SUPPLEMENTAL BRIEFS

SUBMITTED TO THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

SIXTY-SEVENTH CONGRESS
FIRST SESSION

ON THE PROPOSED

REVENUE ACT OF 1921

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INCOME TAX.

BRIEF OF THE COMMITTEE ON BANKING INSTITUTIONS ON TAXATION.[1]

ESTATE TAX AMENDMENTS.

This committee approves the amendment to section 403, subdivision (b), paragraph (3), of the revenue act of 1918, contained in section 403 of H. R. 8245, with reference to the exclusion from the gross estate of money deposited in banking institutions in the United States by a nonresident decedent not engaged in business in the United States at the time of his death.

This committee does not approve of the amendment to section 407 of the revenue act of 1918, provided in section 404 of H. R. 8245, because it does not aid in expediting the determination of the estate tax. The provisions of the amendment so far as they go toward the relief of the executor from personal liability and the extinguishing of the lien upon any part of the gross estate title to which has passed to a bona fide purchaser for value are approved. This committee feels that there should be an additional provision to help in the speedy determination of the estate-tax audit and assessment, in order that the distribution which so very frequently is delayed may be made within the statutory period required by many of the States. The following addition to the proposed amendment is therefore suggested:

"*Provided further*, That if the executor shall file a return and the commissioner shall not within three months from the date of filing assess the tax thereon, unless there is a mutual agreement between the commissioner and the executor for an extension, then upon failure to so assess the tax, the executor may file a petition in the United States district court of the district in which the estate tax is filed, annexing hereto a copy of the return as filed. The court shall thereupon set a date for a hearing and shall give 30 days' notice to the commissioner, and at the hearing the court shall determine the amount of the taxable estate of the decedent, and the amount of the tax so determined shall be final and binding upon the commissioner and executor except in the case of fraud: *And provided further*, That in any event the executor, if he believes the assessment to be unfair or incorrect, may likewise appeal to the district court for a review of the assessment before making payment of the tax, and upon the finding of such district court all taxes found to be due, with interest from the date the return was due, shall be assessed against the estate, unless an appeal to a higher court shall be taken."

The importance of such a provision as is suggested is earnestly called to your attention. There have been cases in which, because of the delay in the accounting for the Federal estate tax and the delay in the assessment by the commissioner, it has been impossible to distribute an estate until after the statutory time allowed for distribution by the statutes of a State, and there are instances where the State authorities may impose a penalty for failure to distribute within the specified time.

It is extremely unfair to many legatees and devisees to delay the distribution of many estates, and there has been considerable just criticism of the delay which has been apparently brought about by a failure of the Government machinery in arriving at the determination of the tax due within an apparently reasonable time. While there should be every reason for the proper coercion of individuals by the Government authorities, in case of failure on the part of individuals there is at present no redress for executors and administrators who desire to keep faith with their distributees.

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[1] All references to H. R. 8245 are to the bill as referred to the Senate Committee on Finance, under date Aug. 22, 1921.

BASIS FOR DETERMINING GAIN OR LOSS.

This committee is opposed to the provisions embodied in subdivision (a), paragraph 2 of section 202 as amended, as impractical from an administrative point of view and as inexpedient from the viewpoint of the taxpayer as well as of the Government. This provision means that the cost to the donor of every gift must be determined by the donee when he disposes of it. It means that every wedding, Christmas, birthday, or other family gift, if disposed of, must have the cost ascertained. Such a provision is impossible of fulfillment, and therefore incapable of satisfactory enforcement. The administrative cost of an attempt to properly enforce such a provision will be excessive, and the prolonged delay necessitated in attempting to obtain the data required will provoke in numberless cases dissatisfaction on the part of the Federal authorities and taxpayers alike. A satisfactory appraisal of property as of the date received it is in general possible to obtain as under the present law and regulations, but the unknown value of property at an unknown date to be determined arbitrarily as in this provision places a power in the hands of the commissioner and his agents which is not only inexpedient and impractical but will be in fact unjust, although administered with the utmost good faith.

So far as the provisions affect a voluntary trust or trust by deed, the provision is distinctly unfair in the case of numberless trusts which have been carried on and are being carried on after the death of the donor, and the same principle applies to all individuals which applies in the case of such trusts. Where securities have become intermingled there is no way of determining the cost of certain securities of the same kind, as, for example, bonds of the same issue received by gift inter vivos, some by will and some by purchase. A trustee with power to sell and reinvest will be handicapped in determining whether the yield on investment will not make disposition impossible, because the yield on the new investment will be cut down by a tax which will be paid on disposition of securities held, and such a tax may not be ascertainable until the end of the year. In many cases the increment received on the disposition of such property is merely an increment in name, although perhaps large in amount, because owing to the inflation of the dollar the purchasing value of the amount received is no greater than the purchasing value of the amount spent for the gift at the time it was purchased, and this will be an additional handicap to both individual and trustee.

This committee is in favor of the provisions of the revenue act of 1918 now in force as applied to the disposition of gifts.

It is recommended further that if, in case of a reorganization, merger, or consolidation, stock of the old corporation is exchanged for stock of the new corporation and cash, unless the cash received is in excess of the cost of the old securities, no gain or loss shall be deemed to have been derived or sustained until the new stock on securities have been sold.

To accomplish this purpose it is suggested that the following paragraph be added to subdivision (d) of section 202:

"When, in the case of the reorganization of a corporation, stock or securities of the new corporation and cash are received in exchange for stock or securities of the old corporation, the cash received shall be applied to the cost of the stock or securities of the old company or to the fair market value of such stock or securities as of March 1, 1913, if acquired prior to that date, and unless the cash so received shall exceed the cost, or fair market value as of March 1, 1913, of the stock or securities of the old corporation no gain or loss shall be deemed to have been derived or sustained until definitely determined by sale or other disposition of such stock or securities."

DEDUCTION OF NET LOSS.

The committee approves of the amendment of section 204 of the revenue act of 1918 contained in section 204 of H. R. 8245.

DEDUCTION OF INTEREST.

The amendment of section 214, paragraph 2 of subdivision (a), as provided in section 218 of H. R. 8245 prohibits a deduction of interest on indebtedness incurred or continued to purchase or carry Victory 3¾ per cent notes.

This committee would call attention to the fact that these notes were sold with the understanding that interest on indebtedness incurred in their purchase or continued to carry the same could be deducted. Inasmuch as loans for such purposes are probably still carried by original purchasers, it is unfair to change the law in this respect at this time.

DEDUCTION OF LOSSES.

The committee is opposed to the amendment of section 214, paragraph 5 of subdivision (a) contained in section 214 of H. R. 8245, which provides that no deduction shall be allowed for any loss claimed to have been sustained in any sale or disposition of shares of stock or securities made after the passage of the revenue act of 1921 where it appears that at or about the date of such sale or other disposition the taxpayer has acquired identical property in the same or substantially the same amount as the property sold or disposed of. It is the intent of the revenue act to permit the deduction of losses in determining net income subject to tax. The sale of securities in the open market definitely determines the taxpayer's loss. This committee is therefore of the opinion that a loss should be deductible if the amount thereof is definitely ascertained by a bona fide sale, and that the repurchase of the security or other property should not in any way affect the deduction of the loss.

DEDUCTION OF BAD DEBTS.

The committee approves the amendment of section 214, paragraph 7 of subdivision (a) contained in section 218 of H. R. 8245.

This amendment is of particular importance from an accounting standpoint. Under the present law, according to the interpretation of the Treasury Department, it is necessary that a debt be finally settled in order that a loss may be taken for a "bad debt" for income-tax purposes. This practice is clearly unsound and is not in accordance with the intention of the income-tax law to have the return of the taxpayer clearly reflect the net income for the taxable year. For example, it is not unusual that the collateral securing a debt will substantially decrease in value, the debtor become insolvent, and a portion of the debt become uncollectible beyond any reasonable doubt. In such cases it should be the practice of the creditor (and conservative business accounting so requires) to have the account written down to an amount which may be recovered in the year in which the loss is actually sustained. The final settlement of the account by the sale of the collateral may extend over a considerable period beyond the taxable year, and in such cases the creditor under the present rulings is compelled to wait until such final settlement, or long after his loss is actually sustained, to take his loss in his tax return.

This amendment is designed to give no greater latitude in the taking of losses, but to permit the taking of a loss in the year in which it is actually sustained, and thus to encourage conservative bookkeeping and to have the income report for tax purposes as nearly as possible conform with the books of the taxpayer.

It will also discourage the final closing out of accounts at a greater loss to the taxpayer than would otherwise be sustained.

CONTRIBUTIONS.

This committee approves of the amendment to section 214, paragraph 11 of subdivision (a), as provided in section 216 of H. R. 8245, but believes that for uniformity the provisions with reference to a trustee should be added in this section, so that the wording may be the same as provided in section 403 as amended.

BENEFICIARIES OF ESTATES OR TRUSTS.

The amendment of subdivision (a) of section 215 of the revenue act of 1918 contained in section 219 of H. R. 8245 is ambiguous. This amendment is evidently intended to prevent the deduction of any capital losses of an estate or trust from the ordinary income which is actually distributed to beneficiaries. The committee is opposed to this provision for the reason that its terms are uncertain and indefinite and may be subject to various conflicting constructions.

PERSONAL EXEMPTION.

The amendment of subdivision (c) of section 216 of the revenue act of 1918 contained in section 221 of H. R. 8245 allows an increased personal exemption to a married person of $2,500, providing the net income of such person is not in

excess of $5,000. This committee is of the opinion that the personal exemption should be the same in all cases, and if any increase is made such increase should be uniform.

The amendment of subdivision (e) of the same section allows a personal exemption of $1,000 to nonresident alien individuals regardless of status or nationality. The committee is of the opinion that nonresident aliens should be permitted the same exemptions as citizens and residents of the United States, as a great many countries having income-tax laws give similar privileges to citizens of the United States.

INTEREST ON BANK DEPOSITS OF NONRESIDENT ALIENS.

The committee approves the amendment of paragraph (1), subdivision (a) of section 217 of the revenue act of 1918 contained in section 228 of H. R. 8245, but believes that the clause contained in parentheses should read as follows:

" (Except interest received from foreign traders or foreign-trade corporations, and interest on deposits with individuals, partnerships, and corporations engaged in the banking business, paid to persons not engaged in business within the United States and not having an office or place of business therein.)"

The amendment of subdivision (e) of the same section is, in the opinion of this committee, incomplete in that it does not provide for property purchased, but only for property produced. It is suggested therefore that the words "purchased or" be inserted before the word "produced" in lines 7 and 9 on page 27.

ESTATES AND TRUSTS.

The committee is of the opinion that the amendment of section 219 of the revenue act of 1918 contained in section 225 of H. R. 8245 can be stated more clearly, and therefore suggests that the following be substituted therefor:

" SEC. 219. (a) The tax imposed by this title shall apply to estates and trusts, which tax shall be levied, collected, and paid annually upon and with respect to the income of estates or of any kind of property held in trust, including:

" (1) Income received by estates of deceased persons during the period of administration or settlement of the estate;

" (2) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

" (3) Income held for future distribution under the terms of the will or trust;

" (4) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals;

" (5) Income collected by a guardian of an infant to be held or distributed as the court may direct; and

" (6) Income of an estate which during the period of administration or settlement is properly paid or credited to any legatee, heir, or other beneficiary.

" (b) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether such income be taxable to the estate or trust or to the beneficiaries thereof. In cases under paragraphs 4 and 5 of subdivision 1 of this section the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

"(c) The net increase of an estate or trust shall be computed in the same manner and on the same basis as provided in this title for individual taxpayers, except that there shall also be allowed as a deduction from the gross income any amount which pursuant to the terms of the will or deed creating the trust is during the taxable year paid to or permanently set aside for the use of the United States, any State, Territory, or any political subdivisioin thereof, or the District of Columbia, or to or for the use of any corporation or association or community chest organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.

"(d) In cases under paragraphs (1), (2), and (3) of subdivision (a) of this section the tax shall be imposed upon the estate or trust as an entity, and shall be paid by the fiduciary: *Provided*, That in determining the net income of the estate of any deceased person during the period of adminis-

tration or settlement under paragraph (1) of subdivision (a), there may be deducted the amount of any income properly paid or credited to any legatee, heir, or other beneficiary. In such cases the estate or trust shall be allowed the same credits as are allowed to single persons under section 15 of this title.

"(e) In cases under paragraphs (4), (5), and (6) of subdivision (a) of this section the tax shall not be imposed upon the estate or trust as an entity and paid by the fiduciary, but there shall be included in computing the net income of each beneficiary his distributive share, whether distributed or not, of the net income of the estate or trust for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from that upon the basis upon which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal year or calendar year upon the basis of which such beneficinary's net income is computed."

In view of the above provision it is also suggested that section 225 of the revenue act of 1918 be amended to read as follows:

"SEC. 225. (a) That every fiduciary (except receivers appointed by authority of law in possession of part only of the property of a taxpayer) shall make under oath a return for the individual, estate, or trust as follows:

"(1) If acting for an individual whose entire income from whatever source derived is in his charge and the net income of such individual is $1,000 or over if single or if married and not living with husband or wife, or $2,000 or over if married and living with husband or wife.

"(2) If acting (a) for an estate of a deceased person during the period of administration or settlement, whether or not the income of such estate during such period of administration or settlement is properly paid or credited to any legatee, heir, or other beneficiary; (b) for an estate or trust the income of which is accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests; or (c) for an estate or trust the income of which is held for future distribution under the terms of the will or trust: *Provided*, That the net income of such estate or trust is $1,000 or over.

"(3) If acting (a) for an estate or trust the income of which is to be distributed to the beneficiaries periodically, or (b) as the guardian of an infant whose income is to be held or distributed as the court may direct: *Provided*, That any beneficiary of such estate or trust received or is entitled to a distributive share of the income of the estate or trust of $1,000 or over.

"(b) The return made by a fiduciary shall state specifically the items of the gross income and the deductions, exemptions, and credits allowed by this title. Under such regulations as the commissioner may prescribe, a return made by one of two or more joint fiduciaries shall be a sufficient compliance with the above requirement. The fiduciary shall state under oath that he has sufficient knowledge of the affairs of the individual, estate, or trust for whom or which he acts to enable him to make the return, and that the same is, to the best of his knowledge and belief, true and correct. Fiduciaries required to make returns under this title shall be subject to all the provisions of this title which apply to individuals.

"(c) The executor, administrator, or personal representative of a deceased person shall be required to file a return of the income of such deceased person for the period intervening between the beginning of the taxable year and the date of death of the deceased, and such return shall include all interest, rents, and other fixed and determinable income accrued to the date of death.

"For the purpose of determining income accrued to date of death of a decedent, which income should be included in the income-tax return for such period to the date of death, the practice of accounting of the probate, surrogate, or other court of the State in which the decedent died a resident shall govern, and in the case of a nonresident alien the accounting practice of the State in which any ancillary letters may be taken out with respect to property located in such State or accounted for by any executor or administrator in a given State shall govern with respect to the accounting for Federal income-tax purposes as to accrued income.

"(d) The executor, administrator, personal representative, or estate of a deceased person shall not be liable for tax on any return filed prior to the death of the decedent unless notice and demand of such tax is served upon the executor, administrator, or personal representative within one year after notice of the death of the deceased is given to the Commissioner of Internal Revenue and to the collector of internal revenue of the district in which the deceased was a resident at the time of his death."

WITHHOLDING AT SOURCE.

The committee is of the opinion that section 221 of the revenue act of 1918, as amended by section 227 of H. R. 8245, is not clear, and would suggest in lieu of the words "in the cases provided for in subdivision (b)," in line 18, page 34, the following: "income received as interest on obligations described in subdivision (b)."

CREDIT FOR TAXES.

The committee opposes the amendment of paragraph 5, subdivision (a) of section 222 of the revenue act of 1918, as provided in section 228 of H. R. 8245, and a similar amendment to subdivision (a) of section 238 of the revenue act of 1918, provided in section 246 of H. R. 8245, and approves the provisions contained in the existing law.

COMMUNITY CHEST, ETC.

The committee approves of the amendment of subdivision 6, section 231, of the revenue act of 1918 contained in section 235 of H. R. 8245.

TAX-FREE COVENANT BONDS.

The committee would suggest that paragraph 8 of subdivision (a) of section 234 of the revenue act of 1918, as amended by section 239 of H. R. 8245, be amended by the addition of the following words: "whether individual, corporation, partnership, or fiduciary." This addition is deemed advisable to describe definitely the obligee.

PENALTY FOR "NEGLIGENCE."

The committee is of the opinion that the penalty imposed by subdivision (b) of section 250 of the revenue act of 1918, as amended by section 251 of H. R. 8245, for understatement in return due to negligence, should be confined to interest at the rate of one-half of 1 per cent per month. Negligence is too broad a term upon which to assess a high penalty. Many people innocently make erroneous returns due to lack of knowledge of complicated rules and regulations. There is no intent on the part of such taxpayers to defraud the Government, and it is unjust to impose the high penalty prescribed in the bill.

LIMITATION OF LIABILITY OF EXECUTOR, ETC.

The committee recommends that subdivision (d) of section 250 of the revenue act of 1918 as amended by section 252 of H. R. 8245 be changed by the elimination of the words beginning on line 3, page 55, as follows;

"*Provided*, That in the case of income received during the lifetime of a decedent, all taxes due thereon shall be determined and assessed by the commissioner within one year after written request therefor by the executor, administrator, or other fiduciary representing the estate of such decedent."

The committee recommends that there be substituted in lieu thereof in section 225 of the revenue act of 1918 subdivision (d) as it appears on page 7 of these recommendations.

RETURNS OF INFORMATION.

The committee is opposed to the amendment of section 256 of the revenue act of 1918 contained in section 256 of H. R. 8245. The burden now placed upon employers with respect to returns of information is onerous. To change the provision as indicated in the amendment will greatly add to the present volume of work and at the same time will not materially aid the department in checking up returns. It can be readily seen that if every employer is required to make a return for laborers who receive $8.50 per day and who are constantly changing employment the administrative difficulties of enforcing the provision as amended would be insurmountable.

AGREEMENT FOR FINAL ASSESSMENT.

This committee approves the principle of section 1001 of H. R. 8245, but is of the opinion that the particular provision is unnecessarily complicated and involved. This committee therefore recommends that the following be included in lieu thereof:

"SEC. 1001. Upon the application of any taxpayer, the Commissioner of Internal Revenue, under regulations prescribed by him and approved by the Secretary of the Treasury, may, by agreement with such taxpayer, make an assessment of taxes which shall be final and binding on both the Government and the taxpayer and which shall not be set aside, increased, or diminished except in case of false or fraudulent returns of income."

RETURNS OF NONRESIDENT ALIENS.

The committee is of the opinion that the time for filing returns of nonresident aliens and foreign corporations is entirely too short. It is therefore recommended that section 227(a) be amended to provide that returns of nonresident alien individuals, corporations, and partnerships shall not be due until the 15th day of the ninth month following the close of the fiscal year of the taxpayer, or if the return is made on the basis of the calendar year on or before September 15 of the year following the taxable year. If the extension is granted it should be provided that the full amount of tax shall be paid when the return is filed.

CERTIFICATES REQUIRED BY PARAGRAPH 4 OF SCHEDULE A, TITLE XI, OF THE REVENUE ACT OF 1918.

The committee recommends that paragraph 4 of Schedule A of Title XI be amended by eliminating the words "but such deliveries or transfers shall be accompanied by a certificate setting forth the facts."

This provision was so impractical and impossible of fulfillment that the rulings thereon were modified, and the inexpediency of this requirement is obvious.

BRIEF OF JULIUS HAUSMANN, NEW YORK CITY.

I believe that one point in the tax question has not been properly presented, and that is the failure to favor income from earnings over incomes from investments.

During the late emergency it was necessary to act quickly, but I believe it is now the desire of your committee to have the tax matter placed upon a sound foundation.

Most of the residents of this country, including those engaged in professional vocations, depend upon earned incomes, and such incomes are subject to hazards not found at all or only slightly found in incomes from investments. The continuance of an earned income of a prudent individual depends upon health, employment, age, continuance of good times, and many other matters over which the wage earner has no control. An error by a lawyer or a doctor is apt to mean the total and permanent ruin of a means of livelihood of many years building. An income from investments made with prudence only requires the clipping of the coupons. A person who derives income as an employee or from being personally engaged in a business in which a nominal capital is involved should not be taxed as much as a person deriving an income from investments, the ownership of a store, etc. The question of invested capital as a basis for tax is not involved in my contention, but the risk of permanence of an earned income is involved.

Several foreign countries have recognized the injustice of laying an equal tax upon an earned income and an income from investments.

Referring to the present English law, Chambers's Income Tax (fourth edition, 1920 budget), says, at page 3:

"Indeed, it is important to notice that under the new 1920 code the area of relief is greatly extended. That results from the fact that the various allowances are now given without any limit of income."

At page 9:

"The relief in respect of earned income is another benefit to which every one with an earned income is entitled, no matter how large the income, and though he can make out no claim to any of the special allowances which are noted below."

At pages 15 and 16:

"In a sense any investment 'earns' interest or dividend, but that is not the meaning of the word for income-tax purposes. The idea is income earned by personal exertions, not by capital. But in the case of a business no distinction is drawn between the earnings of the capital employed in it and the exertions of the business man or men whose business it is; all is classed as earned income.

In saying this, we refer to individuals carrying on business alone and to partnership, but not to incorporated companies. * * * Further, the earned income privilege is extended to any pension, superannuation, or other allowance, deferred pay, or compensation for loss of office, given in respect of the past services of the individual, or of the husband or parent of the individual, in any office or employment, or given to the individual in respect of the past services of any deceased person, whether the individual, or husband or parent, shall have contributed or not.

"The importance of this is that the tax benefit attaching to earned income is extended to persons who do not and did not earn it—for example, widows and children in receipt of allowances given for services rendered by the husband or father, or parents or sisters in receipt of allowances given for services rendered by a deceased son or brother."

A storekeeper may or may not be treated as a person who for the purposes of taxation earns an income.

The booklet which was prepared in 1918 by the United States Government Printing Office, legislative reference division of the Library of Congress, for use by the Committee on Ways and Means, therein shows the then existing law in England and France to have favored earned incomes (p. 10).

In France the exemption granted incomes from pensions and life annuities was 1,250 francs, while the exemption granted to the recipients of salaries was 1,500 francs (p. 36). An income derived from professions was also favored (p. 38). The tax rate on each of the foregoing kinds of income was 3.75 per cent. An income from transferable securities (no similar exemption being reported in said booklet) was taxable at 5 per cent (p. 39).

The following applies to the existing law, but the same illustrations will apply to the proposed law after the changes in the tax rates are taken into consideration. The personal exemptions and the partial exemption of the first $4,000 will be disregarded.

Assume that a man with $10,000,000 carefully invests the same to yield a taxable income of 5 per cent, or $500,000 a year. The tax rate would be the normal tax of 8 per cent, and the highest surtax applicable would be 68 per cent additional, or a total tax of $303,510.

A corporation with a taxable income of $500,000 would pay a tax of 10 per cent, and if it had practically no invested capital, but was not a personal service corporation, it would pay under circumstances most unfavorable to it almost 40 per cent more, subject to various deductions, but in reality the tax rate would be considerably less than 50 per cent of the net income, or less than $250,000. Under the proposed law the corporation would pay 15 per cent, or $75,000.

Assuming an individual, as a result of initiative but a small investment, earned $500,000 (the illustration would apply equally well if a smaller figure be used) the tax under the existing law would be exactly the same as that assessed upon the same amount of income from investments, i. e., $303,510.

Assuming that the rate of surtax upon such an income when received by an individual is reduced to about 32 per cent, such a tax together with the normal tax upon the $500,000 would greatly exceed the 15 per cent assessed upon a corporation with the same income.

In view of the fact that in many such cases the present tax laws have favored corporations rather than individuals, it only seems fair to have the repeal of the excess-profits tax take effect at or subsequent to the time when the reduction of the surtaxes upon the incomes of individuals takes effect.

Without including an income from an invention, which, under our present law, receives protection for years, but referring especially to an income from an idea or an income that is received in one year from the culmination of the efforts of several years' work, it is manifestly unfair to tax such an income as much as an income derived from investments.

To argue that the developer of the idea should incorporate is useless in view of section 220, which provides that when a corporation is formed or availed of for the purpose of preventing the imposition of surtaxes the stockholders shall be subject to taxation upon the earnings both distributed and undistributed. The pending bill has a provision for imposing upon the earnings of a corporation formed for such purpose a special tax in addition to the regular tax. The law both pending and prospective penalizes a person who is unfortunate enough to have his income accrue from an idea or from earnings.

A further objection to the forming of a corporation which does business in this and foreign countries is the disadvantage under which such a corporation

labors in transacting its business with its foreign clientele. While it is true that a corporaton has become favorably looked upon in the United States, in many instances corporations are not so favorably regarded abroad. The foreigner in his business dealings looks in the main to the character and personnel of the individual with whom he trades in a far greater degree than to the mere financial responsibility of the individual, partnership, and corporation. This statement applies not only to importing, exporting, and dealers in foreign exchange and commercial paper but as well to banking.

Foreign trade, and particularly exports, are essential to the success of America and the continuous employment of its citizens. What could be more unfair to individuals than Senate bill 680, which by its terms entirely exempts from Federal taxes American corporations formed solely for purposes of foreign trade. The bill is correct in principle, but should also include so much of the business of an individual or partnership as may be foreign trade and also dealing in foreign exchange, for without dealers in foreign exchange, which is a very hazardous business, there could be no foreign trade.

BRIEF OF MANUFACTURERS' APPRAISAL CO.

PHILADELPHIA, *April 13, 1921.*

Hon. BOIES PENROSE,
United States Senator, Washington, D. C.

DEAR SIR: You may remember that just prior to the passage of the 1918 income-tax law I wrote a communication in the Philadelphia Public Ledger calling attention to the absurdities of the practice of applying annual rates of depreciation to industrial and other properties in connection with income-tax returns. You may remember that I suggested that depreciation judgment should be applied so as to describe the effect of things that actually happened, rather than for the wrong factor of age, and that there was inserted in the law a provision for deduction of depreciation, if any, due to obsolescence. It was a point that my communication in the Public Ledger urged—that depreciation should be specifically judged for considerations of mechanical deterioration, obsolescence, and lack of utility.

Some of the most bizarre results have been obtained in the recent application to plants of our clients of "age-rate" depreciation. One Philadelphia concern which has a plant worth at least $300,000 has been cut down to a present valuation of $5,000, although the plant is in splendid operating condition.

In a recent communication from Prof. T. S. Adams (who has been an advisor to the Treasury Department on tax matters), in reply to a letter from me calling attention to the incorrectness of the practice of applying annual rates of depreciation, he seemed to think there was nothing else to do than to apply what he called "conventional" rates, and where there were reasons for making exceptions to do so.

I find, after some inquiry, that there is in the administrative department of the internal revenue office no clear idea on the subject of value and valuation, and certainly no uniform method of consideration of the subject of value in the administration of the income-tax law. Presumably they have experts along other lines, but I have so far failed to learn of the employment of expert appraisers.

I feel that in the preparation of the new income-tax law I could be of some real assistance if the legislative authorities wished me to assist in working out a plan that would bring about uniformity in the methods of valuation of properties in connection with the income-tax law.

The whole subject of value and valuation is one that is generally misunderstood. There are a number of appraisal organizations like my own which have developed standards of appraisal, different somewhat in their methods of collection of facts and in the consideration of depreciation. The science of appraisal has developed to such an extent that the collection and classification of lists of materials in buildings and machinery and equipment in industrial plants is now a matter of routine requiring expert appraisers to do the work with facility; but in the subject of depreciation lies the true science of valuation work.

Depreciable property does not depreciate regularly by years, and consequently age or annual rates are not the proper bases for appraising depreciation. Our plan is to ascertain first the cost of new reproduction, or what is generally known as the replacement cost as of a given date, and then to segregate the so-called scrap value, if any, the remainder being what is called the depreciable

value. If a machine or other item contains materials which would have a market worth after the machine value has been completely destroyed, then depreciation judgment should be applied to the machine value only, omitting the worth of the materials remaining after the machine value has become void.

There are three or four classes of depreciation, and when the problem is presented in the way suggested it is possible for the appraiser to express his judgment clearly and effectively so as to show, in percentage or lump amount, the lessened usefulness under headings which may be described as follows:

MECHANICAL DETERIORATION.

This class of depreciation covers the effect of influences which have caused the machine or other item to depreciate mechanically, such as wear, tear, and breakage, whether the wear, tear, or breakage be ordinary or unusual in their character.

OBSOLESCENCE.

There are several kinds of obsolescence depreciation, the most noticeable of which is that which is due to the invention of a better thing, whether it be a machine, a building, or a tool. The second class of absolescence depreciation is that which is due to the discontinuance of manufacture of the thing to be appraised and the consequent special expense of repair or replacement. There is a third class of obsolescence depreciation, which is due to the discontinuance of the process for which the thing is designed in the best practice of the art.

In the second class are included a great many machines which are still in use in plants and are worth using, notwithstanding the fact that the manufacturer has discontinued making them. A few years ago all of the large flour mills of the country had erected flour-bleaching apparatus, costing about $10,000 for each mill, which was rendered obsolete by the passage of a Federal pure-food law. This type of obsolescence comes under the third heading.

LACK OF UTILITY.

This is intended to describe the relation of a machine or other item to the particular use or usefulness of the owner. There may be a perfect machine which in its place would be useful, but which under its existing ownership lacks usefulness. This is an engineering rather than an appraisal problem, and there may be some question as to whether it would be possible to apply a legislative defininition of value or judgment as to lack of utility.

Assuming that the excess-profits taxes will be abolished in the new legislation which is forthcoming, there is still a necessity for a real definition of "value" and the requirement of analysis in such a way that any appraisal offered will be provable. The comparatively new science of valuation should not be left to the administrative decision of the Internal Revenue Bureau men, who have merely academic or book knowledge of the subject. The danger of leaving technical matters of this kind to administrative decision instead of enacting legislative definitions that are effective is shown in the Interstate Commerce valuation of railroads, which has cost a great many millions of dollars without as yet establishing any standard of valuation that can be generally understood.

Whatever shape the new legislation may take, there is room for a requirement of analysis in valuation that will be uniform, and I know that it will be possible to put in the law a workable standard for valuation that will prevent some of the amateurish and unfair decisions of the Internal Revenue Bureau which have been made in the last few months.

Perhaps you will ask what my interest in this proposal is. My interest in this would be that as one who is devoting his life to the solution of valuation problems I am interested in so standardizing methods of valuation that it will be possible to make appraisals that mean something definite. We have done a great deal of appraisal work for income-tax purposes on various theories of accountants and clients. In some instances we know that our appraisals have been accepted. In one instance the examiners accepted an appraisal of a very large plant only to have their theories of valuation upset by the men who held a subsequent hearing. If our appraisal was correct in the first place it should not have been overturned by the men who followed. If it was wrong in theory in the first place it should not have been accepted. There should be principles laid down which appraisers can follow in a manner to really serve

their clients and under which manufacturers are free from the danger of suffering unfair reductions in their capital investments by administrative methods.

If all of this interests you, it would please me very much to go into further details with you or any other Members of Congress who have a legislative interest in the subject of valuation. I should be pleased to go to Washington at any time to discuss this subject with you or with any congressional committees having an interest in the subject.

Sincerely, yours,

WALTER W. POLLOCK, *President.*

PHILADELPHIA, *April 14, 1921.*

Hon. BOIES PENROSE,
Washington, D. C.

MY DEAR SENATOR: In connection with my letter dated the 18th, you may be interested in the following comment received from the Cable Co., large manufacturers of pianos at Chicago, which I have received this morning and which is directly in point with the suggestions contained in my other letter:

"The internal revenue examiners went back to the year 1896 and refigured depreciation and arbitrarily deducted something like $258,000 from our plant-asset accounts, notwithstanding the fact that your 1908 appraisal showed an asset of something like $180,000 over and above our book values as at that date. The inference, of course, is that we have charged off capital investment as expense, and this is no doubt true. It is difficult to pick out the items. Our tax auditor has asked if it is possible to get from you information showing fluctuations and replacement values for the years 1906 to 1908 on the different classes of assets which we have in our plant, which are roughly divided as follows: (*a*) Buildings and equipment; (*b*) machinery and fixtures.

"It may be that I am asking the impossible. If so, you will no doubt tell me."

There are undoubtedly thousands of such cases, where great injustice will be done manufacturers unless a comprehensive system of depreciation shall be devised. I am inclosing herewith an attempt at so defining value and valuation methods in the forthcoming income-tax measure as to make such a situation impossible in the future. If it shall be possible to ascertain a truly fair valuation for invested capital purposes, that same valuation ought to be workable for any other purpose. I believe that an intelligent compliance with the provisions contained in this proposed legislation will answer the purpose. Manufacturing concerns and appraisal oganizations are in a position to understand and apply the principles which are here described, and they are capable of explanation and defense in hearings before the internal revenue officials and in the courts.

Yours, very truly,

WALTER W. POLLOCK, *President.*

DEFINITIONS OF "VALUE" AND REQUIREMENTS FOR VALUATION METHODS SUGGESTED FOR INCLUSION IN THE FORTHCOMING INCOME-TAX MEASURE.

When, in compliance with the provisions of this act, a taxpayer shall submit a valuation of physical properties, such valuations shall be determined by the following standards:

1. He shall first ascertain the cost of new reproduction of physical property other than land, at fair market prices as of the date required, and shall deduct from such cost of new reproduction the percentage or amount, if any, of accrued depreciation from such cost of new reproduction.

2. Accrued depreciation is defined, for the purposes of this act, as the expression of opinion or judgment as to lessened usefulness at the date of the valuation. In the measurement of depreciation judgment the taxpayer shall separately state the percentage or amount of accrued depreciation, if any, due to the following elements:

(*a*) Accrued mechanical deterioration, if any, comprising lessened mechanical usefulness due to ordinary or extraordinary wear and tear, breakage, or other causes of mechanical deterioration.

(*b*) Accrued obsolescence depreciation, if any, comprising lessened usefulness due to improvement of invention; to discontinuance of manufacture and

consequent special expense of repair or replacement of the object under consideration; to discontinuance of the process for which the object was designed in the best practice of the art; to expiration of patents or special conditions of manufacture which are deemed to have lessened the market price; or to other causes of obsolescence depreciation.

(*c*) Accrued lack of utility, if any, comprising in the case of buildings a change in the present usefulness of sites, as compared with the usefulness of such sites at the date of construction; in the case of other physical objects of depreciation a judgment as to impractical adaptation of such objects to the uses of the taxpayer; or other elements of accrued lack of utility.

In the valuation of land sites, whether in cities, towns, agricultural, mining, forest, or other districts, the taxpayer shall show normal worth by comparison with the valuation at normal worth of contiguous sites of comparatively similar location and usefulness. Whenever possible such valuations shall be analyzed so as to show effect upon valuation of each element of accessibility or usefulness of streets, highways, waterways, improvements in cultivable qualities, natural mineral deposits, natural or artificial growths, or other enhancing elements.

BRIEF OF THE MUTUAL INSURANCE COMPANIES.

Under the revenue act of 1918 insurance companies are required to pay income, excess-profits, and capital-stock taxes in the same manner as these taxes are imposed upon corporations generally. In addition the insurance companies are required to pay the insurance-premium taxes levied by section 503 upon the issuance of insurance policies.

The mutual insurance companies urge the repeal of the insurance-premium tax in the revision now being made of the revenue act of 1918.

This insurance-premium tax is a purely war-time measure, which has heretofore been repealed promptly at the close of each war.

The policyholder pays this premium tax in the end. The insurance company is just made a tax collector for the Government. This costs the policyholder for each $100 which goes to the Government an expense of about $67 in the average stock company, while the expense is only 50 cents for each $100 paid into the treasury when the Government collects the tax direct from the taxpayer.

The insurance company is not relieved of any other tax because of the payment of this premium tax. Neither is the policyholder who actually bears this tax relieved of any other tax.

The premium tax is an additional tax which is not imposed upon other corporations. Neither is the tax so imposed upon policyholders imposed upon any other class of persons in like manner. Insurance is to-day a recognized necessity and is the only necessity so taxed. Other additional taxes are imposed on the ground that the subjects of the tax are, in part at least, luxuries or enjoy privileges in the exercise of eminent domain as do railroads and public utilities. Insurance enjoys no such privileges and is not in the class of luxuries.

Other additional taxes are specifically required to be paid by the purchaser or consumer, thus constituting the railroad or the druggist a mere tax collector for the Government without additional pay or additional expense to the purchaser. The purchaser pays the exact amount of the tax and no more.

In the case of the insurance tax this is specifically required to be paid by the insurance company, notwithstanding the fact that the insurance company has already been required to pay all the taxes imposed upon other corporations. No attempt is made to impose such additional taxes upon banking, merchandising, manufacturing, or any other single business as such. No reason has ever been suggested for imposing the premium tax upon insurance as a business except the necessity of the Government in time of war.

In requiring that this premium tax shall be paid at the rate of 1 cent for each dollar or fractional part thereof of premium charged on each separate policy, the present law imposes on the insurance companies the most cumbersome and expensive method possible for calculating and reporting the tax. The result is that this tax imposes on the companies an expense fully proportional to that involved in the handling of any other part of their business.

It is generally recognized that this tax is paid by the policyholder. The insurance rates are increased to provide for this tax. The addition not only includes enough to pay the tax but an additional amount to cover the excessive expense involved in the collection and handling of this tax by the insurance companies.

The stock, fire, and casualty agents' commissions average about 21 per cent of all the money collected from the policyholders. Many other expenses and State and municipal taxes are generally a flat percentage upon the policyholders' total payments. The total expenses of the stock companies are an avearge of about 40 per cent of the total paid by the policyholders.

After paying an average expense of 40 per cent the stock company has left only 60 per cent of the policyholders' payments with which to meet losses. To have a full $100 available to pay losses it must therefore collect $167 from the policyholder. In other words the stock company uses $67 for expenses for each $100 paid for losses.

As this expense ratio of 40 per cent is figured on the total collections from the policyholders, it follows that the collection of taxes by the insurance company for the Government must bear the same proportion of expenses. This means that for every $100 collected by the insurance company for the Government the policyholders are required by the insurance company to pay an additional $67 for the expenses. The Commissioner of Internal Revenue reports that the cost to the Government averaged about 50 cents for each $100 collected during the fiscal year ending June, 1920, and it was about 80 cents for each $100 collected during the fiscal year ending June, 1921.

It should be noted that the foregoing only applies to fire and casualty insurance. The expenses of the mutual companies are approximately half the expenses of the stock companies, but as the greater part of the business, amounting to between 80 per cent and 85 per cent of the total, is transacted by the stock companies on the average expense ratio above mentioned, the effect of the business transacted by the mutual companies does not vary the situation materially.

It should also be noted that the State and municipal taxes imposed upon the gross premiums of policyholders amount to upward of 3 per cent and that the Federal tax is imposed upon the total policyholders' payment, including the amount required for this 3 per cent tax, and that the State tax is also imposed upon this total amount including the amount required to pay the 1 per cent Federal tax. This is plainly a case of imposing a tax upon a tax.

The tendency of stock, fire, and casualty insurance to-day is very strongly toward a monopoly of the business in a few American companies and in a few foreign companies. The figures show that nearly one-third of the fire-insurance business in the United States is now being transacted by foreign or foreign-owned fire-insurance companies; that 10 American companies do more than 40 per cent of the business transacted by American companies; that 25 American companies do 60 per cent of the business transacted by all the American companies.

If there is any possibility that any part of this tax is not immediately transmitted to the policyholder with all expenses, it means that just that much more of a burden is thrown on the business transacted by the smaller and newer companies equally with that transacted by the larger and older established companies.

It is obvious that this helps the larger companies and handicaps the smaller ones, while a tax on income and profits will fall on the larger and older companies, which can best stand the burden, and will not affect the newer and smaller companies, which ordinarily can make no profits for many years until they become established. As conditions now are, most of the newer and smaller companies give up the struggle within a short time. It is a sound governmental policy to foster and encourage the development of local insurance companies, stock and mutual, in every part of the country.

The mutual insurance companies in the United States number nearly 3,000. They are all American. They are owned exclusively by American policyholders. They effect savings to the people which range from 10 per cent to 70 per cent of the stock company charges.

These mutual companies are a unit in objecting to the insurance-premium tax. They object to this tax as applied to all insurance companies, because the mutual companies, to a large degree, represent the great mass of policyholders who purchase insurance from both mutual and stock insurance companies.

The tax on insurance premiums necessarily tends to discourage the taking of insurance. It imposes a very excessive collection cost upon the policyholder taxpayer. As now collected it is in part a tax upon a tax. Finally, it is a war-time emergency measure, and each insurance-premium tax has always been repealed promptly immediately at the close of each war.

The mutual companies do not object to the substitution of a tax on the investment income of insurance companies with proper deductions in lieu of the

income, excess-profits, and capital-stock taxes, provided that the rate at which such investment income is to be taxed will not impose on the insurance companies a burden disproportionate to that imposed upon corporations engaged in other businesses.

It is believed that such tax on investment income is the most logical and practical and will involve the least expense and inconvenience in its administration both to the Government and the companies.

NATIONAL ASSOCIATION OF MUTUAL INSURANCE COS.
FEDERATION OF MUTUAL FIRE INSURANCE COS.
NATIONAL ASSOCIATION OF MUTUAL CASUALTY COS.
NATIONAL ASSOCIATION OF AUTOMOTIVE MUTUAL INSURANCE COS.
HERMAN L. EKERN, *Counsel.*

BRIEF OF THE REAL ESTATE BOARD OF NEW YORK (INC.).

Two problems confront Congress and the country. These are housing and employment.

Senator Calder's thorough investigation disclosed a shortage of 1,000,000 apartments in the United States, and labor leaders claim that there are 5,500,000 unemployed in the country. The building of dwellings containing 1,000,000 apartments would give employment to 5,000,000 men in addition to the men employed in the various industries providing the necessary materials.

It would seem, therefore, the bounden duty of Congress to encourage in every way the building industry, and that this duty is paramount to the raising of revenue for wasteful and extravagant government.

Fifteen years ago a "billion dollar Congress," with a per capita tax of $12 annually, astounded our people. To-day we have a per capita tax of $35, exclusive of the debt service. In addition there are enormous local taxes, which in the city of New York, for instance, amount to $58 per capita.

You can get an accurate idea from the following figures of the burden imposed on the head of a family of five in New York City, and New York City differs very little from the other cities of the country:

Cost of Federal Government annually	$250
Cost of State and local government annually	290
Total	540

Partly due to this excessive taxation and partly due to the cost of material and the cost and inefficiency of labor, an apartment of four rooms and bath, the smallest decent unit for a family of five, costs, with the land, either in a multi-family house in the thickly settled sections of the city or in a one or two family house in the suburbs, $6,000. For a $6,000 apartment at least $960 a year rent must be charged, or 16 per cent of the cost. This is made up as follows: Seven per cent for interest on money invested; 3 per cent for taxes and water; 2 per cent for heat; 2 per cent for light, insurance, and incidentals, including risk; 2 per cent for repairs.

The head of a family of five, in Greater New York has a fixed annual charge of $960 for rent and $250 for Federal taxation, or $1,210 in all. This burden is intolerable, but the condition becomes still worse when even at $960 a year apartments are unobtainable, and two and sometimes three families are compelled to live in an apartment intended for only one family. There is a shortage in Greater New York alone of 100,000 apartments.

This condition can be remedied only by building, and building to the extent needed is practicable only in two ways: First, by the building of large standardized multi-family dwellings erected by strongly financed, efficiently managed corporations; or second, by the building of one and two family houses by individuals, who themselves will aid in the work financed by building loan and savings associations.

Here is where Congress can aid. All corporations organized for the purpose of building, operating, selling, or exchanging real estate, and for no other purpose, should be exempt from the taxation contemplated in the pending revenue measure. Sections 230 and 231 should be amended so as to exempt such organizations from the corporation tax.

The States themselves recognize that real-estate organizations are so heavily burdened by taxation for local purposes that they should not be asked to pay the special taxes for State purposes. In New York and Massachusetts real-

estate corporations are expressly exempted from the tax on net incomes of mercantile and manufacturing corporations. The reason is obvious: In New York State $100,000 invested in an apartment house pays $2,850 annual tax for local purposes; $100,000 invested in a mercantile and manufacturing corporation would pay only 4½ per cent on its net income. If such income is $10,000 it would pay $450 annually.

This statement is equally true as to individuals. A man in New York State owning a $5,000 mortgage or a bond or any form of security earning 6 per cent would pay for State and local purposes only a normal tax of 1 per cent on the income, or $3. A man owning a $5,000 home would pay, in 1921, $142.50, and certainly more in 1922.

As real estate bears 90 per cent of local taxation, it should be relieved from special State or Federal taxation. This is so apparent that further argument seems unnecessary.

Section 213 exempts an amount not exceeding $500 received by an individual as dividends or interest from a domestic building and loan association. This should be amended so as to read "annual dividends or interest."

The by-laws of all building and loan associations require that the interest or dividends of a borrower shall remain until the stock matures. The average loan required in the cities to build a house is now $5,000. This requires in some associations 50 shares, with dues of 50 cents per share per month, or 25 shares at $1 per share per month. Ordinarily the stock would mature in 11 years. The dues paid would amount to $3,300 and the accumulated dividends to $1,700. On this the borrower would pay a 4 per cent tax on $1,200. This is unfair and discouraging. As the borrower seldom has more than $3,000 income and usually has two or more dependents, he would pay no tax if he drew his dividends annually.

History shows that republics can only endure permanently where the majority of the heads of families own their own homes. There are 23,000,000 heads of families in the United States; 8,000,000 own their own homes. If 14,000,000 owned their own homes, there would be no doubt as to the permanency of our own institutions and there would never be any serious labor troubles. Men who own their own homes can rarely be delivered by agitators or demagogues.

In 1920 building, loan, and savings associations loaned to home seekers over $500,000,000. As the average loan was about $2,500, this would mean 200,000 additional home owners. These associations are growing rapidly and have 8,500,000 members. Congress should do everything possible to encourage the building of homes.

The real estate interests believe also that if you continue the excess-profits tax you should amend section 202.

Section 202. Basis for determining loss or gain: This basis should be changed when real estate transactions are considered. March 1, 1913, values should be taken plus a certain percentage of increase based on normal changes of conditions.

The fair market price or value as of March 1, 1913, should not be taken as a basis for determining in a transaction taking place in 1920.

Leaving out all questions of the abnormal prices of war times, there should be considered the constant gradual increase in prices of material and labor. Of the 250 per cent increase in the cost of building perhaps 20 per cent is the normal increase that would come from the more complete unionization of labor, the higher standards of living, and the growing scarcity of certain kinds of material.

If the seller of a house the fair market value of which in 1913 was $10,000 received for it $20,000 and bought a similar house in a more convenient locality in 1920 or 1921, he would pay at least $20,000, so that his profit could be apparent only and not real. This profit should not be taxed. The fact stated above applies with equal truth whether the transaction is with a piece of property worth $1,000 or $100,000.

Section 231 should exempt personal service corporations. These corporations are really partnerships, especially those dealing in real estate, and no special service or protection is given them by the State or the Federal Government. The capital invested is usually nominal and the partners pay on their individual incomes. The accumulated earnings, before division, are seldom invested but are deposited in commercial banks and do not draw interest.

Section 1008, if enacted, and if section 218 is declared invalid, would put an extremely serious burden on these corporations, as the accumulated tax would amount to 42½ per cent.

In the majority of instances the net income of these corporations has been divided and spent, and the tax would be in the nature of a penalty tax which would not only wipe out the resources of the corporation but be a serious drain if paid by the individual partners.

Section 214 should be amended so as to permit the deduction of a special tax levied in cities for general benefit. As an instance, it is proposed in New York State to make each city a school district in which a special tax not exceeding 2 per cent may be levied in addition to the regular tax for special school purposes, the special school purposes being the Americanization of foreigners. This is a national and not a State function, and yet it is proposed to put its cost entirely on the real estate taxpayers.

A contented people must have employment and must be adequately housed. It is the duty of the Congress of the United States to address itself to this proposition and deem its solution paramount to any other matter under consideration.

BRIEF OF THE STATE SECRETARIES SECTION OF THE AMERICAN BANKERS' ASSOCIATION.

We, as a committee appointed by a section of the American Bankers' Association, have been charged with the duty of endeavoring to have incorporated in the new revenue act a provision which would allow banks to use as a deduction on their Federal income-tax returns State, county, and municipal taxes paid which are assessed against the stockholders of such banks.

The amendment which our committee and the bankers whom we represent would like to have included in the new revenue act should, we believe, be inserted following the word "Territory," in subdivision 3 (c) of section 234 of the revenue act of 1918, and is as follows:

"Including taxes paid which are assessed (imposed) against stockholders of corporations on the value of their stock in such corporations."

Its proper place in the revenue act of 1921 would be following the word "year," appearing on first line of subdivision 3 of section 239 as that act was introduced in the House August 15, 1921.

The national bank act (section 5219, Revised Statutes) inhibits the several States from imposing any taxes on national chartered banks except on real estate owned, but provides that the States may impose taxes on stockholders of banks based on the value of their stockholdings in such banks. The different States have enacted taxing laws pursuant to these provisions.

A typical statute is that now in force in Missouri. Section 12775, Revised Statutes of Missouri, 1919, provides:

"* * * Persons owning shares of stock in banks, or in joint-stock institutions or associations doing a banking business, shall not be required to deliver to the assessor a list thereof, but the president or other chief officer of such corporation, institution, or association shall, under oath, deliver to the assessor a list of all shares of stock held therein and the face value thereof, the value of all real estate, if any, represented by such shares of stock, together with all reserved funds, undivided profits, premiums, or earnings, and all other values belonging to such corporation * * * so listed to the assessor, shall be valued and assessed as other property at their true value in money less the value of real estate, if any, represented by such shares of stock * * *."

Under this statute the Missouri Supreme Court has held, in the case of State ex rel. *v.* Shryack (179 Mo., 424, 78 S. W., 808):

"The real estate of a bank should be assessed against the corporation, the personal property should not be assessed at all, and the shares of stock should be assessed against the stockholders in their individual names, but the corporation should pay the tax assessed against the stockholders and recover it from them."

A similar statute in Kentucky was considered by the United States Supreme Court in National Bank *v.* Commonwealth (9 Wall, 353). Such statute provided:

"The cashier of a bank whose stock is taxed shall on the first day in July of each year pay into the Treasury the amount of tax due. If such tax be

not paid, the cashier and his sureties shall be liable for the same and 20 per cent upon the amount, and the said bank or corporation shall thereby forfeit the privileges of its charter."

The United States Supreme Court held in the above case that the State statute imposing upon national banks the duty of paying taxes obviously assessed against their stockholders is constitutional. In the language of the court:

"* * * It is only when the State law incapacitates the banks from discharaging their duties that it becomes unconstitutional. * * * But we are of the opinion that while Congress intended to limit State taxation to the shares of the bank * * *, it did not intend to prescribe to the States the mode in which the tax should be collected."

Likewise it has been held that:

"Where a national bank has become insolvent and the property swept away no tax on the shares can be collected from the receiver under a statute requiring the tax to be paid by the bank." (City of Boston *v.* Beal, 51 Fed. Rep. 306; s. c. 55 Fed. Rep. 26.)

From the above quotations from different State statutes and court decisions it will be noted that the method of filing assessment lists by banks, both national and State, is not only prescribed, but that in some States it is the enforceable duty of banks to pay the tax which is clearly assessed against the stockholders. Other statutes and court decisions similar to those above quoted can be cited.

Aside from the fact that some of the States require by statute that the bank pay these taxes it has been a custom for the past 60 years for all banks to pay State, county, and municipal taxes which are assessed against their stockholders. Bankers have always considered the payment of these taxes as a necessary part of the expense of doing business, and in ninety-nine out of a hundred cases are not reimbursed by the stockholders.

It is our opinion that there is no basic distinction, when consideration is given to ordinary and necessary expenses, between real-estate taxes paid by a bank (which by statute are assessed against the bank direct) and "personal property" taxes paid by the bank (which are of necessity assessed against the stockholders).

Congress intended to give national chartered banking institutions especial protection when the national bank act was enacted. At that time the chartering of banks was looked upon by many as an exclusive right of the different States, and many thought that the Federal Government should not issue charters to banking institutions. To protect national banks from having excessive and unfair taxes imposed against them by the State legislatures section 5219 was drafted and its provisions still remain in effect. Certain it is that Congress did not intend to penalize national banks if and when in future years those banks paid taxes which were assessed against their stockholders. That banks, both National and State, are being penalized under the provisions of the Federal income-tax law can not be gainsaid.

We believe also that Congress intended, in the enactment of the national bank act, to give special benefits to national banks which were not enjoyed by other banking institutions; this for the reason that banks taking out or operating under a national charter were compelled to purchase Government bonds which were issued in payment of the Civil War debt. The Government was, without question, the beneficiary of the sale of these bonds, which were made at a time when purchasers of long-term bonds were not very numerous.

When comparison is made between banking institutions and manufacturing or mercantile corporations, the unfairness of the present revenue act and regulations is very apparent. Assume a mercantile corporation doing a retail business: Local taxes, based on the value of personal assets owned, are assessed directly against the corporation by State, county, and municipal authorities and are deductible on the Federal income-tax return filed by the corporation. Then assume the case of a bank which pays a like amount of personal-property taxes, but because those taxes are levied against the stockholders the bank can not claim as a deduction those taxes paid under the provisions of the present revenue act.

We believe the present inequity can best be corrected by incorporating in the new revenue act the amendment following the second paragraph of this letter. To amend the national bank act, authorizing the States to impose personal-property

taxes directly against national banks, would not give the desired relief to State banks and trust companies. The taxing laws of the different States, as applied to bank shares, at present in conformity with the provisions of the national bank act, would need to be repealed or amended if State banking institutions were to have the same relief accorded them that national banks would obtain through an amendment to the national bank act. This would require 10 to 15 years' time, and probably could not be accomplished at all in some of the States.

There are at present 22,705 State banks and trust companies doing business in the United States and 8,184 national banks.

We appreciate fully that article 566 of regulations 45 provides that stockholders of banks may use as a deduction their proportionate part of personal-property taxes paid by banks with the added provision that a like amount must be included as income in the stockholders' return as dividends. Under this provision of the regulations it is impossible for an individual stockholder to be benefited more than 4 per cent or 8 per cent normal Federal tax by claiming as a deduction his part of the taxes paid by the bank. Furthermore, it is extremely doubtful whether one-tenth of the banks of the country notify their stockholders of the amount per share of taxes paid for them. The present regulations are extremely complicated and the method of obtaining the very limited benefit is obscure. The new revenue act and regulations should tend to simplify complicated provisions in all points possible.

We believe that it is the intention of your committee to propose, and of Congress to enact, for the most part, an income-tax law assessing tax on net income received. We submit that net income has not been determined when "personal property" taxes paid by banks, which make up a very material part of their disbursements, are ignored. Probably, no important change could be made in the revenue act or regulations with less difficulty than the change we are suggesting; this because neither bankers nor stockholders understand the present regulations, and the consequence is that only a very small part of a large sum of taxes paid by banks each year are used as a deduction.

To allow banks to use as a deduction these taxes paid would not deprive the stockholders of any material benefit. Article 566, heretofore referred to, indicates that the only reason a stockholder can use as a deduction his proportionate part of taxes paid by the bank for him is the inclusion as income from dividends of a like amount. If the bank were allowed to consider the payment of taxes as a necessary expense of doing business, it could not be contended that the payment constituted a dividend, and, therefore, the stockholder would not have received, in fact or in theory, a dividend representing the payment of "personal property" taxes. Not having included any so-called dividends, the stockholder would not have the right to claim deduction for taxes paid for him.

This is not an argument for reduction of Federal income taxes paid by banks. Bankers, of course, desire to see the banks relieved from paying excess-profits tax, but realize full well that corporation income taxes will be levied for many years to come. Bankers are perfectly willing to pay as much Federal income tax as other corporations with like net income.

To incorporate our suggested amendment in the new revenue act would not establish any harmful precedent. It is not open to any legal objection. It simply would correct a very serious unfairness in the present law.

The several States that have income-tax laws on their statute books have followed the provisions of the Federal law more or less closely, and if all States were to enact income-tax laws uniform with the present Federal law they would constitute a real hardship on banking business as compared with other lines of business.

Moreover, the revenue act of 1921 will doubtless be in existence many years to come, and probably its method of arriving at net taxable income will be amended fewer times in the future than have the previous acts. We believe there is an imperative need that the new act include our suggested amendment.

It is not necessary to remind your committee or Congress that banks performed a very valuable service to the Government during the recent war in that they acted as sales agents for the Government in the sale of Liberty bonds and Victory notes and also assisted many thousands of taxpayers in the preparation of Federal income-tax returns. In the investigation by the Department of Justice and other agencies of so-called income-tax "experts," we have failed to note the name of any one connected with a banking institution.

But we are not asking for the enactment of any provision that would be unfair to other corporations. Rather, we desire that the new revenue act be enacted on a basis of fairness and equity to all taxpayers alike, including banks.

We earnestly solicit your support in having our suggested amendment incorporated in the revenue act of 1921.

M. A. GRAETTINGER,
Secretary Illinois Bankers Association.
ANDREW SMITH,
Secretary Indiana Bankers Association.
W. F. KEYSER,
Secretary Missouri Bankers Association.
THEODORE S. CADY,
Associate Member of Committee.

BRIEF OF THE STATE STREET EXCHANGE, OF BOSTON, MASS.

Increased corporate income taxes for years following 1921 are imposed by the revenue bill as passed by the House of Representatives. These are said to be substitutes, in part, for excess-profits taxes from which corporations are to be relieved. It has not been recognized that for corporations and associations which never had any excess profits they are a real, substantial, additional burden. It seems most unjust to place further taxes on corporations that never had any excess profits in order to relieve those that did profit exceedingly during the war period. This proposed additional rate bears very harshly on corporations that have invested in improved real estate. Such associations of investors ought to be wholly relieved from any corporate taxes for the following reasons:

1. At the present time very few private individuals can afford to invest their capital individually in any buildings of considerable size, such as office buildings, hotels, apartment houses, theaters, etc. The result of this is that the only way of providing for these real-estate improvements is by corporations, associations, and joint-stock companies. Accordingly, every encouragement must be given, if building is to be stimulated, to the investment of large and small sums in developing real estate through associations of investors.

2. With the present housing and building shortage and lack of employment it is most important to encourage new building. This can not be done if this class of property is to be subject to corporate taxes. In the first place, higher taxes tend to make it impossible to put up buildings which can compete with other buildings built when the cost of construction was much lower. In the second place, the present returns on this class of property are so low as to discourage all new capital from making new investments of this character.

3. The improved real estate in which corporations and associations of this class invest bear the great bulk of local taxation. The annual rate in Boston was $24.10 last year upon the assessed value of land, and buildings and the assessments are the full value of properties.

Taking at random some of the associations joining in this brief, we find:

Association.	Net earnings before taxes.	Local tax.	Per cent of tax.
State Street Exchange	$336,573.50	$144,600.00	0.43
Washington Building Trust	114,917.24	34,892.50	.31
Suffolk Real Estate Trust	93,116.36	38,458.78	.41
Summer Street Trust	50,990.93	25,990.93	.50
Western Real Estate Trust	409,761.00	132,508.00	.32

The present Federal taxes add to the local taxes from 6 per cent to 8 per cent more of the net earnings before taxes.

The annexed sheet shows the dividend rates of a few of these real-estate associations. One pays at the rate of 8 per cent, two at 7 per cent, five at 6 per cent, and half of them at 4 per cent or less.

4. Real-estate investment companies are not engaged in business so that the community buys their wares. It is true that in the course of time rents can be increased in some cases to take care of increased taxes, but almost all buildings of considerable size are let for rooms or apartments for terms of years,

and the taxes are borne by the landlord. Accordingly, any extra taxation, as it can not be foreseen in advance, bears directly on the owners and is not borne by the community. These real-estate corporations are not engaged, so to speak, in making money, but only in investing money in property which is necessary for the community and on which no great return is expected.

5. There is abundant precedent for special tax treatment of real estate. The New York income tax on corporations specifically exempts real-estate companies. Massachusetts and many other States, in levying corporate taxes, exempt from tax the real estate that has been subject to local, municipal taxes.

6. Unless Congress desires to increase the taxation, now burdensome to the last degree, on improved real estate held, and which must largely be held, by corporations and associations, we urge that they be included under section 231 of the revenue act of 1918 in the classes of corporations exempt from income tax.

For that purpose we propose the following definitions:

"All corporations, including associations, and joint-stock companies, whose business is confined to the holding of or making investments in improved real estate and the management incidental thereto or to improving real estate by the erection of buildings thereon and whose purchases and sales are occasional only and, with any holdings of personal property, are incidental only to the business above set forth."

In any event, there should be no increase over the present 10 per cent rate.

7. If the committee should decide that no such special treatment can be granted, we suggest that another way of accomplishing the result would be to allow corporations to deduct all rents from their corporate taxable income. This can readily be done by inserting, in subdivision (a) of section 234 of the revenue act of 1918, the following new paragraph:

(6a) "All amounts received as rents from buildings of any character."

A clause of this kind will directly encourage building. For example, a mill wishing to put up dwellings for its employees will be given a direct incentive from the Government so to do.

Prices of real estate trust stocks, Boston, Mass., July 16, 1921.

	Mortgages outstanding.	Capital stock outstanding.	Par.	Dividend rate.	Bid.	Asked.
				Per cent.		
Albany Trust	$270,000	$1,100,000	$100	4		
Barristers' Hall Trust		850,000	100	5		
Bedford Trust	75,000	470,000	100	3		$55
Berkeley Hotel Trust	450,000	1,100,000	100	3	$40	
Board of Trade Building Trust		1,670,000	100	4½	60	68
Boston Ground Rent Trust	413,000	3,453,500	100	5		80
Boston Real Estate Trust	360,000	9,317,000	1,000	4		650
Boston Storage Warehouse Co.	100,000	1,255,000	100	6	87	
Boston Wharf Co. bonds	2,500,000		1,000	4	740	780
Boston Wharf Co. stock		6,000,000	100	5		80
Bromfield Building Trust	325,000	583,400	100	4		60
Business Real Estate Trust bonds	600,000		1,000	7		1,000
Business Real Estate Trust stock	3,600,000	3,250,000	100			20
Chicago Real Estate Trustees		2,500,000	1,000	6		900
City Associates		750,000	500	4½		
City Real Estate Trustees, Chicago	180,000	722,000	1,000	5		700
Congress Street Associates	1,280,000	2,100,000	100	4	55	
Copley Square Trust bonds	2,301,000		1,000	4½		
Copley Square Trust preferred stock		650,000	100	5		
Copley Square Trust common stock		2,000,000	100	3	22	30
Devonshire Building Trust preferred	725,000	250,000	100	5		75
Devonshire Building Trustcommon stock		540,000	100	2	25	
Dwelling House Associates	98,000	700,000	1,000	3½		400
Eastern States R. E. Trust bonds	175,000		1,000	5		900
Eastern States R. E. Trust stock		233,800	100	5		80
Essex Street Trust		580,000	100	4		60
Factory Buildings Trust		700,000	100	6		80
Fifty Associates	110,000	(1)		(2)		3,300
Hotel Trust (Touraine)	370,000	1,436,200	100	5	70	
Huntington Chambers Trust		600,000	100	4		
Kimball Building Trust		1,000,000	100		30	
Lovejoy's Wharf Trust	575,000	1,800,000	100	5		
Municipal Real Estate Trust	385,000	1,943,500	100	5		80
Old South Building Association		1,278,900	100	5		

(1) 1,000 shares.

(2) $160.

Prices of real estate trust stocks, Boston, Mass., July 16, 1921—Continued.

	Mortgages outstanding.	Capital stock outstanding.	Par.	Dividend rate.	Bid.	Asked.
				Per cent.		
Oliver Building Trust	$825,000	$1,500,000	$100	6		$80
Paddock Building Trust		1,100,000	100	5		70
Pemberton Building Trust		750,000	100	4		55
Post Office Square Building Trust	325,000	800,000	100	5		
Quincy Market Realty Co. bonds	1,600,000		1,000	5	$830	
Real Estate Associates	150,000	1,714,900	100	4		65
Real Estate Improvement Trust	350,000	234,500	100	6	50	
Somerset Hotel Trust	425,000	500,000	100	4	55	
South Street Trust		1,000,000	100	5		80
South Terminal Trust	450,000	1,000,000	100	3		45
State Street Exchange	2,658,000	3,500,000	100	4		45
Suffolk Real Estate Trust	350,000	1,440,000	1,000	3		450
Summer Street Trust	500,000	840,000	100	3	45	
Terminal Hotel Trust, preferred stock	140,000	350,000	100	4		
Terminal Hotel Trust, common stock		350,000	100	8		
Tremont Building Trust	1,200,000	2,555,000	100	5	60	
Trimountain Trust		633,700	100	4½		75
Western Real Estate Trust	360,000	3,200,000	100	7		107

BRIEF OF THE UNITED STATES LEAGUE OF LOCAL BUILDING AND LOAN ASSOCIATIONS.

PURPOSE OF THE AMENDMENT.

The purpose of the amendment is to encourage greater investments in the shares of the local building and loan societies of the country in order that these institutions may be enabled to more adequately meet the demands made upon them by members desiring to build or purchase their dwelling houses, and thus, while promoting systematic thrift, to relieve the hardships caused by the housing scarcity and stimulate the greater employment of labor in the building industries.

Point 1.—There is a great housing scarcity throughout the country, especially in industrial centers. Because of the detrimental social and economic effect upon citizenship, public health, and industrial stability, the Government should concern itself earnestly in relieving the situation.

The recent report of the United States Senate Committee on Reconstruction, signed by Senators Calder, Edge, and Kenyon, supported by testimony taken in many cities, should be convincing as to the need of action of some kind. High rents, unwholesome crowding, public discontent, and dangerous civic psychology are features of the situation.

Walter Stabler, comptroller of the largest of industrial insurance companies, whose investments in housing mortgages are very great, testified before the Senate committee: "We are facing a most serious situation in the housing field, the most serious that the country has ever seen; and it has not grown any better. It is growing worse steadily."

A communication signed by many city health commissioners to Senator Calder says: "In every city there is abnormal overcrowding. From 20 to 30 per cent of the population of the cities studied is thus affected. Thousands of families are forced into insanitary and dangerous quarters. Health authorities are powerless, because it is impossible to vacate such premises under present conditions. * * * The relation of bad housing to child health is startling. Infant mortality is 50 per cent higher in districts where there is the greatest overcrowding. * * * Overcrowding has propagated and spread tuberculosis. * * * Unless conditions are remedied, and quickly, we are going to be unable to cope properly with pestilential diseases," etc.

Tenement House Commissioner Mann of New York City told the Calder committee that the shortage of houses in New York City has resulted in awful overcrowding of living quarters. He mentioned one case where a house built for 59 families now holds 99 families, and adds: "These conditions will, if continued long enough, be reflected in the death rate and in the infectious and contagious disease rate and in the morals of the people."

Very recently the Hon. Herbert Hoover, Secretary of Commerce, after an investigation of the housing situation, said, in an address at Chicago, that there was an indicated shortage of nearly 1,500,000 homes. He said further: "An equally disturbing fact is that the tentative figures from the forthcoming census indicate that the total number of homes owned by occupiers has steadily decreased, and that nearly 60 per cent of our population are living as tenants. * * * If the rate of increase in tenantry continues for two or three decades, 75 per cent of the people of this country will be tenants. * * * A nation of majority rule should be a nation of majority ownership."

Point 2.—The problem of housing relief has many angles, but public as well as private investigation has demonstrated that the chief trouble relates to the financial aspect of it. A tremendous increase in small dwelling-house construction would immediately follow the provision of adequate mortgage money credit facilities—that is, if every home seeker of good character, good health, a steady job, and a good margin of real-estate security could get a long term loan, to be payable in easy installments with which to build or buy his home.

In the records of the Calder committee and that of the Lockwood-Untermeyer investigation in New York the testimony as to the shortage of mortgage money is cumulative and convincing. Only the fact, and not the causes thereof, is pertinent here, but, in passing, it may not be out of place to advert to the testimony of responsible witnesses before the Senate committee that hundreds of millions of dollars had been withdrawn from the mortgage market because of the incidence of Federal taxes upon mortgage income received by individual lenders. This shortage applies not only to funds for building individual houses but dwellings of the multiple type as well.

Point 3.—The chief and fittest agencies that exist for financing small-house construction and purchase are the domestic building and loan associations of the country. There are 9,000 of them, and they are scattered from coast to coast. Their aggregate membership exceeds 5,000,000 men, women, and children—almost invariably persons of small or moderate means. They deal exclusively with the small home seeker, who is most affected by the housing scarcity. The United States League reports, collected from every section of the country, shows that the loans made to home seekers last year by these institutions aggregated more than $500,000 000. The average mortgage loan is about $2,500. In the States where the building loan societies are showing their greatest development in number and resources (notably Pennsylvania, Ohio, New Jersey, Illinois, Massachusetts, and New York) the reports are invariable at the present time, showing that the associations, for lack of adequate loanable funds, are obliged to disappoint thousands of families seeking ownership of their homes through this system of self-help.

The report of the Calder committee highly praises the work of the building loan associations toward solving the housing problem and recommends Congress to pass the home loan bank bill, which would permit these institutions to borrow money extensively, as needed for home seekers, through the sale of home loan bank bonds (tax exempt) secured by the deposit of dwelling-house mortgages by the borrowing building and loan association. Because of the evident indisposition of Congress to authorize further issues of tax-exempt bonds, there appears no early prospect of relief through the passage of the Calder-Nolan home loan bank bill.

Relief must come through encouraging the masses of the people to supplement and increase the already large savings funds of the building and loan association, so that these funds may be employed in an increasing ratio in loans to home seekers.

Secretary Hoover, in a recent address at Chicago, said: "I believe that we would have a very much more stable economic system if we had a more regular proportion of our saving available to home building." He pointed out that of the vast sums tied up in the savings departments of national banks, State banks, trust companies, and insurance companies only a small percentage was available for home building. He made this further comment: "After all, saving is a perfunctory process as compared to purposeful saving; and what greater incentive for saving is there than the ownership of a home, the possession of which may change the very physical, mental, and moral fiber of one's children." In a letter to the United States League of Local Building and Loan Associations, Mr. Hoover said:

"Your associations, true people's banks, popularly controlled and locally managed, have sprung up voluntarily throughout the country. Through the

system of weekly or monthly deposits by their shareholders they encourage thrift throughout the Nation. Through the system of amortization, in which the building and loan associations were the pioneers, they have made their assets sound and worthy of confidence. Through loans principally upon homes they are an instrumentality not only in solving the housing problem but in developing self-reliance of our citizenry."

Point 4.—Governments have always held thrift and individual home owning to be policies worthy of particular encouragement by legislation. Laws for the encouragement of thrift have been deemed justifiable at any time. More than ever in the country's history they would seem to be justified at present. The small-exemption proposal now pending in the revenue act for members of building and loan societies serves the double purpose of helping citizens to help themselves and of relieving a dangerous and distressing scarcity of dwelling places.

Point 5.—The exemption proposed is not likely to reduce public revenue to any appreciable extent, but even if such was the prospect the proposal would justify itself for the reasons stated. But loss of revenue is by no means to be assumed. Rich speculators can not profit by the exemption, since not more than $500 of income during any year is affected. On the other hand, it is quite possible that should this exemption lead to a considerable increase of the investments in building and loan societies, the indirect effect would be an increase of public revenue—municipal, State, and national—through the greater stimulation of the building industry throughout the country. This stimulation would be felt by manufacturers of all sorts of material used in the construction and operation of dwelling houses. Ramifications of the building industry are so many and diverse that the benefit to capital and labor that would come from a general resumption of building of new houses would be very great indeed.

AN AMERICAN REMEDY.

The remedy seems clear enough. It lies not in the direction of Government subventions for housing, either by the State or by the Nation, nor in any of the ill-considered proposals for spending public money in doing things for the people that may best be done by themselves. Any even temporary expedient for the creation of State-supported agencies to provide housing should be discouraged. That way, as the experience of England has demonstrated, lies waste, extravagance, and ultimate futility, along with the demoralization of the normal activities of private initiative and enterprise. The way out is the true American way of wisely helping the people to help themselves, by increasing the incentives for individual thrift and industry and removing the penalties that unwise taxation policies now impose upon the savings funds that are employed in the creation of homes.

BRIEF OF THE NATIONAL ASSOCIATION OF CHEWING GUM MANUFACTURERS.

The National Association of Chewing Gum Manufacturers, an organization composed of practically all of the manufacturers of chewing gum throughout the United States, herewith requests that the existing excise tax of 3 per cent on the sales of chewing gum be repealed through amendment in the tax bill now under consideration by your honorable body.

We regard the special excise taxes as entirely unfair in principle; they are war-time imposts applied to times of peace. If such taxes at a flat rate were applicable generally, no industry could have any objection, as all would be paying the same; but it is unjust to pick out selected industries for such special taxation. Seventy-five per cent of each stick of chewing gum is already taxed by the Government through the tariff.

The tax imposed on our industry in the form of a special excise can not be passed along. We have a fixed selling price of 5 cents per package of five pieces, or 1 cent a stick, to the consumer, and the manufacturer's price to the wholesaler must permit of a legitimate profit to both jobber and retail dealer before the goods are sold to the consumer at 1 cent a stick or 5 cents a package.

Large quantities of chewing gum are sold to school children at 1 cent a stick, and to increase the price to the consumer would mean an increase from 1 cent to 2 cents a stick. This would unquestionably greatly restrict sales in addition to the natural falling off which has already taken place in connection with the general shrinkage of business in this country.

The chewing-gum industry in this country is now in bad shape, and has been in that condition for some time past. We are going through a period of extreme depression; a number of manufacturers are in the hands of receivers and many others are in financial difficulties. Numerous manufacturers have passed their dividends—even on preferred stocks—but the excise taxes must be paid to the Federal Government monthly whether or not stockholders or bondhonders receive dividends or interest on their stocks or bonds.

In this connection it is interesting to note that in the case of one large manufacturer of chewing gum whose figures are available the amount paid in taxes since October, 1917, is greater by 16 per cent than the amount paid to stockholders during the period.

In the measure now before you for consideration provision has been made for the relief of other industries through the abatement of the tax, through a change in the form of taxation, or through a reduction in the amount of the tax imposed. Manufacturers of chewing gum ask that the same consideration be given to their industry.

The Mexican Government has recognized the situation and recently reduced the export duty on chicle, the main ingredient of chewing gum, by more than 50 per cent. The Canadian Government has removed the war-time duties on ingredients going into the manufacture of chewing gum, particularly the 7½ per cent import tax on chicle, and has also decreased the sales tax on our goods from 3 per cent to 1½ per cent.

Chewing gum is not a luxury. It is purchased mainly by children at 1 cent a stick and by the poor man and his family at 5 cents a package containing five pieces. If, however, it should be classed as a luxury, why should chewing gum be taxed when articles running into comparatively large sums, such as silks and velvets, real hand-made laces, luxurious furniture, exquisite and expensive chinaware, cut-glass tableware, Russian caviar, pate de foie gras, exotic fruits, cut flowers and other hothouse products, and numerous other luxuries that only find their places in the homes or on the tables of the rich are not taxed?

Our industry is perfectly willing to pay it rightful share of any revenue required by the Federal Government, and we, therefore, suggest in lieu of the special taxes on a comparatively few industries a general sales or turnover tax of not more than 1 per cent. Unequal taxation, however, is resented by every true American.

DARWIN R. JAMES, Jr., *President.*

BRIEF OF LEADING CANDY AND CONFECTIONERY ASSOCIATIONS.

We address you with the request that you reconsider that portion of the contemplated revenue act which proposes to tax at 10 per cent confectionery of the wholesale price of 40 cents or more per pound. The present uniform rate of 5 per cent was reduced to 3 per cent by the committee of the House. Recently it was reported that your committee contemplated a modification of the tax rate, so as to tax at 10 per cent candy and confectionery whose wholesale price was 40 cents or more.

This proposed change is a matter of vital concern to a large group within the industry and affects both manufacturer and retailer. Represented here, among others, are manufacturers of nationally known brands, such as Huyler's, Schrafft's, the Mirror, Park & Tilford, Wallace & Co., Greenfield's, Whitman's, Crane Candy Co., Sweet Candy Co., Hershey's, and Runkel, all of whom are manufacturers, and some of whom are also retailers, conducting as many as 60 or 70 stores. There is also represented here the Confectioners and Ice Cream Manufacturers' Protective Association of the State of New York, which is an association of retail dealers with upward of 500 members, and the Cocoa and Chocolate Manufacturers' Association of the United States, consisting of practically all manufacturers of chocolate and chocolate products.

In the short time available it has been impossible for the undersigned to procure the attendance of all those in the industry who are affected, but we have the assurance that the National Confectioners' Association, as well as the New England Confectioners' Association, join with us and support the arguments which we are here presenting.

We feel that it is a fair statement to say that practically the entire candy industry protests against the 10 per cent discrimination, for which we can find no basis in any arguments presented at the hearings on the revenue bill or in the statistics of the industry.

Measured in dollars and cents, the 10-per-cent tax would affect approximately 10 per cent of the volume of the industry, but we feel that the arguments here presented will show that this high taxation will burden unduly a specific group of manufacturers whose investments are large, will not produce any appreciable revenue, and will cause unfavorable comment from a large proportion of the buying public.

The arguments submitted for your consideration are:

1. That although less than 10 per cent of all candy comes within the class exceeding 40 cents per pound wholesale, the greater part of the production (in some cases as high as 90 per cent) of the manufacturers of confectionery here represented does come within the scope of this 10-per-cent tax. This means that that group of candy manufacturers who have devoted their time, energy, and money to building up nationally known brands of better-grade candy will solely be burdened with the higher tax, while those concerns who have devoted their efforts to cheaper grades will remain unaffected thereby. One concern selling a million dollars worth of goods annually may not manufacture 2 per cent of merchandise salable at 40 cents per pound or over, and another concern doing the same amount of business would manufacture 90 to 95 per cent of the commodity included in the higher rate of taxation.

2. From the point of revenue the proposed 10 per cent tax will not produce sufficient to warrant its imposition, but it will burden those affected thereby with 25 per cent of the entire tax sought to be derived from the candy industry. (See Schedule B.)

3. Contrary to popular belief (or newspaper reports), there is only a fair margin of profit in high-grade candies, no larger than in any other grade. Annexed hereto is a tabulation of manufacturers' cost taken from the actual records of one of the largest manufacturers in the Eastern States, showing the manufacturing cost of a 1-pound package of candy which retails at $1.25. This statement shows that the actual manufacturer sells this for 85 cents, netting him a profit of 7.3 cents, out of which he must pay his income taxes. This same manufacturer reports that for the year 1920 the net profit of this company was 3½ per cent on sales.

Filed herewith is the brief of another large manufacturer in the city of New York, who is also a retailer, 90 per cent of whose production would be affected by the 10 per cent tax, and whose records for the year 1920 show that its profit was approximately 12 per cent before the payment of Federal and State income taxes.

It is therefore readily apparent that any taxation based upon a theory that the cost of even the high-priced candy does not exceed 20 cents per pound is entirely erroneous and contrary to the facts. The candy business is highly competitive, and manufacturers are held to the closest margin of profit.

4. The 10 per cent tax will affect a large part of the buying public, for much of the candy intended to be taxed at 10 per cent is sold in bulk and retailed in small units of 1 ounce or more at 5 or 10 cents. In other words, the sale of 1 pound of hig-taxed candy divided into 5 or 10 cent packages will be distributed among a dozen people. Another large portion of this higher-priced candy is retailed in small packages of standard size and weight at 5 or 10 cents a package. The present 5 per cent tax can hardly be absorbed by the manufacturer of these package goods. A 10 per cent tax could not be so absorbed and would lead to an increase in price of at least 1 and 2 cents in retail sales to a large mass of the buying public.

5. The undersigned are convinced that the proposed differentiation within the industry is discriminatory and unjustified. These manufacturers have large investments and have sought through their energy and skill to reach the buying public with a product which is in no sense a luxury, or, if it must be termed a luxury, is a poor man's luxury, for the buying public is not drawn from the wealthy class but from the salaried and laboring class.

Annexed hereto is a typical cost sheet marked "Schedule A," to which reference has heretofore been made. A second schedule marked "B," showing the distribution of the tax under the proposed plan and the resultant hardship to us, is also annexed. There is also filed herewith the individual statements of certain manufacturers indicating how they specifically will be affected by the proposed legislation.

We therefore respectfully ask your committee to reconsider its present intention and to omit from the bill as it is to be reported to the Senate, the clause as to the 10 per cent tax which is so discriminatory.

SCHEDULE A.

Details of cost of package retailing for $1.25 (1 pound super extra chocolates); wholesale price 85 cents, including excise tax.

COST PER 100 PACKAGES.

Item	Cost
Box and carton, 100 at $100 per 1,000	$10.00
Cardboard partitions, 100 at $2.65 per 1,000	.26
Top parchments, 100 at $25 per 1,000	.03
Bonbon caps, 4,000 at $13 per 1,000	.52
Cotton pad, 100 at $2.10 per 1,000	.21
Lace mats, 100 at $2 per 1,000	.20
Guarantee slips, 100 at $0.50 per 1,000	.05
Cellophane wrappers, No. 10, 100 at $19.95 per 1,000	2.00
Seals, 200 at $0.47 per 1,000	.09
Ribbon, No. 1½–2,410, 115 yards at $20.50 per 1,000	2.36
Content labels, 100 at $1 per 1,000	.10
	15.82
Contents	25.67
Labor, packing, and wrapping, etc	4.00
Departmental overhead—department S	4.50
	49.99
Packing for shipment	1.50
Total factory cost	51.49
Transportation	5.00
General overhead, including selling, advertising, office, and administration expenses (33⅓ on package goods)	17.16
Excise tax (1/21 of 85 cents)	4.05
Total cost	77.70
Selling price	85.00
Profit (before income tax)	7.30

The above company last year, on a business of $4,753,000, paid excise taxes amounting to $210,775; income tax and excess-profits taxes of $60,298. Its net profits for the year were 3½ per cent.

SCHEDULE B.

The Government derived a revenue from the 5 per cent tax on candy for the year ending June 30, 1920, as follows:

Sales, $462,840,000; revenue, $23,142,030.

It is estimated that there has been a shrinkage of 30 per cent from the above figures, or

Sales, $324,000,000; revenue, $16,200,000.

Therefore the revenue from the tax now proposed on sales of $324,000,000 would be as follows:

90 per cent: $291,600.000 at 3 per cent	$8,748,000
10 per cent: $29,400,000 at 10 per cent	2,940,000
Total	11,688,000

Ten per cent of the sales of the industry would pay about 25 per cent of the tax.

STATEMENT OF E. GREENFIELD'S SONS, NEW YORK CITY.

The company was established in 1848, has a capital investment of nearly $1,500,000, and employs constantly nearly 500 help on the average the year round. Our domestic business is exclusively chocolates, and 65 per cent of it consists of high-grade chocolates in fancy packages and bulk, distributed exclusively through the jobber. The remaining sales are made up of 5-cent, 10-cent, and 15-cent packages and chocolate penny goods. The greater proportion of our bulk chocolates are also sold to the consumer by the penny, 5 cents, and 10 cents' worth by the retailer.

We further submit that our proportion of profit on package and bulk goods, retailing from 60 cents to $1 a pound, shows no greater profit than our 5, 10, or 15 cent packages or our penny-count goods.

The business of the company for the year 1920 was conducted at a slight loss, and from the results to date the net profits for the current calendar year will not exceed 5 per cent after taxes.

This statement should, therefore, disprove the mistaken theory or notion that runs in the minds of some that the so-called high-priced candies show exorbitant profits.

We further submit that our books are open to the inspection of the Treasury Department or any official who desires to substantiate this statement.

STATEMENT OF HAWLEY & HOOPS.

Although we are manufacturers of a general line of confectionery, 95 per cent of which would be unaffected by the 10 per cent tax, nevertheless we feel this is a gross injustice to many of the manufacturers where the position is reversed.

We think any differentiation in the tax is bound to cause mischief and create general confusion within the industry, besides the unpleasant reaction on the part of the public.

STATEMENT OF MENGO L. MORGENTHAU, PRESIDENT THE MIRROR.

The Mirror, of New York City, wholesalers and operators of 19 high-class candy stores in the metropolitan district, protests against the amendment which we understand is proposed by your committee to that part of the new revenue bill which relates to the tax on candy. The bill as passed by the House provided for the reduction of the 5 per cent tax levied on this commodity under the existing law to 3 per cent. Your committee have, we are informed, agreed to the reduction in the tax from 5 to 3 per cent, but have incorporated the prosion that candy selling for 40 cents or more per pound shall pay a tax of 10 per cent.

Without any reference having been made thereto in the hearings before your committee, and without any suggestion from the industry, so far as we know, we are utterly at a loss to understand the reasons causing your committee to propose this amendment, which so clearly penalizes and discriminates against one portion of the industry as compared with another. No such line of demarcation is justified.

In the case of The Mirror, its records for 1920 show that 90 per cent of its sales would come under the ruling of 40 cents per pound or over and be subject to the 10 per cent tax. This would double the amount of the excise tax to be paid by the Mirror, whereas the figures in Schedule B attached hereto show that the Government intends to collect from the industry as a whole 33⅓ per cent less. This is manifestly a serious discrimination against concerns of our class.

It seems to be generally believed that the better class of merchandise shows more of a profit than the lower priced goods. This is a serious mistake. The gross profit of The Mirror in 1920, based on the cost of merchandise sold, was only 45 per cent on the selling price. Against this there were expenses of over 33 per cent, leaving a net profit of only 12 per cent. These figures mean before Federal and State taxes have been deducted. We are making this statement of facts to counteract the grossly exaggerated and visionary statements recently circulated through the press by irresponsible parties of a 300 per cent profit.

This statement of facts show very cleary that concerns such as The Mirror, whose only crime seems to be that they have built up their businesses on medium and higher-priced candies nationally know and demanded by the public, are being radically discriminated against when their exicse taxes are doubled, while the tax on the business of large wholesale concerns manufacturing a cheaper grade of merchandise is being reduced 40 per cent. This discrimination and injustice certainly does not require the opinion of any tax expert, and the collection of such a tax would be very difficult to satisfactorily explain to an intelligent voter.

The retail candy industry is probably in closer touch with the consuming public than most industries. It is not a case of an occasional purchase but one of daily consumption by millions of voters throughout the country. If this discriminatory tax is allowed to remain in the bill, and it finally becomes law, it will be necessary for the thousands of stores which happen to deal in the better brands of confectionery to enlighten their customers and the public as to why they are required to pay a tax of 10 per cent on the candy they purchase.

BRIEF OF THE NATIONAL CONFECTIONERS' ASSOCIATION.

1. There is a very general impression that the price of sugar should control the price of candy, and that candy prices to-day should reflect absolutely the 70 per cent reduction in refined sugar prices since 1920. This impression is incorrect, as the cost of sugar constitutes only a small per cent of the cost of producing candy. The ratio of sugar cost to total cost of production is manifestly larger in the less expensive grades of candy. Eighty per cent of the candy produced in the United States is sold by the manufacturer at 20 cents and under per pound. On this candy sugar represents about 15 per cent of the total manufacturers' cost. On higher-priced candy the sugar percentage cost is naturally less. It must furthermore be borne in mind that the cost of packages or containers, labor, and high overhead expenses constitute a very considerable proportion of the total cost of the higher-priced candies.

2. An erroneous impression prevails that the confectionery industry is the chief beneficiary of prohibition. This, however, is not correct. All industries have profited by prohibition, due to the fact that money hitherto spent for liquor has been available for expenditure in other lines. Accurate statistics carefully collected by the National Confectioners' Association show that industries have prospered in the following order: (1) Savings banks, (2) the soft-drink industry, (3) the ice-cream industry, (4) the theaters and moving-picture shows, and (5) the confectionery industry. The increase in candy production to the best of our information has been approximately 25 per cent, due to the natural expansion of the industry rather than to prohibition.

3. Candy is sold by manufacturers at prices ranging upward from 12½ cents per pound. Eighty per cent of all candy produced is sold by the manufacturer at 20 cents or under per pound. Ten per cent is sold by the manufacturer at prices ranging from 20 cents to 80 cents per pound. The remaining 10 per cent constitutes the higher-priced candies. Candy sold by the manufacturer at 20 cents and under per pound is sold by the retailer to the consumer at from 25 cents to 40 cents per pound. These candies, for the most part, are manufactured by machinery.

4. The removal of the 5 per cent manufacturers' excise tax on candy will have the following result: Some candy to-day is sold at less than cost in order to increase production and thus reduce overhead costs. On such candy the manufacturer by the removal of the excise tax can eliminate his losses. On other goods prices would be reduced to the amount of the tax thus removed or the manufacturer would be able, without change in price to the jobber or retailer, to give larger pieces or quantities for a penny, nickel, or dime. The saving in tax would be reflected either in reduced prices or in added quantity or material.

5. Many articles made from exactly the same ingredients pay an excise tax when manufactured by confectioners, but no specific taxes when manufactured by cake and cracker manufacturers. Such articles are: Fig-filled newtons, vanilla wafers dipped in chocolate, sugar wafers, wafers covered with nuts and dipped in chocolate, etc. As an example of the competition which we are suffering from this class of products we may cite raisins packed in 2-ounce packages to retail to the consumer at 5 cents per package. The demand for these is enormous and is stimulated by a nation-wide advertising compaign on the part of the raisin growers. Thirty carloads of these raisins put up in these small 5-cent packages have been shipped into New York City within the past few days. Paying no tax, either manufacturer's or consumer's, they are sold in direct competition with tax-paying confectionery. Yet a candy manufacturer must pay this excise tax if he takes these same raisins, dips them in chocolate, and offers them for sale. We do not advocate or urge a tax on these articles, but we protest against the competitive disadvantage under which we are placed on account of the excise tax on candy. This is having a serious effect upon our business.

6. The great bulk of candy sales consists of penny goods and candy sold in sales units of 1 cent, 5 cents, and 10 cents. The price at which such candy is sold can not be advanced. The sizes of the different kinds of candy can not be reduced and successfully compete with articles which are not taxed. The cost to the consumer is increased by the intervening profits of the jobber and the retailer before the candy reaches the ultimate consumer.

7. No other industry which is subject to an excise tax is confronted with the competitive conditions which must be met by the candy manufacturers, as the above statements clearly demonstrate.

8. The excise tax can not be passed on to the consumer without seriously decreasing the demand for candy. Whatever increases prices under present conditions decreases demand.

9. The excise tax can not be absorbed by the retailer or the jobber, because it would reduce or destroy the retailer's or jobber's rightful profits, and they will not sell the candy if they can not make a profit thereon.

10. Under these conditions the excise tax can not be absorbed by the manufacturer without the danger of losing his entire profit, which, as stated above, even under normal conditions, is very small. If he absorbed the exercise tax it would completely wipe out his profit.

11. The excise tax is not a tax on profits, it is a tax on doing business, and it must be paid whether the candy manufacturer makes a profit or not. Under present conditions this tax is being paid by many candy manufacturers out of their actually invested capital.

12. During the first six months of the calendar year 1921 the Treasury Department has received from the candy excise tax approximately $3,000,000 less than were received during the same six months of 1920, a reduction of about one-third. These figures emphasize the extreme business depression in the candy industry. There has been a greater percentage of failures in the candy manufacturing industry so far during 1921 than at any time during the past five years.

13. The candy excise tax is furthermore discriminatory and detrimental to candy manufacturers, because it gives an advantage to certain classes or manufacturing retailers who avoid paying either as a whole or in part the candy excise tax on their sales. It is estimated that there are 30,000 Greeks and other nationalities engaged in the candy manufacturing business in the United States who sell directly to the consumers. Many of these retail manufacturers keep no records and can not be checked up by the Government authorities in reference to paying the excise tax, and yet they constitute a constantly increasing element of competition in the industry, which must be met by candy manufacturers who keep accurate records, have a high overhead expense, and conduct their business under sanitary conditions.

14. As stated herein, it should be kept in mind that the great bulk of the candy is sold through small retail distributors, such as drug stores, grocery stores, general stores, 5 and 10 cent stores, and retail confectioners situated in cities, small towns, and rural districts. These distributors do not manufacture the candy which they sell. Their competition, especially in the cities, small towns, and rural districts, is from the foreign element which has entered the candy business and in many cases is manufacturing candy under insanitary conditions and selling at very low prices diretcly to the consumers. These lower prices are possible because such manufacturers are willing to make a profit that is not a living profit for the regular established distributors, and also to the fact that the regular established distributors must, because of the nature of their business, consider in their prices to the consumers the profits intervening between the manufacturer and the consumer. If the manufacturer should shift the tax to the jobber and the retailer, then the retailer would have to bear the burden of the tax and the accumulation of profit thereon, whereas the manufacturing retailers of the class referred to above would wholly, or at least in part, avoid the payment of the tax.

15. Candy manufacturers are subject to three Federal taxes—corporation-profits tax, excess-profits tax, and the 5 per cent excise tax—as compared with only two taxes levied on competitive and other industries not subject to specific taxes. We are not asking to be freed from general taxation. All that we ask is that we shall be taxed the same as other industries in general. We are now being taxed on invested capital, because we can not actually pass the tax on to the consumer without a serious effect upon the consumption of the product. We therefore urge the repeal of the candy excise tax because it is burdensome, discriminatory, and unfair to a reputable industry, which under normal conditions is always highly comptitive.

16. If industries are to be taxed, then in all fairness we believe that they should all be taxed alike and that our industry should not be discriminated against.

HUBERT B. FULLER, *Special Tax Counsel;*
THOMAS E. LANNEN, *General Counsel;*
WALTER C. HUGHES, *Secretary and Treasurer;*
Special Tax Committee of the Association.

EXCISE TAXES.

BRIEF OF THE NATIONAL ASSOCIATION OF ENGINE AND BOAT MANUFACTURERS (INC.).

SEC. 900, Par. 20: "Yachts and motor boats not designed for trade, fishing, or national defense; and pleasure boats and pleasure canoes if sold for more than $15, 10 per cent."

The National Association of Engine and Boat Manufacturers (Inc.) is an organization for the purpose of promoting the general welfare of its membership, which includes 151 industrial plants engaged in the manufacture of motor boats, engines, and marine accessories located on the Atlantic and Pacific coasts and on the Great Lakes. Our boat-building plants represent an aggregate invested capital of $15,000,000 and employ approximately 10,000 workmen. The association respectfully urges the repeal of the present tax of 10 per cent imposed by paragraph 20 of section 900 of the revenue act of 1918 upon yachts and motor boats not designed for trade, fishing, or national defense, for the following reasons:

1. The tax has had a destructive effect upon the yacht and motor boat industry.
2. As compared with similar taxes upon other industries, it is oppressive and discriminatory.
3. It tends to discourage the use of yachts and motor boats and thereby will eventually destroy the Naval Reserve Force, which was a valuable adjunct of the Navy during the recent war.
4. The amount of revenue received from the tax is negligible.
5. A greater amount of revenue would be obtained if the tax were removed.

DEPRESSED CONDITION OF MOTOR-BOAT INDUSTRY.

A comparison of the present condition of the motor-boat industry with that existing in 1913 will show conclusively the destructive effect of this tax. For the first nine months of the year 1918 the 15 largest builders of pleasure boats reported a total volume of business of $1,528,802.15, as compared with a total business of only $466,602.48 for the same 15 companies for the first nine months of the year 1919. Out of those replies received from the members of the association in response to its request for a comparative record of these two periods there were seven companies which reported having no pleasure-boat business at all during the first nine months of the year 1919. From these statistics it is plainly apparent that there has been a falling off of at least 70 per cent of the normal business transacted by our boat-building companies. In making this comparison it should also be borne in mind that the year 1918 was not a peak or banner year in the boat-building industry.

Because of the rapid advance in the last few years in wages and in the cost of material entering into the manufacture of motor boats the selling price has of necessity been increased to a considerable degree. Yachtsmen generally have seemed unwilling to accept this increased burden in view of existing conditions, and the additional tax of 10 per cent has driven practically every prospective purchaser out of the market and has been the direct cause of the cancellation of many orders, thus depriving the marine industry of a large proportion of its normal revenue.

During the continuance of the war the building of boats for pleasure purposes came to a standstill, and our marine manufacturers faced the alternative of either taking on commercial work or going out of business. Introduced originally as a war measure, this particular tax provision would have aroused no opposition from the industry, inasmuch as all of the shipyards and marine-

engine plants of the country had either already engaged in necessary war work or were preparing to do so. Between the signing of the armistice in November, 1918, and the enactment of the revenue act in February, 1919, taxes that were to have been imposed under this statute upon other industries were either eliminated from the bill or materially reduced, while the tax proposed in the section relating to the sale of yachts, motor boats, pleasure boats, etc., was unchanged.

The present situation in the industry is made more acute by reason of the fact that during the recent war a large number of these boat-building companies considerably enlarged their plants in order to be in a position to serve the Government in the construction of submarine chasers, mine sweepers, barges, lighters, tugs, hydro-airplane hulls, and other work vitally necessary to the successful prosecution of the war. The 10 per cent tax placed upon the sale of motor boats at the close of the war became, therefore, an even greater blow to the industry because of the expansion of their plants and facilities, and the absolute crushing of their hopes for a renewal of the normal volume of their business transacted in the prewar years.

This tax also bears with extreme hardship upon a class of citizens who made heavy sacrifices during the war.

A majority of the steam and power yachts over 40 feet in length were voluntarily surrendered by their owners to the Government for a nominal consideration and were used for important naval service during the period of the war. In many cases their owners also volunteered their services and entered the Naval Reserve Force. Although the Government was supposed to pay the owners of these vessels a sum sufficient to put them in the same condition as when they were taken over, the fact is that the Government allowance for repairs is so inadequate, in some cases not one-half of the cost, that the owners will not undertake to make the necessary repairs. The only recourse of the owners is to sell the vessels at a large reduction from their former value, and upon repurchasing a new vessel they are compelled to pay not only an increased price because of the increased cost of production, but they are also compelled to pay a 10 per cent tax for the privilege of replacing the vessels which they sold or gave to the Government for war use. This increased cost of production is mainly due to the advancing prices of all material entering into the construction of vessels, including accessories and equipment, as well as to the increased and special taxes paid by the accessory and equipment manufacturers, which, being added to the cost, are included in the final price of the completed yacht or motor boat. When there is added to this price the 10 per cent tax upon construction, as measured by the sale price of the vessel, the gross outlay becomes so great that owners are refraining from placing orders for new vessels and in many instances have written to the members of the association canceling orders which have already been placed because of this tax.

In addition, the present tax has a seriously detrimental effect upon the marine-engine industry. A large volume of capital and many thousands of skilled employees are engaged in the manufacture of engines for yachts and motor boats. A falling off of work in the shipyards of the country is at once reflected in the marine-engine works. There are about 170 of these engine works in this country, employing approximately 26,300 persons. Unless the industry is freed from the effects of this tax their plants will remain upon a part-time basis and their labor forces will be scattered to other mechanical industries, and years of constant effort will be required to again build up their disrupted organizations.

In addition to restricting the construction of yachts and motor boats, the present tax limits the opportunities for employment, which is the greatest economic need of the country at the present time. Yacht and motor-boat construction requires a highly specialized force of skilled artisans, and any governmental policy which tends to disrupt their organization and prevent their employment should be avoided. There are at present about 215 yacht yards, which normally employ more than 10,000 workmen. Some of these employees have been working in these yards for many years, having entered as apprentices. For the last two years of the war Government work kept busy practically all these yards. However, with the completion of the Government work these yards had to reduce their labor forces, and may yet be compelled to close down entirely unless normal conditions are soon to prevail. With the present 10 per cent tax operating as an insurmountable obstacle to the acquisition of new

business, a resumption of the demand for yachts and motor boats can not be expected, and at the present time the larger yards are doing practically nothing upon new construction because of the stifling effect of this tax. In one large yard the labor force has been reduced by 200 workmen because of the cancellation and withholding of orders for new vessels.

The need is apparent for the retention in their present vocations of the shipbuilders and other marine workers of the country. With the present stagnation in the boat-building business, directly attributable to this tax, these skilled mechanics are rapidly becoming absorbed in other lines of industry, and unless relief is soon obtained the marine industry of the country will be seriously threatened.

The financial resources of many of our members have been strained to the breaking point in an endeavor to hold together their organizations while awaiting relief from this intolerable condition. Unless this relief is adequate and speedy the industry will disintegrate, and many of the existing plants will either devote their facilities to other lines of manufacture or, if this can not be done, will pass into the hands of receivers.

The association respectfully invites the attention of the members of this committee to the brief of the Waterway League of America in support of a users' tax on motor boats, in which the present situation is summarized in these words:

"If American yachting is to return within any reasonable time to its prewar condition, if the yacht yards and engine shops are to be permanently prosperous, and if the great army of workers in yacht and engine building and their allied industries are to be assured of regular and profitable employment, the tax on construction imposed by section 900, article 20, must be removed in its entirety."

This quotation is presented here because it represents the impartial opinion of persons who are familiar with the problems confronting this industry, but who are not directly or indirectly engaged in the business of yacht or motor-boat construction.

TAX IS DISCRIMINATORY AS COMPARED WITH OTHER INDUSTRIES.

The association has always believed that the motor-boat industry has been unjustly discriminated against by this provision of the revenue act of 1918. That the industry is unable to stand the strain of the 10 per cent tax is plainly indicated by the tremendous falling off in the business of the members of the association who for the past 18 months have been operating upon a basis of less than 25 per cent of their normal factory output. The motor-boat industry is practically one-eightieth of the size of the automobile industry when compared with reference to volume of invested capital and employs only about one-thirtieth as many workmen. Notwithstanding this great disparity in the comparative size of the two industries, the motor-boat industry is taxed at the rate of 10 per cent while the corresponding tax upon automobiles is at the rate of 5 per cent. While it is not contended that these industries are competitive in the ordinary sense, at the same time they both furnish the means for outdoor recreation, and if the motor-boat owner is prohibited by what he regards as an excessive tax upon his new boat he will buy an automobile until such time as he feels that he can economically resume his trips on the water. In this sense, they are competitive, and the imposition of a 10 per cent tax upon the motor-boat industry is a serious discrimination in favor of the automobile industry, which is only taxed at the rate of 5 per cent.

TAX WILL INTERFERE WITH FUTURE DEVELOPMENT OF THE NAVAL RESERVE FORCE.

Another vitally important effect of this tax is to prevent the training in time of peace of persons living on the coastal or inland waters of the United States in the use of yachts and motor boats, who during the recent war formed a valuable adjunct of the Navy. Yachtsmen and motor-boat operators demonstrated not only their readiness and willingness to serve the Government in the war, but their knowledge and ability gained through their experience in the handling of small boats was of immense value to the Navy Department in all of its branches. Not only by personal enlistment but also by voluntary contribution to the Government of their yachts and motor boats and other serviceable craft these men proved the value of their training on the water. Every possible encouragement should be given both by Congress and the execu-

tive branch of the Government to this class of men, who may at any time in the future again be called upon to render active service.

The records of the Navy Department attest the fact that experienced yachtsmen were invaluable in the patrol and convoy service. Lloyd's Register of American Yachts for 1920 is authority for the statement that there were 438 yacht clubs in this country. A total of 1,675 yachtsmen from these clubs volunteered their services to the Government by placing their experience and skill as navigators, boatmen, etc., at the disposal of the country. Of this number 269, or about 16 per cent, served as officers of the Navy. In addition to the possible use of owners of motor boats in time of war, many of the officers of the merchant marine received their training in small boats in the coastal waters of the United States. The association cites this phase of the situation merely to bring before the committee the fact that this 10 per cent tax has a far-reaching and disastrous effect upon one of the oldest and most important industries, because it tends to discourage many persons who, were it not for this oppressive tax, would at this time be operating motor boats.

REVENUE DERIVED FROM TAX IS NEGLIGIBLE.

The volume of revenue collected by the Bureau of Internal Revenue from this source, according to its official statistics, has been exceedingly small. The figures covering the revenue received from the sales tax on motor boats are as follows:

	1919	1920		1919	1920
July	$28,148.76	$103,539.96	November	$18,663.41	$22,333.18
August	35,721.72	35,721.72	December	7,200.36	25,119.68
September	31,029.01	173,470.61			
October	19,986.04	21,996.60	Total	140,749.30	382,181.75

On the users' tax there was collected during the first six months of 1920 $256,128.01 and for the last six months of 1920 $500,170.81, making a total of $756,298.82 for the calendar year of 1920. It can thus be seen that by adding the revenue from the users' tax to the revenue from the sales tax the Government collected from these sources in 1920 about $1,250,000.

During the year 1920 the Consolidated Shipbuilding Corporation paid a tax of $135,000 on a single yacht, leaving the balance of the tax for that year, to wit, $320,245.51, to represent the tax from all the other boat-building concerns of the country.

REMOVAL OF 10 PER CENT TAX WILL YIELD GREATER REVENUE.

From a study of the present condition of the motor-boat industry, it must be apparent that no large amount of revenue can ever be obtained from this source because the present tax on new construction violates the fundamental rule that a tax should not be imposed which destroys its own source of revenue. As long as the present tax is retained the motor-boat industry must remain in its present stagnated condition. If removed, the industry will revive as general business conditions improve. Unless the industry is in a prosperous financial condition, the Government can not obtain revenue from it either by means of the present tax upon new construction or from income or profits taxation. A far greater amount of revenue would undoubtedly be obtained from the industry through the income tax paid by these concerns and their employees through the income and profits taxes than has been obtained from the present tax, which has not only failed to yield a satisfactory amount of revenue to the Treasury but has also by cutting off orders for new construction of yachts and motor boats placed the manufacturers in a condition of stagnation, which has prevented the Treasury from receiving its fair share of the profits of this industry. From the standpoint of the amount of revenue fairly due to the Treasury Department from this industry ,the association unhesitatingly takes the position that by stimulating the sport of yachting and motor boating and by increasing their use by the people the Treasury will, under whatever system of taxation this committee is about to formulate, receive annually a far greater amount in one year than has been collected under this 10 per cent tax.

CONCLUSION.

This association asks for no preference or special exemption. Its members realize that the vast war debt must be paid by means of heavy taxation. It firmly believes in equal distribution of the cost of government and is willing to pay its fair share of the cost of winning the war. However, it urgently requests the removal of this oppressive, unequal, and discriminatory 10 per cent tax, to permit the reestablishment of the yacht and motor-boat industry upon a firm financial and industrial basis, to permit thousands of our citizens to enjoy the physical benefits of healthful recreation upon the coastal and inland waters of the United States, and to assist in the upbuilding of a force of trained yachtsmen and motor-boat navigators, who will ever stand ready to again give their vessels and their services, if necessary, for the future defense of the country.

HENRY R. SUTPHEN, *President.*
IRA HAND, *Secretary.*
GEORGE F. LAWLEY, *Chairman Legislation Committee.*

BRIEF OF THE TOILET SOAP MANUFACTURERS OF THE UNITED STATES.

On behalf of the manufacturers of toilet soaps and toilet-soap powders we have the honor to request that in the readjustment of internal revenue taxes now about to be made by Congress the special impost of 3 per cent on toilet soaps and toilet-soap powders be repealed. We earnestly urge the elimination of this tax on the ground that it is an inequitable burden and a clear discrimination against a single industry, as it is levied in addition to a full share of all other taxes, including corporate and individual income taxes, borne by these manufacturers.

In this connection we beg to remind you that the President of the United States in a message to Congress on May 20, 1919, more than two years ago, made the following recommendation:

"Many of the minor taxes provided for in the revenue legislation of 1917 and 1918, though no doubt made necessary by the pressing necessities of the war time, can hardly find sufficient justification under the easier circumstances of peace and can now happily be got rid of. Among these, I hope you will agree, are the excises upon various manufacturers and the taxes upon retail sales."

Because of the conviction on the part of the congressional leaders that the revision of internal revenue legislation as well as the tariff should be postponed until the reestablishment of more stable conditions throughout the country the recommendations referred to were not acted upon. Manufacturers and merchants have since waited patiently for relief from inequitable special taxation which, although borne with patriotic fortitude during the war time, certainly has no justification now that the war is actually over.

We fully appreciate the fact that the resources of the Federal Treasury and the obligations that must be met during the next few years will not permit of a very substantial reduction in the total amount of revenue to be derived from taxation. The burdens of the war must be met and, in the nature of things, must be carried for many years to come. We would not shirk the smallest fraction of our fair share of this tax burden, but we submit that the very fact that it is inevitable that the cost of the war must burden the country for many years to come is the strongest possible argument against further oppression of selected industries by special taxes and in favor of the prompt readjustment of our entire system of internal revenue imposts, so that the burden shall be most equitably distributed over all industries and all classes of our population. To continue during a long peace-time period a special tax on a single industry, justifiable perhaps during a great war emergency, is not only inequitable but unscientific from the standpoint of sound economics and can not be justified upon any reasonable theory of taxation.

The public understands that Congress now desires to rectify mistakes in the levying of taxes made under stress of war necessity, and that while there may not be any material reduction in the aggregate amount of internal revenue to be annually collected great care will be exercised to bring about a readjustment of tax burdens with a view to stimulating industry, increasing employment, and thus restoring prosperity at the earliest practicable date. With such an object in view we submit that the special tax borne by manu-

facturers in our industry in all fairness should be promptly repealed in the interest of producer, dealer, and consumer, all of whom will be beneficiaries of the lifting of this burden.

The manufacturers of toilet soaps and toilet-soap powders during the last two fiscal years paid a special tax averaging more than $2,000,000 per annum. In addition they paid their full share of the excess-profits tax, corporate and individual income taxes, the tax on transportation, and the thousand-and-one minor imposts levied by the war revenue act.

Upon what theory Congress imposed this particular tax we have never been able to understand. It would hardly seem necessary to point out the absurdity of taxing ordinary bath soaps as luxuries, and it is certainly a surprising fact that the authors of the existing law should have gone outside the categories of the Spanish War revenue act of 1898 and the revenue act of 1914 for the purpose of imposing a tax on soap, which, since the archaic revenue law of 1862, has never been subjected to any internal revenue impost whatever. It is almost inconceivable that in the year 1921 the laws of the United States should tax soap as an article of luxury when this Government is spending millions of dollars annually to impress upon our people the importance of personal cleanliness and to keep the United States in line with the world-wide movement for improved hygiene and better sanitation. Legislation requiring the use of soap and contributing to its cheapness would certainly be more appropriate to the spirit of the times.

We are sure that Congress is not unmindful of the world-wide demand on the part of the consumer for lower prices, especially upon the necessaries of life, in which we do not hesitate to include our products. Wherever it is possible to meet this demand to a substantial extent, it is also possible to maintain normal production and to afford employment at living wages.

When costs of production and the burdens of taxation make it impossible to bring about lower prices there is an inevitable shrinkage in demand, production, employment, and prosperity. The Federal receipts from corporate and individual income taxes and other sources of revenue affected by the general welfare of the people have far more to gain from a general condition of prosperity that will be brought about by a scientific readjustment of tax burdens than can be obtained by the retention of discriminatory imposts on special industries, particularly those producing goods necessarily included in the daily budget of the American family no matter how limited its resources.

We beg to assure your committee that our industry is animated by the same spirit of patriotism that has been so strongly manifested throughout the country since America first became involved in the great World War. To whatever extent Congress in its wisdom shall increase corporate and individual income taxes or any other impost bearing equally upon the taxpayers of the whole country we shall cheerfully contribute our share, but we most earnestly urge the repeal of the present discriminatory tax on our products.

We believe that the expectation that Congress will speedily lift all inequitable tax burdens on industry is justified by the confidence of the entire Nation in your intelligent and statesmanlike handling of a problem that is vital to the welfare of the whole country.

BRIEF OF THE ASSOCIATED LEATHER GOODS MANUFACTURERS OF THE UNITED STATES (INC.), BROOKLYN, N. Y.

Almost all of the manufacturers of purses, pocketbooks, shopping and handbags which are to be taxed 5 per cent, as provided in the proposed addition to section 900 of the revenue act of 1918, are located in and about the city of New York. These manufacturers number about 150, most of whom conduct their business on a scale sufficiently large to make their interest in this proposed taxation vital. During the year 1920 they did a gross business of about $30,000,000, and they have been doing business this year at the rate of about $20,000,000 per year, in the aggregate.

The total of handbags, purses, pocketbooks, etc. which were manufactured to be sold for more than $4 each during 1920 was about $5,000,000, and during 1921 the manufacturers produced about $4,000,000 of over $4 goods. In other words, in the year 1921 the $4 goods which would be subject to the tax if the tax had been in force during the whole year would have produced only about $200,000. The conditions for 1922 seem to be approximately what they are to-day, and therefore even allowing a small increase the total tax collected from these items for 1922 would be approximately $200,000.

It thus appears that the benefit promised to the Government by this taxation is almost negligible when it is considered what expense will be necessarily incident to the gathering and consideration of the monthly reports and the collection of the tax. At the same time an American business will be greatly damaged and a foreign business benefited. The effect upon these manufactures will be so disastrous and so much worse than the framers of the bill expected that it is desired to present to the committee this data for the purpose of showing them that for a very little benefit to the Government they are not only damaging an American industry that is to-day inadequately protected by the tariff, but are doing so without at the same time revising the tariff schedule so as to give the industry a protection equal to the added tax.

The raw material with which American makers of these goods produce the finished pocketbooks, purses, and bags and shopping bags includes a large quantity of imported raw material, consisting of metal frames, small hand mirrors, toilet articles, links, linings, etc. Most of this material has been imported practically continuously, and under the existing tariff regulations the average duty that this imported material has borne is 65 per cent. The benefit thereof has, of course, been received only by such other American industries as were protected by that rate, but that high tariff has necessarily enhanced the cost of production of handbags, etc., by the American manufacturer of the articles here represented.

The American labor market and all material and overhead charges in the city of New York, as everyone knows, have not only been high but have come down so slowly and so slightly that little real relief is visible for some time to come. Therefore the combination of high cost of production plus the high cost of the imported material plus the high cost of American-produced material tends to make the margin of profit in the American production precarious, because of the existence of active competition.

That active competition is the completed foreign-made article which is imported here and which pays upon entrance a duty of only about 35 per cent. That article is produced abroad, where labor and material are cheap, and when this low tariff on the completed article is added to the low price at which it is brought here the finished article may be put on sale in the best stores in New York City at a price that allows a high profit and yet at a price slightly under the American-produced article of the same grade.

If this committee could revise these two tariff items so as to make them reasonable and consistent, this proposed 5 per cent tax would be negligible, but to-day without that extra tax the American manufacturer finds it hard enough to meet the foreign-completed article, and so he either must charge this 5 per cent against his narrow margin of profit or increase his selling price and make his article sell still higher than the imported equivalent.

Some of the raw material which is used by American manufacturers is imported, with a duty that varies from 25 to 80 per cent, and this material is used in making the goods that would be subject to this tax, namely, articles selling to the retailer at more than $4 apiece. The gold frames, for example, bear a 50 per cent duty, the trimmings 60 per cent, and the toilet fittings 60 per cent, so that the average is at least 50 per cent. This added cost is confined to goods that sell at $4 and over. In other words, the article made in America, which it is proposed to tax at 5 per cent on the manufacturer's price, is the very article that has already been under the burden of paying these heavy tariff duties on the material that is needed to make them—a cost not borne by cheaper articles which contain little or no imported material. These articles selling by the maker at more than $4 are also burdened with the prevailing labor cost in America, which item has been the subject of attempted arbitration in this very trade, thus far without success. The wage agreement now in force has kept the wage scale practically stationary for the past year. In 1920 it rose about 35 per cent. So that to-day and for the future, as far as can be seen, the high labor cost will continue at approximately the peak it reached in the latter part of last year. These "over $4" items are therefore subject to a second heavy burden.

The reduction in American frames and other American material has been in no way equal to diminished sales and the diminished profits, so that with labor and foreign material practically unchanged and with the buying power of the country almost on strike the margin of profit in this class of goods has not only fallen from the 10 per cent that prevailed in 1920 but in 1921 has been replaced by losses with some manufacturers and by decreased margins with others. This is in spite of the reduction in the American-made material.

Generally speaking, the overhead in 1921 has increased in the face of decreased sales, and no intelligent observer sees any change in 1922. The arbitration of the wage question has been stimulated by the need for reduced production cost, and if no material reduction is obtained that industry is going to have a year during which careful management will be necessary to keep going. The charts used in the arbitration matter are available, and since they are in printed form can be submitted to this committee, if necessary, to show how fair is the above statement of the wage conditions.

Although these conditions have not been felt generally by those manufacturers who do not come into the "over $4" class, they have the further advantage of not using much imported material, and therefore do not have to consider the tariff additions. Yet it is proposed to free them from any tax upon their productions (under $4) at an arbitrary figure, which is supposed to divide a necessary from a luxury. It is difficult to explain why a $3.95 handbag is not a luxury but a $4.05 one is, and yet these taxes are levied on the theory that if one can afford to pay $4.05 for a handbag one ought to be willing (even if the tax were added to the price) to pay 5 per cent more. As a matter of fact, bags, etc., can not now be termed a luxury at that price, although when the retailer gets through adding his profit he has made the article sell at a luxury price. If that is so, the 5 per cent should be included in his substantial increase which the retailer invariably has added to the $4 goods. His margin of profit is notoriously greater than that of the manufacturer, and if there is any profit that can stand a 5 per cent tax it is his rather than the maker's.

He, however, puts upon his counter not merely our American made goods but the foreign article imported complete, and made of goods low in price because of foreign conditions in labor. The addition of the 30 to 40 per cent tariff rate on the completed foreign article is not much of a burden, because of the low importation price base from which it is figured. The total cost to him is thus such that he can add a large profit and yet retail it at less than its American equivalent.

In fact, he does so, and in that way we see one of the reasons for sales decrease now apparent. As between the two articles the purchaser is inclined always to select the cheaper one, if they are approximately the same, and in spite of the American effort to keep the margin of profit low this foreign competition persists. The retailer makes more on that article than on the American article, and he keeps the prices of them almost the same, but keeps the imported article up near to the lowest price that he thinks proper for the American article. He figures the latter by adding what he thinks is a proper profit to our sale price, and then with that as a standard fixes the price of the foreign article, even though he thereby gets a very large profit on the latter. The effect on our trade is obvious.

There are approximately 150 manufacturers such as are here represented, and 85 per cent are in the metropolitan district, which includes New Jersey. This association has practically every substantial manufacturer in that district as a member, and 80 per cent of the trade volume is represented in it. The gross manufactured total in 1920 decreased almost one-third in 1921, and the consensus of opinion in the trade is that there is no reasonable prospect of improvement next year. If the better grade of goods is subject to a further burden, next year will be a poor year, with many manufacturers suspending operations in that grade of goods, and letting the trade buy the imported article, which will then be without competition. In that event the retailer will demand what he pleases, since the American market will be in his hands, and home competition will cease until he goes too high and tempts it to come back.

If the tax is levied on the goods sold by the manufacturer there is no assurance when these goods will move out into the retailer's or consumer's hands, and much of them will, if conditions continue, remain as a sort of frozen credit. There is enough of that now, and we submit that no taxation which will increase that amount will benefit trade, but in the long run must react upon the Government, through curtailing of production.

As a matter of fact the tax at this point will not pay as it would further on, because the retailer having added a substantial profit has created a retail price appreciably larger than the cost to him, and yet that increased selling price is going to be free of taxation. It is estimated that the consumer pays about 22 per cent more than the manufacturer gets, and if this difference were the basis of the tax the Government would get an appreciably larger sum. The

proposed method, however, loses that added quantity of taxes—a loss that would not occur if the retail sale price were the basis of computation.

The reputable manufacturers, all of whom belong to this association, fear that some competitors who are not in the association may be tempted to sell at a fictitious price such of their products as ought to bring more than $4. This fictitious price will be $4 or under, and since that sale will be the manufacturers' sale no tax can thereafter be imposed on a resale. In this way such manufacturers will escape any tax, and those agencies with which they deal will make some private arrangement whereby the difference between the fictitious price and the real price can be returned as a sort of rebate. The creation of a corporation which would take the manufacturers' products in this way will no doubt be one of the methods which a dishonest competitor would use. Such a method would be futile if the tax were placed upon the retail price and seems another reason for not placing it upon the producer.

The last point of objection is one of the most important and relates to what sales shall be the subject of this tax if it is imposed in the form contemplated. The bill under consideration does not seem to affect the opening sentences of section 900, and the regulations published by the Treasury Department indicate that if they are continued in their present form the tax will be collected monthly upon sales in the month beginning at the date of the passage of the act. That, however, is a matter of argument, and at present the bill does not definitely provide that the tax shall not be retroactive.

The manufacturers have gone through 1921 on the assumption that they had figured all taxes and other charges, and their prices have been based on that belief. Many of them have suffered serious losses of profit, and others have even received no profit on some sale. It would be most unfair to levy a tax which would operate upon sales made during the year 1921 and prior to the date when this bill becomes a law. For example, a manufacturer whose gross sales have netted him a profit of $20,000 for 1921 would find that 5 per cent of his gross sales would almost wipe out his profit. The 10 per cent that used to prevail has been so cut down by circumstances that many of the manufacturers would thereby lose all of the 1921 profits. Where they would get the money to pay their income and other taxes it is impossible to see, so we are confident that the injustice of any retroactive tax must appear at once to the committee.

Not only should the tax not be made retroactive for the above reasons, but it should not even be effective until July 1, 1922, because already the manufacturers are in process of completing their business for the next eight months. Their spring business, the preparations for which begin long before the season, are being made on the basis of present tax conditions and their contracts are made months ahead. The selling price with them is determined long before delivery and is fixed by facts in operation at the time the contract is made. From now till the end of the year such contracts will be concluded regularly, and since this tax can not be definitely fixed for some months yet it is unfair for the trade to be held in suspense during the period when it should be making its contracts. It is equally unfair to ask it to contract upon present conditions and then manufacture at a time when a different condition exists. If the tax becomes operative July 1, the necessary readjustments can be made, but it is scarcely possible to make them all if the tax takes effect before that date.

The undersigned will attend at committee sessions upon request or representative members of the association will appear before the committee if desired for examination to substantiate the foregoing statements.

MEIER STEINBRINK, *Attorney.*

BRIEF OF THE UMBRELLA MANUFACTURERS ASSOCIATION OF AMERICA.

The Umbrella Manufacturers Association of America most earnestly protest the imposition of a sales tax on the manufacturer of umbrellas and parasols.

This proposed tax is a glaring instance of the transfer of tax from a luxury to a real necessity, which will be brought home to every family in this country, besides handicapping with needless expense a small industry already operating at a very small margin of profit.

The reasons in detail why we ask that umbrellas and parasols be eliminated from the manufacturers' sales-tax schedule are:

1. Umbrellas are a necessity and required by all classes of people as a protection against the weather for their persons and clothing.

2. The basis on which the tax applies is below the cost of manufacture of a really serviceable umbrella, so that the tax can not be considered in any sense a tax on a luxury.

3. The tax proposed in the House bill will mean an increase in taxation on the regular every-day article, such as retails from $4 to $8, and a decrease in tax on those retailing above $8, which might perhaps be considered luxuries. In other words, in changing the form of the tax the House bill, which repealed the so-called luxury taxes, has increased the burden on the necessity and decreased it on the luxury. For example, assuming, as we must, that the tax will be passed along to the consumer the same as any other cost of manufacture, an umbrella retailing for $5, under the existing law, will cost the consumer 10 cents in taxes (10 per cent of $1, the excess over $4). Under the proposed law the burden on the consumer will be 25 cents, or 5 per cent of $5. This increase applies to all umbrellas selling up to $8 retail, where the present and proposed taxes are equal. Above the $8 retail price the proposed law reduces present taxes until in the case of a $30 umbrella, which might with reason be classed as a luxury, the reduction is from $2.60 tax to $1.50. Thus it appears that on this one article the amendment to the tax law shifts the burden from the luxury to the necessity.

4. The amount of revenue to be derived through this tax is out of all proportion to the trouble and expense to which the manufacturer will be put in keeping his records and making returns. Careful estimates made for the year 1920 indicate a total production of $20,000,000 for the industry. This was the banner year, both in number of pieces and prices, for umbrellas. If umbrella manufacturers do a business in 1922 of $12,000,000, they will exceed their expectations. Prices, as well as quantity, have been substantially reduced. Of this not more than 33⅓ per cent will be sales by the manufacturer at more than $2.50 per article, or $4,000,000, which at 5 per cent will yield but $200,000 revenue.

5. There is no reason why silk shirts, socks, stockings, neckties, hats, picture frames, etc., should be freed from tax, regardless of value, that does not apply with equal or greater force to umbrellas and parasols.

BRIEF OF THE SMOKING COAT AND LOUNGING ROBE INDUSTRY.

This memorandum is submitted with particular reference to the amendment of section 808, subdivisions 20 and 21 of section 900 of the revenue act of 1918, and in particular paragraph 27 immediately following such subdivisions, which amendment is as follows:

"(27) House or smoking coats or jackets and bath or lounging robes if sold for more than $3, 5 per centum."

In connection with this proposed amendment there are two points to which we wish to call the particular attention of the committee and urge an amendment of the act proposed so as to obviate the difficulties and injustice which the industry submits would be suffered by it if these two objections were not removed. In this connection, however, we wish to assure the committee that the industry has no desire to escape its just share of the burden of taxation, and this memorandum is not directed toward any effort to avoid or evade taxation, but is submitted solely in the interests of the business as a whole, in the belief that unless the present act is amended in some respects it will be a serious detriment to this industry, which indirectly affects business as a whole.

The two points which we wish to call to your attention are:

1. The act should go into effect as of January 1, 1922, instead of as of the passage of the act.

This industry is a seasonal one, about 90 per cent being contracted for in the spring for the fall trade, and a substantial part thereof has already been delivered.

As an inevitable consequence, if the tax goes into effect as of August 15 or upon date of passage and prior to January 1, 1922, those wholesalers and retailers who have already received shipments on account of their contracts will be placed in a preferential position, and those receiving subsequent deliveries will be unable to compete successfully against them.

This perhaps would not be so serious if we were in times of prosperity and the trade was active, but under the present condition of stagnation the effect will be serious, will result in many cancellations or attempted cancellations of orders, for which, on the one hand, the manufacturers will suffer and, on the

other hand, the distributors who have failed to receive shipments prior to August 15 or the date of passage of the act will suffer by reason of their inability to compete with their competitors who have been fortunate enough to have received a substantial part of their orders prior to that date.

This would all be remedied if the date when the tax is to go into effect were postponed until January 1. By that time the fall deliveries will be made, and the tax would have been discounted in taking orders for the spring season.

The tax received from this industry will not be a large one in any event, and we submit that the loss of revenue to the Government by reason of postponing the date of the incidence of the tax to January 1 as requested will be a trifling one compared with the damage which the industry would suffer if the present date, August 15, or any date prior to January 1, 1922, is maintained.

2. The price at which house or smoking coats or jackets and bath or lounging robes are exempt from tax should be fixed at not less than $6.50 instead of $3, as the act now reads.

This amendment is vital to the prosperity of the industry, and we feel that the framers of the bill in fixing a price of $3 were insufficiently advised of the trade and the character of the garments and class of people who purchased the cheaper grades of said articles.

The tax which is sought to be imposed is presumably a luxury tax, and the burden thereof is intended to fall upon those who have means sufficient to afford same.

The purchasers of the cheaper grades of all said articles are not of the "well-to-do" or even of the "comfortably-off" class, but are principally people of small means and invalids. The bathrobe is indispensable for invalids and convalescents and is also part of the United States Army and Navy regular requirements. It is also very largely used by people of small means to give bodily warmth owing to the high cost of fuel.

It is a universal practice for housewives who do their own work to slip on a bathrobe upon arising in the morning and to practically live in such bathrobe. Likewise, the men of the family upon returning from work slip on a house or smoking coat or jacket or bathrobe of the cheaper grade for the purpose of saving their regular clothes, and it is a material economy. The house coat is in fact a garment of the man of small means who is a member of no club and spends his evenings at home.

The cheaper grades of bath or lounging robes are made entirely of cotton, and the cheaper grades of house or smoking coats or jackets are made of cotton and wool shoddy mixed. The cotton bath robes and lounging robes for adults, which comprise the great bulk of the trade, range from $2.75 to $10 apiece net wholesale, and the cheapest grades of house or smoking coats or jackets made of cotton and shoddy range from $4 to $7.50 apiece net wholesale.

On the other hand, bathrobes and lounging robes containing any mixture of silk sell for approximately $12.50 apiece and upward, and those containing wool, even though the warp be of cotton, sell from $11.50 apiece net and upwards wholesale. House or smoking coats or jackets containing a mixture of silk range from $10 apiece net and upwards wholesale, and those containing pure wool, even though with a cotton warp, from $7.50 apiece net and upwards wholesale. The values most commonly used are those ranging from $4.50 to $6 apiece wholesale.

An export trade in the cheaper grades of bath or lounging robes and house or smoking coats or jackets has developed, and substantial shipments are being made to Canada and other countries. Five per cent often represents the greater part of the profit in these transactions, and the proposed tax would seriously interfere with it if it did not arrest entirely the export trade in the cheaper grades.

For the greater part, the objections urged above would be remedied by the proposed increase of the minimum price free from tax from $3 to $6.50, and such a change is earnestly urged upon the committee.

In this connection we beg to point out that this is the only article mentioned in the act where the cheaper grades composed of cotton and cotton and shoddy used by people of small means are taxed. For instance, the limit of $2.50 placed upon umbrellas eliminates from taxation entirely all cotton umbrellas and places the tax only upon umbrellas containing linen or silk or some other more expensive material, as is entirely proper for a luxury tax, and it is, we submit, unfair to the industry that bath robes and lounging robes and house or smoking coats or jackets alone should have their limitation fixed at a figure so low as to

include the cheapest grades and the ones most universally used by the men of small means throughout the country.

In view of the importance to the industry of these suggested changes, we would respectfully request a hearing, so that we may present more in detail the facts in support thereof.

Respectfully submitted.

Pollak, Behrens & Co., New York City; Fischer, Jelenko & Posner, New York City; Hamburger Bros., New York City; Jones-Brundage & Co., New York City; G. Mehringer & Co., New York City; Wolf-Lit Co., New York City; Michael Cooper, New York City; A. Rosenblatt & Sons Co., New York City.

BRIEF OF THE NATIONAL ASSOCIATION OF THE MOTION PICTURE INDUSTRY.

The National Association of the Motion Picture Industry did not appear before the Senate Finance Committee to present its protest against the continuance of the special war excise taxes which were levied against this industry during the war as a war emergency measure only. The motion-picture industry is affected by three special war excise taxes, which consist of the following:

(*a*) A 5 per cent film sales tax, which is contained in title 9 of excise taxes, section 906. This tax is levied on every transaction involving the sale, leasing, or licensing of motion-picture films for exhibition purposes.

It is our desire to have this tax eliminated immediately.

(*b*) A theater seating tax provided for under article 10, section 1000, subdivision 5, special taxes, which provides for an annual tax to be paid by each theater based upon its seating capacity, varying from $50 to $200.

(*c*) A 10 per cent admission tax contained in title 8, section 800, subdivision 1, taxes on admissions and dues. This is a tax paid by the public on every ticket of admission to every place of amusement, including the motion-picture theaters. This tax is being resented by the public and is one of the causes for the falling off of attendance at theaters.

It is our suggestion that this tax be reduced 50 per cent.

The House Ways and Means Committee afforded this industry absolutely no relief, and the House bill as passed and which is before the Senate Finance Committee for consideration adopted the view of the House Ways and Means Committee. The House under that bill granted relief from similar taxes to works of art, fur garments, perfumes, yachts, and other luxuries, but no relief has been granted to the poor man with reference to his amusement and entertainment, which is no longer a luxury but a necessity, particularly in communities where the motion-picture theater is the only form of relaxation and entertainment afforded the poor man.

In these times of depression it is necessary to build up and maintain the morale of the people and buoy up their spirits by affording them amusement and relaxation at prices within the bounds of their slender purses, and the motion picture is doing that, as it helped to sustain the morale of the people during the war.

The motion picture has now become a source of education as well as entertainment. The various countries throughout the world are combed for matters of public interest and educational value to be reproduced on the screen for the edification of the public. The purchaser of a work of art or a yacht costing thousands of dollars can very well afford to pay a tax thereon, but the poor man's amusement can ill afford to pay the taxes which are pyramided and which in the long run are substantially consumed by the public.

It is true that the 5 per cent film sales tax has been shifted by the producer or distributor to the exhibitor or theater owner, but it is impossible to shift these burdens any longer, because the majority of the theaters throughout the country are small theaters operated by comparatively poor men. The result is the falling off of audiences at the theaters, which in turn is reflected by a stagnation in the business of the film producers and distributors.

It is eminently unfair to pick a handful of the industries of the country and saddle them with excise taxes and allow other industries to be exempt from them. It seems that the motion-picture and theatrical industries have been selected as the targets against which were hurled every possible form of municipal, State, and Federal tax-license and franchise fees. The industry has now become so burdened with these onerous taxes—Federal, State, and munici-

pal—that it is impossible to stagger any longer under the load. Some of the States are now beginning to follow in the footsteps of the Federal Government. For instance, the State of Connecticut has passed a law levying a 5 per cent State tax on the price of admission. Thus the public is now compelled to pay a 15 per cent admission tax in that State. Censorship laws have been passed in various States, and censorship fees have been so planned that they shall yield not only sufficient for the operation and maintenance of the censorship board but also to provide a substantial revenue as well for the State government.

This tax burden must be consumed somehow, and it must naturally and necessarily reflect itself in the price of admission charged by the theaters, otherwise the theaters would be operated at a loss.

It does not aid the theater owner to be informed that these taxes are levied and imposed because the theater has been placed in the category of luxuries. This classification is challenged and its applicability denied, because the motion picture has become to-day practically the only means of relaxation for the poorer families, and in some communities it is their only means of relaxation. Amusement is not a luxury. On the contrary, it is a necessity. If it were conceded even for the sake of argument only that the theater is a luxury, it should be entitled to relief, because in times of depression so-called luxuries are the first to suffer and to bear a natural tax by way of diminution of business, and it would be serving no purpose to pile an additional tax on its business, because that would cause further stagnation.

The motion-picture industry has been the source of substantial revenue to the Government through the income tax paid by it, and unless it is fostered and given an opportunity to return to normal the revenue to be derived will be greatly diminished and the Government will defeat its own object.

The depression in the theaters has been felt directly by the motion-picture producer and distributor. Several of the largest producing corporations have been compelled to close their studios in the East, many other producing laboratory corporations have absolutely suspended business, and several companies have gone into the hands of receivers, throwing thousands of people out of employment. In the past year only one motion-picture producing company was able to pay a dividend to its stockholders. Fort Lee, N. J., and Long Island City, which were beehives of activity in the production of motion pictures, are to-day practically dormant. Production in the industry has been cut down to approximately 35 per cent of normal, and no immediate relief seems to be in sight. The motion-picture producers and distributors can not afford to shoulder these taxes nor can they be any longer shifted to the exhibitor and the public. It is impossible for the exhibitor to reduce the price of admission in theaters, because present wage scales, material costs, overhead, and maintenance cost are still almost at peak.

A period of strictest economy has set in in every branch of the industry, from production right through to sales, and the era of high salaries has passed except in those particular instances where contracts are still alive, and with the expiration of these contracts reductions in salaries must take place or resignations will follow. The bottom has practically been reached, still business conditions do not brighten. The only relief will therefore be in a lifting of these discriminatory taxes. Protest is made against their continuance, because in a democratic form of government there should be a democracy of taxation. In other words, a tax should be general and equal in its application or it should have no place in our American plan of obtaining revenue for the Government.

Our recommendation for the present is that the 5 per cent film sales tax be removed, that the admission tax be reduced 50 per cent, and the seating tax be eliminated.

SPECIAL TAXES.

BRIEF OF THE INTERNATIONAL APPLE SHIPPERS' ASSOCIATION, THE WESTERN FRUIT JOBBERS' ASSOCIATION OF AMERICA, AND THE NATIONAL LEAGUE OF COMMISSION MERCHANTS OF THE UNITED STATES.

These organizations were formed not for profit but for the upbuilding of the fruit and vegetable industry, betterment of trade conditions, cooperation with farmer clubs, fruit and vegetable growers' associations, commercial organizations, chambers of commerce, and transportation and Government agencies. They have successfully survived a period of 29, 27, and 18, years, respectively, as necessary and indispensable links in the chain of distribution and marketing of food products.

OCCUPATIONAL TAX.

Section 1001 (1) revenue act of 1918 provides as follows:

"Brokers shall pay $50. Every person whose business it is to negotiate purchases or sales of stocks, bonds, exchange, bullion, coined money, bank notes, promissory notes, other securities, produce or merchandise for others shall be regarded as a broker."

House bill 8245 proposes to continue this provision in effect.

OBJECTIONS.

1. The Bureau of Internal Revenue has construed this provision as including "a commission merchant receiving produce or merchandise (including live stock) on consignment, to sell for account of the consignors." (Reg. 59, art. 6.) Live stock has since been excluded under a court decision that live stock is not produce or merchandise.

2. The Bureau of Internal Revenue has also ruled that a broker is required to pay the tax "in respect of the main office and of each branch office." (Reg. 59, art. 9.)

3. The intention of Congress was clearly to place the tax on brokers, and only brokers.

4. As defined in the law a broker is one who "negotiates purchases or sales."

5. The articles covered in the business of a broker, as defined in the law, are stocks, bonds, exchanges, bullion, coined money, bank notes, promissory notes, other securities (so far they all relate to transactions in money or investments, etc.), and produce or merchandise.

Why should not the law be limited to financial transactions? Or if other transactions are included, why not include all transactions of a brokerage character? Why should produce be included and not live stock or real estate?

6. Commission merchants are not brokers. If they do a brokerage business in produce (i. e., negotiate sales without taking possession of the goods or the money) they should be taxed if all brokers are taxed. But a commission merchant receives produce (i. e., fruit, vegetables, etc.) on consignment. He takes physical possession of the property, assumes responsibility for it, pays the freight charges, makes direct sales, and remits the proceeds less his commission. He does not merely negotiate purchases or sales.

7. The United States Food Administration drew the proper distinction between brokers and commission merchants. The definitions were as follows:

"Brokers: Individuals, firms, corporations, associations that merely act as intermediaries between buyer and seller in the purchase or sale of goods without handling the goods or without assuming any responsibility for or interest in the goods themselves.

"Commission merchants: Individuals, firms, corporations, associations, or exchanges that solicit for sale, or sell food products on a commission basis,

or that act as agents or representatives of growers in the marketing of food products for a fixed package charge or on a percentage basis."

8. Any legislative definition of brokers for taxation purposes is objectionable which does not include all brokers. Why should brokers in real estate, real-estate mortgages, live stock, scrap iron, coal, and numerous other commodites be exempted?

Any legislative definition of brokers for taxation purposes is objectionable which includes those who are not brokers. The common understanding of a broker is well known, and it is wrong in principle to describe as a brokerage transaction that which is not a brokerage transaction. If a commission merchant dealing in produce is to be made a broker by legal definition, why not include a merchant dealing in silk, cotton piece goods, or other commodities handled in the same way on commission?

9. It is unwise from an economic standpoint and discriminatory to place an occupational tax on an agent of a grower of food products when the occupation of an agent of manufacturers of iron and steel products, rubber, textiles, etc., are not taxed. Why should a burden be placed on production, handling, or consumption of farm or orchard products when it is not placed on similar transactions in manufactured products?

10. It is unduly burdensome to place an occupational tax on commission merchants and repeat the tax in connection with every branch house which he may have. Commission merchants have one occupation, wherever they may perform it.

It is submitted that the words "produce or merchandise" be stricken out of section 1001 (1).

This will confine the tax to financial transactions, as originally intended. If other kinds of brokers are intended to be taxed they can be specifically named, as the law does now in the case of pawnbrokers (sec. 1001 (2)), ship brokers (sec. 1001 (3)), and customhouse brokers (sec. 1001 (4)), etc.

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