

# **UNFERMENTED FRUIT JUICES**

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## **HEARING**

BEFORE THE

## **COMMITTEE ON FINANCE**

## **UNITED STATES SENATE**

SIXTY-SIXTH CONGRESS.

FIRST SESSION

ON

### **H. R. 7840**

A BILL PROVIDING FOR A TAX ON PURE FRUIT-JUICE  
BEVERAGES

AND

### **H. R. 2837**

A BILL TO REPEAL SECTION 630 OF THE REVENUE ACT OF 1918,  
APPROVED FEBRUARY 24, 1919

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# UNFERMENTED FRUIT JUICES.

WEDNESDAY, JULY 30, 1919.

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

The committee met in its room in the Senate Office Building, pursuant to call, at 10.30 o'clock a. m., Hon. Boies Penrose presiding.

Present: Senators Penrose (chairman), McCumber, Smoot, Dillingham, Curtis, Watson, Calder, Sutherland, Simmons, Williams, Thomas, and Nugent.

The CHAIRMAN. The committee meets this morning for the consideration of two bills, H. R. 7840 and H. R. 2837, both of which have passed the House. The first bill provides for a tax on pure fruit-juice beverages, and reads as follows [reading]:

AN ACT Providing for a tax on pure fruit-juice beverages.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be levied, collected, and paid upon all non-alcoholic fruit-juice beverages, whether carbonated or not, whether consisting of pure fruit juice or of pure fruit juice to which sugar or water or both have been added, when sold by the manufacturer, producer, or importer, in bottles or other closed containers, a tax of 2 cents per gallon, and such beverages shall not be deemed soft drinks. All provisions of any act or acts inconsistent with the provisions of this act, or imposing any other or different tax on the articles taxed herein are hereby repealed.*

As I understand it, that substitutes for the present 10 per cent tax a 2-cent per gallon tax on fruit juices.

Commissioner ROPER. Mr. Chairman, if you will permit me, I would like to make just a short general statement.

The fiscal needs of the Government require that \$6,000,000,000 shall be collected from the American public during the first 12-month period of the operation of the revenue act of 1918, approved February 24, 1919. It is, of course, impossible to raise so large an amount of revenue through taxation without cutting deeply into the incomes and profits of the country and imposing hardships in many instances. My idea is, I feel, in accord with that of the Secretary. He concurs in believing that his tax burden should be distributed as broadly as possible and borne in accordance with the ability of our people to pay taxes.

The income and profits taxes seek four and one-half billions of the \$6,000,000,000 total above referred to but in doing so reaches and assesses only about three and one-half million of our population of 110,000,000 people. The miscellaneous and sales taxes seek one and one-half billions of dollars of the \$6,000,000,000 total but the number of persons assessed is not less than 10,000,000 of our population. The number involved in this line of taxes is therefore desirable, in that it greatly broadens the basis of taxation and distributes a proper portion of the tax load. To be sure much concern has

been expressed regarding the taxes involved in section 630 because of the inconvenience which the collection of the tax naturally entails and the general antipathy on the part of the small and frequent purchaser to tax annoyances.

When the consideration of the law of 1918 was first initiated our country was involved in the World War and we were much concerned not only regarding the manner of raising revenue for the maintenance of our program but also regarding the necessity of impressing upon our people the need of economy and saving. It was more for the purpose of impressing a proper program of economy than for revenue that the Treasury Department recommended the taxes provided by section 630. The war having been concluded and the immediate necessity for a strenuous program of economy having to some extent passed, both the department and the Congress, last winter, after the signing of the armistice, endeavored to carve out the bill the "luxury taxes." To this end a resolution was introduced into the House and passed that body but failed of passage in the Senate in the closing hours of the session. Since that time the department has favored the elimination of the taxes imposed by section 904, but has not felt warranted in recommending further action in this direction unless the sources of revenue relinquished are to be replaced by sources equally productive. On June 4, I wrote Mr. Fordney in response to an inquiry from him, this letter:

Referring to your telephone request, I beg to advise that it is the view of this department that the tax on soft drinks, ice cream sodas, and similar articles of food, covered by section 630 of the revenue act of 1918, is a reasonable consumption tax, and that the revenue involved, \$21,000,000, can not well be sacrificed at this time.

The department does feel that a more adequate check on the collection of this revenue should be provided for, and suggests that legislation be enacted requiring each proprietor of a soda fountain, or similar place of business, to purchase serially numbered checks of the various denominations covering 5-cent sales, 10-cent sales, etc., or that legislation be enacted providing for the printing of tickets or stamps to be sold by the Government to the proprietors of these establishments, to be by them sold to the purchaser of the taxable articles at the time of purchase.

If revenue-producing sections of the present law are to be repealed, the department feels that they should be replaced by other sources equally as fruitful, and sources from which the revenue can be collected with the least amount of inconvenience to the public.

It is my conviction that the Government needs and should have all of the taxes which the law in its present form is likely to yield, and that it would be unwise to repeal any of these taxes with the exception of those provided by section 904.

So far as the administrative questions are concerned, I have some other gentlemen here who will be very glad to go into greater details.

The CHAIRMAN. We shall be very glad to have them do so, Mr. Commissioner, but Senators Chamberlain and McNary, the two Senators from Oregon, are here, and maybe they might be heard in behalf of their own bills, and then we could hear the officials of the department.

#### **STATEMENT OF HON. CHARLES L. McNARY, UNITED STATES SENATOR FROM OREGON.**

Senator McNARY. Mr. Chairman and members of the committee, a year ago during the consideration of this bill, I had an opportunity to appear and discuss the tax which the finance bill at one stage levied on fruit juices. The House bill last fall levied a 20 per cent tax on

the gross sales of grape juice, soft drinks, etc. After thorough consideration of this committee, all references to taxation on fruit juices was removed. When the matter came before the conference of the House and Senate, the Senate bill provided for no tax and the House bill provided for a 20 per cent tax on the gross sales of grape juice, etc. A compromise was had whereby a 10 per cent tax was placed on the gross sales and the original House language was restored. The House conferees, as well as the Senate conferees, desired very much indeed to reduce the tax to the gallon basis, such as it had endured prior to our entrance into the war.

Senator McCUMBER. Reduced to what?

Senator McNARY. Reduced to 2 cents a gallon. But they found that the system employed in the House placed a tax on the gross sales, which could not be changed by the conferees to the gallon basis, and therefore a 10 per cent tax was placed on the gross sales of items covered by the original House bill.

I think I and others frankly stated to the conferees at that time that the industry could not carry that load.

We are here this morning able to demonstrate to you that the loganberry industry is practically ruined and will be completely ruined if this bill is continued in operation as at present interpreted, with the result of the loss of millions of dollars to the small farmers in the West without any revenue coming to the Government.

You would be amazed to learn that since the 1st of March, when this bill became operative, that the business has declined so very greatly that it is only two-fifths of that which was done last year, based on the transactions of last March, April, May, and June; three-fifths of the business of last year has gone. If it continues at that rate it will all be gone before the year is over. You are not taxing, you are strangling, an industry. This matter is of great importance to the West. Loganberries are grown by farmers in small plats in parts of Montana and Idaho, northern California, western Oregon, and Washington.

Senator CURTIS. Is the trouble owing to the change in basis of taxation from the gallon to per cent?

Senator McNARY. Ten per cent, Senator, on the gross sales is so great a tax that when sold to the consumer the prices are prohibitive, and the result is that the consuming public is not buying it.

Senator THOMAS. What is the tax now, 20 per cent?

Senator McNARY. Ten per cent on the gross sales. Not only that, but the transportation cost has increased 25 per cent, and when you put your loganberry juice in glass containers and cartons and ship it 3,000 miles to a consuming public, you have a product so expensive that no one will buy it.

Senator McCUMBER. Do I understand that the gross sales have only been about two-fifths of what they were?

Senator McNARY. Two-fifths of what they were a year ago.

The CHAIRMAN. Senator, why are not cereal beverages affected in the same way?

Senator McNARY. The only cereal beverages with which I am familiar are substitutes for near beer.

The CHAIRMAN. I suppose they are affected in the same way.

Senator McNARY. That may be so; I am not here pleading their cases.

The CHAIRMAN. I have not heard any complaints from them as to losing business?

Senator McNARY. I do not know anything about that.

Senator McCUMBER. You do not attribute the falling off to the fact that the people can drink those beverages from now on, while then they were taking their last pull at the old line drinks?

Senator McNARY. I do not know.

Senator NUGENT. I think Senator McNary was before this committee last summer at the time when this same matter was up for consideration. If my recollection serves me right, there were certain gentlemen who appeared before the committee at that time and they placed on this table a number of bottles showing the manner in which they put up grape juice, loganberry juice, cider, etc. If my recollection serves me right it developed at that meeting that the tax per gallon on loganberry juice was about 3 cents; that these gentlemen had taken advantage of that fact and, although there were 16 of these bottles to the gallon, they had increased the price to the consumer 5 cents on each bottle. In other words, the price at which the small bottles were sold prior to that time was 25 cents, and when this revenue law went into effect, although it provided a tax of about one-sixteenth of a cent on each bottle, they had increased the price 5 cents. In other words, they had more than made up the amount of tax on a gallon on each bottle that they sold.

Senator McCUMBER. Yes; but, Senator, you have not taken into consideration the other expenses that made up the 5 cents.

Senator NUGENT. I was merely asking whether or not my recollection was correct?

Senator McNARY. Your recollection is correct. But the statement was decidedly erroneous and unfounded in fact. I was making a statement before the committee at that time, and Senator Smoot, who was ready with figures, attempted to and did calculate so much faster than I could, that he showed the tax was infinitesimal while the price was extreme, and I was unable to meet the situation; and the next day Mr. Gile went around to Senator Smoot's room and convinced him that he was wrong.

Senator NUGENT. Senator, do you remember what the tax on loganberry juice is?

Senator McNARY. I do not remember the figures in detail. These will be discussed later by others. But I do know this: You have an industry here which is growing. You have a product which contains an element of food and of food value, and you are destroying it if this tax continues. The matter was heard before the House at the hearings a few days ago, and the House after imposing this burden, so injurious and too great to be carried, receded from their position of last year and now bring in this bill, which provides for 2 cents a gallon on the juice.

Senator SIMMONS. Senator McNary, is not the injury to the industry by reason of the advance in price the result of the tax put on it or the result of the exploitation of the producers of this product, causing the retailers to excessively increase the price?

Senator McNARY. Oh, no, Senator.

Senator SIMMONS. That is happening under the pretext that the tax has been imposed and the price must therefore be raised, they are adding ten times, in some instances, the amount of the tax?

Senator McNARY. That is true.

Senator SIMMONS. And then they charge that the price has been made so excessive that the consumer will not purchase it, and that that price has been made excessive by reason of this increased tax and not by reason of the increased profit that they are exacting.

Senator McNARY. But that is not this situation. That may be true with respect to some manufactured articles that are made out of sugar and extracts and water. The heart of this industry lies in the situation of the small farmer of the West. He must have a certain profit on the berries before he can grow them. The pickers and laborers must be paid a living wage, the land must be had, fertilizers must be used, and water must be used. The berries are pressed into juice, and then that juice is sold in a raw state or in a diluted form to the public. Anyone can press the juice from the berries. The business can not be monopolized, and therefore it would not be profitable for the people to combine. They could not increase the price and then lay it on this tax. It would not be prudent. Many a farmer presses the juice out himself and then sells it.

Senator SIMMONS. This is the information I would like to have you give me, which would enlighten my judgment about this matter: I want, first, a statement of what this material sold for before any tax was imposed, before the war was commenced; I want, then, a statement of how much the tax has added to that, so that we can see how much of this additional price is tax and how much is profit.

Senator CURTIS. You want to know the price now?

Senator SIMMONS. That is what I want to know—the price now.

Senator WATSON. What is the price now?

Senator McNARY. I have Mr. Churchill here, and I would be very glad to have him come and answer the questions.

Senator McCUMBER. Before you get to that proposition, can you give any reason why there should be any tax at all on loganberry juice than there should be on loganberry jelly or raspberry jelly or any other food product?

Senator McNARY. I can not give you a reason.

The CHAIRMAN. The reason is that all other nonalcoholic beverages are taxed.

Senator McCUMBER. It is not a beverage.

Senator McNARY. It is a food product.

Senator SIMMONS. Do they not say that Bevo is a food product?

Senator McCUMBER. It is nothing but a food product.

Senator THOMAS. Some people say red liquor is a food product.

The CHAIRMAN. Senator McNary, I suggest that you proceed with your remarks, and we will hear the other gentleman you have in mind later.

Senator McNARY. Thank you. The sales of loganberry juice were increasing rapidly up until April or March of this year, when the tax went into effect. Since then the sales have only reached two-fifths of what they were last year.

I think the kernel of the whole thing is in the question propounded by Senator Simmons, and I will be very happy to have Mr. Churchill at this time speak on this subject.

The CHAIRMAN. The committee will be very glad to hear Mr. Churchill now.

**STATEMENT OF MR. ARTHUR M. CHURCHILL, REPRESENTING  
THE PHEZ CO., PORTLAND, OREG.**

**Mr. CHURCHILL.** Mr. Chairman and gentlemen of the committee:

**The CHAIRMAN.** What is your business, Mr. Churchill?

**Mr. CHURCHILL.** I am a lawyer.

**The CHAIRMAN.** Whom do you represent?

**Mr. CHURCHILL.** The Phez Co., of Salem, Oreg.

**The CHAIRMAN.** What is their business?

**Mr. CHURCHILL.** They are the largest manufacturers of loganberry juice and the largest manufacturers in the Northwest of bottled apple juice as well.

I am simply a stockholder, but I am representing them here; I am not an active official of the company otherwise.

I take it that you do not desire to have me go into a general discussion of the subject, but desire me to answer questions. May I answer the question of Senator Simmons as to profit? The fact is that last year was the first year we had made any earning whatever. Last year we did make a reasonable earning.

**Senator THOMAS.** Pardon me; what was the tax then?

**Mr. CHURCHILL.** The tax last year was 1 cent a gallon.

**Senator THOMAS.** And out of that you made a profit?

**Mr. CHURCHILL.** We absorbed the 1 cent a gallon tax out of what would have been our earnings. We did not believe the tax was properly assessable in our case, but we paid it and absorbed it. The tax, inadvertently, I think, under the present law, as compared with last year has raised the tax on this 8-ounce bottle to over 30 cents a gallon from 1 cent, assuming the department's contention to be correct, that we are taxable under it. We can not live under that.

**Senator THOMAS.** I thought it was 20 per cent.

**Mr. CHURCHILL.** The tax proposed when the bill was introduced was 20 per cent on the gross sales. It was cut in conference, as Senator McNary has stated, to 10 per cent on gross sales, but because of the price which this must necessarily sell for, including freight and containers, all of which goes into the manufacturers' price, the tax on this size of bottle at 10 per cent on all of that becomes 30 cents a gallon.

**Senator McNARY.** You pay a tax on the freight, on the bottle and the container?

**Mr. CHURCHILL.** Absolutely.

**Senator McNARY.** Which is all out of proportion to the value of the product.

**Mr. CHURCHILL.** Positively.

**The CHAIRMAN.** Does not everybody else pay those taxes, Mr. Churchill?

**Mr. CHURCHILL.** Unfortunately not.

**The CHAIRMAN.** Everybody pays taxes on freight and on all the other things you mention.

**Mr. CHURCHILL.** The soft-drink industry which, in our contention, we are not a part of, is an industry quite distinct. Nearly all so-called soft drinks are bottled locally. The bottles are returned the next day or so to the bottlers. They do not charge for the bottles when the bottles are returned; and, likewise, they do not charge for the cases when the cases come back. They have no freight; they have

no jobber's discounts. The result is that the average soft drinks sell to the retailer at 80 cents a case of a gallon and a half. It costs them to manufacture it about 41 cents a gallon for the juice itself, according to their own publications. It costs us to get it to the trade, including jobber's discounts, \$3.20 a gallon. It is an utterly different industry.

The soft-drink prices are practically the same for all these various so-called soft drinks, but the fruit-juice industry is a wholly different thing. The fruit-juice has to be bottled where the juice is grown in order to preserve the delicate flavor and aroma of the berries and to prevent it from being alcoholized.

We must ship our juice in glass containers. The people on the Pacific coast must buy the glass in the East, as we have no glass sand or cheap fuel with which we might produce glass. We have to ship those bottles from the States of Ohio and Illinois to the Pacific coast and pay 25 per cent increase in freight rates on the bottles and ship back our product at the same freight to eastern centers of population and pay a tax on all those things. Our tax at 30 cents a gallon is nearly as much as the soft drink costs.

The question was asked whether perhaps either we or the retailers have raised the price exorbitantly and whether that is why the trade has fallen off, and that is a fair question. The fact is that last year, after we got to the end of our fiscal year and figured up closely our net earnings showed about 5 per cent on our sales.

If we had absorbed this tax ourselves, we would have had to pay all of that earning and as much more in order to take care of the tax. So that obviously we could not take care of it out of what we earned. We therefore tried to do the other thing. We tried to take the Government at its word and to pass this tax on to the trade, with the idea that they would absorb the tax as a consumption tax, as was contemplated, and would continue to buy our goods. The result is shown in this chart, which is on page 36 of the House hearings that you have before you. It shows that the business, which is only two or three years old substantially, increased very rapidly right up to the moment when this tax came into force, and from that moment the business dropped to two-fifths of last year, because of the attempt to pass the tax to the dealer and through him to the consumer.

There are tabulations in the House hearings going carefully into the retailer's profits, and it will appear as you study that—I can go into it if you care to have me, but I presume you do not—that the retailer's profits on these goods are materially less than they are on other goods of the same class.

This bottle [illustrating] was put out originally to sell at 25 cents. There are 8 ounces in this bottle [indicating]. The juice for drinking purposes is supposed to be diluted by adding 2 equal parts of water; 8 ounces will just fill an ordinary water glass.

Senator WILLIAMS. That is the pure loganberry juice simply with sugar added?

Mr. CHURCHILL. It is the pure juice.

Senator WILLIAMS. The loganberry is similar to the blackberry?

Mr. CHURCHILL. It is a cross between the raspberry and blackberry. It is the only fruit outside of the citrus fruits that produces citric acid and it combines this with a delicious flavor that is quite different from any other fruit that is known.

Senator THOMAS. You improved the breed by crossing?

Mr. CHURCHILL. We have at least made it quite different from anything produced. It is quite juicy. It is too acid to can; in fact, we are unable to can it in tin, as it eats tin, even lacquered tin. And we have not been able to market the fresh berries except locally, as they are too perishable, and the result is the farmers have developed large acreage and the local market was not ample, and there was only one recourse open.

Senator THOMAS. Is the loganberry restricted in its growing area?

Mr. CHURCHILL. It grows in California, and possibly in some valleys in Idaho, as Senator McNary said, but the Department of Agriculture says that the berry does not seem to thrive where the thermometer drops to zero and is not capable of withstanding extreme heat in the summer. So that the mild temperature of the valleys of the Pacific coast seems to be its home.

Senator THOMAS. It seems to be a pretty conservative berry?

Senator CHAMBERLAIN. Can you not state to the committee in figures what your total sales were up to the time this tax went into effect and what the drop was in the amount of your sales?

Mr. CHURCHILL. Our sales for 1918 were \$1,387,000. That included loganberry juice and apple juice; approximately our sales have been two-thirds loganberry and one-third apple juice.

The CHAIRMAN. What was loganberry juice sold for by the gallon before this tax was imposed?

Mr. CHURCHILL. It will be a little difficult for me to average it by the gallon, Mr. Chairman, but, if I may speak in bottles, I think I may make it equally clear.

The CHAIRMAN. How much has the price gone up by the bottle?

Mr. CHURCHILL. We simply added the tax, and we simply billed it to the dealer with the tax added.

The CHAIRMAN. What was it selling for by the bottle before the tax was imposed?

Mr. CHURCHILL. This size [indicating] was selling—you mean to the retailer?

The CHAIRMAN. I mean to the retailer.

Mr. CHURCHILL. We sold it to the retailer at \$8.25 a case.

The CHAIRMAN. That was before the tax?

Mr. CHURCHILL. That was before the tax.

The CHAIRMAN. What do you sell it for now to the retailer?

Mr. CHURCHILL. We simply add the tax, which is 10 per cent, of that list price less the jobber's discount, which amounts to about 69 cents a case, or 30 cents a gallon.

Senator WATSON. How many bottles are there to the case?

Mr. CHURCHILL. Thirty-six. That makes a difference of nearly 1 cent a drink on the price of the goods.

The CHAIRMAN. One cent on each bottle?

Mr. CHURCHILL. Each drink.

The CHAIRMAN. How much has the retailer raised the price?

Mr. CHURCHILL. The retailer's margin before we—

The CHAIRMAN (interposing). I want a direct answer to the question, Mr. Churchill. How much has the retailer raised his price on this article since the tax was imposed?

Mr. CHURCHILL. That has varied with the retailers in different parts of the country. Most retailers had held their price down to 30 cents for this size bottle, which would be 10 cents a drink right up

to the time this tax was imposed. In some places they had already raised the price to 35 cents, and even then they are not getting more than an average percentage of profit. But the great majority of dealers had realized the danger of that and though their percentage of profits was much less than on other similar classes of goods, they had left the price at 30 cents and tried to maintain their volume of sales.

Senator WILLIAMS. They held it at 30 cents. What did you sell it to them at?

Mr. CHURCHILL. I think it averaged just about 24 cents, and they were making about 21 per cent on those goods. As you know, the average retailer figures to make between 18 and 25 per cent on the average goods.

Senator WILLIAMS. These people, then, were making the average profit?

Mr. CHURCHILL. Yes; equal to his profits on his average turnover. But on the staples he makes much less than he does on specialties, because he has to push the specialties and therefore expects to get 33 per cent on these in order to maintain his average.

Senator WILLIAMS. So you want to capitalize his expectation?

Mr. CHURCHILL. But he will not handle our goods unless he can make as much as on other goods of the same class.

Senator WILLIAMS. Has he quit handling them to any great extent?

Mr. CHURCHILL. Our sales have fallen off, as you will note by the tables, to two-fifths of last year.

Senator WILLIAMS. Did they fall off because of the imposition of the tax or because of the fact of the immense advertising campaigns by other people who have been bottling a lot of other fruit juices in competition with your profits?

Mr. CHURCHILL. I think all fruit juices have been affected similarly. Of course, it is true that the competition with these cheaper soft drinks is what we have to face, whereas our juice in the home cost 10 cents per drink before this tax went on.

Senator NUGENT. If I remember correctly, last year the statement was made before this committee that a gallon of loganberry juice would fill 16 of those bottles, and that prior to the levy of a tax of 1 cent a gallon those bottles sold for 25 cents.

Mr. CHURCHILL. They were originally put up to sell at 25 cents as a retail price.

Senator NUGENT. And after the levy of a tax of 1 cent a gallon the price per bottle was increased to 30 cents?

Mr. CHURCHILL. I think Senator McNary sought to explain that. You will recall that he said that was a mistaken statement on his part?

Senator NUGENT. What do you say now?

Mr. CHURCHILL. That is not at all true.

Senator NUGENT. What was the price at retail after the levy of the tax of 1 cent a gallon?

Mr. CHURCHILL. Of course, the 1 cent a gallon was a matter—

Senator NUGENT. Be frank enough, if you know, to answer my question: What was the price at retail of those bottles after the levy of the tax?

Mr. CHURCHILL. Other large items of increased cost put the price up to such an extent that the average retail price was raised to 30 cents. The tax was only an incidental item.

Senator WILLIAMS. The price per bottle went up 5 cents?

Mr. CHURCHILL. Yes, sir.

Senator WILLIAMS. And the tax was 2 cents a gallon?

Senator NUGENT. 1 cent.

Senator WILLIAMS. How do you account for that immense profiteering of 5 cents a bottle in order to equal the tax of 1 cent a gallon?

Mr. CHURCHILL. I have attempted to explain that a tax of 1 cent a gallon is not a large factor in our costs, but the other items—increased cost of containers, freights, and labor—were serious. Farm costs nearly doubled.

Senator WILLIAMS. I am not talking about that. If the cost of labor had not doubled and the cost of raw material had not doubled we would not have a tax levy at all. I am talking about this particular profit. The retailer raised the price 5 cents a bottle, and the 16 bottles made a gallon, which would be 80 cents to account for a tax of 1 cent. How do you explain that? Do not go back to the cost.

Senator THOMAS. How can he explain it if he did not do it?

Senator WILLIAMS. I do not care who did it. I want to know if it was done and why. It affects my cotton and affects another man's wheat and is affecting the street-car fare in Washington. We have to raise a tax in order to run the Government, and if we would release every man from taxation on account of the fact that labor has increased in cost and raw materials have increased in price, we would have nothing left to tax at all.

Senator THOMAS. It does affect the added price.

Senator WILLIAMS. It also affects the price of my cotton, and I have been getting it back and he has been getting it back.

The CHAIRMAN. I still do not know what that bottle [indicating] retails for now.

Mr. CHURCHILL. Mr. Chairman, it retails since the tax was imposed, as near as we can gather information, from the retailers—

The CHAIRMAN (interposing). Will you not answer this question: What does the bottle retail for now?

Mr. CHURCHILL. I think it has had to go to 35 cents.

Senator CHAMBERLAIN. The effect has been to diminish the sales; people will not buy it.

The CHAIRMAN. Does not the increase in price more than cover the increase in tax?

Senator WILLIAMS. Has it put anybody out of business?

Mr. CHURCHILL. Yes, sir.

Senator WILLIAMS. Can you tell us who has been put out of business by that?

Mr. CHURCHILL. We have—three-fifths of our business is gone already.

Senator WILLIAMS. But you are still in business?

Mr. CHURCHILL. We are still hoping.

Senator WILLIAMS. Do you know anybody who has been put out of business by it?

Senator CHAMBERLAIN (interposing). May I suggest one proposition: Since the tax has been levied and his price has been increased

people have quit using this juice, with the result that his sales have fallen off three-fifths. The result of that is while nobody has gone out of business, immediately, by the nature of things they will have to go out.

Senator WILLIAMS. I understand that; and so also has the consumption of beefsteak decreased very materially because the price has been raised; there is no doubt about that.

Senator CHAMBERLAIN. There is not a set of men undertaking to control this business as in the case of the packers. There are no middle men. Here is a farm product that a man produces on his own farm.

Senator WILLIAMS. I can not find any middle men; the packers controlled the whole thing.

Senator CHAMBERLAIN. I think they are. But there is not anybody controlling this product. It is a farm product and put up at the home in many instances, is it not?

Mr. CHURCHILL. Absolutely.

Senator WILLIAMS. I think the Senator from Oregon will admit that the fact that it is a farm product does not entitle it to any special favor.

Senator SIMMONS. How many drinks are there in a bottle?

Mr. CHURCHILL. Three drinks.

Senator SIMMONS. How much does it sell for at the fountains?

Mr. CHURCHILL. We only sell about 15 per cent of our product at the fountain. By the way, the tax is double there. When we go to the fountain we have been paying two taxes.

Senator SIMMONS. You say there are three drinks in a bottle. I want to find out what one drink sells for.

Mr. CHURCHILL. For use in the home this bottle sold for 30 cents. The average dealer would make it sell for use in the home at 10 cents.

Senator McNARY. Ten cents a drink.

Senator SIMMONS. That is what it would cost the householder who used it. But when that is sold by the drink at the fountain, what do they sell it at?

Mr. CHURCHILL. Probably not less than 15 cents and add war tax to that.

Senator SIMMONS. There are three drinks to the bottle; that is 45 cents, and what did you say they pay for it—30 cents?

Mr. CHURCHILL. For this bottle the retailer will pay about 24 cents.

Senator SIMMONS. He sells it for 45 cents?

Mr. CHURCHILL. That is the soda-fountain man.

Senator SIMMONS. That is what I am trying to get at. You could answer us without going into an explanation. You say there are three drinks in a bottle, and those drinks sell for 15 cents apiece, and that is 45 cents. You say you sell it to the retailer for 24 cents?

Mr. CHURCHILL. Without the tax.

Senator SIMMONS. That is 21 cents that is made on that bottle. How much of that is tax?

Senator NUGENT (interposing). He is figuring, Senator Simmons, the price of the drink at the price of 30 cents a bottle for the juice, which he now says is selling at 35 cents.

Senator SIMMONS. Yes; but he says he sells it to the retailer for 20 cents, and the retailer finds there are three drinks in a bottle, that he sells at 15 cents a drink.

Senator NUGENT. I thought you were trying to get at the cost per drink.

Senator SIMMONS. I am trying to show how much profit the retailer makes on that thing. The retailer, as I understand Mr. Churchill, pays 23 cents a bottle which has three drinks in it, and he sells those three drinks at 45 cents.

Senator McCUMBER. Twenty-three cents, plus the tax?

Senator SIMMONS. The tax is to be taken out of that, and I was trying to find out what the tax on one of those bottles is. And then if you will tell me what the tax is on the juice in one of those bottles, we can see very clearly how much of this 23 cents is tax and what is profit.

Mr. CHURCHILL. The tax is pretty close to 2 cents a bottle, or somewhat less than a cent a drink.

Senator SIMMONS. That leaves 20 cents that the retailer makes on that bottle?

Mr. CHURCHILL. I think the Senator is confusing the retailer with the soda-fountain man. Only 15 per cent of our goods go over the soda fountain. They will not handle our goods in large quantity, because there is not margin enough in it as compared with other things.

Senator CALDER. A glass of loganberry juice with White Rock costs double what they can sell ice cream for?

Mr. CHURCHILL. Absolutely. The only interest we have in the soda fountain is its advertising value. They sell some and keep the goods before the public. But they will not handle it in quantity, because they can not dispose of it in volume.

Senator SIMMONS. And he sells it at 15 cents?

Mr. CHURCHILL. The soda fountain man does, so far as he sells it.

Senator SIMMONS. What else do you have to mix with that juice there to make the drink? [Indicating bottle on committee table.]

Mr. CHURCHILL. He mixes it into various things, including phosphates.

Senator SIMMONS. There are three drinks there in that bottle [indicating]. You divide that sirup into three parts. You put something with that sirup before it is used? It is nothing but water, is it?

Mr. CHURCHILL. Sometimes. But the soda-fountain man mixes it in a hundred ways. But even at the margins you indicate he will not push it. His margin is made for service; it is the transforming these things into beverages. It is not a retail problem. He sells this and expects to make a profit on it the same as hotel people do for the service they render. But the 10-cent price I am discussing is where 85 per cent of our product is selling, in the home, which is the only place we can sell it in quantity. It cost in the home before this tax was added 10 cents a drink, at the 30-cent price per bottle, and many people thought they could not afford it even then. But we were still able to keep the gross volume of sales going up rapidly, so long as the price did not go up beyond that point.

Senator CALDER. You say it amounts to 10 cents a drink. I have visited homes where a bottle of that kind was distributed among five people, or five drinks being made from such a bottle, but of course it is not as strong.

Mr. CHURCHILL. Of course not; no, sir. The average is three drinks, but it could be divided up into and perhaps sometimes is divided up into three or four or five or even six drinks.

Senator NUGENT. I understand you to say that you sell these bottles to the retailer. I am not talking now about the number of drinks, but you sell these bottles to the retailer for 24 cents.

Mr. CHURCHILL. Approximately 24 cents a bottle.

Senator NUGENT. And that the tax on each bottle represents 3 cents?

Mr. CHURCHILL. About 2 cents.

Senator NUGENT. And that the retailer is now selling the loganberry juice at the rate of 35 cents per bottle?

Mr. CHURCHILL. Quite right.

Senator NUGENT. That would leave him, then, a net profit of 8 cents on each bottle, would it not? I mean, if you sell the bottle to the retailer for 24 cents, and there is a tax of 3 cents per bottle, and he sells it at approximately 35 cents.

Mr. CHURCHILL. I think it is something like that.

Senator NUGENT. Eight cents a bottle is the retailer's profit?

Mr. CHURCHILL. Yes; estimated in that way. But may I figure it out on a percentage basis?

Senator NUGENT. Yes.

Mr. CHURCHILL. The retailer's profit before the tax was added on this bottle was approximately 21 per cent. The retailer expects to make and does make as a rule on specialty goods, pretty close to 33½ per cent. What he was handling of our's—our goods—he was handling at something like 21 per cent. If he attempted to absorb the tax without raising the price he would have to handle our goods at 15 per cent, which is less than people handle flour and other staples in large quantities for, and no retailer in the world could do business at that rate on such goods as these, and he will not do it and we can not make him do it.

The CHAIRMAN. So far as that is concerned, does not a retailer keep postage stamps and other things of that kind, in which there is no profit, for the accommodation of his customers?

Mr. CHURCHILL. You are right, Mr. Chairman, but he will not keep goods of this kind for the accommodation of his customers; he expects to make a margin of profit on it. Our sales, since the tax went on, show that his tax has already very injuriously affected our business, because the retailer would not handle our goods on such a margin, and he is not handling them, and the industry bids fair to be entirely destroyed if this tax remains. Three-fifths of the business is gone now; we have lost \$350,000 in sales in four months, since March 1, 1919, and the industry can not possibly live under such conditions.

Senator NUGENT. Isn't that because the retailer demands an exorbitant profit?

Mr. CHURCHILL. No, sir. Even if we were able to get 33½ per cent on our goods he would only be getting the average margin of profit, as compared to handling similar goods, but in our case he was only getting one-half such profit, approximately, before that.

Senator NUGENT. You think the effect of the tax is that it prevents people from buying these goods because of the exorbitant price the retailer is charging?

Mr. CHURCHILL. No; I repeat that the retailer is not getting an exorbitant profit. Even if he could get 33½ per cent, which at the 30-cent price he is not doing by one-half, he would only be getting

the profits that he gets on other similar goods. And even if he charged 35 cents for such a bottle as I hold in my hand, as some do, he would only be getting decidedly less than the normal profit.

Senator WILLIAMS. What does a bottle of grape juice of that size sell for?

Mr. CHURCHILL. I do not know.

Senator WILLIAMS. It sells for about one-third the price of loganberry juice, doesn't it?

Mr. CHURCHILL. I do not know, because I am not acquainted with those matters, but I will say that grape juice has gone up very remarkably this last year. The figures as to grape juice surprised me, the increased price I mean, but I do not know just what it is from memory.

Senator WILLIAMS. Yet that is one of your great competitors on the market, and you say you are ignorant of the price?

Mr. CHURCHILL. Our competitor, primarily, Senator Williams, is the 5-cent soft drink.

Senator WILLIAMS. Isn't your bottle competitor grape juice? I mean, isn't your chief competitor in bottled goods, grape juice?

Mr. CHURCHILL. I will say that grape juice is most nearly comparable to loganberry juice, but our chief competition is—

Senator WILLIAMS (interposing). And you say that you do not know what your chief competitor is selling his product at?

Mr. CHURCHILL. Well, I am not personally active in the handling of the trade. I know that our industry has that matter under consideration, very carefully, but I am not acquainted with those details. I can get the information for you, Senator Williams, but I can not tell you from memory.

Senator WILLIAMS. The object of my question was to bring you back to the reason why your sales had fallen off. Loganberry juice was advertised very extensively. Nobody could pick up a magazine or a newspaper without finding one of their advertisements. I take it there was an immense increased cost of operation involved in advertising. If it be true that the people found out that loganberry juice was not very much better than grape juice, and grape juice is worth half the price of loganberry juice, then with or without the tax your sales would have fallen off, would they not?

Mr. CHURCHILL. The Senator is quite right as to the extensive advertising in which we engaged, and which we think necessary, or thought necessary, and that grape juice sells for a lower price, yet our sales kept going up until the moment this tax hit us so heavily.

Senator CALDER. Last year the tax on this product was 1 cent a gallon, wasn't it?

Mr. CHURCHILL. Yes, sir.

Senator CALDER. What is it now?

Mr. CHURCHILL. Thirty cents on this bottle. [Meaning on a gallon.]

Senator CALDER. It has been increased from 1 cent to 30 cents?

Mr. CHURCHILL. Yes, sir.

Senator THOMAS. Why did you say "30 cents on this bottle?"

Mr. CHURCHILL. The price of the product per gallon varies slightly with the size of the bottle. The tax, being a percentage of that price, would range from 26 cents on some sizes to 30 cents a gallon on such a bottle.

Senator WILLIAMS. Oh, you meant that the tax is 30 cents on a gallon?

Mr. CHURCHILL. Yes.

Senator WILLIAMS. Suppose the Congress repeals this tax, can you give the consuming public a guaranty that the price of your products will go back to where it was before the price was raised?

Mr. CHURCHILL. We have not raised our price; our price to the dealer will be just what it was before the tax. All we have done is to bill this loganberry juice to the dealer and say that he must pay the tax, which tax is billed to him separately.

Senator WILLIAMS. Then I understand that your billing of the loganberry juice to the retailer is at the old price plus this tax and no more?

Mr. CHURCHILL. Absolutely; we have not changed it.

Senator WILLIAMS. So that it would be up to the retailer if the tax was removed as to what the retail price would be?

Mr. CHURCHILL. Of course, I can not speak for the retailers of the country, but I know what has been the experience in the past. They have tried before this, knowing they were getting an abnormally low profit, before this tax ever went into effect, to raise the price slightly so as to make some profit. A few of them tried to raise the price to 35 cents a bottle, as was done by some here in Washington, but they found they could not do it and went back to the 30 cents.

Senator WILLIAMS. Your other product you call apple juice; what has been the effect on that?

Mr. CHURCHILL. Quite as serious a result.

The CHAIRMAN. You say you are selling these products to the retailer by the gallon at the same prices charged by you before the tax was imposed.

Senator THOMAS. He said plus the tax.

Mr. CHURCHILL. Yes, sir; that is it.

Senator THOMAS. Then your argument about the increase in labor cost disappears, it seems to me.

Mr. CHURCHILL. What was that?

The CHAIRMAN. Senator Thomas asked you a question which was in my mind, as to whether your argument about the tremendous increase in labor cost does not disappear.

Mr. CHURCHILL. I think the chairman misunderstood me. We raised the price last August, a year ago, when the costs during the war had gone up so fast that we found we were losing money. When we checked up we found we had been losing money quite heavily on these goods at the prices at which we had been selling them, and we raised the price on August 1 last, enough to enable us to continue without loss, and to make something of a margin on the goods. Since that time there has been no raise in the price on this article of goods [holding up a bottle of loganberry juice] and only slight raises on other articles not sold in relatively great volume. While we have lost business in some cases we have managed to keep our gross total of sales increasing until the time when this tax hit us, and this chart on page 36 of the House hearings, shows that the sales dropped, immediately upon the taking effect of the tax, to two-fifths of the volume of last year. The point is that this price was just as much

as the trade would bear; that there was no slack to take up when the tax was added.

And, gentlemen of the committee, if we knew any other way to remedy this situation we wouldn't be here urging you to reduce this tax; we would months since have hastened to adopt any plans which would have avoided this disaster. But we know of no other way to remedy the situation, and we have lost \$350,000 in business—which also affects the Government by greatly reducing the amount that the Government might expect to receive under this act, and also under the income tax.

Senator SIMMONS. You say that last July you increased your price sufficiently to cover the increased cost of production?

Mr. CHURCHILL. Yes, sir.

Senator SIMMONS. And you have not increased that price since?

Mr. CHURCHILL. Not on the——

Senator SIMMONS (interposing). How much have the retailers that you are selling to, since last July when you increased your price, increased their price to the consumer? But, first, you increased your price to the retailers then before the tax was put on?

Mr. CHURCHILL. Yes, sir.

Senator SIMMONS. As the result of the increases you had to meet?

Mr. CHURCHILL. Absolutely.

Senator SIMMONS. Now, how much have the retailers increased the price to the consumers since the tax was put on over the price they were selling your goods at when you had made your increase as the result of the increased cost of production?

Mr. CHURCHILL. After this increase of last July they raised the price——

Senator SIMMONS (interposing). Let us get at it directly, as you are going to answer the question circuitously: Let us see if we can not get at it rather categorically. When did you make your increase to cover cost of production?

Mr. CHURCHILL. August 1, to be exact.

Senator SIMMONS. August 1 of last year?

Mr. CHURCHILL. Yes, sir.

Senator SIMMONS. Immediately upon your making that increase did the retailers increase their price?

Mr. CHURCHILL. Those that had not put it up to 30 cents before raised the price to 30 cents, and some raised the price to 35 cents even, as they did in Washington. The result, in the latter case, was that the trade fell off. And the trade fell off with some people, even to those retailers who stood by the price of 30 cents, which most did in spite of the fact that they were making a very small margin of profit—and it all resulted in keeping the sales from going on up as rapidly as they would otherwise have done.

Senator SIMMONS. As the result of your increase the retailers raised their price to 30 cents a bottle?

Mr. CHURCHILL. Yes, sir.

Senator SIMMONS. When did the tax go into effect?

Mr. CHURCHILL. March 1 of this year.

Senator SIMMONS. Up to March 1 the retailer continued to sell the bottles of loganberry juice at 30 cents?

Mr. CHURCHILL. Most retailers did.

Senator SIMMONS. And that covered your increased cost?

Mr. CHURCHILL. Yes, sir.

Senator SIMMONS. On March 1 how much did they increase it, when the tax went into effect?

Mr. CHURCHILL. Did we raise the price?

Senator SIMMONS. No; did the retailers raise the price?

Mr. CHURCHILL. The most of the retailers increased the price from 30 to 35 cents, as far as I can learn, or felt that they would have to do so if they continued, and therefore refused to buy our goods at all.

Senator SIMMONS. Then the retailers increased the price of loganberry juice by 5 cents a bottle from nothing in the world except the war tax?

Mr. CHURCHILL. Yes, sir.

Senator SIMMONS. They had already increased the price because of your increase, which you say you made to cover increased cost of production, and then they added on 5 per cent for the tax after that?

Senator WILLIAMS. Not 5 per cent, but 5 cents.

Senator SIMMONS. Yes; I meant 5 cents a bottle.

Mr. CHURCHILL. The tax was close to 2 cents, but they were only making a margin of profit of around 21 per cent, and when they had to increase it to take care of the war tax—

Senator SIMMONS (interposing). Let us get to that. The increase of 5 cents a bottle was on account of the tax and nothing else. What was that tax?

Mr. CHURCHILL. Approximately 2 cents a bottle.

Senator SIMMONS. Then they increased the price almost twice the amount of the tax?

Mr. CHURCHILL. The Senator is correct, but I ought to explain right there that their profits before that were abnormally low, and they attempted to make it even money; the most of them raised the price, instead of to 32 cents, to 35 cents, which gave them a profit more nearly comparable with other similar goods they were selling.

Senator SIMMONS. Yes; but they had been running on from August, when you made your increase, to March, without making any increase; that is, on the 30-cent basis, and I should take it it would be assumed they had adjusted their prices to your increase—to the manufacturers' increased cost.

Mr. CHURCHILL. They had adjusted as far as they felt they dared.

Senator SIMMONS. Therefore the increase made after March 1 was purely on account of the tax, nothing more, but they increased the price practically double the amount of the tax.

Mr. CHURCHILL. I think the Senator will agree with me that no goods of this kind are sold at odd prices within a 5-cent limit.

Senator SIMMONS. Oh, no; they are sold at odd prices. I bought a coca-cola last night and paid 7 cents for it.

Mr. CHURCHILL. Yes; but that was at a soda fountain.

Senator WILLIAMS. That argument that you make will not stand, Mr. Churchill. Every time you buy a coca-cola it will cost you 7 cents.

Senator McCUMBER. Mr. Churchill is talking about the general retail business and not merely about the soda-fountain business; and they do not make a difference of 1 cent or 2 cents or 3 cents in the general retail business, but it is usually 30 cents or 35 cents.

Senator THOMAS. Yes; the great bulk of the retail sales are in even amounts.

Senator WILLIAMS. When you go to buy a bottle of mineral water now, which used to cost 15 cents, you pay 16 cents for it. If you buy it by the half dozen you pay 16 cents where you used to pay 15 cents.

Senator CALDER. That bottle, which cost 3 cents more to the retailer, has to have 5 cents added on the price by him. And hasn't it cost him something more to do business this year than last? Haven't the wages of his employees increased, and the overhead cost increased, and rent increased, and everything required to do business, and therefore may not there be a reason for adding on the additional 2 cents by the retailer?

Mr. CHURCHILL. The Senator is absolutely correct. I think if the members of this committee will consult the trade interests at all, they will find the retailer's margin of profit on our goods abnormally low. The soft-drink industry, which is our principal competitor, very frankly states, and publicly, that the retailer must have a margin of 33 $\frac{1}{3}$  per cent in order to do business. On the other hand, he has been doing business with our product on a 21 per cent margin, and staying with it as well as he could to see what he could work out. When the tax of 2 cents was added the average retailer has felt about this way: If I have to add 2 cents to this, when my cost is going up, I can not afford to handle it unless I get something like what I get out of other things. Perhaps some might think that he ought to have done business on a 15 per cent margin, or not done any, but that is what he has done, as far as we could check the facts. It has most injuriously affected our sales, and our business is going fast. We can not change human nature, and we can not change the whole retail practice, or what the retailer does in all goods of this class, or anything of that kind. We would change it if we could, but we can not.

Senator CALDER. Do you attempt to control the prices of the retailer?

Mr. CHURCHILL. Absolutely not; we have nothing to do with them. We only deal with human nature as we find it. We have put \$750,000 into this business to try to find a market for the product of the loganberry vine of Oregon and Washington, and our money is going, and the money invested in these vineyards is going, too, unless we can get relief. We have not taken a dollar out of this business and we do not know when we will. We thought we had a paper profit last year, but now we are likely to find even that disappearing.

Senator CALDER. Isn't it possible that some retailers are selling those goods to-day at 33 cents a bottle?

Mr. CHURCHILL. It is possible, and it is also possible that some are selling at 30 cents. I do not know what all the trade is doing. I know that Cornwell's, in Washington, in the Southern Building, last August, put up the profits the same as on other goods, and they soon saw that that wouldn't do, and the result was that their trade fell off to a fraction. We assume that what happened to Cornwell last year, after they raised their price as a result of the tax, happened to other companies or dealers.

Senator CHAMBERLAIN. Is this table found on page 6 of the House hearings accurate?

Mr. CHURCHILL. Yes, sir.

Senator CHAMBERLAIN. It seems to me that the loss in sales speaks more plainly than it is possible for us to express the fact in any discussion here. For instance, in March, 1918, the sales were \$82,407.07, while in 1919 they had fallen to \$32,237.97, and in April, 1918, the sales were \$163,130.21, while in March, 1919, they had fallen off to \$39,015.89, and so on for each corresponding month they had fallen off from 50 to 75 per cent. Mr. Churchill, can that be accounted for in any other way than that the tax has caused a failure of purchasers to call for these goods?

Mr. CHURCHILL. We can not account for it in any other way.

Senator CHAMBERLAIN. I can understand, Mr. Chairman, that a tax may reach a certain point where it will practically drive an industry out of business, and that seems to be the effect here, because at the end of June the total falling off in sales was from \$573,419.04 to \$222,653.86, or about 60 per cent. Mr. Churchill, where do these figures come from?

Mr. CHURCHILL. These figures came from our books of sales. These show our total sales, from our books.

Senator CHAMBERLAIN. Is the effect of that to reduce the area of vines producing your products?

Mr. CHURCHILL. The effect must be, ultimately, to reduce it, of course, because loganberry juice production is conceded to be the backbone of the whole loganberry vineyard industry. There is no question about that.

Senator WILLIAMS. I would like to ask you one other question: Do you know what proportion of grapes went into wine and what proportion went into grape juice before this recent prohibition legislation was enacted, and what proportion of grapes go into wine now and what proportion into grape juice.

Mr. CHURCHILL. That was covered in the House hearings, and Mr. A. M. Loomis, I think can answer that.

Senator WILLIAMS. I will ask that a note be made of my question, Mr. Chairman, so that it may be answered when Mr. Loomis comes before us. I might explain that the object of my question is to know if the chief competitive article has increased in production by reason of one branch of customers having gone out of business. In other words, we have legislated into futility one branch of purchasers of the chief competitor of the loganberry.

Mr. CHURCHILL. I can answer that question from the hearing on last Monday before the House Committee on Ways and Means, very clearly. It will appear very definitely from those hearings that the grape juice supply last year was very short; the volume was much shorter than in ordinary years; and the fear of the grape juice people is that prohibition will not help but will hurt their business.

And for the reason that a very large proportion of the capital heretofore invested in the brewery business is going from that business into the soft-drink business. Numerous instances were cited in the hearings. The prospect is that the soft-drink industry will prove a much stronger competitor of grape juice and loganberry juice than before.

Senator WILLIAMS. If that be true, I doubt not it is thought other soft drinks are threatening both grape juice and loganberry juice. Therefore isn't it true that the people must either quit raising grapes

or else sell them altogether to be used fresh, or to be consumed in the way of grape juice, and that you are being threatened with a new and a double competition, which would very naturally account for a decrease of your sales.

Senator McCUMBER. If that should be the natural operation of the law, wouldn't it be well for us to protect a great industry like this by taking off the tax entirely and allowing it to exist? This product is used, perhaps, more in hospitals than any other juice known, by the people who are able to purchase it. It is regarded as a food product, and as more of a food product than any other soft drink?

Senator WILLIAMS. So is grape juice and orange juice and apple juice.

Senator McCUMBER. Oh, no; there is nothing in apple juice or in orange juice or in grape juice like this.

Senator WILLIAMS. Why, hospitals could not get along without orange juice.

Mr. CHURCHILL. Of course, gentlemen of the committee, as to our problems, as we have stated, these are not our only troubles. The fruit-juice industry has its problems besides this. Our point is, that the Government certainly, in the face of a situation such as we present here, should not add other burdens; and all the tax the Government is going to get out of the four months that are past, according to the table to be found on page 6 of the hearings before the Ways and Means Committee of the House, is \$22,000.

The CHAIRMAN. Your position is, that if we continue this tax we finally will not get any tax?

Mr. CHURCHILL. Yes, sir.

The CHAIRMAN. But, on the contrary, it will destroy the business?

Mr. CHURCHILL. Yes, sir.

The CHAIRMAN. And that is another proof of your contention.

Mr. CHURCHILL. Yes, sir.

Senator CHAMBERLAIN. What is the character of the labor employed in your industry out there; isn't it chiefly women and children?

Mr. CHURCHILL. Yes, sir; a large percentage of the berry picking is done by women and children more particularly.

Senator CHAMBERLAIN. And it comes at that part of the year when these people can get out and assist and be profitably employed?

Mr. CHURCHILL. Yes, sir; they can go from Portland and other cities, and they are given additional earnings.

Senator CHAMBERLAIN. They go out and camp out in these fields, and it is an outing for the urban population?

Mr. CHURCHILL. Yes, sir.

The CHAIRMAN. That is true of the canning industry, and scores of other industries.

Mr. CHURCHILL. Yes, sir.

The CHAIRMAN. Have you anything further to present, Mr. Churchill?

Mr. CHURCHILL. I do not know how far this committee wishes to go. I have been assuming that you would wish me to answer questions.

I will say this, that originally there were 20 small plants engaged in this industry, scattered around, but that all but about 3 or 4 of them, I would say 4 of them, have fallen by the wayside; they

simply could not keep it up. The only way we have succeeded so far is by pouring hundreds of thousands of dollars in advertising into a work of familiarizing the people with loganberry juice, and popularizing the use of it—which advertising has been criticized here, but it was a work that we had to do in order to keep the industry alive, and certainly it seems to me such expenditure on our part should be commended rather than criticized.

Senator WILLIAMS. I was not condemning it.

Mr. CHURCHILL. I misunderstood, Senator; I beg your pardon.

Senator WILLIAMS. I was not criticizing it, but mentioned the fact that you were extensively advertising, and that the advertising contributed to increase your expenses.

Mr. CHURCHILL. Those were our efforts.

Senator CHAMBERLAIN. You have instanced a number of people who have fallen by the wayside?

Mr. CHURCHILL. There were originally 20 plants, but I think 16 of them have fallen by the wayside. Portland is the only local market—

The CHAIRMAN. How long since did those plants go out of business?

Mr. CHURCHILL. They drifted out gradually.

The CHAIRMAN. How long ago did the last one disappear?

Mr. CHURCHILL. I suppose a couple of years.

The CHAIRMAN. Before the tax was imposed?

Mr. CHURCHILL. Yes; the tax was not the cause of that. It has been a question of finding a market for the juice.

The CHAIRMAN. The tax had nothing to do with their demise?

Mr. CHURCHILL. Oh, no, sir; the tax had nothing to do with that.

Mr. Chairman, may I call attention to something to be found on page 74 of the hearings before the Ways and Means Committee of the House?

The CHAIRMAN. You may.

Mr. CHURCHILL. The Senate committee last year felt that this industry could not stand any tax, and the Senate conferees stood out very strongly on that proposition—

Senator SIMMONS (interposing). I think that statement is hardly true, Mr. Churchill. We did not eliminate the tax upon the idea that this industry could not stand a tax, but we eliminated it on the idea that this was a new industry, an agricultural industry, and I think that was the basis of our action.

Senator CHAMBERLAIN. But it was eliminated?

Senator SIMMONS. Yes; but I think that was the basis.

Senator CHAMBERLAIN. And there is stronger reason for it now than then?

Mr. CHURCHILL. I think the committee's stand has been amply justified. We are not here now asking for an elimination of the tax, but contending that the tax in its present form would not only continue to be most injurious to our business but would result in producing less tax for the Government and a reduction in the income tax.

Now if you will go to page 74 of the hearings before the Ways and Means Committee of the House:

Apple juice and cider are sold by some manufacturers at a unit price for the liquid, with an extra charge for the containers, which are returnable at price charged; by others at a price which includes the containers, which are not returnable, by reason of remoteness from market; and by still others who sell by both methods.

The result is that a gallon of apple juice or cider is taxed at widely differing amounts, as will be readily seen by the following statement and illustration:

One gallon of cider sold in barrels, with containers charged extra and returnable. Sold at 20 cents per gallon, tax 2 cents per gallon.

And if you go on down the list you will find another paragraph which reads as follows:

One gallon of cider sold in 6-ounce bottles, packed 72 to a case, \$5.50 per case, or \$1.60 per gallon, tax 16 cents per gallon.

In other words, the very same apple juice, from the same factory, is taxed all the way from 2 cents to 16 cents per gallon, depending on the size of the container. The burden is eight times as great on the man who can only afford to buy a little at a time.

Now, gentlemen of the committee, in the case of apple juice practically all of the tax is on the containers which multiplies the tax on the product several times, whereas, as I explained a little while ago, where a soft drink is manufactured locally and the manufacturer takes the bottles and containers back, they only pay on the drink itself. The only way we can be protected from this gross discrimination is by placing our tax on a gallonage basis. What we are seeking here is to put such a tax on this industry so that it can live, and a tax on that will be uniform as to different sizes of containers.

Senator WILLIAMS. What tax do you suggest?

Mr. CHURCHILL. Two cents a gallon.

Senator WILLIAMS. Regardless of the container and the size thereof?

Mr. CHURCHILL. Yes, sir.

Senator THOMAS. Why do you want this provision in the bill, "And such beverages shall not be deemed soft drinks"?

Mr. CHURCHILL. There has been a good deal of confusion at the Treasury Department as to whether this is or is not a soft drink. The Treasury Department has held that we are a soft drink, and we want to straighten out the interpretation.

Senator McCUMBER. Is there any tax on grape juice?

Mr. CHURCHILL. Yes; there is a specific tax.

Senator McCUMBER. How much?

Mr. CHURCHILL. The tax, I think, is 10 per cent. Grape juice is specifically included in the present law.

Senator THOMAS. This is virtually to give loganberry juice another classification. If we might only legislate and by legislation create a hard drink, some of us would probably be very happy.

The CHAIRMAN. Anything else, Mr. Churchill?

Mr. CHURCHILL. No, sir; I think not.

Senator NUGENT. I would like to ask a question or two: Don't you think your business has fallen off very largely because of the fact that the cost of the necessaries of life have increased tremendously during the past three years, and that your loganberry juice is something in the nature of a luxury, and people have stopped consuming it as they have many other luxuries?

Mr. CHURCHILL. I think in a measure that may be true, but our sales on the average, or our general bulk of total sales, was increasing right along up to the time when the tax struck us. It may be a fact that some people did cease using loganberry juice, but the further fact that our average sales were increasing right along

through January and February and up until the tax went on in March, is good proof of the effect of the tax.

Senator WILLIAMS. I want to ask a question, not exactly in line with the inquiry here, but in order to satisfy my curiosity: What is the medicinal effect of this drink? Does it have the effect of correcting bowels when they are too open, like blackberry juice?

Mr. CHURCHILL. I can not speak with any authority on that.

Senator THOMAS. No; it does not.

Mr. CHURCHILL. It does not with some people. It has a very helpful effect in some cases.

Senator WILLIAMS. Is it an astringent?

Mr. CHURCHILL. I do not know.

Senator THOMAS. I have been told by physicians that it has a tonic effect.

Senator SIMMONS. As I understand you, there are 16 of these bottles in a gallon?

Mr. CHURCHILL. Sixteen 8-ounce bottles.

Senator SIMMONS. That makes, at the rate of 3 drinks to the bottle, 48 drinks to the gallon?

Mr. CHURCHILL. Yes, sir.

Senator SIMMONS. And you want that tax made at the rate of 2 cents a gallon?

Mr. CHURCHILL. Yes, sir.

Senator SIMMONS. That would be one twenty-fourth of 1 cent per drink?

Mr. CHURCHILL. The tax would not be considerable, of course, per drink. But the only tax we can stand is what we can pay out of our hoped-for profits, and without charging it to the trade at all. We must absorb it.

Senator SIMMONS. Well, that is what it would be. It would be one twenty-fourth of 1 cent per drink. Now, you are taxing these soda-fountain drinks, like Pepsacola, Cherry Cola, and Coca Cola about 1 cent a drink.

Mr. CHURCHILL. I think the Senator's calculation is based on a different situation.

Senator SIMMONS. How much is it a drink?

Mr. CHURCHILL. The tax on soft drinks now-----

Senator SIMMONS (interposing). But how much is it a drink?

Mr. CHURCHILL (continuing). Is 5 cents a gallon and it may be figured out at that rate.

Senator SIMMONS. I am talking about when sold at a soda fountain?

Mr. CHURCHILL. Do you mean fountain drinks, the fountain tax?

Senator SIMMONS. Yes; when sold by the drink. I am talking about the tax on your product sold by the drink. If we put it at what you ask us to put it at it would be one-twenty-fourth of 1 cent a drink. Now, what is the soda fountain tax per drink?

Mr. CHURCHILL. The soda fountain tax now in effect is to be repealed, practically-----

Senator SIMMONS (interposing). I am talking about what it is, whether it is going to be repealed or not.

Mr. CHURCHILL. We pay that tax, too, at the soda fountain.

Senator SIMMONS. I am not talking about that, but I want you to tell me what the tax is on pepsa cola or lemon cola or coca cola when

sold at a soda fountain. There must be some equitable relation between the tax on loganberry juice and the tax on soft drinks?

Mr. CHURCHILL. May I answer your question this way: The average soft drink is sold for 5 cents, and the soda fountain tax is 1 cent a drink at the present time, and it will be added to the 5 cents.

Senator SIMMONS. Wouldn't you have this situation: More than half of your product would be taxed at one twenty-fourth of 1 cent a drink, and you would have these other drinks taxed at 1 cent a drink or 24 times more.

Senator CALDER. But you would have a tax of 1 cent a drink on this same product when dispensed at a soda fountain, anyway.

Senator SIMMONS. But he says it is not sold at the soda fountains.

Senator McCUMBER. Fifteen per cent of it is.

Mr. CHURCHILL. The others do not pay it either if not sold at a soda fountain. The only tax that is comparable with the tax we are discussing here to-day is the manufacturers' tax on soft drinks.

Senator McCUMBER. All others are sold at soda fountains.

Mr. CHURCHILL. No; a great deal is sold through grocery stores in bottles.

Senator McCUMBER. To change the question, what do you get for that by the gallon?

Mr. CHURCHILL. It depends upon the size of the bottle.

Senator McCUMBER. No; it doesn't depend upon the size of the bottle. What do you sell it for by the gallon? What is your price by the gallon; what is your price by the gallon for that bottle?

Mr. CHURCHILL. If I may answer roughly, about \$3.50.

Senator McCUMBER. Do you think that 2 cents, if we are going to the gallon tax basis, that 2 cents tax would be proper?

Mr. CHURCHILL. Yes, sir.

Senator SIMMONS. Do you think that would be an adequate tax for a product that sells at \$3.50 a gallon?

Mr. CHURCHILL. The question is, Senator, what we can stand. We had better pay 2 cents a gallon, from a revenue standpoint, than not to be able to pay any tax at all. We have come in and volunteered to pay a small tax, which we ourselves can absorb, either out of our pockets or out of our narrow margin in this business. We can not pass it on to the consumer.

Senator SIMMONS. Have you calculated what per cent 2 cents a gallon would be? What per cent would that be on loganberry juice at \$3.50 a gallon. Have you calculated that?

Mr. CHURCHILL. I have not calculated that; no, sir. The tax will be relatively small, and I might add, it must be small, in order to let us live. Right now we are being taxed 30 cents a gallon and the soft-drink industry is being taxed about 5 cents a gallon, up to now, and we are simply asking to be put under a separate classification and to be taxed on our ability to pay. It is a distinct industry. If we can stand more than 2 cents a gallon, very well, but we do not believe we can.

Senator SIMMONS. That would be about one-half of 1 per cent. I do not recall any tax that we imposed anything like as low as that on anything.

Mr. CHURCHILL. That doubles the tax of last year.

Senator SIMMONS. What was that answer?

Mr. CHURCHILL. That doubles the tax of last year.

Senator CALDER. That tax of 2 cents a gallon is also upon the bottle and the containers and the freight charges and the entire cost of manufacture, the putting up of the product.

Mr. CHURCHILL. When it comes to a gallon tax it would be only based on quantity.

Senator CALDER. But the present tax is based on all.

Mr. CHURCHILL. Yes, sir.

Senator CALDER. So that 2 cents a gallon would simply be a tax on the product.

Mr. CHURCHILL. Absolutely. What we want is a tax on the product itself, in order to put it on a parity with these other goods. Then consider us on our merits; what we can stand. We do not want to shirk any tax. And there is no tax on any other agricultural product that I know of. This industry is in its infancy and is being taxed out of business.

The CHAIRMAN. I will ask Senator McCumber to take the chair for a few moments.

(Senator McCumber assumed the chair.)

Senator WILLIAMS. Why is that any more of an agricultural product than grape juice or apple juice?

Mr. CHURCHILL. Grape juice will be relieved by this same tax. I am speaking of fruit juices. We are not asking to be singled out from other fruit juices. I am here simply because I am interested in the loganberry and in apple juice.

Senator WILLIAMS. You say that you want a tax that you can absorb because you can not pass it on to the consumer? If we give you the tax that you want why can you not pass it on down? You have passed this on.

Mr. CHURCHILL. Because we find we can not pass it on; we are losing our business.

Senator WILLIAMS. Assuming it has decreased your business, it is because there has been passed on to the consumer an increase of about 5 cents for a tax of 2 cents. Now, if you could enter into bond not to pass it on to the consumer you would have more friends in the committee. I am hunting for something that can not be passed on to the consumer. If you will give bond that you will not pass the tax on to the consumer I think I will vote with you.

Senator SIMMONS. I am not unfriendly, and will not favor a tax if it is burdensome. But, Mr. Churchill, I want you to name a substitute tax that would be somewhat commensurate with the tax put upon other things in this country; and I think one-half of 1 per cent is out of all proportion to other taxes.

Mr. CHURCHILL. If I may answer the Senator, I will do it this way—

Senator SIMMONS (interposing). In other words, if you come here and ask us to do something, you should ask us to do something reasonable.

Mr. CHURCHILL. The Senator is quite correct. The fact is that the only reason we get a higher price for these goods than the soft drink people do for their cheaper bottled products is because it costs us very much more to produce it.

Senator SIMMONS. It would be better if you would compare yours with the Bevo tax.

Mr. CHURCHILL. Well, I am not so familiar with that.

Senator SIMMONS. Bevo is sold without any manipulation at all at the soda fountain. It is sold and used in the households of the country, and my understanding is that that sells—

Senator THOMAS (interposing). This does not relieve this product from the soda fountain tax if it is sold from the soda fountain.

Senator SIMMONS. That is the reason I asked Mr. Churchill to compare it with something that is not sold generally from a soda fountain, and Bevo is not sold generally from a soda fountain. The great bulk of that, like loganberry juice, is sold directly to the household. The tax on that, I think, and the tax on this are something alike. That is a cereal product and yours, Mr. Churchill is a fruit product. They are both food products.

Mr. CHURCHILL. I have not made any considerable comparison with Bevo, and what I say will be off-hand. It sells, I believe, at 5 cents a bottle, doesn't it? It is put out and I believe a large margin of profit is made on it at that price.

Senator THOMAS. It is sold at that price to the consumer?

Mr. CHURCHILL. At 5 cents a drink, I think.

Senator SIMMONS. Do you mean Bevo?

Mr. CHURCHILL. Am I not right?

Senator SIMMONS. The commissioner tells me it sells for about 25 cents a bottle, and that a bottle contains about two drinks.

Mr. CHURCHILL. I am not sufficiently posted on Bevo to tell you about that. I have compared loganberry juice with the soft-drink situation because that is a class we have been held to come under. I know that the average soft drink sells for about 5 cents; and I know they have only been taxed 5 cents a gallon while we are taxed 30 cents a gallon.

What I want to leave with the committee is this: That we must be considered separately as a distinct industry. No one would consider putting a tax upon canned fruits or dried fruits, and yet we are absolutely in the same situation. We put this out in bottles because it can not be canned. If we must continue to pay this heavy tax it will not let us live. Of course it is impossible to say as between 2 cents and 3 cents a gallon whether an extra cent would be prohibitive or not, but the point for us is, that it must be a small tax, and then we will pay it out of our earnings, if we have any.

Senator WILLIAMS. Will you give bond to do that?

Mr. CHURCHILL. I am not prepared to give bond, but we will do that.

Senator WILLIAMS. I wish you would find out whether you will give bond to do it and let me know.

Mr. CHURCHILL. We will put it in writing, to do that.

Senator WILLIAMS. That might be something like the Belgian treaty.

Mr. CHURCHILL. We would be prepared to stand by any agreement we might make.

Senator SUTHERLAND. The bulk of your business is handled by distributors or retailers?

Mr. CHURCHILL. Yes, sir.

Senator SUTHERLAND. How do you know he will not demand a larger profit?

Mr. CHURCHILL. Because it reduces very much the volume that he sells.

Senator SUTHERLAND. He is not restricted, and he will sell a substitute, just the same as is done with regard to any other product where the price goes up, if he finds a substitute?

Mr. CHURCHILL. But before this tax went on, although he had no reasonable margin, every time he tried to increase the price he had to go back to the 30-cent price. I am satisfied that will be the practice generally if this tax is taken off.

Senator SUTHERLAND. You are not sure of that?

Mr. CHURCHILL. We are not allowed under the law to control retail prices. We must simply sell to the trade and take human nature as we find it.

Senator WILLIAMS. Of course if you were to absorb the tax and sell to him the same as before, he would have no excuse to increase the price.

Mr. CHURCHILL. We will do that.

Senator THOMAS. Before you take your seat let me ask you this question: Have you made any estimate of the probable revenue to be derived from this tax?

Mr. CHURCHILL. I asked Mr. McCoy and have discussed it with Mr. Walker, of the beverage tax department of the Treasury Department, and the best information I can get is that the total beverage tax will amount to about \$30,000,000, of which about \$12,000,000 will come from this class of goods. The best estimate I can make as coming from the volume of fruit juices is 2 to 3 per cent of the aggregate sold as soft drinks. So that if we only paid our proportionate share, the probable amount lost to the Treasury would be from 2 to 3 per cent of \$12,000,000, or \$240,000 to \$360,000—that is, if we can keep up our volume of sales. But if they fall off, as they have done with us, and if they are lost, as seems to be the outlook for us, there will be no revenue at all.

Senator THOMAS. That hardly answers the problem I had in mind. I did not know but what you had an estimate with regard to your particular business, in dollars and cents, at the 2-cent tax.

Mr. CHURCHILL. Oh, at the 2-cent tax.

Senator THOMAS. Yes.

Mr. CHURCHILL. Well, if we sold as much as the tax amounted to last year it would be \$4,000. But the tax at the present high rate is so far only \$22,000, which would be all the Government would get for the last four months, and destroy a business amounting to millions of dollars.

Gentlemen, I thank you.

Senator McCUMBER (in the chair). Does some other witness want to be heard on the matter of fruit juice and other things of that kind? Does any other witness want to be heard on that particular subject?

Senator CALDER. If there is no one who wishes to be heard on the matter of loganberry juice, I would like to have Representative Shreve, who represents a congressional district in the State of Pennsylvania, invited to be heard.

Senator McCUMBER (in the chair). The committee will be glad to hear Mr. Shreve.

**STATEMENT OF HON. MILTON W. SHREVE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA.**

Mr. SHREVE. Mr. Chairman and gentlemen of the committee, I have the honor to represent the twenty-fifth congressional district of the State of Pennsylvania, which, as you all know, is a district up on Lake Erie. I also have the honor of representing the Chautauqua and Erie grape belt. That means Chautauqua County, N. Y., and Erie County, Pa.

I will not attempt to go into the story of why we are growing grapes up in that particular locality and peculiarly situated section of the country; only far enough to let you know something about it. As the lake receded it left certain sand and gravel beds, which extend back here and there along for a distance of about 2 miles. There are about 50,000 acres of those lands, extending from Erie to Buffalo, and those are the lands where the Concord grape seems to thrive best. For more than 25 years we have been building up an industry, and we did have a year ago 42,000 acres of grapes in that vicinity; and I am a grape grower myself on a small scale, and know something about their troubles.

Now, gentlemen of the committee, the grape grower has had his troubles all along. The National Government, recognizing that fact, has for many years assisted us. In the Sixty-third Congress we succeeded in having an entomologist sent up in the northeast corner, and Senator Calder secured another one for the other side of the New York line; and so the Government has been assisting us in every way, until we have gotten this intricate problem pretty well solved, and we know how, all along the south shore of Lake Erie, to grow luscious Concord grapes.

As to our markets, years ago we tried to basket grapes and sell them, but we found that was a difficult matter; it was difficult for us to compete with California and other sections of the country, and therefore for us the basket grape market was limited. The next proposition was wine making. For a good many years we shipped them in 20-pound baskets or crates, and the average carrier did not know anything about the destination of his shipment—buyers stopping at all small towns to make purchases, and the farmer loading up a wagon and taking his product down to the car and loading it on a car, and then in a few days he would get his money. So that a very large part of that product went into wine.

That is the way it went until a few years ago when some gentleman undertook the grape juice business. Right in my own district and within a mile of my farm a man spent half a million dollars trying to build up a grape juice business and failed. I happen to know all about the inside of that failure, because I was a director in a bank at the time that and other banks had to take over this plant; and we tried to run it for a while ourselves, but soon discovered that it was not a profitable business and the business was finally sold, or advertised for sale and bought by interests in New York State. I merely mention that fact for the purpose of showing that the grape juice manufacturers are not making any money. And I might further say that I am not representing manufacturers. I do not care anything about the manufacturer, but I want to say to you gentlemen that I am seriously interested and deeply interested in

what is going to happen to the owners of those 42,000 acres of land up in the Chautauqua-Erie grape belt—small farms of 4, 5, or 6 acres, and sometimes 10 and 25 acres, but possibly the average of the belt would not be more than around 25 acres. It is a business that requires special study, and the farmers have grown up on the farms there, and raised their boys there, and they understand the business. They start in in the fall, as soon as frost comes, and then along in January or February they begin to trim, and there is work of a special character until the next fall. Gentlemen of the committee, you can not go out over the hills and find any farmer who can do this work. He must be trained and must be an expert.

What has happened to those agriculturists under this bill, and what is the situation at the present time? The tax on 1 ton of grapes will amount to \$27—and I have sold grapes myself for \$17 a ton—

Senator THOMAS (interposing). Do you mean that that is the aggregate tax per ton based upon the tax that this bill levies on grape juice?

Representative SHREVE. Not in this bill we are considering to-day, but the law as it stands to-day. It amounts to 16 cents a gallon, and we get 160, 165, or 170, or perhaps 175 gallons of grape juice out of a ton of grapes, and therefore it is simply a mathematical proposition and you can figure it out for yourself.

Senator THOMAS. Oh, I will take your word for it.

Representative SHREVE. Thank you.

(The chairman, Senator Penrose, resumed the chair.)

Representative SHREVE. If we leave that tax on those grape growers a year from now there will not be a grape grower in that vicinity, simply because they will be ruined this year.

Senator WATSON. How many gallons of grape juice per ton did you say is produced?

Representative SHREVE. One hundred and sixty to 170 gallons, depending upon the ripeness of the grapes.

Senator WILLIAMS. Speaking of grape juice, and the same thing is not true of loganberry juice, but speaking of grape juice, all this comes back to the proposition of having robbed them of the entire market for making wine out of grapes.

Representative SHREVE. I will not say entirely, but, of course, the fact that they have lost the sale of grapes to wine makers will have a very great effect upon their product.

Senator WILLIAMS. But if this law goes into effect, how can anybody use his grapes for wine when it is forbidden to manufacture it?

Representative SHREVE. Well, they do not expect to be able to sell it for the purpose of making wine, but they can use it or sell it for grape juice.

Senator WILLIAMS. I understand that, but this tax is right upon the deprivation of your entire market for making wine.

Representative SHREVE. Yes, sir.

Senator WILLIAMS. So it becomes a double hardship?

Representative SHREVE. Yes, sir; we have not only lost the greater part of our markets, but now the Government comes in and proposes to take everything else that we have. And I say that because the grape vineyard business can not live and pay \$27 a ton tax.

And, gentlemen of the committee, it is the farmer who pays the tax; it is not the ultimate consumer, but it is the farmer. They are

all ready to make contracts. I am trying to sell my grapes now, but can not get a price until they know what the Congress is going to do about the tax—whether they are going to have to pay \$27 a ton. And there are 42,000 acres of land, and of the most valuable land, land that sells at \$300 and \$400 and \$500 and sometimes even \$1,000 an acre, land whose future is wrapped up in this matter.

It is a very attractive business, and, as Senator Calder well knows, it has attracted a very splendid citizenship along the southern tier of counties bordering on Lake Eric. Some men have been rather inclined to use this section as a summer home. This tax is going to wipe these homes out. But by no means is that the only serious effect of this tax, because many a man, many a poor farmer who has lived there all his life, and brought up his boys on the farm, and trained them to become grape growers, is seriously affected by this tax.

Senator WILLIAMS. But he is not a poor farmer?

Representative SHREVE. No; but he may become poor mighty quick if we consider the effect of this tax.

Senator CALDER. And in some cases the tax is greater than the amount the farmer gets for his grapes.

Representative SHREVE. Well, it has been, although last year we had better prices. Our average price has probably been about \$48 or \$50 a ton. But last year there was a shortage all over the belt and the price went up considerably, but this year we are expecting a normal crop and the price will probably come back.

Senator SUTHERLAND. How much do you grow to an acre?

Representative SHREVE. About 2 tons to the acre was what I grew when I commenced, but last year it was about half a ton to the acre. Mr. Chamberlain, who appeared before the House committee last week, said he thought the average would be about a ton per acre.

Senator WILLIAMS. Why was that reduction?

Representative SHREVE. For a great many reasons.

Senator WILLIAMS. Aren't you progressing?

Representative SHREVE. We are progressing, and the Government has done everything on earth it could to help us, but I have not found any man yet could tell us why the vineyards last year only bore about half a ton to the acre, when the year before, under the same cultivation, they bore about a ton. I might say, however, that I have my own theory about it.

Senator WILLIAMS. I can understand how the yield would vary from one year to another, but I understood you to say a moment ago that when you first began to grow grapes the industry was producing about 2 tons to the acre, and now you say about half a ton.

Representative SHREVE. That is absolutely true.

Senator WILLIAMS. That seems to be a constant falling off.

Representative SHREVE. It is on account of loss of fertility in the soil.

Senator SUTHERLAND. Do not you improve the soil?

Representative SHREVE. We do improve it, but with the price of fertilizer \$100 a ton, it is mighty hard to keep up the soil.

Senator WILLIAMS. Did that all take place before the war or is it a thing that has come about with the war?

Representative SHREVE. Oh, no; the war has had nothing to do with the fall in the price of grapes.

Senator WILLIAMS. Well, the war has had everything to do with the raise in the price of fertilizer.

Representative SHREVE. Yes.

Senator WILLIAMS. And if it is attributable to that, then it ought to have been a fall that took place during the war and not before, because they have not had the opportunity of improving their lands with fertilizer to help their crops.

Representative SHREVE. Yes, sir.

Senator CHAMBERLAIN. If this tax continues as it is under the law at present you think it will practically put the grape grower out of business?

Representative SHREVE. Absolutely.

Senator CHAMBERLAIN. In other words, there will be no tax at all collected by the Government from it?

Representative SHREVE. No, sir.

Senator CHAMBERLAIN. Under the proposed law, the bill that passed the House, have you made any estimate as to what the Government would realize from the 2-cent tax?

Representative SHREVE. Oh, I do not know anything about the tax proposition. All I am interested in is the farmers' end of it. I know that in my district there were about 2,000,000 gallons of grape juice made in 1917, and at 2 cents a gallon the total tax would be \$40,000, and I think that there should be some tax on it, and we do not want to get out from under it, but it should be a tax that will not put the farmer out of business. When the farmer is put out of business you will get no tax.

Senator SUTHERLAND. How does this tax compare with the present tax?

Representative SHREVE. The tax would be about \$3.20 a ton.

Senator SUTHERLAND. It is now what?

Representative SHREVE. About \$27 a ton.

Senator CALDER. Mr. Chairman, may we now hear Mr. Loomis, of the National Grange?

The CHAIRMAN. The committee will be glad to hear Mr. Loomis if Representative Shreve has finished?

Representative SHREVE. I have finished my statement, unless some member of the committee wishes to ask me further questions.

The CHAIRMAN. The committee will now hear Mr. Loomis.

**STATEMENT BY MR. A. M. LOOMIS, MEMBER OF THE LEGISLATIVE COMMITTEE OF CHAUTAUGUA & LAKE ERIE FRUIT GROWERS' ASSOCIATION, AND ALSO REPRESENTING THE NATIONAL GRANGE, WASHINGTON, D. C.**

Mr. Chairman and gentlemen of the committee, I appear here to make a brief statement for Prof. T. C. Atkeson, the Washington representative of the National Grange; I also represent the Lake Erie Fruit Growers' Association, of the Erie and Chautauqua grape belt, where I have had my home for many years.

The CHAIRMAN. Where do you live now?

Mr. LOOMIS. My home at present is in the city of Washington.

The CHAIRMAN. Where was your home before coming to Washington?

Mr. LOOMIS. Before that I was in Dunkirk, N. Y. For 10 years I was the editor of the Grape Belt, a newspaper published in the interest of the grape growers, at Dunkirk, N. Y., and for 15 years was the statistician representing this industry.

If it were not so near 12 o'clock, and I did not know that you gentlemen were all very busy, and very naturally want to go somewhere else, I would go into details in the matter.

The CHAIRMAN. If you have anything you would like to file with the committee which has not appeared already in the House hearing, you may do so.

Mr. LOOMIS. I have nothing to file except those things which are already in the House hearing. But there are some things which I wish to say that I believe would be of interest to the committee.

The CHAIRMAN. You may proceed with your statement.

Mr. LOOMIS. On behalf of the National Grange let me make this very brief statement: We looked this revenue bill over rather carefully at the time it was passed, and we discovered what we believe is true, although this requires more careful perusal than we gave it—that the only food products taxed in the entire bill are fruit juices. We believe this is a departure from good policy, and that food products should not be taxed, and on behalf of the grange, an organization of food producers of the United States, some 600,000 or 700,000 of them, organized into definite and well-disciplined bodies in 33 different States, we wish to protest against a tax on food products of any kind. In that far I am opposed to the bill before you, and I am more opposed to the bill which is the law at the present time.

However, coming to my more specific relations to the grape interests, the grape growers and the grape industry, I will say that this tax of 2 cents a gallon as now proposed is not an exorbitant tax if the industry is to be taxed at all. If the industry must be taxed, it is fair, and there will be no difficulty on the part of the grape growers to meet this tax.

I want to say that in my study of the situation I have come to the conclusion that this will not be a consumer tax, but a producer tax; and it can not be otherwise in the face of the competition which loganberry juice and other fruit-juice industries now face, as has been freely stated in this hearing this morning.

The situation relative to grape juice to-day is exactly as stated by Congressman Shreve. The grape crop will begin to move in eight weeks. There is a crop which under normal conditions is worth from \$2,000,000 to \$3,000,000, and yet there are no contracts out to-day, so far as I can learn, for the sale of that crop. Not only will the tax be passed over to the producer of the grapes, if left on the statute books, but it will affect the product of the grape-juice people, which will reduce the market to that extent and lose that much tax to the Government, or the tax on the grape-juice people may be passed back to the grape grower and thereby affect the grapes sold not only to the grape-juice people, but on the general market, and have the effect of bringing all prices to that level and will very seriously affect the grape industry generally. I want to say that I have talked to men since this tax was put on, and they say if the tax is continued they will go out of business of growing grapes, and it will

wreck an industry of 40 or 50 years' standing in which there is \$16,000,000 invested in the grape industry alone. I feel that that is going to be the result if this tax stands.

Senator CALDER. Isn't more than \$16,000,000 invested in the grape industry?

Mr. LOOMIS. Oh, I am only speaking of my own section.

Senator CALDER. That is the Chautauqua section?

Mr. LOOMIS. The Chautauqua-Erie grape belt, the same section that Congressman Shreve spoke of. There are other sections of New York which represent 33½ per cent of the Chautauqua-Erie section, and in the State of Michigan there are sections representing 50 per cent of ours. So that we are probably representing one-half of the grape growing industry east of the Rocky Mountains.

Senator McCUMBER. Your position, as I understand it, stating it very briefly, is that the Government having taken away your market for the sale of grapes, so far as the wine industry required them, compels you now to rely upon selling the entire product as a food product, and that it ought not to tax food products.

Mr. LOOMIS. That is the position I am compelled to take from my relations with the industry.

Senator McCUMBER. And in which I think you are absolutely right.

Mr. LOOMIS. But if Congress in the exigency thinks it must tax the grape industry, then the 2-cent tax is fair. The tax will produce, as nearly as I can estimate it, about \$100,000 on grape juice alone. The apple juice tax will be very materially under that, and the loganberry juice tax somewhat under it.

Now, gentlemen of the committee, I will be glad to answer any questions I can from my experience. Not knowing this was to be a formal hearing, thinking it was simply a conference, I did not prepare to appear here.

The CHAIRMAN. Does anyone else wish to be heard?

Senator CALDER. Congressman Newton would like to be heard.

The CHAIRMAN. Congressman Newton, of St. Louis, will now be heard by the committee.

#### STATEMENT OF HON. CLEVELAND A. NEWTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI.

Representative NEWTON. Mr. Chairman and members of the committee, they do not produce grape juice in my district, but they do produce cereal beverages.

The CHAIRMAN. Will you define for the committee just what you mean by "cereal beverages"?

Representative NEWTON. Cereal beverages are those juices which are made from grain. We have two kinds of juices—we have fruit juices and grain juices. Then there are two kinds of grain juices or cereal beverages. There is one kind that is made by a process of fermentation, the alcohol afterwards being extracted, and there is another kind which is made by extracting the food properties that are soluble from the grain and then subjecting it to a process of carbonation, making a beverage which has never fermented and which contains no alcohol.

I think some of the industries in the district which I represent manufacture by one process and some by the other. The largest one, the Bevo plant, manufactures by the latter process. They get their rice and their barley and they extract the food materials that are soluble and carbonate them and put the product on the market. There is no process of fermentation. In all these goods there is a certain degree of alcohol, but it is very small and they are regarded as nonalcoholic. I think that Bevo and all similar beverages contain approximately the same percentage of alcohol as grape juice and other soft drinks. For instance, Coca-Cola has a small percentage of alcohol.

Now, there are two questions in which the people in my district are interested. One is the present system of collecting the revenue, which is a very impracticable and unjust system. The other, of course, is the amount or rate of the tax. I want to call your attention to the revenue bill of 1918, which is now in operation, and direct your particular attention to section 628, which reads:

Sec. 628. That there shall be levied, assessed, collected, and paid in lieu of the taxes imposed by sections 313 and 315 of the revenue act of 1917—

(a) Upon all beverages derived wholly or in part from cereals or substitutes therefor, and containing less than one-half of one per centum of alcohol, sold by the manufacturer, producer, or importer, in bottles or other closed containers, a tax equivalent to 15 per centum of the price for which so sold.

That is the law under which revenue is being collected. Pursuant to that statute, the Revenue Department of the Treasury issued regulation No. 52, and I want to call the committee's attention to article 7 of that regulation, which provides:

The tax attaches when the beverage is sold, that is to say, when the title to it passes from the vendor to the purchaser pursuant to a previous contract of sale or upon a sale without previous contract. When title passes is a question of fact dependent upon the intention of the parties as gathered from the contract of sale and the attendant circumstances.

Another regulation which bears upon the matter that I desire to discuss before this committee is article 11 of the same order, which reads as follows:

The amount paid for both the beverage and closed container is the basis for computing the tax, though the container is billed separately. If the beverage is sold under an agreement by which the manufacturer is to refund the purchaser a specified amount upon the return of the container, the tax nevertheless attaches on the whole price, including the amount agreed to be refunded upon the return of the container.

With these regulations before you I want to call your attention to what appear to me to be some injustices which result from the practical application of this law. You will note the regulations provide that the tax shall be fixed upon the price of sale by the manufacturer. There are certain manufacturers who sell the fluid in bulk; that is, they manufacture the cereal fluid and another corporation is formed for the purpose of bottling and boxing and shipping and distributing and selling it throughout the country. These manufacturers pay 15 per cent of whatever they sell the fluid for when they transfer it to the other concern.

On the other hand, take Bevo for instance. This manufacturer puts out about 6,000,000 cases a year. They have sales agencies established all over the country. They manufacture the fluid, put it in bottles, put the bottles into boxes, and they carry the boxes

to the railroad, and ship the boxes to the various parts of the country—say, for instance, to Chicago, New York, or San Francisco.

Then they are unloaded and put into the branch sales agency, and the selling price of that Bevo is the cost of the manufacture of the product, plus the cost of labor for bottling, plus the cost of the bottles, plus the cost of boxes, plus the cost of freight, and plus the overhead charges at the point of destination. They pay 15 per cent of all those costs, while the company that sells at the factory escapes all that tax.

That is unjust; it is not a fair way of levying a tax, and the vice of the whole system is that the law tempts the manufacturer to organize another corporation, practically as a subterfuge, in order to escape paying a revenue tax on containers, labor, freight, drayage, and all overhead expenses.

The CHAIRMAN. How would you correct that inequality?

Representative NEWTON. I would determine what is a reasonable gallon tax, and make the tax a gallon tax. The Government did that when it was collecting a tax on alcoholic liquors of all kinds for more than 50 years. The Government levied its tax, for instance, on beer. The brewery was equipped with large tanks, and the Government knew just how many gallons they contained. The revenue agent had a lock at the entrance and another at the exit of that tank. He went down there in the morning and he closed the exit and opened the entrance and permitted the tank to be filled under his supervision, and he collected a flat gallon tax for the total amount of fluid that went in, locked the entrance, unlocked the exit, and went about his business to other places, and collected taxes in that way all day. The result was that the one thing he was concerned about was getting the tax on every gallon of fluid that was manufactured.

But what have you got now? The situation you have got now is this: In the first place, the manufacturer has to do about three times as much bookkeeping as he ever had to do before, and a lot of it wholly unnecessary. The Government has to keep a lot of special agents out there at the expense of the Government—experts going over the books of the manufacturers. They have to determine many things. For instance, under the regulations the department has concluded that the manufacturers have a right to have a refund on the bottles and boxes that are returned. I understand from these manufacturers that in order to maintain their product in competition with other soft drinks, as it is costing them more to manufacture cereal beverages than other soft drinks, it is necessary for them to have their containers returned. Now, the Government, under that regulation, collects 15 per cent tax every month on the selling price, including boxes and bottles, but it permits them when the boxes and bottles are returned to deduct 15 per cent of their value.

The result of that is that the Government's special agent, in order to verify the account, must examine all of the company's records to see how many boxes and bottles came in during the month. There is an endless amount of bookkeeping which the Government's agents must do.

Senator THOMAS. Then the plan which you would propose works a double benefit?

Representative NEWTON. Surely it does.

Senator THOMAS. One benefit to the taxpayer and the other to the Government, through economy of collection?

Representative NEWTON. Absolutely. There is an immense economy to both.

Senator WILLIAMS. In that connection I want to ask you this question: Do you think the unfermented fruit juices could be handled the same way that beer and wine and whisky were?

Representative NEWTON. Why, there is no reason——

Senator WILLIAMS (interposing). There is this difference: When you put a certain amount of beer in a vat or empty tank or put a certain amount of whisky in a barrel the Government levied its tax on a straight per gallon basis, but if you attempt to make a great tank of grape juice and leave it there two or three days it would turn into wine.

Representative NEWTON. I know, but you do not have to use the tank. The bill that came from the House, I understand, provides for a flat gallon tax on all fruit juices.

Senator WILLIAMS. You have got to tax it there, or else it will change its character.

Representative NEWTON. There is no reason as to grape juice for putting it in the large tanks. If the Government can collect its tax on the particular price which every box sells for at any remote place in the country after the freight is paid, certainly it can with much greater ease collect a flat tax on every gallon that is manufactured.

Senator WILLIAMS. I agree with you, provided you can properly administer the law after the proposed changes. How would this do? Suppose the gauger goes there each morning at a certain time when they measure the grape juice. He levies and collects the tax, and then under the supervision of the gauger or some other Government official the manufacturer proceeds to bottle it and render it airtight so it can not change its nature. Do you think that could be practically administered? If it can be, it seems to me you are on the right track.

Representative NEWTON. I think it would be generally better to let them go ahead and bottle it but before they sell it let the Government's agents go over the bottles, knowing the contents of every bottle.

Senator WILLIAMS. There is this objection to that. Under the old system a man stepped in, looked at this tank and said, "There are so many thousand gallons of beer here." That was all. But if he has got to go and see each pint bottle, each quart bottle, and each half-pint bottle that is a pretty big job. If you could fix a time of day when the stuff would be in a wholesale quantity in a container kept by the manufacturer, the contents of which were known to the Government, and then proceed to bottle it under supervision and get it out of the warehouse that same day you would obviate that difficulty. Do you think that could be done? I do not know; I am asking for information.

Representative NEWTON. I think that the gallon tax is easier of application in the case of a beverage, because it is put up in great quantities. However, I think it is easier to collect the tax on fruit juices at the gallon rate than it is to undertake to collect the tax on such juices under a system which requires the Government to

keep track of the selling price of every box, including the freight, when it goes from one end of the country to the other.

Senator WILLIAMS. I am agreeing with you about that.

Representative NEWTON. I say it is more practicable.

Senator WILLIAMS. Do you believe that what I have outlined is a thing capable of practical administration?

Representative NEWTON. I do.

Senator WILLIAMS. If that can be done, I approve of it.

Senator SUTHERLAND. Are not those containers practically all standard in size, so that the Government agent, knowing the number of bottles in a case and the number of cases in a given space, would be able to tell the number of gallons?

Representative NEWTON. I think that is true. At any rate, every manufacturer would have a regulation case, and the Government agent would know the contents of that case, so that even though there might be a variation between manufacturers in the size of the containers, there would be regularity with respect to the containers of any one manufacturer.

Senator WILLIAMS. You know, you must avoid the danger of fraud. If the stuff is put in a vat and measured and the tax paid, and then taken out and bottled, the Government can not be defrauded, but where the Government is following up every bottle there is great opportunity for fraud.

Representative NEWTON. I agree with that, but I think the present system offers a far greater temptation to fraud. I think the very fact that, as I am advised, many manufacturers now are forming these corporations to buy the fluid and go ahead with the details of transporting it and selling it is in effect an evasion of the law, and the method of collecting the tax tempts the manufacturers to resort to that sort of thing.

Senator WILLIAMS. Then, had we not better make that evasion into a law and let it go at that?

Representative NEWTON. I think the simpler thing for the Government, and I am sure the simpler thing for the manufacturer, is to establish a flat gallon rate. Then after collecting the tax on the gallon the Government has no concern in the details of shipping, distributing, etc.

Senator WILLIAMS. That is just what the trade is evolving, is it not? It is evolving that method of doing business?

Representative NEWTON. A great many of them have already established it. Some of them are doing it, but so far as I know there is nobody in the district I represent, I am happy to say, that is doing that now. They are complaining about people in other parts of the country that are resorting to it.

Senator WILLIAMS. Why not encourage them all to do that?

Representative NEWTON. I think the collection of a flat gallon tax would be a great deal simpler for the Government and save the Government a great deal of expense in the collection and save the manufacturer a great deal of expense; there is an economy on both sides.

Here is another illustration of the effect of the present plan. As I mentioned a few minutes ago, the regulation provides that when the container is returned the tax shall be refunded. The effect of that is to make it necessary to do a great deal of additional bookkeeping.

Senator WILLIAMS. We would get rid of that whole difficulty?

Representative NEWTON. We would get rid of that whole difficulty.

Senator WILLIAMS. If you can have this tax collected by the gallon, if you can have the manufacturer pay the tax at the time the goods are produced—

Representative NEWTON. Then you would settle the whole question.

Senator WILLIAMS. You could have the whole quantity decanted under the supervision of a Government authority, and taken out of that warehouse and put into the trade, and the Government would be rid of this labor and expense?

Representative NEWTON. That is exactly what I am contending here.

Now, there is one other thought that I had not expected to go into the details of, inasmuch as there is a representative here of the Bevo manufacturers; that is the amount of the tax.

The CHAIRMAN. Congressman, I was just going to ask you that question. What amount of tax would you suggest so that no reduction in revenue would be caused below what we are getting now under the 15 per cent?

Representative NEWTON. Mr. Chairman, there are different angles from which you have to approach that. Under the present system of operation these manufacturers are absolutely losing money. They can not continue to operate under the present system; the tax is too high. For instance, one feature of the case that I want to call your attention to is that they are all soft drinks, they are nonintoxicating drinks, they are in the class with the fruit juices and these other soft drinks, and they must compete with those drinks in the market. You can not escape that. One is grain juice and the other is a fruit juice; if you discriminate between them in the tax, you drive the one you discriminate against off the market.

Now, I think the tax ought to be equally distributed among the various soft drinks. I think that if you put 2 cents a gallon or whatever you think the business will stand upon the one class of drinks you ought to extend that all around, because they must compete. As an illustration of this, the Bevo manufacturers six or eight months ago were selling their product at \$2 per case. As a result of that they found that the retailer raised his price. They wanted to stay on the market; they were losing money, but they did not want the retailer to raise his price because they knew that if he raised his price they would be driven off the market. So, hoping for a better day when the matter would be adjusted and they would get fair treatment under a new revenue law, they reduced the price of their product from \$2 to \$1.80 a case, so that retailer could still sell at the old price.

The CHAIRMAN. What was the old retail price per bottle?

Representative NEWTON. About 10 cents a bottle. In St. Louis where it is manufactured I think it is 10 cents a bottle. If the freight has to be paid to San Francisco or New York, the retailer has to raise his price to cover that freight.

The CHAIRMAN. Then the price for each drink is about the same as that for grape juice.

Representative NEWTON. Yes; they must compete with grape juice and other soft drinks.

The CHAIRMAN. The fruit drinks and the cereal drinks command about the same price per drink at retail?

Representative NEWTON. Exactly. Unless the cereal drink competes with the fruit drink it must go out of business.

Now, I am advised by these manufacturers that the fruit drink gives a bigger profit; it does not cost as much to produce it. The result is that the cereal manufacturer, having to pay more for the manufacture, must have his boxes and bottles returned.

You asked about the yield of revenue. If the present system goes on, of course, it will not yield revenue. The more they sell to-day the more they lose. You have two things to consider; one is the amount of revenue you want and the other is how much the business will stand. When you have taken those two things into account so that the grain juice can exist, there is not any doubt that there will be a great amount of revenue. I am unable to give the figures, but I think that probably those figures can be calculated with a reasonable degree of certainty.

Senator WATSON. Has there been any contamination of some of the cereal juices under this tax?

Representative NEWTON. I do not think so, for the reason that they reduced the price in order to meet the competition. There would have been if they had not made that reduction, but they have been hoping to keep their sales up and hoping that a better day would come when they would have an opportunity, under proper treatment, to go on the market and compete.

The CHAIRMAN. Congressman, as I understand it, grape juice and Bevo, at the present time, cost about the same per drink at the hands of the retailer?

Representative NEWTON. That is my understanding.

The CHAIRMAN. Then, that would seem to shatter the argument that the increased retail price of fruit juices has caused the business to be cut more than half?

Representative NEWTON. I confess it appeals to me that way.

The CHAIRMAN. Your business is expanding at the same price per drink at which the fruit juice business is going down hill?

Representative NEWTON. I believe they contend that they have raised their price. I have heard that some of these juices have raised their prices; I do not know how true that is. But I know that the grain juices in order to stay in the market, if you sell them by the glass—"out of the wood" they call it; they put it up in kegs—you have to sell it at 5 cents a drink in order to make it compete with Coca Cola. If you sell it in the bottle you have to compete with the 10-cent bottle. Unless you do that you are driven off the market; and in order to do that, even though they are already losing money, when the overhead expense to the retailer became such that he felt that he had to raise the price, the manufacturer, in order to keep from having the trade curtailed, thought it was better to reduce his price from \$2 to \$1.80 in order to maintain the demand until such time as Congress would take hold of the matter and regulate it so that they would be permitted to go ahead and have a chance to earn a profit.

Senator SUTHERLAND. What is the relative cost of producing a cereal juice as compared with grape juice?

Representative NEWTON. I have not the figures here. My general information is that the grape juice can be produced at less

expense. You grow your grapes and you produce the juice on the ground. To produce any cereal juice you have to bring your rice from the South and your barley from the North, and they have to be assembled; you have to have considerable machinery, and you have to have a place to store it and heat it. In the manufacture of grape juice you do not have to have any of that machinery.

Take Bevo, for instance. The investment in St. Louis cost the manufacturers \$12,000,000. It is a wonderful building. They have gone ahead in perfect good faith that the people wanted a non-alcoholic drink. The building is just as it was originally constructed; it was completed about two or three years ago. It was built for Bevo exclusively and was never intended to be used for anything else.

I will say further, that, as I understand it, in that plant the tanks were put in there with the idea that the Government would continue this old system of collecting the tax on the gallon basis, and it was so collected for some time.

Before the war began they paid a flat tax of 1 cent a gallon. Then this other tax went on and it is hard to tell how much it is now.

Senator WILLIAMS. More for information than because it is pertinent to what you have said: Can not an ordinary brewery be turned into a near-beer factory without extensive changes in the machinery?

Representative NEWTON. I think it depends largely upon what you make.

Senator WILLIAMS. Well, if you are going to make Bevo?

Representative NEWTON. I do not think so, because Bevo is made by an entirely different process. Bevo is not fermented. There are a lot of near beers produced by first making beer and then extracting the alcohol.

Senator WATSON. In your district, at St. Louis, the Busch people erected an entirely new plant?

Representative NEWTON. Absolutely; they put \$12,000,000 into this industry.

Senator WATSON. That was because they could not convert their old brewery into a factory for Bevo?

Representative NEWTON. Yes, sir; Anheuser-Busch is not using any part of that brewery with exception of some storage houses.

The CHAIRMAN. What became of the old brewery?

Representative NEWTON. Oh, they are trying to make some food preparations, I think; they are trying to convert it to different uses of that kind; cattle feed and things of that sort.

Senator WILLIAMS. Then they put \$12,000,000 into an entirely new plant?

Representative NEWTON. Yes. They did that long before prohibition came, because they felt there was a demand in the country for a nonintoxicating drink, and they wanted to get a drink that was not fermented, and they had chemists working in their laboratories for a long time perfecting such a process.

In conclusion, I will say, as a representative from the district, that I do not know what the tax ought to be, but I do feel that any system of taxation which is adopted ought to place these people in a position where they can compete with all the other drinks.

Senator WILLIAMS. Does the House bill put all these drinks upon a straight gallon tax basis?

Representative NEWTON. It puts all fruit juices on that basis and leaves the grain juices under the 15 per cent ad valorem tax.

Senator WILLIAMS. That includes grape juice?

Representative NEWTON. Yes, that is my understanding.

Senator WILLIAMS. Without exception?

Representative NEWTON. You will notice it says:

That there shall be levied, collected, and paid upon all nonalcoholic fruit-juice beverages, whether carbonated or not, whether consisting of pure fruit juice or of pure fruit juice to which sugar or water or both have been added, when sold by the manufacturer, producer, or importer, in bottles or other closed containers, a tax of 2 cents per gallon, and such beverages shall not be deemed soft drinks.

Senator WILLIAMS. I understand that. Why do they not put Bevo in there?

Representative NEWTON. Because that is not a fruit juice; it is a grain juice.

Senator WILLIAMS. Why do they not tax that on a straight gallon basis?

Representative NEWTON. I think the real trouble was that the representatives of the manufacturers of cereal beverages were not vigilant enough. I did not know the matter was up over there until I found it out day before yesterday, and I went over to the Committee on Ways and Means, and they gave me a hearing there. They listened to me and said it ought to be corrected, and asked me to draft an amendment.

Senator WILLIAMS. Why not put all of these so-called nonalcoholic drinks upon a straight gallon basis?

Representative NEWTON. That is just what I am saying, because I think it ought to be. When I got there I found the bill had been reported out.

Senator WILLIAMS. I understand. What is the argument on the other side? Have you heard it?

Representative NEWTON. I do not know of any. I can not see any reason on earth why they should not be put on the same basis and treated alike.

Senator WILLIAMS. There must be some difference, although I do not know enough about it to say what it is.

Representative NEWTON. I will tell you what I think the difference has been; I think it was the prevailing prejudice against something that was thought to be related to beer.

Senator WILLIAMS. Related by affinity?

Representative NEWTON. I suppose so; I suppose that is the real explanation. It is a rather remote affinity.

The CHAIRMAN. Mr. Cooke, we shall be pleased to hear from you now.

**STATEMENT OF MR. LEVI COOKE, ATTORNEY AT LAW, WASHINGTON, D. C., REPRESENTING THE ANHEUSER-BUSCH BREWING ASSOCIATION, ST. LOUIS, MO.**

The CHAIRMAN. Mr. Cooke, whom do you represent?

Mr. COOKE. The Anheuser-Busch Association, which controls and operates the Bevo plant at St. Louis. That is the plant to which Congressmen Newton referred as having been built exclusively for the production of a cereal beverage, nonalcoholic, and not fermented at any stage of the process.

Senator WILLIAMS. In that connection, of course all these things have a little alcohol in them. How much alcohol is in Bevo?

Mr. COOKE. Senator Williams, there have been many, many analyses made of Bevo as purchased in the retail stores in the country by State laboratories and State chemists, and the maximum shown on any of those analyses is 0.16 of 1 per cent, and many of them show no trace of alcohol.

Senator WILLIAMS. Of course the chemists say there is some alcohol in buttermilk even. What is the amount of alcohol in grape juice, do you know?

Mr. COOKE. We have some comparative analyses here.

Senator WILLIAMS. I wish you would give them to me for both grape juice and this loganberry.

Mr. COOKE. Welch's grape juice, purchased at the Olympia Candy Co., of St. Louis, showed 0.13 of 1 per cent of alcohol by volume. Armour's grape juice showed 0.12 of 1 per cent by volume. These were purchased in stores in St. Louis:

Red Wing grape juice showed 0.07 of 1 per cent. Puritan grape juice and Paw Paw grape juice showed 0.07 of 1 per cent. Sweet Valley grape juice showed 0.50 of 1 per cent.

Coca-Cola showed 0.14 of 1 per cent. Another sample of Coca-Cola showed 0.21 of 1 per cent. Ar Cola—some brand of a similar drink—showed 0.24 of 1 per cent.

Sarsaparilla showed 0.07 of 1 per cent. A sample of Cream Soda 0.10 of 1 per cent. A product called "Cherry Dip" showed 0.13 of 1 per cent. A product called "Squirrel Beer" showed 0.07 of 1 per cent.

Senator WILLIAMS. Have you the figures for root beer there?

Mr. COOKE. I do not see any root beer sample analyzed.

Senator WILLIAMS. Is loganberry juice given there?

Mr. COOKE. I do not see any loganberry sample.

Senator WILLIAMS. Very well. I just wanted to get those comparisons. None of them is above 1 per cent?

Mr. COOKE. There was one sample that showed 0.50 of 1 per cent; none of these samples showed as much as 1 per cent.

Senator CALDER. Did you state what percentage of alcohol there was in Bevo?

Mr. COOKE. I stated that we had many analyses of Bevo purchased at different places and the maximum was 0.16 of 1 per cent.

Senator WILLIAMS. By the way, do you know what the alcohol content of fresh cider is?

Mr. COOKE. Any sample of fresh cider will show a varying quantity, because cider is made from fallen apples, and the rotten spot having started in an apple, alcoholic fermentation is started immediately.

Senator WILLIAMS. Then impure cider, made from impure fruit, has a larger content of alcohol than cider made from apples taken fresh from the tree?

Mr. COOKE. Yes, sir; but I suppose most of the cider in the country is made from fallen apples; a good part of it is, at least. The farmer in a big apple district is tempted to sell the sound apples, and what he can not sell he sends to his cider press.

Senator WILLIAMS. The windfallen apples?

Mr. COOKE. Windfallen apples and apples that begin to rot on the tree.

I have an analysis here of Bevo, made at Austin, Tex., by the food and drug commissioner of the State and the chemists of the food and drug department, which I might lay on the record.

(The witness read the statement referred to, which is here printed in full, as follows:)

AUSTIN, TEX., December 6, 1916.

*Analysis of Bevo—Mixed contents of 4 bottles bought in the open market from Griffith Drug Co., Austin, Tex.*

Specific gravity at 15.6° C.....	1.025
Alcohol by weight.....	.13
Alcohol by volume.....	.16
Total extract.....	6.55
Phosphoric acid (P <sub>2</sub> O <sub>5</sub> ).....	.48
Protein (N x 6.25).....	.2485
Total acidity (acetic).....	.108
Polariscope reading, direct.....	50
Reducing sugar (as invert Fehling).....	3.3
Total sugars after inversion (Fehling).....	6.5
Ash.....	.1226
Yeast cells.....	None.
Sulphates in ash.....	8.8

#### REMARKS.

The sample is a carbonated beverage practically free from alcohol; it is nonintoxicating; shows no evidence of having undergone alcoholic fermentation and can not be termed a "Malt liquor," under the standard adopted by the joint committee on standards of the American Association of Official Agricultural Chemists and Interstate Food Commission.

Respectfully submitted.

R. H. HOFFMAN,  
*Food and Drug Commissioner.*

E. H. COLAZ,  
*Chemist, Food and Drug Department.*

D. F. SNYDER,  
*Chemist, Food and Drug Department.*

Senator WILLIAMS. I want to ask you one other question for my own information. Do you know what the percentage of alcohol is in fresh juice from sugar cane and fresh juice from sorghum?

Mr. COOKE. I do not. The act of 1918, the present revenue law, should not have discriminated between cereal beverages and fruit juices and other soft drinks by placing a 15 per cent tax on cereal beverages as against a 10 per cent tax on the sale price with respect to the other products. We feel that if there is to be any revision of the law, and there should be, that discrimination should be eliminated.

Senator WILLIAMS. Is not this true: that if there is to be any discrimination at all it ought to be in favor of the cereal juice because it costs more to produce it?

Mr. COOKE. We stand on the proposition that the cereal beverages do cost more to produce, but since they must all compete with each other we are not asking that there be any tax discrimination in favor of the more costly beverage. It is not only more costly in its original production but the distribution is a much more costly operation.

Senator WILLIAMS. Do not the cereal juices have more nutrition in them than the fruit juices?

Mr. COOKE. I am not a dietetic expert, but the manufacturers of these products say that the nutriment in cereal beverages is very high. The contention has always been that any infusion of grain,

making a palatable beverage, is highly nutritious. It is very much the same in principle as milk, which contains fats in liquid form. If you take these solids in the form of a cereal beverage they enter the alimentary canal in a form more readily assimilated.

Senator WILLIAMS. Take pure malt extract, for example. That is rather highly nutritious, is it not?

Mr. COOKE. The doctors all recommend it.

Senator WILLIAMS. They recommend it for women who have recently given birth to children, do they not, as a quick way of assimilating nutrition?

Mr. COOKE. Oh, yes. It is supposed to be readily converted. Malt extract, I am told, shows 14 per cent of solids on analysis, which are present in liquid form. Milk, I think, will run from 12 to 14 per cent.

The Bevo plant to-day is running at a loss, because the producers of Bevo have had to absorb this tax of 15 per cent. That is, their original price was 90 cents a case for the fluid: that was the price at which the product was put on the market. They raised that price from 45 to 55 cents per dozen, in order to meet the increasing cost of operation. They then found that sales were falling off to such an extent that they had to reduce the price to the original price of 45 cents a dozen, or 90 cents for two dozen. The company has absorbed all of these taxes, and it is to-day losing money on the 15 per cent tax which they pay out of the price which they are now getting for the product, which was the original price before they had this tax put on.

It is impossible for the Bevo plant to continue indefinitely absorbing that tax. They have been perfectly willing to continue in the hope that there would be a correction of that condition, and they hope now the correction will be made by putting a reasonable gallon tax on the product.

Senator WILLIAMS. I just happened to be looking over a menu card the other day in a Washington restaurant, and I noticed a quotation on Bevo.

Mr. COOKE. What was it?

Senator WILLIAMS. Twenty-five cents a bottle.

Mr. COOKE. That is unfortunate. I went to the Waldorf roof the other night and paid \$1.10 for grape juice and water and an ice-cream soda for the gentleman with me. I thought the price was high, but then they charged me \$2 for allowing the two of us to be on the roof. So you see what the individual vendor of the product charges for it is not always a fair criterion.

Senator WILLIAMS. I am not talking about the Waldorf Astoria or the Willard, or the Shoreham, but about a restaurant around on Fourteenth Street. I am trying to get at how much they are making out of it. When they charge 25 cents for a pint bottle of that stuff what is approximately the profit they are making over what they pay for it when they bought it from you?

Mr. COOKE. Well, sir, the Bevo Co. will sell a case containing 24 bottles—not that pint bottle, but 10 ounces—at \$1.90.

Senator WILLIAMS. That would make how much for a pint bottle?

Mr. COOKE. Twenty-four into \$1.80 goes about eight times.

Senator WILLIAMS. So they made the difference between 8 cents and 25 cents?

Mr. COOKE. No, sir; because there must be added to that the freight to Washington and the profit of the wholesale distributor here

in Washington who purchases the cases and distributes the cases to the restaurants. The Bevo Co. can not undertake to sell direct to that restaurant.

Senator WILLIAMS. When I said they made that much I did not mean that exactly; I meant that the difference between your price and the price at which they sold it was the difference between 8 cents and 25 cents, which would be 17 cents, would it? That is more than 200 per cent, is it not? Of course, out of that have to be taken freight and overhead charges and everything else. I am trying to get at the point that this profiteering, if it is going on, is between the middlemen and the ultimate consumer. I think the tax has nothing to do with; it is a question of distribution.

Mr. COOKE. But the manufacturer or even the large wholesaler can not control the retail dealer's price.

Senator WILLIAMS. Of course, he can not; I am merely trying to get the facts upon the record.

Mr. COOKE. There are many places where Bevo can be purchased at varying prices, according to the distance from the plant. There are plenty of retailers who are only too glad to sell it at 10 cents a bottle. Other retailers have to charge 15 cents. I do not doubt that the profiteering of retail dealers is largely responsible for these very high prices that they charge for all these products.

There is one feature of this bill that I think will convince the committee that Bevo and all other cereal beverages should be treated on a parity with the products already covered by the measure. The tax of 2 cents per gallon is levied against fruit-juice beverages, whether consisting of pure fruit juice or of pure fruit juice to which sugar or water or both have been added. It is very possible that there will be plenty of beverages placed on the market which will not be loganberry juice or grape juice or apple juice, but will consist in part of one of these fruit juices to which sugar and water have been added in any quantity, and carbonic-acid gas added, and you have a very palatable drink, which will take a tax of 2 cents a gallon as against a cereal beverage which will still pay the 15 per cent. And that tax, as I have stated, is causing the Bevo plant to lose large sums of money in their efforts to absorb the tax in such a way as to leave their product on the market on a competitive basis. We are compelled to consider cereal beverages not as competing with one another but competing with all other soft drinks, ginger ale, Coca Cola, and the fruit juices to which water is added. Unless cereal beverages are included in this measure and the gallonage basis adopted for cereal beverages they will be compelled, in the face of competition, to go out of business, to shut down until such time as they can resume operations.

The Bureau of Internal Revenue realized as pointedly as the manufacturers the effect of this 15 per cent tax upon the sales price to the manufacturer, purchaser, or importer, and they did everything they could under the terms of section 628 to relieve the manufacturer or purchaser, paying the tax upon the containers, but found that the law was in the way, that they could not adopt any interpretation which they could justify which would take off that tax from the manufacturer. The result was that the Anheuser-Busch Association, operating the Bevo plant, compelled to deliver this product to their branch agencies, have had to absorb that tax, not on the selling

price at St. Louis, which is about \$8 a barrel, but the sale price at New York, Philadelphia, or New Orleans, after they had already paid, on top of the manufacturing cost, their freight charges, their cartage charges, storage charges, handling charges, and everything else, with the result that they were absorbing a tax in New York, Philadelphia, New Orleans, or San Francisco of 15 per cent upon a much larger figure than the sale price which they took as their basis at St. Louis. As the Congressman said, a number of consumers have been compelled to consider the organization of selling corporations and letting the selling corporations do the handling and distributing of the product. The Bevo interests do not wish to do that, and I think Senator Williams will realize that that is a kind of thing that business men do not want to indulge in.

Senator WILLIAMS. No; I do not think they do. What I was thinking was this: Would it not be better to make that a legitimate thing for the manufacturer to do instead of having him resort to this scheme of evasion? In connection with that, what would be the effect upon Bevo before it was bottled if it were left in a large tank for say 24 hours?

Mr. COOKE. Why, Bevo is handled in such a fashion that it does not deteriorate in handling in large tanks. It has got to be handled that way.

Senator WILLIAMS. Will it ferment or increase its alcoholic content?

Mr. COOKE. It has no alcoholic content that the operation of the plant can detect. It is not fermented.

Senator WILLIAMS. But it has an alcoholic content; I think you said three-tenths of 1 per cent.

Mr. COOKE. I said sixteen-hundredths of 1 per cent.

Senator WILLIAMS. Whatever that is, will that be increased if it is left in contact with the air?

Mr. COOKE. I am told that the tanks are refrigerated and that there is no opportunity in the Bevo plant for any fermentation to be set up.

Senator WILLIAMS. That is what I wanted to ask. Now, if that is the case, why can not the Government gauger come around, say, once in 24 or 48 hours, measure the stuff in the large tanks, have the tax paid upon the contents of it, and then under supervision of the Government have it decanted and bottled or put in other receptacles?

Mr. COOKE. That can be done, and that was done, Senator, under the 1 cent per gallon tax which existed before the act of 1918. The entire plant was constructed on the theory that the Government would collect the tax in just that fashion, and that is what we want to return to.

Senator WILLIAMS. That is perfectly practicable as a matter of administration?

Mr. COOKE. And of experience.

Senator WILLIAMS. And it would not by fermentation increase the alcoholic content?

Mr. COOKE. No, sir.

Senator WILLIAMS. Why is not that same principle applicable to all these fruit juices?

Mr. COOKE. I think it is, Senator. I think the committee need have no concern about the feasibility of the collection of the gallage

tax on cereal beverages, loganberry juice, and other fruit juices, or soft-drink products.

Senator CHAMBERLAIN. And it would save money to the Government?

Mr. COOKE. Absolutely, Senator. The present system of collecting this ad valorem tax, the tax on the sale price, is simply an open door to fraud. It necessitates all sorts of special bookkeeping by the manufacturers and all sorts of special inspection by Government auditors, and the Government has been getting this tax once every 30 days only, and then they have to wait 10 or 15 days for the audit to be made. Under the other system they could collect the tax every day.

Senator WILLIAMS. One more question. As I understand it, the reason why Bevo will not increase its alcoholic content is because it is kept refrigerated and can not ferment. Is that true of the handling of these various fruit and grape juices, or are they handled in a different way?

Mr. COOKE. I am not pointedly familiar with the method of handling fruit juices, but I have heard and believe it to be true that the fruit-juice manufacturers are compelled to exercise every care to avoid fermentation being set up.

Senator WILLIAMS. Is that accomplished by refrigeration?

Mr. COOKE. It is done by handling the product in sterilized vessels so as to prevent the possibility of its coming in contact with wild yeast. It is, I think, an expensive process to handle fruit juices to accomplish that result, but it is managed in such a fashion that it is done.

Senator WILLIAMS. Why could they not keep the fruit juices from fermenting by means of refrigeration?

Mr. COOKE. I dare say they could, and possibly some of them employ that process. The refrigeration process is an expensive process, of course.

Senator WILLIAMS. But no more expensive to them than it is to you?

Mr. COOKE. I do not suppose it would be.

Senator SUTHERLAND. Is the Bevo product shipped in bulk largely?

Mr. COOKE. It never has been, Senator, but they are considering doing that in the light of this tax. The Bevo plant commenced its operations on the theory that they would sell that product exclusively in glass. They never have sold in bulk, but they have been compelled to contemplate doing that and in the course of time may be compelled to do that, so that it will be drawn from the wood and sold in the store where it is consumed.

Senator SUTHERLAND. Most of the beer formerly sold was packed in wood and shipped to centers where it was bottled and distributed?

Mr. COOKE. Yes; there was local bottling.

So far as the collection of the tax on fruit juice or any other beverage is concerned, the Bureau of Internal Revenue has had so much experience in the collection of direct taxes that I think the committee need have no concern whatever about the ability of that department to devise regulations for the collection of a gallonage tax that will not only safeguard the revenue but cause no inconvenience to the manufacturer.

Senator WILLIAMS. And which will at the same time provide for putting the stuff in containers before it begins to increase its alcoholic strength?

Mr. COOKE. You may depend upon the manufacturers to take care of that particular element, because the last thing they want to do now is to get alcohol in their products.

I think I have nothing else to say, except this. This plan will dispose of the proposition of the effect of this 15 per cent upon the shipment in containers, the 15 per cent being assessed upon the sale price at some point, including both the contents, which is the article you are taxing, and the boxes and bottles. In the Bevo plant, with the 3,500,000 cases which it is necessary for them to have in order to handle the product, they take a charge, which is really a deposit of 50 cents on the box and 40 cents on the bottles, and that is about half of what the boxes and bottles are worth. They must do that, because if they agreed to pay back the full price of the boxes and bottles they would then suffer a loss on account of paying the return freight upon the boxes and bottles, and they really would be repurchasing, at cost to themselves, their own boxes and bottles. Therefore they have to exact a deposit and agree to return one half of the value of the boxes and bottles as shown on their cost sheets.

The result is this. They charge 90 cents per box, including contents, and with 2,500,000 cases out, it amounts to nearly \$2,500,000. They are constantly recovering those and returning deposits or giving credit, but under this law they must pay 15 per cent each time they ship the boxes and bottles containing the Bevo, so that we figure the Government is constantly keeping about \$375,000 of the company's money.

Senator NUGENT. You receive interest on that, do you not?

Mr. COOKE. Under the regulation, if 1,000 boxes come back in a month we take credit for 90 cents per box, or \$900. That is the deposit that we return of the original sale price of those boxes, including the contents. That \$900 is subtracted from the gross sales of that month on which the 15 per cent tax is paid. In other words, we take that credit, but in the meantime we have had those boxes out. We have had to pay 15 per cent for three months on those boxes, so that we figure that there is \$375,000 of Anheuser-Busch Association money in the Treasury Department, set up simply as payment of a tax that never should have been collected.

Senator NUGENT. In other words, you lose the use of that money during the time these boxes are out?

Mr. COOKE. Yes, sir.

Senator NUGENT. As a matter of curiosity, I would like to know if you can tell me about what proportion of those boxes are returned?

Mr. COOKE. About 80 per cent come back, 80 to 90 per cent. There is considerable breakage, of course. The boxes come back with some breakage, which, of course, can not be adjusted by correspondence. It is necessary to treat it in a broad gauge fashion in order to do business at all. In handling cereal beverages unless a large percentage of those boxes and bottles come back the business can not be conducted.

Senator NUGENT. Upon whom does the loss fall if the boxes and bottles are not returned? Do you charge that loss to the parties to whom you made the shipment?

Mr. COOKE. No; we take a deposit of 50 cents for the boxes and 40 cents for the bottles for all the goods we ship. The price of a case of Bevo to-day is \$1.80 for the contents—

Senator NUGENT. I am afraid I do not make myself clear. You charge the cost of the boxes and the bottles to the party to whom the shipment is made?

Mr. COOKE. We exact a deposit from him.

Senator NUGENT. And in the event the boxes and bottles are not returned you keep the deposit?

Mr. COOKE. Yes, sir.

Senator NUGENT. So it is to the interest of the person to whom the shipment is sent to return the boxes and bottles to you?

Mr. COOKE. Yes, sir.

Senator SUTHERLAND. Do you add nothing to that to cover the tax on those containers?

Representative NEWTON. The boxes and bottles cost \$1.80 a box, and they take a deposit of 90 cents a box. They pay the 15 per cent tax on the boxes and bottles when they are sent out, which amounts to 14 cents, and if the boxes and bottles do not come back they lose \$1.04.

Senator WILLIAMS. Who does?

Representative NEWTON. The manufacturer.

Senator WILLIAMS. On the containers that do not come back?

Representative NEWTON. Yes.

Senator WILLIAMS. I confess that is new to me.

Mr. COOKE. They lose money, because they exact a deposit of only one-half the cost of them. If you paid the full amount you would not only have to pay that, but you would have to pay the freight from San Francisco and New York in addition.

Senator NUGENT. Does the actual cost to the company of the boxes and bottles represent the 90 cents or the \$1.80?

Mr. COOKE. \$1.80.

(Here followed informal discussion which the reporter was directed not to take.)

The CHAIRMAN. Is there anyone else in the room who desires to be heard?

Senator CHAMBERLAIN. You were going to conclude the hearing this morning?

The CHAIRMAN. The understanding with the gentlemen who left was that, if agreeable to those present, the committee would take a recess until 3 o'clock this afternoon.

#### STATEMENT OF HON. GEORGE E. CHAMBERLAIN, A UNITED STATES SENATOR FROM THE STATE OF OREGON.

Senator CHAMBERLAIN. Mr. Chairman and gentlemen, I have only a word or two to say. The arguments that have been made in behalf of the manufacturers of cereal beverages apply with equal force to the fruit-juice people, and I am entirely in sympathy with the views that have been expressed by them.

It does seem to me while prohibition is in force—and I am sure that it will be generally in force throughout the country in a short while—the drinking of these harmless beverages ought to be encouraged rather than discouraged. That applies particularly to cereal drinks, and in addition to the arguments that have been made

in favor of reducing the tax on such products is this additional argument in favor of the fruit-juice producers. In the instance of the manufacturers of cereal drinks, the men who suffer are the manufacturers almost entirely, because the ingredients which go into their product come from the country at large, and even if the manufacturers were ruined—and I do not advocate that by any manner of means—the ingredients which would otherwise go into their product would be absorbed in the general markets of the country in other lines. I do not make that as an argument against them; I say, I think they ought to be protected as well as the fruit-juice producers.

But in the case of the fruit-juice growers, Mr. Chairman, not only will the manufacturers of the product be injured and ruined financially, but the men who are undertaking to encourage this industry, the growers, will be destroyed. In my State, it is true, the area of cultivation is small; I think probably 4,000 or 5,000 acres. In the State of Washington there is some loganberry juice produced. In the State of New York 42,000 acres are devoted to grape culture. These men will all have to go out of business; I do not think there is any question about that in the light of the information that has been adduced here. It is a question of policy on the part of the Government, whether they will encourage these men who are opening up this area of production or absolutely put them out of business, as the evidence tends to show this slight tax which was levied last year will do.

As evidence of the fact that the loganberry-juice people will be compelled to go out of business—and my State is more interested in that—the showing here for the months of March, April, May, and June of 1918 is that there were \$573,419.04 of sales made by the manufacturers of this product. That was for 1918, while in 1919 for the same four months there was only \$222,653.86 worth sold. In other words, there has been a falling off in the sale of this product of more than 50 per cent. That falling off represents alone the taxation of \$22,265.39. That is represented by the loss in the sale of these products.

Now, Mr. Chairman, if the growing of these fruits continues to fall off in the same proportion in the next year there will be another diminution of 50 per cent occur in another year. In other words, the growing of loganberries and other fruits will absolutely be put out of business.

I think, therefore, Mr. Chairman, that the request these gentlemen make here is a very reasonable one, that the tax be placed at 2 cents a gallon, and I am heartily in sympathy with these people who represent the Bevo interests in their argument that there ought to be a gallon tax instead of the tax now in effect.

I do not believe, as a matter of fact, that there ought to be any tax imposed upon any of these food products. As Mr. Loomis has said here, the National Grange has gone into this subject very carefully, and they find that the only food products that are taxed in the bill of 1918 are these few items now under discussion. I for one do not believe that there ought to be any tax on them at all, there is not any reason why there should be, and yet the growers and manufacturers are willing to concede a tax of 2 cents a gallon without making any question about it—double the tax which was paid before the war.

The only reason I can see, Mr. Chairman, why we ought not to consider the request of the Bevo manufacturers at this time is that this bill has already passed the House. It only affects the fruit-juice industry. If the Senate committee could report the bill out as it passed the House the matter could be easily disposed of before the adjournment of the House on the 2d of August. If we undertake to put in anything else than what is now contained in the bill it will simply mean that the whole subject will be delayed until after Congress reconvenes in September. I wish, therefore, it might be possible for the committee to report the bill out just as it is so that there would be some reasonable prospect of having it passed before the adjournment. It will be seen that these men who are engaged in the loganberry juice industry out there in my section of the country—and I assume it applies equally to the grape industry—are losing about \$3,500 per day of sales. The witnesses who have testified here in reference to the grape industry have shown that the sales are practically nil.

Therefore, if this bill could be passed now, Mr. Chairman, I think it would be a great saving to the people who are engaged in this particular industry and, as I feel now, if the committee should take up the question of these other nonintoxicating beverages at a later date I for one will give the measure my cordial support.

Senator McNARY. That, I think, concludes the hearings so far as this bill is concerned?

The CHAIRMAN. The Treasury officials will be heard this afternoon concerning other features of the bill.

Senator McNARY. I want to offer an amendment to the bill relative to the manner in which the tax shall be collected. It is a question, Mr. Chairman, whether the bill as it passed the House is not incomplete in that respect. It is as follows:

SEC. 2. That the taxes imposed by this act shall be returned, assessed, collected, and paid in the same manner and subject to the same provisions of law, including penalties, as the taxes imposed by section 628 of the revenue act of 1918, approved February 24, 1919.

(Thereupon, at 1.40 o'clock p. m., the committee took a recess until 3 o'clock p. m. of the same day.)

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#### AFTER RECESS.

The CHAIRMAN. The committee will now hear Mr. West, of the office of the Commissioner of Internal Revenue.

#### STATEMENT OF MR. M. F. WEST, OF THE OFFICE OF COMMISSIONER OF INTERNAL REVENUE.

The CHAIRMAN. What position do you occupy in the Treasury Department, Mr. West?

Mr. WEST. I am assistant deputy commissioner.

Senator CURTIS. Wait just a second, if you will. The Congressman who addressed us this morning wanted to make one or two amendments. Would it not be well to read them, and let them be pending, as you might want to ask Mr. West some questions about them?

Representative NEWTON. Just a suggestion. I have one amendment to H. R. 7840:

Page 1, line 6, after the word "added," insert the following:

\* \* \* and upon all beverages derived wholly or in part from cereals or substitutes therefor, and containing less than one-half of 1 per centum of alcohol.

Senator SMOOT. Is not that the wording of the present law?

Representative NEWTON. Yes; that is the wording of the present law. It changes the basis.

The CHAIRMAN. This bill under consideration refers to fruit juice, and you want to get in everything.

Representative NEWTON. Then I wanted to offer for the consideration of the committee an amendment to the same bill:

Strike out all after the enacting clause, and substitute the following:

That in lieu of the taxes imposed under paragraph (a) of section 628 of the revenue act of 1918 there shall be levied, collected, and paid upon all products subject to tax under said paragraph a tax of 2 cents per gallon, to be paid by the manufacturer, producer, or importer under such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe.

The CHAIRMAN. That is a substitute bill, is it?

Representative NEWTON. The effect of this is to take in all of the soft drinks and adjust the whole matter.

The CHAIRMAN. You strike out all of H. R. 7840 and insert that?

Representative NEWTON. Yes.

The CHAIRMAN. Then you do not need your first amendment?

Representative NEWTON. I am offering the amendment for consideration of the committee. I wanted to make the suggestion and leave it.

The CHAIRMAN. Your second amendment is much the better.

Representative NEWTON. I think that settles the whole matter. You see, the first bill covers part of the matters to be dealt with. The amendment I have offered takes another part; and the third one takes the whole matter into consideration, but puts all drinks on an equality which come in the same class.

The CHAIRMAN. Now, Mr. West, I should like to have you state the views of the commissioner upon this matter, together with any suggestions you may have to make.

Mr. WEST. Sections 628 and 630 are closely allied. The words "shall not be deemed soft drinks" I think, should come out, because the effect might be to interfere with the collection of the tax imposed by section 630 on soft drinks.

Another point is, some provision should be made for the collection of the tax, like a reference to 629, which tells about the collection.

The CHAIRMAN. Have you prepared an amendment?

Mr. WEST. No, sir. Another point that comes up in consideration of the matter is that if the proposed change is made, some provision should be made to extend the time of the effective date, say, to at least two weeks or a month.

Senator CURTIS. You want to make it take effect on and after a certain date?

Mr. WEST. That is the suggestion.

Senator CURTIS. What is your attitude—I have not read the hearings of the House—on this bill that passed the House?

Mr. WEST. The 630 and 628?

Senator CURTIS. Yes.

**Mr. WEST.** The commissioner has pointed out that the revenue to be derived from the taxes imposed by sections 630 and 628 is needed by the Government. I think 630 is a good revenue producer.

**Senator THOMAS.** It is a very good trouble breeder.

**The CHAIRMAN.** I have not heard any complaints; I have not had a letter about it.

**Mr. West,** you made a reference that 630 would have to be repealed?

**Mr. WEST.** I said if 630 is repealed. In that event I believe the loss of revenue will be greater than \$21,000,000, which is the estimate furnished for 630.

**The CHAIRMAN.** That bill is not under consideration now. The bill regarding fruit juices is before us. Let us confine ourselves to that, after which we will take up the other bill, which has not as yet been read to the committee nor considered by it.

**Mr. WEST.** I have very little to say about 628, other than to state that the bureau has held that loganberry juice, apple juice, lime-fruit juice, and other fruit juices are taxable under section 628, and that the tax is on beverages which contain less than one-half of 1 per cent of alcohol.

**Senator SMOOT.** Has any one doubted that?

**Mr. WEST.** The question has been raised with respect to loganberry juice.

**The CHAIRMAN.** On line 8, Mr. West, it reads, "And such beverages shall not be deemed soft drinks." For what purpose was that put in the bill?

**Mr. WEST.** I do not know.

**The CHAIRMAN.** Have you any idea what was in the mind of the author of the bill at that point?

**Mr. WEST.** "Shall not be deemed soft drinks" in the bill 7840?

**The CHAIRMAN.** Yes.

**Mr. WEST.** No.

**The CHAIRMAN.** Then it ought to be amended, ought it not, by striking out the words "and such beverages shall not be deemed soft drinks"?

**Mr. WEST.** I think so.

**The CHAIRMAN.** Because your department has ruled they are soft drinks, therefore the language is not necessary.

**Mr. WEST.** That is true, we have ruled they are soft drinks.

**Senator CURTIS.** Mr. Chairman, did not one of the witnesses state this morning that the object of that was to put this fruit juice in a class by itself?

**Senator SMOOT.** This amendment here of the House is certainly for that purpose. The purpose of those words is to say that loganberry juice is not to be deemed soft drinks as ruled by the department. That is what this is for, and that, therefore, no tax should be imposed upon them.

**Senator NUGENT.** They want special legislation in regard to this particular matter.

**Mr. COOKE.** I think I know the reason for that soft-drink provision. Section 630 says [reading]:

That on the last of May 1, 1919, there shall be levied, assessed, collected, and paid a tax of 1 cent for each 10 cents or fraction thereof the amount paid to any person conducting a soda fountain, ice cream parlor, or other similar place of business, for drinks commonly known as soft drinks, compounded or mixed at such place of business.

And the thing they want to get away from——

The CHAIRMAN. They want to be relieved of section 630 also.

Mr. WEST. We have heard in the hearings that no tax applies on such drinks as ginger ale, root beer, moxie, mineral water, etc., when served directly from a closed container, in which case the manufacturer's tax on such drinks has already been levied.

However, if any of the drinks or beverages herein mentioned are compounded or mixed with carbonated water, flavors, or other ingredient of the fountain, they are taxable.

If loganberry juice is mixed with carbonated water at the fountain, it is subject to tax under section 630. Of course, under our ruling it is a soft drink and taxable under 630, but if you say it is not a soft drink and leave in 630 it might be a question whether we have a right to tax.

Senator NUGENT. Mr. Churchill called attention to the fact that he drew this bill, and I would like to have him explain his ideas with regard to that matter.

Mr. CHURCHILL. There has been a contention between us and the department for the past six months as to whether these fruit juices and fruit-juice beverages were soft drinks. In the trade definitions they are not. In the general sense of nonalcoholic drinks it is sometimes used to cover all of these, even milk and water. The intention was to define the words "soft drinks," so there would be no question about the definition. I had not in mind 630 particularly. I am entirely willing it should be removed and I think 630 would be repealed. I wanted this thing defined so there will be no contention about the construction, and it has been very much a controverted question over there. It can't be combined with 628.

The CHAIRMAN. You are willing to have these words stricken out?

Mr. CHURCHILL. I do not think they are of value if the department will accept that as to what has gone by. It would make no difference other than that. But they have included us as a soft drink, but as one of the Senators said only grape juice was mentioned in the act before.

Mr. WEST. The regulations clearly hold them soft drinks; there is no question about that.

Senator SMOOT. Have you held that if loganberry juice is used at a fountain the same as other sirups are used and those other sirups used are nonalcoholic and are deemed by the department to be soft drinks, that therefore loganberry juice should not be so deemed a soft drink used in the same way and for the same purpose?

Mr. CHURCHILL. It would work that way. But we sell so little at the fountain that it will make almost no difference to us. However, in the trade and what we have been contending to the department was that soft drinks covered four things and do not even cover cereal beverages in the trade. They cover ginger ale, the cola drinks, acid drinks, like lemon soda, and the nonacid drinks. It is of great importance that they should be defined not only for the purpose of this act but for legal conception. The department has ruled that the word "nonalcoholic" does not apply—does not include milk, cocoa, chocolate, and so on, and we have thought a construction would be of value. But it would make only incidental difference to us in the fountain trade.

The CHAIRMAN. Mr. Churchill, the way you have got this worded your product would be taken out of section 630 of the revenue law, and you would escape the 1 cent tax. So I think it makes very considerable difference to you.

Mr. CHURCHILL. We sell so little over the fountain.

The CHAIRMAN. But it promotes the sale of your product to knock off that 1 cent?

Mr. CHURCHILL. We will be entirely willing to have 628 or strike it out.

Senator SMOOT. In the repeal of 628 there is no earthly need of having it in here. If this act of the House, H. R. 7840, passes, there is no need of having it here. It would make no difference in your tax having it mentioned at all.

The CHAIRMAN. It looks like an indirect attempt to exempt from any tax under 630.

Senator THOMAS. In other words, you are afraid you might suffer from the retroactivity of the law?

Mr. CHURCHILL. The department might be influenced by what was in the mind of Congress.

Senator SMOOT. There is not anything in it so far as this act is concerned.

The CHAIRMAN. There is nothing in it that appeals to reason or logic. So they will escape the tax under 628 and 630.

Mr. CHURCHILL. We are entirely willing they should go out.

Senator CURTIS. What do you say, Mr. West, about the tax of 2 cents?

Mr. WEST. I could not say about the fairness of that.

The CHAIRMAN. Do you know what the revenue is from these fruit juices, Mr. West?

Mr. WEST. That is very hard to say. We have been delayed in getting out the returns and the regulations and the tax that was due from February 25 to March 31 under 628, the time of payment of which was extended to June 15. The taxes due under 630 for the period from May 1 to May 31, inclusive, should be returned by the last day of June. The time was extended to July 20. We had to do that on account of the distribution of forms and getting out the regulations.

Senator SMOOT. Thirty days extra under the law?

Mr. WEST. No; July 20, to which we have extended the time for making the return of May business, which would ordinarily come in in June. But we had extended it just 20 days beyond that. But what I meant was that the collectors will collect that in July, and it will be late in August before we will get all of our returns from them throughout the country. The estimated revenue under section 630 for a 12-month period is \$21,000,000. We have a record now of 200,000 names, and I think that is just about 50 per cent of the people who finally will make returns. We secured those names from directories of addresses and from reports made by collectors.

Senator THOMAS. Does not the expense of collecting returns absorb a good part of this?

Mr. WEST. Very little; I think that would be comparatively small. But if we get 400,000 names on the list, and I do not believe that is exaggerating, I think the tax would be far in excess of \$21,000,000.

The CHAIRMAN. Have you at hand for the record, the definition of soft drinks, based on the rulings of the department? I want to get

the definition of soft drinks; I think it would be useful for the committee to have hereafter.

Mr. WEST. I might read here from the regulations, although it does not cover just specifically what you want: Beverages are taxable under article 6, Regulations 53, and that article provides as follows:

In general, such beverages as are commonly known as soft drinks which are compounded or mixed at the fountain where sold are subject to the tax. Beverages sold at the fountain, ready for consumption, from a bottle or closed container on which a tax has been paid under section 628 of the revenue act of 1918 are not subject to the tax.

Senator SMOOT. That would leave loganberry juice out?

Mr. WEST. When sold from the bottle, and also leaves ginger ale out.

Senator SMOOT. And root beer?

Mr. WEST. All out when not further mixed or compounded at the fountain.

The CHAIRMAN. Combined with carbonated water at the fountain it is taxable, and if you put ordinary water in it it is not taxable?

Mr. WEST. Or shaved ice, we have held that does not make it subject to the tax. It may be well to put in for your information article 7 of the regulations [reading]:

The following articles of food or drink subject to tax within the meaning of section 630 of the revenue act of 1918: All beverages when compounded or mixed at the fountain, such as orangeade, lemonade, pineapple juice, coca cola, root beer, moxie, phosphates, fruit and flavoring sirups compounded or mixed with plain or carbonated water, milk shakes in any form, malted milk shakes in any form, cream and egg shakes, ice cream, ice-cream sodas, ice-cream sundaes, ice-cream sandwiches, flavored ices and all other similar drinks or foods not enumerated or specified under articles 8 and 9. This list is not intended or considered to be complete but merely illustrative of the class of articles subject to tax.

The next article covers those which the department holds not taxable, and further says that no tax applies on the sale of beverages or drinks such as ginger ale, root beer, moxie, mineral water, etc., when served directly from closed container, in which case the manufacturer's tax on such drinks has already been paid.

The CHAIRMAN. But other soft drinks would be?

Mr. WEST. We consider all of them soft drinks, as we do loganberry juice. [Reading:]

However, if any of the drinks or beverages herein mentioned are compounded or mixed with carbonated water, flavors, or other ingredient at the fountain, they are taxable.

Then there are certain things like bromo seltzer, citrate of magnesia, etc., which are sold at soda fountains, which are not soft drinks.

The CHAIRMAN. What I am trying to get is, what is your rough definition of soft drinks? Milk is not a soft drink?

Mr. WEST. It is only reached, I believe, by taking the illustrations; I think that is about the best answer to that.

Senator THOMAS. In other words, your definition is one of classification?

Mr. WEST. That is right, although this is said not to be considered exhaustive.

Senator SMOOT. Will you tell the committee just whether the department has any objections to the passage of this H. R. 7840?

Mr. WEST. The commissioner has stated in his letter to Mr. Fordney that [he does not favor the repeal of any tax provisions except section 904.

The CHAIRMAN. What is the question?

Mr. WEST. Just how the department would view this H. R. 7840.

The CHAIRMAN. Whether they would recommend it or not?

Mr. WEST. We have not gone on record, but there are objections to the bill as it stands from the viewpoint of the bureau.

Senator SMOOT. What I wanted to know was whether the department had any objection to the passage of this bill.

The CHAIRMAN. On that, Mr. West, you are not authorized to make any statement?

Mr. WEST. I would not like to say.

The CHAIRMAN. Do I understand you to say that under paragraph A, section 628, you estimate roughly that \$21,000,000 will be raised?

Senator SMOOT. That is 630.

Mr. WEST. That is under 630.

The CHAIRMAN. How much will be raised under paragraph A?

Mr. WEST. That is cereal beverages, which is estimated at \$18,000,000, and the soft drinks and grape juice under 628 as \$12,000,000, and \$1,000,000 on the mineral water.

The CHAIRMAN. Then under paragraph A how much will be raised all together?

Mr. WEST. That would be \$30,000,000.

The CHAIRMAN. How much under paragraph B?

Mr. WEST. \$1,000,000.

Senator SMOOT. Do you think that there will be more than \$21,000,000 raised under 630?

Mr. WEST. Oh, yes; I think undoubtedly there will be.

The CHAIRMAN. Of that \$20,000,000 how much will be raised on cereals and how much on the fruit juices?

Mr. WEST. \$18,000,000 is estimated from cereal beverages and \$12,000,000 from the grape juice, ginger ale, and other soft drinks.

Senator CALDER. That includes all soft drinks?

Mr. WEST. Yes, sir; that includes all soft drinks—Moxie, sarsaparilla, and the others.

The CHAIRMAN. Does the department receive many letters of complaint about these taxes from people who consider them obnoxious.

Mr. WEST. As a general thing, I do not think we have had many complaints.

The CHAIRMAN. What I want to know is, whether they write to you as they would to Representatives in Congress and Senators?

Mr. WEST. We get very few complaints regarding this tax.

The CHAIRMAN. As to any part of the tax laws?

Mr. WEST. That is pretty broad.

The CHAIRMAN. As to these beverages you get very few?

Mr. WEST. Very few.

The CHAIRMAN. I do not remember a complaint myself.

Senator THOMAS. I have heard a good many complaints voiced around the soda fountains.

Mr. COOKE. Was your question addressed to the point of whether or not the manufacturers have complained about the percentage tax in 628?

Senator SMOOT. Not the manufacturers; the consumers.

Senator THOMAS. The question was addressed to 630.

Mr. COOKE. The manufacturers protest vigorously.

The CHAIRMAN. I am talking about the consumer. Mr. West, it has been said as a basic principle that this percentage tax ought to be abolished, and the gallon basis adopted as a fairer and more practical method. Have you any view on that, regardless of the amount?

Mr. WEST. I see no objection to that if the revenue that the Government ought to get is fully protected.

The CHAIRMAN. But do you think that a better method?

Mr. WEST. I imagine the point there would come about the container. We had considerable trouble over the container. We interpreted the law to apply to the beverage and the container. We had a great deal of controversy with the manufacturers on that.

Senator SMOOT. The question of discrimination could also be brought forward, because the 2 cents on the cheaper article produced and the 2 cents that may be levied on an article of four or five times the cost.

Mr. WEST. If Congress wanted to put the tax just on the beverage itself, regardless of what it was put in or anything of the kind, that would be a different story, because so far as whisky is concerned I do not suppose a man in selling a barrel of whisky ever figured very much the rebate on it.

The CHAIRMAN. That is the way they do with distilled spirits—they put the tax on the contents.

Mr. WEST. And nothing is said about the barrel.

The CHAIRMAN. They do not say anything about the barrel, do they?

Mr. WEST. No.

The CHAIRMAN. Why would not that same principle apply to these drinks?

Mr. WEST. It probably could. Under the present law the tax is on the beverage and container. If the purchaser returns the container he gets credit in that proportion that it bears to the total tax paid.

The CHAIRMAN. I do not see why you could not have the same general method that applies to whisky—tax the actual contents; leave out the container, and put on a tax of so much a gallon.

Mr. WEST. It could be done.

The CHAIRMAN. It would not be so complicated as this method.

Mr. WEST. Probably not, from the manufacturers' standpoint.

Senator THOMAS. It would not cost as much to the administrator.

Senator SMOOT. The reason that was not adopted before was because of the discrimination there would be in the different kinds of articles produced. One cost 10 cents a gallon, another 60 cents, another 80 cents a gallon, and it would be hardly fair to have 2 cents a gallon tax on all.

The CHAIRMAN. Whisky varies very much in price, according to the brand and make and manufacturer, even as much as 100 per cent or 200 per cent, although that is a thing of the past.

Mr. WEST. The amount of money involved is so much greater; the container here figures nearly as much as the article itself.

Senator SMOOT. In some cases the container figures more than the article itself.

Senator NUGENT. Has there been any considerable revenue derived because of the tax on the containers?

Mr. WEST. That can not be told yet; we have not received the returns from the collectors.

Senator NUGENT. If the manufacturer is entitled to a credit upon the return of the container, I apprehend the revenue derived from the tax on the containers would not amount to a very considerable sum.

Mr. WEST. They probably would say there is a loss on account of breakage and persons not sending them back to them.

Senator CURTIS. As I understand it, Mr. West, you are not able to tell the amount that would be collectible under this bill and the present law?

Mr. WEST. Under the present law?

Senator CURTIS. Yes.

Mr. WEST. No; you mean the 2 cents a gallon?

Senator CURTIS. I mean the 2 cents a gallon. You can not give us any idea what the income would be under this act, and it is too soon to tell what the income has been under the other.

Mr. WEST. That is true, but in two weeks we will be getting the returns for July.

Senator SMOOT. Have you any suggested amendments to the House bill?

Mr. WEST. None other than with reference to soft drinks, eliminating the words on lines 8 and 9 and extending the effective date a little.

Senator SMOOT. That ought to be done, of course.

The CHAIRMAN. Would this be such an amendment as you suggest:

*Provided, That the provisions of this act shall not take effect until thirty days after its passage.*

Mr. WEST. If the bill were to become law such change would render it much easier to administer.

Senator SMOOT. All you would have to do would be to say, line 9:

Thirty days after the passage of this act the provisions of any acts inconsistent with the provisions of this act or imposing any other or different tax than the taxes imposed herein are hereby repealed.

Mr. WEST. Would it not be well to insert something like section 629, that "each manufacturer, producer, bottler, or importer of any of the articles enumerated," etc., "would be required to make a return and pay the tax to the collector?"

Senator SMOOT. That section 629 provides that articles enumerated in 628 shall be made monthly returns.

Mr. WEST. Just a safety proposition.

The CHAIRMAN. We are repealing 628 and 629.

Senator SMOOT. Then 629 ought to be repealed and put on this bill.

Mr. WEST. That would not apply there, because you still have the tax on the cereal beverages in 628 left.

Senator SMOOT. Yes; that would be so; you would have to have that, too.

Col. PARKINSON. I want to say that the point that the witness is making is correct, because this is a new bill, and there is no provision in it for the enforcement of this provision, and I suggest that something like what I have here in my hand be included.

The CHAIRMAN. We will be glad to have you read it.

Col. PARKINSON:

That the taxes imposed by this act shall be returned, assessed, collected, and paid in the same manner and subject to the same provisions of law, including penalties, as the taxes imposed by section 628 of the revenue act of 1918.

The CHAIRMAN. Do you think it would be better to have this as a new law or to amend?

Col. PARKINSON. I think you would avoid a lot of troubles discussed here in the hearing if you would amend 628.

The CHAIRMAN. If there is no objection, we will have the experts prepare the bill so that a new section may be substituted for 628.

Senator SIMMONS. What is this?

The CHAIRMAN. This is a new bill, and it has just dawned on the committee to substitute a new section for 628.

Senator SMOOT. Mr. Parkinson, in making that proposed amendment to section 628, do not forget that we want the time limit; that is, a time specified when this amendment should take effect, not from the passage of the bill but 30 days hence.

The CHAIRMAN. The committee has before it another bill (H. R. 2837). This bill has passed the House of Representatives and was referred to this committee yesterday. It is "An act to repeal section 630 of the revenue act of 1918, approved February 24, 1919":

That section 630 of the revenue act of 1918, approved February, 1919, be, and the same is hereby, repealed.

Senator CURTIS. Senator McNary offered an amendment that covers that. You might refer that to the expert at the same time.

The CHAIRMAN. Before we go on with this second bill I will have read into the record the following amendment, offered by Senator McNary:

SEC. 2. That taxes imposed by this act shall be returned, assessed, collected, and paid in the same manner and subject to the provisions of law, including penalties, as the taxes levied by section 629 of the revenue act of 1918, approved February 24, 1919.

The section to be repealed reads as follows:

Senator SIMMONS. Is there any suggestion of any substitute tax?

The CHAIRMAN. No, sir. Section 630 reads as follows:

That on and after May 1, 1919, there shall be levied, assessed, collected, and paid a tax of 1 cent for each 10 cents or fraction thereof of the amount paid to any person conducting a soda fountain, ice-cream parlor, or other similar place of business, for drinks commonly known as soft drinks, compounded or mixed at such place of business, or for ice cream, ice-cream sodas, sundaes, or other similar articles of food or drink, when any of the above are sold on or after such date, for consumption in or in proximity to such place of business. Such tax shall be paid by the purchaser to the vendor at the time.

What amount of revenue will be derived from that, Mr. West?

Mr. WEST. The estimated revenue is \$21,000,000 on a 12-month period basis.

Senator SIMMONS. Is not this true, Mr. West, since the prohibition has gone into effect that the soda-fountain business of this country has enormously expanded?

Mr. WEST. I can only give you my personal opinion about that, and that is that I think it has, and I think that it will increase considerably.

Senator SIMMONS. They are anticipating a further very large increase when prohibition becomes absolute?

Mr. WEST. I feel that instead of getting the \$21,000,000 we will come nearer to getting \$40,000,000.

The CHAIRMAN. Do you find any difficulty in the collection of those taxes?

Mr. WEST. We have had very few complaints. The one weakness, I suspect, is in the manner in which it is collected.

The CHAIRMAN. To what do you refer?

Mr. WEST. This, that the office has not prescribed any specific way in which the records of sales shall be kept, except that the vendor shall keep daily records of sales grouped according to the amount of the sale, so that at the end of the month he can make proper return to the Government. Many methods have been proposed to the office, but none of the mechanical devices have been approved, leaving it to the vendor to use such means as he desires, so long as a proper record is kept.

We had a number of these people in just as soon as we started, who wanted us to adopt this or give our approval to that. Some proprietors use cash registers which show the items of tax; others have comptometer machines, which register the number of 5-cent sales, 10-cent sales, etc., and others keep serially numbered tickets, retaining a part of such ticket in a box, and a daily record is kept of tickets, on which the final report for the month is based. No general complaint has been made to this tax. Some letters have been received by the bureau in which the writers wonder whether or not the tax paid to the vendor is actually returned to the Government. The question is more of psychology, whether the Government was getting it, owing to the fact that the vendor probably put it in with the other, or puts it in a separate receptacle. Some vendors have misinterpreted the regulations or have not familiarized themselves with the regulations and he imposed a tax on each individual sale rather than on the aggregate amount of the sale when one party pays for the purchases, and some few letters have come in complaining of this action, but on the whole very little opposition to this tax has developed.

Under the collection sections, where a party goes in and a purchase is made by him for several persons the tax goes on to the aggregate sale. All of them do not seem to be aware of that regulation, although it is here, and the man would have to pay on each individual Coca-Cola drink, or whatever it is, and then, of course, complaint comes in.

Senator CALDER. So if I should buy six glasses of soda at 5 cents that would make 30 cents, and the tax would only be 3 cents, and the vendor charges a cent for each one?

Mr. WEST. I do not know that we have received more than two or three dozen letters, but we have had some letters reporting that.

Senator CALDER. In some of the poorer sections of New York I have had occasion to look this up, and I find in the foreign sections of the city they go in and buy the soda, or whatever the drink may be, and take a penny and put it in the cigar box.

Mr. WEST. That is in line with the regulations.

Senator CALDER. Do they always remember? I have heard them say "We forget sometimes, but whenever we remember we put it in."

Mr. WEST. It is doubtful in our mind whether we could have this collected by means of a stamp, having a detachable part of it going to the purchaser. Probably in the rush time they would complain of that and probably overlook that. But the psychological effect it has on the purchaser is that he is getting something as evidence that he paid a tax.

Senator CALDER. How do you know that after the consumer leaves the place the vendor does not take the money out of the cigar box and put it in his pocket?

Mr. WEST. That would be hard to tell.

The CHAIRMAN. You can not get the last drop out of the taxpayer. Senator THOMAS. That is one of the things you have to take a chance on.

Mr. WEST. Some have serial tickets, which is the best thing I have seen.

Senator CALDER. In some places you have to buy two tickets, one for the drink and one for the tax.

Mr. WEST. That is the only thing there has been doubt about, whether a stamp or ticket could be required.

Senator CALDER. How would you handle the sale of a stamp?

Mr. WEST. It is a little different from the theater tickets, of course. We use that and we get very great revenue from it—something like \$44,000,000 for 11 months, and that much sounds right good.

Senator SMOOT. The taxpayers are not going to take very many chances with the Government; they will do it with an individual.

The CHAIRMAN. The only complaints I hear in this connection, Senator Calder, come from the East Side of New York, where they have little places, such as those conducted by a street corner vendor.

Senator CURTIS. I have had a great many complaints from sellers out in Kansas.

Mr. WEST. We have not had any letters along that line. We have had some few letters in connection with the Senator's statement where an article is sold for 1 cent or 2 cents; I doubt very much whether there are many sales of that kind these days.

Senator CALDER. Does this tax cover the sale of a glass of cider?

Mr. WEST. Cider is considered a soft drink.

Senator CALDER. Does this tax apply to buttermilk?

Mr. WEST. No. Article 8 covers things not taxable, such as buttermilk, clam broth, and hot bouillon, which are not taxable.

Senator CURTIS. What would be the effect of the repeal of 630, on Coca Cola?

Mr. WEST. I do not know how that is advertised or held out to the public; but if it is a sirup or an extract and put up in bottles and other glass containers in a form suitable for sale at retail and can be converted into a beverage by the consumer merely adding water or water and sweetening, thus making it available for immediate consumption as a beverage, it would be taxed.

Senator CURTIS. They do not add water to it?

Mr. WEST. I do not know.

(The committee, thereupon, at 4.05 o'clock p. m., proceeded to the consideration of executive business, and upon the conclusion thereof adjourned to meet at the call of the chairman.)