

MARIHUANA TAXING BILL

JULY 15, 1937.—Ordered to be printed

Mr. BROWN of Michigan, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 6906]

The Committee on Finance, to whom was referred the bill (H. R. 6906) to impose an occupational excise tax upon certain dealers in marihuana, to impose a transfer tax upon certain dealings in marihuana, and to safeguard the revenue therefrom by registry and recording, having had the same under consideration, report it back to the Senate with amendments and recommend that the bill do pass.

The amendments proposed by your committee are as follows:

Page 2, line 6, insert after the word "plant," the following: "fiber produced from such stalks,".

Page 2, line 7, insert after the word "any" the word "other".

Page 2, line 9, insert after "(therefrom)," the word "fiber,".

These amendments specifically exclude from the definition of marihuana and, consequently, from the provision of the bill, fiber produced from the mature stalks of the hemp plant. Although as the definition is now drawn it would be extremely difficult to construe it to include fiber, out of an abundance of caution, the legitimate producers of hemp for fiber purposes wished the fiber produced by them to be specifically excluded from the provisions of the bill.

Page 3, line 9, strike out "\$5 per year" and insert in lieu thereof "\$1 per year, or fraction thereof during which they engage in such activity".

Page 4, line 6, strike out ", (2),".

These amendments reduce the occupational tax imposed by the bill upon producers of marihuana from \$5 per year to \$1 per year. The legitimate producers of hemp appeared for the first time on this bill and testified as to the effect of the legislation upon the legitimate hemp industry. It appears that there are numerous very small hemp producers upon whom a \$5 tax would be burdensome. It

seems advisable, therefore, to reduce the occupational tax from \$5 to \$1 per year.

Page 6, line 10, insert after "District of Columbia," the word "or".

Page 6, line 11, strike out "or the Canal Zone,".

Page 6, line 14, insert after "District of Columbia," the word "or".

Page 6, line 15, strike out ", or the Canal Zone".

Page 8, line 10, insert after "District of Columbia," the word "or".

Page 8, line 11, strike out "or the Canal Zone".

Page 15, line 16, strike out "the Canal Zone,".

Page 16, line 1, strike out "Canal Zone and the".

Page 16, line 5, strike out "Canal Zone and the".

These amendments eliminate the Panama Canal Zone entirely from the bill and are proposed at the behest of the Secretary of War. It appears that the Panama Canal Zone is kept under such close supervision by the Federal Government that the marihuana traffic in the zone can be adequately controlled at this time without additional legislation and that the administration of legislation such as this bill which is not specifically designed for application in the Canal Zone is difficult. It seems advisable, therefore, to eliminate the zone from the bill.

Page 8, line 25, strike out section 6 (b) (5) and insert in lieu thereof the following: "(5) To a transfer of any seeds of the plant *Cannabis sativa* L. to any person registered under section 2."

Under the present section 6 (b) (5), a producer may purchase seeds for the further production of the plant and a manufacturer, importer, or compounder may purchase seeds for the purpose of making birdseed or seed oil without paying the \$1 per ounce transfer tax and carrying out the transfer in pursuance of order forms, but a seed dealer cannot purchase seeds for resale for any of the above-mentioned purposes. Evidence was presented for the first time on this bill to the effect that there are numerous legitimate dealers in hempseed who act as middlemen between the producer of hempseed and those who use the seed for further production, for the manufacture of oil or for birdseed. Under the circumstances, your committee considers it advisable to provide for a tax-free transfer for such dealers.

PURPOSE OF THE BILL

The purpose of H. R. 6906 is to employ the Federal taxing power to raise revenue by imposing occupational and transfer taxes upon dealers in marihuana and to discourage the widespread use of the drug by smokers and drug addicts.

The flowering tops, leaves, and seeds of the hemp plant contain a dangerous drug known as marihuana. The drug is used only to a negligible extent by the medical profession. In fact, last year only 4 out of every 10,000 prescriptions contained marihuana. The drug is prescribed as a sedative but it is used very rarely by the medical profession because the effect of the drug is so variable that a physician cannot tell how his patient will react to the drug and because there are so many better substitutes.

The plant also has many industrial uses. From the mature stalks, fiber is produced which in turn is manufactured into twine, and other fiber products. From the seeds, oil is extracted which is used in the manufacture of such products as paint, varnish, linoleum, and soap.

From hempseed cake, the residue of the seed after the oil has been extracted, cattle feed and fertilizer are manufactured. In addition, the seed is used as special feed for pigeons.

Marihuana is also used illicitly by smoking it in crudely prepared cigarettes, which are readily procurable in almost all parts of the country at prices ranging from 10 to 25 cents each. Under the influence of this drug the will is destroyed and all power of directing and controlling thought is lost. Inhibitions are released. As a result of these effects, many violent crimes have been and are being committed by persons under the influence of this drug. Not only is marihuana used by hardened criminals to steel them to commit violent crimes, but it is also being placed in the hands of high-school children in the form of marihuana cigarettes by unscrupulous peddlers. Its continued use results many times in impotency and insanity.

Two objectives have dictated the form of H. R. 6906: First, the development of a plan of taxation which will raise revenue and at the same time render extremely difficult the acquisition of marihuana by persons who desire it for illicit uses and, second, the development of an adequate means of publicizing dealings in marihuana in order to tax and control the traffic effectively.

This bill is modeled upon both the Harrison Narcotic Act and the National Firearms Act, which were designed to accomplish these same general objectives with respect to opium and coca leaves, and firearms, respectively.

Under its provisions all legitimate handlers of marihuana are required to pay occupational taxes as follows: Manufacturers, compounders, and importers, \$24 per year; producers, \$1 per year; dealers, \$3 per year; practitioners (doctors, dentists, veterinaries, and others of like character), and persons who produce or use marihuana for experimental purposes, \$1 per year. These persons, in addition to paying the occupational tax, must register with the collector of internal revenue and file information returns as to their dealings in marihuana.

Moreover, as an additional means of bringing the traffic in marihuana into the open, the bill requires all transfers of marihuana to be made in pursuance of official order forms issued by the Secretary of the Treasury, upon which the details of the transaction are set forth. In order to raise additional revenue and to prevent transfers to persons who would use marihuana for undesirable purposes, a transfer tax is imposed upon each transfer of marihuana. Upon transfers to registered persons, this tax is \$1 per ounce, while, upon transfers to nonregistered persons, who under ordinary circumstances will be the illicit users of marihuana, a heavy tax of \$100 per ounce is imposed. Heavy criminal penalties are provided for manufacturing, producing, or dealing in marihuana without registering and paying the special taxes, for transferring marihuana not in pursuance of an order form, and for acquiring marihuana without payment of the transfer tax.

Thus, the bill is designed, through the occupational tax and the order-form procedure, to publicize legitimate dealings in marihuana and through the \$100 transfer tax to prevent the drug from coming into the hands of those who will put it to illicit uses.

The production and sale of hemp and its products for industrial purposes will not be adversely affected by the bill. In general, the term "marihuana" is defined in the bill so as to include only the flowering tops, leaves, and seeds of the hemp plant and to exclude the mature

stalk, oil, and meal obtained from the seeds of the plant, and sterilized seed, incapable of germination.

Under this definition of "marihuana" the hemp producer will pay a small occupational tax but his fiber products will be entirely exempt from the provisions of the bill, including the order form and transfer tax provisions. The same is true of seed produced by the hemp grower for sale for the further production of the plant, for the manufacture of oil or for birdseed, except that such transfers will be made subject to regulations designed to prevent diversion of the seed for illegal uses.

Similarly, the manufacturers of oil and the byproducts of seed, such as hempseed cake and meal, will pay an occupational tax, but their purchases of seed and sales of such oil, cake, and meal will be entirely exempt from the provisions of the bill except that purchases of such seed will be subject to regulations designed to prevent diversion.

Manufacturers of birdseed will also pay an occupational tax, but their purchases of seed will be exempt from the transfer-tax and order-form provisions of the bill, if carried out in accordance with regulations. Further, under the definition of marihuana, the bill will not apply to their sales of birdseed, if the hempseed contained therein is sterilized so as to be incapable of germination.

ANALYSIS OF THE BILL

Section 1. This section defines the important terms used in the bill, notably "marihuana" and "producer." The term "marihuana" is defined so as to bring within its scope all parts of the plant having the harmful drug ingredient, but so as to exclude the parts of the plant in which the drug is not present. The testimony before the committee showed definitely that neither the mature stalk of the hemp plant nor the fiber produced therefrom contains any drug, narcotic, or harmful property whatsoever and because of that fact the fiber and mature stalk have been exempted from the operation of the law. The term "producer" is defined so as to include not only one who actively fosters the growth of marihuana but also a person who harvests and transfers or makes uses of marihuana which has grown wild. Those on whose land the plant grows wild, however, are not included unless they harvest and transfer or make use of it.

Section 2. This section levies an occupational tax upon persons who deal with marihuana and requires them to register with the collector of internal revenue.

Section 3. This section exempts employees of registered persons, acting within the scope of their employment, and Government officers who handle marihuana in the course of their official duties from payment of the occupational tax and registration with the collector of internal revenue.

Section 4. This section makes it criminal to engage in any activity with respect to marihuana for which registry and payment of the occupational tax imposed by section 2 are required, without having registered and paid the tax. The section also creates a presumption that a person is a producer and thus subject to the occupational tax and registry provisions of section 2, upon proof of the fact that marihuana is growing upon land under his control. Presumptions similar in principle have been sustained by the Supreme Court in *Yee Hem v.*

United States (1925) (268 U. S. 178) and *Casey v. United States* (1928) (276 U. S. 413).

Section 5. This section makes it illegal to ship marihuana in interstate commerce or transport it within the Territories, possessions, or the District of Columbia without having registered and paid the occupational tax.

Section 6. This section makes it illegal to transfer marihuana, except in pursuance of a written order from the transferee, upon an official form obtained by him from the collector of internal revenue. This procedure need not be followed, however, in the following cases: Dispensations by registered practitioners in the course of their professional practice; transfers by druggists in good faith on prescription; export shipments; transfers to certain Federal, State, and local officials; and transfers of the seed to persons registered under the Act.

Section 7. This section imposes a transfer tax upon all transfers required under section 6 to be carried out in pursuance of order forms. The tax is at the rate of \$1 per ounce or fraction thereof on transfers to persons registered under the act and at the rate of \$100 per ounce or fraction thereof on transfers to persons not registered under the act. The tax is to be paid by means of a stamp, by the transferee in the first instance, but if the transferee does not pay it, by the transferor.

Section 8. This section makes it illegal for a transferee required to pay the transfer tax imposed by section 7 to acquire marihuana without payment of the transfer tax. Proof of possession of marihuana and failure, after demand, to produce the duplicate order form which section 6 requires a transferee to retain is made presumptive evidence of a violation of this section. The authorities cited to sustain the presumption in section 4 are equally applicable here.

Section 9. This section provides for the forfeiture to the United States of contraband marihuana, which must be destroyed unless it can be used for governmental purposes.

Section 10. This section requires persons liable for any tax under this bill to keep records and make returns under regulations prescribed by the Secretary of the Treasury. Since many of the taxpayers under this measure, such as practitioners, druggists, manufacturers, and importers are also taxpayers under the Harrison Narcotic Act, the Secretary may, by regulation, permit them to keep records and make returns with respect to marihuana on the same forms used under the Harrison Act.

Section 11. This section authorizes officers and agents of the Treasury and State officers charged with the enforcement of State marihuana laws to examine the order forms and other records which are required under the bill to be preserved by taxpayers.

Section 12. This section prescribes a criminal penalty of not to exceed \$2,000 fine or 5 years' imprisonment, or both, for any violation of the bill.

Section 13. This section makes it unnecessary for the Government to allege in an indictment the fact that the defendant does not fall within any exemption prescribed in the act. The effect of this is to impose upon the defendant the duty to assert and establish his right to any exemption. The same provision is in the Harrison Act and thus has been in operation in criminal cases under that act for 23 years.

The section also places upon the defendant the duty of going forward with the evidence as to whether he has registered and paid

the occupational tax or has effected a transfer of marihuana in pursuance of an order form.

Section 14: This section authorizes the Secretary of the Treasury to promulgate all necessary rules and regulations to carry out the provisions of the act, and to delegate to any officer or employee of the Treasury Department any of the functions conferred upon him by the act.

Section 15: This section defines the territorial scope of the act.

Section 16: This section contains the usual separability clause.

Section 17: This section sets forth the effective date of the act.

Section 18: This section contains the short title of the act.

