TAX ASSESSMENTS ON COMMON CARRIER PROPERTY

HEARING

BEFORE THE

SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 736, H.R. 10169

BILLS TO AMEND THE INTERSTATE COMMERCE ACT, AS AMENDED, IN ORDER TO MAKE UNLAWFUL, AS UNREASONABLE AND UNJUST DISCRIMINATION AGAINST AND UNDUE BURDEN UPON INTERSTATE COMMERCE, CERTAIN PROPERTY TAX ASSESSMENTS OF COMMON CARRIER PROPERTY, AND FOR OTHER PURPOSES

JULY 28, 1964

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Committee on Interstate and Foreign Commerce

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TAX ASSESSMENTS ON COMMON CARRIER PROPERTY

TUESDAY, JULY 28, 1964

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND
AERONAUTICS OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to call, at 10 a.m., in room 1334, Longworth Office Building, Hon. Samuel N. Friedel presiding.

Mr. FRIEDEL. The Subcommittee on Transportation and Aeronautics this morning is opening hearings on H.R. 736, introduced by Mr. Nelsen, a member of this committee, and an identical bill, H.R. 10169, introduced by a former member of this committee, Mr. Hemphill.

The purpose of the bill is to declare that it is an unreasonable and unjust discrimination against and an undue burden upon interstate commerce for a State to assess a valuation on carrier property at a rate higher than it assesses all other property in the State and, collaterally, to provide a remedy in the Federal courts for carriers against the collection of a tax based on an unlawful assessment.

While I understand that the principal proponents of the legislation are the railroad carriers, the bill covers all common carriers subject to the Interstate Commerce Act and thus includes oil pipelines, motor carriers, water carriers, freight forwarders, sleeping car and express companies, and so on.

From our study and hearings over these past years, we well can appreciate that there is a vital problem involved in this legislation before us. It is my understanding that, since the Transportation Act Amendments of 1958, much already has transpired in many taxing districts to show a recognition on the part of those districts of the need for mitigating, in some part, the burden which has been placed upon some of our common carriers, primarily the railroads. While much has been done, I assume that the fact that we have the legislation before us is evidence that there is much yet which the carriers feel should be done.

I have a great many questions in my own mind concerning the legislation, primarily having to do with the constitutional basis upon which it rests, and I am sure that other members of the committee also have a number of questions in their minds. We shall listen attentively accordingly to the witnesses before us this morning and conduct such examination as the time may permit. I doubt, however, that we can develop, in this 1 day, all of the testimony or arguments that are required properly to reach a conclusion on the measure.

We have a copy of the bill and reports from the Interstate Commerce Commission, the Department of Justice, the Budget Bureau,

and the Department of Commerce which will all be inserted at the proper place in the record.

(The bills, H.R. 736 and H.R. 10169, and reports follow:)

[H.R. 736, H.R. 10169, 88th Cong., 1st sess.]

A BILL To amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Act, as amended, is amended by inserting after section 25 thereof a new section 25a as follows:

"SEC. 25a. (1) The following action by any State, or subdivision or agency thereof, whether such action be taken pursuant to a constitutional provision, statute, or administrative order or practice, or otherwise, is hereby declared to constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce and is hereby forbidden and declared to be unlawful: (a) the assessment, for purposes of a property tax levied by any taxing district, of property owned or used by any common carrier subject to this Act engaged in transportation of persons or property in interstate commerce at a value which bears a higher ratio to the true market value of such property than the assessed value of all other property in the taxing district subject to the same property tax levy bears to the true market value of all such property; (b) the collection of any tax on the portion of said assessment so declared to be unlawful.

"(2) Notwithstanding the provisions of section 1341, title 28, United States Code, or of the constitution or laws of any State, the district courts of the United States shall have jurisdiction, upon complaint and after hearing, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain any State, or subdivision or agency thereof, or any person from doing anything or performing any act declared by paragraph (1) hereof to be unlawful: *Provided, however*, That such jurisdiction shall not be exclusive of that which any Federal or State court may otherwise have."

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., July 17, 1964.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN HARRIS: Your letter of February 15, 1963, addressed to the Chairman of the Commission and requesting a report on H.R. 736, introduced by Congressman Nelsen, to amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes, has been considered by the Commission. I am authorized to submit the following comments:

H.R. 736 would amend the Interstate Commerce Act by inserting after section 25, a new section 25a which would make unlawful the collection of any tax, levied by any taxing district, on property owned or used by any common carrier subject to the act, when the assessment for the tax bears a higher ratio to the true market value than the assessed value of all other property in the taxing district subject to the same property tax levy bears to the true market value of all such other property. As we understand it, "true market value" is not a term that is used in all States, but is intended to have the same meaning as "fair market value" or "market value."

There are several points to which we wish to invite attention. One such point is the determination in a Federal court as to precisely what constitutes "true market value." We understand that the question is now determined by State tribunals. H.R. 736 would shift the final determination of "true market value" of carrier property, as well as that of other property in a taxing district, from State courts to U.S. district courts. While we are not in a position to say whether, as a matter of broad general policy, jurisdiction over these matters should be vested in the U.S. district courts, it does seem that the issue might very well be raised in numerous taxing districts, such as city, county, and State,

with the result that the determination of "true market value" might add substantially to the already heavy dockets in many of our U.S. district courts. If, on the other hand, the question of "true market value" were finally determined in a State or local court, then, of course, the question of whether an injunction should issue might more appropriately come before a Federal court.

While a relatively minor matter, it is not clear why this bill, which relates to matters of taxation over which this Commission has no jurisdiction, contemplates an amendment to the Interstate Commerce Act. In this format, it may pose a conflict with the present provisions of section 202(b) of the act which provides, among other things, that "nothing in this part shall be construed to affect the powers of taxation of the several States * * *." While this problem could be resolved by an appropriate amendment (by inserting "notwithstanding the provisions of sec. 202(b)" at the beginning of proposed sec. 25a) we suggest that the objective sought in H.R. 736 may lend itself to consideration separate and apart from the Interstate Commerce Act, and, if favorably considered, might be enacted as a separate statute to be codified under title 49, United States Code—"Transportation."

Since our report in the *Railroad Passenger Train Deficit* (306 ICC 417), in which we recommended inter alia, that States and local governments take such steps as may be required to effect a greater degree of equity with respect to the tax burden imposed on railway properties as compared to that borne by taxpayers generally, an increased awareness of the problems of the railroad industry has been evidenced by the enactment by a number of States of legislation granting a measure of tax relief to railroads. Self-interest in the maintenance and preservation of adequate commuter and other passenger train service as well as freight service for local industries, at reasonable rates, would seem to dictate similar remedial action by other States where appropriate to remove inequitable and discriminatory taxation.

The Interstate Commerce Commission is strongly in favor of any sound proposal to strengthen the national transportation system by eliminating inequitable tax burdens on common carriers. Accordingly, we endorse the objective sought by H.R. 736 and, subject to the opinion of those versed in matters of taxation on the technical aspects of the bill, favor its enactment.

Sincerely yours,

ABE MCGREGOR GOFF, *Chairman.*

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., July 24, 1964.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 736, a bill to amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes.

The bill would add a new section 25a to the Interstate Commerce Act for the purpose, as stated in its title, of rendering unlawful discriminatory property taxes levied by States on common carrier property. It would also confer upon the district courts of the United States jurisdiction to issue injunctions or other appropriate process as may be necessary to restrain violations. Such jurisdiction would not, however, be exclusive of that which any Federal or State court may otherwise have.

Whether legislation such as this should be enacted involves policy considerations as to which the Department of Justice makes no recommendation.

However, we note that paragraph 1(a) of the proposed new section (p. 2, lines 4–12 of the bill) declares the assessment of a discriminatory property tax unlawful. Yet, paragraph 1(b) (p. 2, lines 12–13 of the bill), which deals with the collection of the property taxes in question, seems to interpret paragraph 1(a) as declaring only the discriminatory portion of the assessment to be unlawful. This apparent inconsistency should be clarified if the measure is to be enacted.

If in eliminating the inconsistency mentioned above, the Congress should clearly declare the entire assessment unlawful and prohibit the collection of any part of such assessment, the legislation would not give rise to any legal questions. How-

ever, if the Congress is inclined to make only the discriminatory portion of the tax unlawful and uncollectible, consideration must be given to *Moses Lake Homes, Inc., et al.* v. *Grant County* (365 U.S. 744 (1961), at p. 752), of which the Court stated:

"The effect of the Court's remand was to direct the district court to decree a valid tax for the invalid one which the State had attempted to exact. The district court has no power so to decree. Federal courts may not assess or levy taxes. Only the appropriate taxing officials of Grant County may assess and levy taxes on these leaseholds, and the Federal courts may determine, within their jurisdiction, only whether the tax levied by those officials is or is not a valid one."

This holding leaves undetermined the question of whether the Congress may constitutionally enact such a statute. Such an enactment, therefore, could be expected to give rise to litigation to resolve this question.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., July 28, 1964.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in further reply to your request for the views of this Department with respect to H.R. 736, a bill to amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasoable and unjust discrimination against and undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes.

The bill would insert a new section 25(a) in the Interstate Commerce Act to prohibit any State or subdivision or agency thereof from assessing, for purposes of a property tax levied by any taxing district, property owned or used by any common carrier subject to this act engaged in transportation of persons or property in interstate commerce at a value which bears a higher ratio to the true market value of such property than the assessed value of all other property in the taxing district subject to the same property tax levy bears to the true market value of all such property. The collection of any tax on the portion of said assessment in excess of such rates would also be declared to be unlawful.

The bill further provides that, notwithstanding the provisions of section 1341, title 28, United States Code, or of the constitution or laws of any State, the district courts of the United States would have jurisidiction, upon complaint and after hearing, to issue writs of injunction or other proper process to restrain any State, or subdivision or agency thereof, or any person from doing anything declared by the bill to be unlawful.

State and local governments derive substantial revenues from taxes on property owned by common carriers, particularly the railroads and pipelines. Despite State laws requiring uniform tax treatment, in many States railroads and pipelines are discriminated against as compared to other property taxpayers in the same jurisdiction, due in large measure to long-established procedures for assessment of property. Some States apply assessment by a single central agency, which permits a relatively accurate method of assignment of value. However, other States permit local assessment which permits indiscriminate assignment of values and considerable variation in assessments.

The Department of Commerce agrees in principle that common carrier property should not face discrimination in property tax assessments. Such discriminations have been a concern of the transportation industry for many years. The scope of this problem was outlined in part VII, chapter 1, pages 465–466, of the report of the Senate Committee on Commerce on "National Transportation Policy" (87th Cong., 1st sess., Report 445, June 26, 1961), otherwise known as the Doyle report.

The Department, however, recognizes that there are difficulties of tax administration and lack of experience with Federal legislation of this kind. For this

reason it does not seem advisable to enact Federal legislation until other alternatives are tested with respect to this problem. It is also possible that other property, such as industrial plants and utility facilities, may face the same situation as railroads and pipelines.

The Department has been encouraged by recent activities of the Advisory Commission on Inter-governmental Relations, which in June 1964, recommended draft legislation for State enactment applying to uniform and equitable property taxation. The Commission suggests that enactment by States of this uniform concept would go far toward alleviating the problem of discrimination in assessments. This kind of approach, we believe, should be tested prior to the consideration of any Federal legislation in the field.

For the foregoing reasons the Department would not recommend favorable action on H.R. 736.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of our report from the standpoint of the administration's program.

Sincerely,

LAWRENCE JONES,
Acting General Counsel.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 28, 1964.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of February 15, 1963, requesting the views of the Bureau of the Budget on H.R. 736, a bill to amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and undue burden upon interstate commerce, certain property tax assessments of common-carrier property, and for other purposes.

This bill would amend the Interstate Commerce Act to make unlawful, as an undue burden on interstate commerce, the assessment of property owned or used by any common carrier engaged in interstate transportation at a higher ratio to true market value than that imposed on all other property subject to the general property tax in the same jurisdiction.

The Bureau of the Budget supports the objective of the proposed legislation, which is consistent with the administration's transportation policy set forth in the transportation message of April 5, 1962. It appears questionable, however, whether the bill provides a workable solution to the complex technical problem of determining fair market value of utility property for tax purposes. Furthermore, assigning responsibility for such determinations to the U.S. courts raises serious issues.

In a letter of July 8, 1964, the Administrative Office of the U.S. Courts informs us that the Judicial Conference voted to disapprove a similar bill introduced in the 87th Congress and expresses the view that its Committee on Revision of Laws would take the same position on this bill. The current formal position of the committee cannot, however, be obtained until its next meeting in September 1964.

The Department of Justice, in a report already sent to your committee, notes technical inconsistencies in the bill and questions its constitutionality. While it favors the objective of H.R. 736, the Interstate Commerce Commission, in its report to your committee, questions the appropriateness of amending the Interstate Commerce Act to achieve this purpose and points to a possible conflict with other provisions of the act.

The staff of the Advisory Commission on Intergovernmental Relations, in a letter to the Bureau of the Budget on March 13, 1963, copy enclosed, also expresses doubt that H.R. 736 is an appropriate vehicle by which to move toward the solution of the underlying problem. On the basis of a comprehensive study of State taxation entitled "The Role of the States in Strengthening the Property Tax," the Commission's staff has prepared a draft bill for enactment by State legislatures. This bill has the same objective as H.R. 736 and is preferred by the Commission. Copies of the basic study and the draft bill are enclosed. For your convenience,

parts of chapter 13 of the report dealing with the taxation of railroad property have been marked by the Commission's staff.

The Bureau of the Budget concurs with the reservations expressed by the various agencies that have reviewed the bill and, therefore, is unable to recommend enactment.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS,
Washington, D.C., March 13, 1963.

ASSISTANT DIRECTOR FOR LEGISLATIVE REFERENCE,
U.S. Bureau of the Budget,
Washington, D.C.

(Attention: Mr. W. H. Rommel).

DEAR SIR: This is in reply to your request of February 26 for our comments on H.R. 736, to amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes.

The apparent objective of the proposed amendment is to relieve the economic pressure on the railroads by safeguarding them against discriminatory property assessments. This is clearly a desirable objective. We are doubtful, however, that Federal legislation is the appropriate vehicle for improving the quality of State and local tax administration.

In most States railroads and other public utility properties are centrally assessed for property tax purposes by State agencies. The accepted practice, fairly universally endorsed, is to assess the operating property of public utilities which cross jurisdictional lines uniformly throughout the State and to allocate the total value among the taxing jurisdictions by formula. The proposed amendment would make it unlawful for a State agency to assess railroad property owned by an interstate company at a ratio of assessed value to market value that is higher than the ratio used in the local jurisdiction levying taxes against such property. Since assessment ratios vary considerably among taxing jurisdictions in virtually every State, the State agency would be required to assess railroad property by applying a different ratio in each jurisdiction.

The quality of property assessments leaves much to be desired in a large number of States. A compulsion upon tax assessors to reduce discrimination against railroads would tend to stimulate similar relief for other groups, if for no other reason, because those similarly situated, as for example the other utilities, would press for equal treatment. In the general situation this approach would reduce inequities through a reduction in the level of property assessments, and therefore, at the expense of the revenue-producing potential of the property tax. A more constructive approach would require that the goal of improved equity between classes of property be coupled with an improved level of assessment. However, such general improvement of the property tax can originate only with the States and should originate there rather than at the national level. While considerations of interstate commerce are important, they occupy a subordinate position to the requirement of this Federal system of government that, subject only to the limitations of the Constitution, the States, as the Federal Government, are free to shape their own and their political subdivisions' tax systems.

At its next meeting, this Commission has scheduled for consideration and action a report that deals in depth with property tax administration. It includes a number of recommendations for State legislative and administrative action to improve the quality of property assessments and to strengthen the assessment review-and-appeal machinery for the protection of taxpayers who believe themselves to be treated unfairly. These recommendations reflect the belief that States can and should exert leadership in the elimination of inequities in property taxation, which presently discriminate against different classes of property.

Several States, as you may know, have assumed leadership in guiding their local governments in the improvement of the quality of property tax administration. The results attained by some of them leave no doubt that such leadership offers an effective approach to property tax reform.

For these reasons we would counsel strongly against favorable consideration of the approach represented by the bill H.R. 736. In the time available, it has not been practicable to ascertain the individual views of the members of the Commission on the specific provisions of H.R. 736. Therefore, the views here expressed can best be characterized as those of the staff.

Sincerely yours,

WM. G. COLMAN, *Executive Director.*

PRELIMINARY DRAFT, FOR DISCUSSION PURPOSES

Advisory Commission on Intergovernmental Relations, June 1964

SUGGESTED PROPERTY TAX LEGISLATION[1]

Title

I. Property Tax Survey Commission.
II. Administrative Organization and Powers.
III. Assessment Standards and Measurement of Assessment Performance.
IV. Equalization Procedures.
V. Tax Review and Appeal Procedures.

SUGGESTED LEGISLATION

(Title should conform to state requirements. The following is a suggestion: "An omnibus act that creates a property tax survey commission; amends various statutory provisions relating to property tax assessment standards, organization and equalization; and establishes an independent property tax review procedure.")

TITLE I—PROPERTY TAX SURVEY COMMISSION

SECTION 1. PROPERTY TAX SURVEY COMMISSION. There is hereby created a commission of ( ) members for the general purpose of making a thorough examination of the property tax administration with responsibility for making specific recommendations to the Governor and each session of the Legislature not later than ( ) of each ( ) numbered year.

SECTION 2. COMMISSION'S DUTIES. The scope of the Commission's duties is as follows:

(a) To ascertain whether adequate provision is being made for continuing study and analysis of the property tax by the research division of the [State Tax Agency] and by the appropriate legislative committees so as to insure that this major revenue source serves an appropriate role in the overall state and local tax and revenue structure.

(b) To determine (1) whether any constitutional provision unduly restricts legislative and gubernatorial flexibility and responsibility for producing and maintaining a productive and administrable property tax system and, (2) whether the property tax laws generally need a thorough reexamnation, overhauling, and recodification.

(c) To reexamine the state's property tax exemption policies to insure that this indirect subsidy privilege is extended only on clear demonstration of public interest and is limited to those cases in which the tax exemption method is preferable to outright grants supported by appropriations.

(d) To recommend a procedure for reimbursing local communities for the amounts of tax loss sustained in the instance of mandatory tax exemptions extended to individuals as personal welfare aid and as expressions of personal esteem.

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[1] This draft, particularly title V, draws liberally on State tax laws, especially Maryland. Annotated Code (1957), art. 81, secs. 224–231, and Massachusetts, General Laws, C. 58A, secs. 1–13.

(e) To make a thorough review of all regulatory or partial exemptions from tax liability based on assessed valuations made by local assessment officials, to consider the desirability of their continuance from the point of view of sound policy, and with respect to those exemptions that may be continued, to recommend such adjustments as would be called for by the adoption of the market value determinations of the [State Tax Agency] as the uniform measure for all such regulatory or partial exemption from property tax liability.

(f) To review all state imposed limits on the taxing and borrowing powers of local government that are related to assessed valuation set by local assessment officials, to consider the desirability of their continuance, and for any that may be continued to recommend such adjustments as would be made necessary by the adoption of the market value determinations made by the [State Tax Agency] as the uniform base for restricting the taxing and borrowing powers of local governments.

(g) To review all State financial grants to school districts and local governments that use assessed valuations set by local assessment officials as a measure of local fiscal capacity and tax effort and to recommend such adjustments as may be necessitated by the adoption of the market value determinations of the [State Tax Agency] as an equalized measure of local fiscal capacity and tax effort.

(h) To evaluate the structure, powers, facilities, and competence of both the [State Tax Agency] and local property tax offices and on the basis of such evaluations to recommend one of the following policies for legislative enactment:

(1) Centralized property tax administration, with each local government levying the amount of taxes that it wishes and the state providing all professional services for the assessment, collection and enforcement of the property tax liability.

(2) Centralized property assessment administration, with the valuations certified to local officials as the basis for their billing and collection of taxes.

(3) Coordinated joint state-local administration with the [State Tax Agency] granted all appropriate supervisory powers and facilities but whose assessment responsibilities would be confined to property of types (1) that customarily lie in more than one district and do not lend themselves to piecemeal local assessment; (2) that require appraisal specialists beyond the specialized skills of most local district staffs; and, (3) that can be more readily discovered and valued by a central agency.

(i) To evaluate the present administrative-judicial hierarchy of agencies for assessment review and appeal in order to determine whether taxpayers have ready access to effective legal remedies.

SECTION 3. COMPOSITION OF COMMISSION. The Governor shall appoint ( ) members of the commission and he shall designate the chairman of the commission.

SECTION 4. TERM. The term of office shall be (4) years but the life of the commission may be continued from time to time as deemed necessary by the Legislature.

SECTION 5. STAFF. The commission may employ such research or administrative staff as it deems necessary outside the classified service.

SECTION 6. POWERS. The commission may hold public hearings in various parts of the state and subpena and swear witnesses.

SECTION 7. PER DIEM AND EXPENSES. Members of the commission shall receive per diem of ($) for each full day of attendance at a meeting of the commission plus their actual and necessary expenses incurred in the discharge of their official duties. Members of the commission who are also members of the legislature shall not receive per diem but shall be entitled to reimbursement for their actual and necessary expenses.

SECTION 8. APPROPRIATION. An appropriation of ($) is authorized for the expenses of research projects and studies of state governmental problems. This appropriation may be used for projects conducted by the executive office and cooperative projects conducted by the university of [ ] or other state agencies. In addition to materials and expenses and capital outlay this appropriation may be used for consultative services and expenses of advisors and for expert assistants and temporary employees who may be employed or appointed without regard to the classified service.

SECTION 9. EFFECTIVE DATE. (Insert effective date)

TITLE II—ADMINISTRATIVE ORGANIZATION AND POWERS

SECTION 1. PURPOSE. Title II sets forth the organizational and staffing requirements and apportions assessing jurisdiction for a joint State-local administration of the property tax on a professionalized basis.

SECTION 2. DIVISION OF PROPERTY TAXATION. There is hereby created a Division of Property Taxation within the [State Tax Agency] with the powers and duties in this Act specified.[1]

SECTION 3. DIRECTOR OF THE DIVISION OF PROPERTY TAXATION.

(a) The head of the Division of Property Taxation shall be the director, who shall be appointed by the [Commissioner] of the [State Tax Agency] and shall hold office thereafter under the provisions of [Statutory Citation] of the [State Merit System.] [1]

SECTION 4. DUTIES OF THE DIRECTOR OF PROPERTY TAX DIVISION. The Director shall be charged with the duty of administering and enforcing all laws now in force or which may hereafter be passed relating to the supervision of local property tax administration and the central assessment of property subject to ad valorem taxation. He shall also exercise such other rights, duties, obligations, and functions as may now or hereafter be conferred upon him by law or by the (Commissioner) of the [State Tax Agency.]

SECTION 5. STAFF. The Director shall have such assistants, statisticians, appraisers, clerical staff, and professional consultants as provided for in the budget.

SECTION 6. CERTIFICATION OF PROFESSIONAL QUALIFICATIONS FOR ASSESSORS AND APPRAISERS. The [State Tax Agency] shall be empowered to establish the professional qualifications of all tax assessors and appraisers employed by the State and local assessment jurisdictions and to certify candidates as to their fitness for employment on the basis of examinations given by it or of examinations satisfactory to it given by a state or local personnel agency, and to revoke such certification for good and sufficient cause. No person shall hold or continue in the office of assessor or to appraise property for taxation who is not thus certified.

SECTION 7. GENERAL SUPERVISORY POWER. The [State Tax Agency] may do any act or give any order to any local board of equalization or local assessor as to the valuation of any property or class of property which the [State Tax Agency] deems necessary so that all taxable property is assessed according to the law.

SECTION 8. RESEARCH.

(a) The [State Tax Agency] is authorized to require local assessors and other local officers to report to it data on assessed valuations and other features of the property tax for such periods and in such form and content as the [State Tax Agency] shall require. The [State Tax Agency] shall so structure its system for the collection and analysis of property tax facts as to enable it to make interstate comparisons based on property tax and assessment ratio data compiled for other states by the United States Bureau of the Census and published in its property tax studies.

(b) The [State Tax Agency] shall publish annually, meaningful digests of property tax data together with the findings of the county assessment ratio studies.

SECTION 9. PUBLICIZING TAX EXEMPTION INFORMATION. In order that taxpayers may be kept informed, the [State Tax Agency] shall by appropriate regulation require the regular assessment of all tax exempt property, compilation of the totals for each type of exemption by taxing districts, computation of the percentages of assessed valuation thus exempt in each taxing district and publication of the findings. Such publication should also present summary information on the function, scope, and nature of exempted activities.

SECTION 10. PROVISION OF NECESSARY ASSESSMENT TOOLS AND FACILITIES. The [State Tax Agency] is authorized to direct the governing body of any local government to provide the local assessor with the requisite basic tools, equipment, and office facilities deemed essential to the effective performance of the assessment function.

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[1] As an alternative for States in which organization for tax administration is diffused, the agency should be given prominence as a separate department or bureau. It may be desirable to have the career administrator serve under a multi-member commission appointed for overlapping terms.

SECTION 11. PRESCRIPTION AND PROVISION OF A PROPERTY TAX RECORD SYSTEM. The [State Tax Agency] shall devise, prescribe, supply, and require the use of all basic types of forms deemed necessary for effective administration of the property tax laws. The [State Tax Agency] is authorized to take such supervisory action as deemed necessary to insure that property tax record systems are kept current.

SECTION 12. TAX MAPS. The [State Tax Agency] shall require each local assessment jurisdiction to install and maintain tax maps in accordance with standards specified by the [State Tax Agency]. To correct mapping deficiencies, the [State Tax Agency] shall either install standard maps or approve mapping plans and supervise map production. The local governing body shall reimburse the State on an at-cost-basis for all tax maps installed by the [State Tax Agency]. The [State Tax Agency] is authorized to take such supervisory action as deemed necessary to insure that tax maps are kept current.

SECTION 13. PROVISION OF TAX MANUALS AND GUIDES.—To promote assessment uniformity, the [State Tax Agency] shall prepare, issue, and periodically revise guides for local assessors in the form of handbooks of rules and regulations, appraisal manuals, special manuals and studies, cost and price schedules, and news and reference bulletins.

SECTION 13. PROVISIONS OF TAX MANUALS AND GUIDES. To promote assessment rolls, tax rolls, and tax bills, the [State Tax Agency] is authorized to take such action as may be appropriate to enable the smaller tax jurisdictions on a cooperative basis to take advantage of automated data processing.

SECTION 15. PROVISION OF PROFESSIONAL AND TECHNICAL SERVICES.

(a) Whenever a local government by order of its legislative body requests the [State Tax Agency] to provide professional or technical services for the appraisal or reappraisal of properties therein, the [State Tax Agency] may, according to the comparative need thereof, provide personnel and other assistance to aid local assessors. The [State Tax Agency] shall prescribe the methods and specifications for the appraisal or reappraisal of property. The legislative body of the local government shall reimburse the state on a ( ) basis. To assist local government bodies in budgeting for such services, the [State Tax Agency] shall submit to each local assessor not later than ( ) an estimate of the costs thereof for the following fiscal year.

(b) The [State Tax Agency] shall provide to the various local assessment jurisdictions the services of qualified appraisal engineers for the appraisal of (principal industrial properties) situated within each jurisdiction. The properties shall be determined by the [State Tax Agency] after consultation with local assessors. In making such determinations, the [State Tax Agency] shall take into account the ability of the various assessors to perform such (industrial) appraisals with their own personnel and the varying amounts of (industrial) property situated in the localities. Local taxing jurisdictions' reimbursement of the state for such services shall be on a ( ) basis. To assist local governing bodies in budgeting for such services, the [State Tax Agency] shall submit to each county assessor not later than ———— an estimate of the costs thereof for the following fiscal year.

SECTION 16. TRAINING AND ORIENTING OF ASSESSORS.

(a) The [State Tax Agency] shall sponsor, in cooperation with educational institutions, formal in-service training programs on the technical, legal, and administrative aspects of the assessment process. The State Fiscal Officer is authorized to reimburse the basic participation expenses incurred by assessors and other qualified persons requested to attend such training programs.

(b) The [State Tax Agency] in cooperation with the educational institutions shall plan and conduct pre-entry courses of study and shall also conduct or arrange for regular internship training programs.

SECTION 17. ENFORCEMENT OF ASSESSMENT STANDARDS. To assure that assessing throughout the State meets at least acceptable minimum standards, the [State Tax Agency] shall determine the minimum level acceptable assessment performance that can be tolerated, and the [State Tax Agency] shall provide appropriate assessment administration, at the local jurisdiction's expense, in those local jurisdictions that fail to meet the minimum standard. The criteria to be used in the determination of such cases shall include:

(1) Failure to maintain adequate tax maps and record systems;

(2) Failure to meet minimum personnel requirements; and

(3) Assessments disclosing an index of inequality clearly in excess of a specified level of tolerance.

SECTION 18. CREATION OF THE APPOINTIVE OFFICE OF COUNTY ASSESSOR AND THE ABOLITION OF THE ELECTIVE OFFICE OF ASSESSOR.

(a) Effective (————), there is created in each county the appointive office of County Assessor and, effective the same date, the elective office of [county, township, city] assessor is abolished.

(b) The chairman of the county board shall appoint the Assessor from a list of certified candidates prepared by the [State Tax Agency]. Whenever a vacancy occurs, the (Commissioner) of the [State Tax Agency] may designate a person to carry on the duties of the office until such time as some person can be duly qualified and appointed. All vacancies occurring in the office of County Assessor shall be filled in the manner prescribed in this sub-section.

(c) The County Assessor may be removed from the office by the (Commissioner) of the [State Tax Agency] or by the chairman of the county board for cause, including incompetence.

(d) Any elected county assessor who is in office on (————————) shall succeed to the appointive office of County Assessor in his county for a term to expire on (————————), if he so desires and if he makes application for such office on a form supplied by the [State Tax Agency] for this purpose. If the incumbent on (——————) passes the qualifying examination, he shall be appointed County Assessor.

SECTION 19. MINIMUM STAFFING REQUIREMENTS FOR LOCAL ASSESSMENT JURISDICTIONS. The [State Tax Agency] is authorized to prescribe and to enforce minimum professional staffing requirements in all local assessment districts.

SECTION 20. DIVISION OF ASSESSMENT JURISDICTION BETWEEN STATE AND LOCAL AGENCIES. The County Assessor shall assess all classes of taxable property not specifically designated by law to be assessed by the [State Tax Agency]. The County Assessor shall also assess those classes of tax exempt property as may be deignated by the [State Tax Agency] for special treatment.

SECTION. 21. ADOPTION OF THE COUNTY ASSESSOR'S VALUATION BY ALL LOCAL TAXING DISTRICTS. In order to abolish overlapping assessment districts and to eliminate wasteful duplication of work, the [State Tax Agency] is directed to order each local taxing unit to adopt for property subject to its tax the assessed valuations prepared by the county assessor's office.

SECTION 22. AUTHORIZATION FOR THE CREATION OF MULTI-COUNTY ASSESSMENT DISTRICTS.

(a) In order to give each local assessment district the size and resources it needs to become an efficient assessment jurisdiction, any two or more counties may enter into an agreement for joint assessment of taxable property provided such agreement has been approved by the (Commissioner) of the [State Tax Agency].

(b) The agreement may provide for the abolition of the office of local assessor in any contracting unit where the assessment of property within it is to be made under the agreement by another assessor. In such case, the office of assessor in that unit shall cease to exist upon the date fixed in the agreement.

(c) When the agreement provides for joint employment of an assessor, he shall be appointed and removed in a manner and shall hold office for such term as is provided in the agreement.

TITLE III—ASSESSMENT STANDARDS AND MEASUREMENT OF ASSESSMENT PERFORMANCE

SECTION 1. PURPOSE. The legislature hereby finds and declares that a reasonable degree of assessment uniformity can be more readily attained by abolishing fixed assessment levels (subject to enforcement of a specified minimum level of assessment) and giving the assessor a flexible range of action, but requiring the [State Tax Agency] to determine annually by assessment ratio studies the average level of assessment in each assessment district and to supply this information to the taxpayers.

SECTION 2. DEFINITIONS.

(a) "Current market value" means the estimated price a property would bring as of the assessment date in an open market on a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

(b) "Assessment level" means the percentage relationship which the assessed value of taxable property bears to its current market value.

(c) "Assessment ratio studies" means the comparisons, on a sampling basis, of the bona fide sales prices of sold properties with their assessed valuations, and the application of statistical procedures to determine assessment levels and to measure nonuniformity of assessments. Expert appraisals by a technician other than the assessor may be used to supplement sales prices for classes of property whose sales do not provide an adequate sample or appraisals may be used as an alternative to sales ratio studies.

(d) "Coefficient of intra-area dispersion" means the percentage which the average of the deviations of the assessment ratios of individual sold (or appraised) properties bears to their median ratio. The resulting percentage, which measures dispersion or scatter above and below the average, serves as an index of assessment inequality.

SECTION 3. TAX BASE DETERMINATION. All classes of taxable property shall be assessed at the same percentage of current market value within each assessment jurisdiction. No assessment level so established shall be lower than ( ) percent of current market value as determined by the assessment ratio studies made by the [State Tax Agency] pursuant to (statutory citation). In the event that an assessment ratio study reveals that the prevailing general assessment level within a county falls more than 10% below the minimum assessment level prescribed by law, the [State Tax Agency] shall issue an order directing the appropriate local officials to make such horizontal adjustments in the assessment base as are necessary to secure compliance with the law.

SECTION 4. PREPARATION OF ASSESSMENT RATIO STUDIES. The [State Tax Agency] shall annually conduct comprehensive assessment ratio studies of the average level of assessment and the degree of inequality of assessment overall and for each major class of property in each assessment district in the state. In order to determine the degree of inequality in the assessment of major classes of property within each assessment jurisdiction the [State Tax Agency] shall compute the coefficients of intra-area dispersion as defined in this Act.

SECTION 5. HEARINGS ON TENTATIVE ASSESSMENT RATIO FINDINGS. Before publication of assessment ratio findings the [State Tax Agency] shall send each assessment jurisdiction the tentative ratio computed for that jurisdiction. If the assessor has any objections he may, within thirty (30) days request a hearing before the [State Tax Agency]. Following the hearing the [State Tax Agency] may change or amend its tentative ratio which then becomes the assessment ratio to be published as provided in Section 6 below. Unless manifestly contrary to the evidence, the findings of the [State Tax Agency] on objection to its tentative assessment ratio findings shall be final and conclusive.

SECTION 6. PUBLICATION OF ASSESSMENT RATIO FINDINGS. To insure that taxpayers are full apprised of the level and quality of assessment in each county the [State Tax Agency] shall publish annually the findings of each county assessment ratio study in clear, readily understandable form. The [State Tax Agency] shall post or cause to be posted on or near the door of the County Assessor's office the ratio of assessed to current market value as shown by the study in letters sufficiently large to be visible to a person with normal vision standing within 10 feet thereof. The [State Tax Agency] is authoirzed to cause additional publicity thereof to be given by other means, including publication in newspapers and by radio and television announcements.

SECTION 7. ASSESSMENT APPEALS BASED ON STATE ASSESSMENT RATIO STUDIES. (a) If a taxpayer petitions for reduction and equalization of the assessed valuation of his property and states in his petition the estimated current market value of the particular property, the [County or State Board of Review] shall not deem such petition insufficient or fail to consider or to take action thereon merely because the petitioner, in stating therein the facts and grounds upon which the petition is based, does not make statements regarding the valuation or assessment of property other than the particular property with which the petition is concerned.

(b) If the [County or State Board of Review] determines that the assessment ratio for the particular property is more than 10 percent above the county assessment ratio as determined by the [State Tax Agency], such findings shall constitute prima facie evidence of excessive assessment and the [County or State Board of Review] shall grant appropriate relief.

TITLE IV—EQUALIZATION PROCEDURES

SECTION 1. PURPOSE. The Legislature hereby finds and declares that the objective of interdistrict property tax equalization can be attained by directing a taxing district located in more than one assessment jurisdiction to adjust its tax

rates to compensate for variations in local assessment levels. Pursuant to this finding, this act sets forth the procedure for effecting interdistrict tax equalization. This act also sets forth a procedure for equalizing the tax load among the various classes of property within a tax district.

SECTION 2. INTERDISTRICT TAX EQUALIZATION PROCEDURE. For the purpose of effecting interdistrict tax equalization, the state and any taxing district located in more than one assessment jurisdiction shall apportion its property tax charges among the various assessment jurisdictions in the same proportion that the market value of property subject to the district's tax in each assessment jurisdiction bears to the market value of all property subject to the district's tax. Such apportionment shall be based upon the market value determinations derived from the annual assessment ratio studies made by the [State Tax Agency] pursuant to [statutory citation]. Thereafter the taxing district's tax rates shall be fixed in the respective assessment jurisdictions calculated to raise the amounts so apportioned when applied to the assessed values there.

SECTION 3. INTRADISTRICT TAX EQUALIZATION PROCEDURE. For the purpose of effecting intradistrict tax equalization, the [State Tax Agency] shall prepare assessment ratio studies for each major class of property within each taxing district. In the event that such study reveals that the assessment ratio for a particular class of property within a taxing district deviates by more than 10 percent from the district's general assessment level, the [State Tax Agency] shall direct the appropriate local officials to make such horizontal adjustments in the assessment base as it deems necessary to secure compliance with the law that all classes of property within a taxing district shall be assessed at the same percentage of current market value.

TITLE V—TAX REVIEW AND APPEAL PROCEDURES

SECTION 1. PURPOSE. In order to provide the taxpayer with readily usable and effective means of protecting himself from inequitable property tax assessment, this Title creates a two-level review and appeal procedure with the independent State Tax Court serving only an appellate function.

SECTION 2. HEARING OF TAX ASSESSMENT APPEALS BY LOCAL ASSESSMENT STAFF. The [State Tax Agency] is authorized and empowered (but not required) to issue an order designating the County Assessor's office to hear tax assessment appeals provided that such assessment organization has on its full-time staff at least [three] persons whose ability to appraise property has been certified by the [State Tax Agency.]

SECTION 3. JURISDICTION. In any county where the local assessment agency has been designated by order of the [State Tax Agency] to hear tax assessment appeals, the [Local Board of Review] of such county shall thereafter have no jurisdiction to hear or determine tax appeals, or to assess, classify, reassess, or re-classify property for purposes of taxation; but all such powers and duties shall be vested in the County Assessor's office, subject to the right of appeal to the [———————— Tax Court].

SECTION 4. THE FILING OF A TAX APPEAL WITH THE COUNTY TAX ASSESSMENT AGENCY. The taxpayer shall be entitled to protest his assessment on grounds of overevaluation, unequal valuation, or unequal valuation procedure. He or his agent shall initiate the proceedings by filing between [specified dates], an application for review on a form provided by the County Assessor. The application shall specify whether a hearing is desired. With the application, the taxpayer shall present, in writing, for study by the reviewing agency, a reasonably complete summary of the reasons for the protest. The taxpayer shall be entitled to set forth in his written statement evidence obtained from assessment ratio studies made by the [State Tax Agency] on the issue of whether his assessment is inequitable.

SECTION 6. HEARING PROCEDURE.

(a) The County Assessor shall assign one or more appraisers from his roster of appraisers certified by the [State Tax Agency] to hear the assessment appeal, but not including, however, the appraiser who made the assessment of the particular property under review.

(b) The procedure for hearing tax assessment appeals shall be informal and the taxpayer shall be entitled to appear for himself, with professional aid if he wishes, or to be represented by his agent. Such professional representation may include an attorney, an appraiser, an accountant, an economist, a realtor, or some other specialist.

(c) The determination of any tax assessment appeal brought before the County Assessor shall be evidenced by a written order signed by the appraiser or appraisers assigned to review the assessment appeal and countersigned by the County Assessor.

SECTION 7. CREATION OF A STATE TAX COURT. There is hereby created the [Tax Court], an independent administrative body with the powers and duties in this Act specified. The Court shall consist of [five] judges to be appointed by the Governor and designated in their initial appointments to serve respectively for two, three, four, five and six years from [date] in the year of their appointment. The Governor shall designate one of the judges as Chief Judge. Upon expiration of the term of the office of a judge, his successor shall be appointed in the manner aforesaid for [six] years. The Chief Judge of said Court shall receive a salary of [ ] dollars and each judge shall receive a salary of [ ] dollars and shall devote his full time to the duties of his office. The majority of the judges of the court shall constitute a quorum for the transaction of its business, except that the court may provide by rule for the decision by a single judge on assessment appeals where the estimated current market value of the particular property does not exceed [sixty thousand] dollars. A vacancy on the Court shall not impair its powers nor affect its duties. The Court shall have a seal which shall be judicially noticed.

SECTION 8. JURISDICTION OF THE [STATE TAX COURT]. After the effective date of this Act, the [State Tax Commission] shall have no jurisdiction to hear or determine property tax assessment appeals, but all such appellate powers and duties shall be vested in the [Tax Court], subject to the right of appeal to the State Supreme Court on questions of law.

SECTION 9. PLACE OF MEETING. The principal office of the Court shall be in [ ] but it may sit at any place within the State. The time and place of its meeting shall be prescribed by the Chief Judge. The county governing body shall provide the Court with suitable rooms in courthouses or other buildings when necessary for hearings outside the city of [ ]. Adequate offices and a hearing room in the statehouse or elsewhere in said city shall be provided for the Court.

SECTION 10. PUBLICATION OF OPINIONS AND REPORTS. The Court shall provide for the publication and sale of distribution of such of its reports and opinions as are of public interest, in such form and manner as it may deem best adapted for public convenience and use, upon such terms and conditions as may be approved by the Governor.

SECTION 11. ANNUAL REPORT. The Court shall make an annual report to the Legislature containing such suggestions and recommendations for the amendment, alteration, and modification of existing laws relative to taxation and related matters, as it may deem desirable, and shall include in such report a statement of the number and type of matters handled by it during the preceding fiscal year and the number of matters pending at the end of the year.

SECTION 12. EXPENSES OF COURT. The members and employees of the Court shall receive their necessary traveling expenses and their expenses actually incurred for subsistence while traveling outside the city of [ ] in the performance of their duties. The Court, subject to the approval of the Governor, may appoint such employees, including a clerk, and make such expenditures, including expenditures for law books and publications, as may be necessary in order to execute efficiently the functions vested in said Court. The clerk and assistant clerks shall hold office during good behavior, but subject, however, to retirement under the provisions of any applicable general or special law relative to retirement systems. All expenditures of the Court shall be allowed and paid out of moneys appropriated for the purposes of the Court, upon presentation of itemized vouchers therefor signed by the Chief Judge or a person designated by the Court for the purpose.

SECTION 13. RULE-MAKING.

(a) All appeals to the Court, of whatever nature, shall be noted by the filing of a written petition which shall set forth succinctly the nature of the case, the facts involved, and the question or questions to be reviewed by the Court. The opposing party shall make such response as the Court may by rule prescribe.

(b) The Court shall have power, subject to provisions of this Act, to adopt such reasonable rules of procedure relating to pleadings, notices, hearings, and arguments as it may deem proper.

(c) Proceedings before the Court shall be *de novo* and shall be conducted in a manner similar to proceedings in courts of equity in this State.

(d) Any person appearing and acting for himself, or for a corporation of which he is an officer, or any person designated as his agent shall be authorized to practice before the Court.

(e) Upon receipt of a petition of appeal, the Clerk shall forthwith issue a summons and *subpoena duces tecum* to the assessing or taxing authority or other agency appealed from, requiring it to produce at the hearing the record of proceedings, as well as all maps, plats, documents, and other papers connected with the record, and the record or a copy thereof properly certified by the assessing or taxing authority or other agency appealed from shall be evidenced before the Court at the hearing.

(f) The Court shall have full power to hear, try, and determine any matter before it and may permit or require all explanations, amendments, and additions to be made to any of the proceedings or pleadings, including the petition of appeal, as in its discretion shall be necessary or desirable so that the case may be properly heard and determined. The Court shall not be bound by the technical rules of evidence.

(g) The Court is empowered to assess anew, classify anew, abate, modify, change, or alter any valuation, assessment, classification, tax, or final order appealed from, provided that in the absence of any affirmative evidence to the contrary or of any error apparent on the face of the proceedings, the assessment, classification, or order appealed from shall be affirmed.

(h) The Court shall hear and determine all appeals promptly. In proper cases the Court shall file a written order. Copies of said order shall be certified by the Clerk, under the seal of the Court, to the agency appealed from and to all parties to the appeal. Such order shall be final and conclusive, unless an appeal be taken to the State Supreme Court on a question of law.

(i) In any proceedings before the Court any party in interest may file information in writing with the Court of his address or of the address of his agent or attorney to whom all notices pertaining to said proceeding may be sent, and thereafter a copy of any order of the Court in said matter shall be delivered to said party or his agent or attorney, or mailed, postage prepaid, to the address aforesaid; but nothing herein contained shall require any person to file such information in order to appeal, as provided in this Act.

(j) In any proceeding before the Court, any party to such proceedings may submit requests for rulings on points of law, similar to prayers in non-jury cases in courts of law, and the Court shall grant, reject, or modify the same, so far as may be material to its decision.

SECTION 14. TAKING OF TESTIMONY.

(a) Any member of the Court, or any employee of the Court designated in writing for the purpose by the Chief Judge, may administer oaths, and any member of the Court may summon and examine witnesses and require, by subpoena signed by the member, the production of all returns, books, papers, documents, correspondence, and other evidence pertinent to the matter under inquiry, at any designated place of hearing, and may require the taking of a deposition before any person competent to administer oaths, either within or without the state. In the case of a deposition, the testimony shall be reduced to writing by the person taking the deposition or under his direction and shall then be subscribed by the deponent.

(b) Either party may summon witnesses or may require the production of papers in the same manner in which witnesses may be summoned and papers may be required to be produced for the purpose of trials in the courts. Any witness summoned or whose deposition is taken shall receive the same fees and mileage as witnesses in the courts.

SECTION 15. ASSESSMENT RATIO EVIDENCE. At any hearing relative to the assessed valuation of property, assessment ratio findings as determined by the [State Tax Agency] shall be admissible.

SECTION 16. SMALL CLAIMS OR INFORMAL PROCEDURE.

(a) The owner of any taxable property with an estimated current market value of less than [fifty thousand] dollars may elect, upon payment of a $2,00 filing fee, to appeal his tax assessment under the small claim procedure. Such procedure, to the extent that the Court may consider practicable, shall eliminate formal rules of evidence, pleadings practice, and with the exception of the filing fee, may eliminate any or all fees and costs, or may provide that costs shall be in the discretion of the Court.

(b) The appellant shall file a written statement of the facts in the case, together with a waiver of the right to appeal to the State Supreme Court, except upon questions of law raised by the pleadings. The Clerk of the Court shall then

serve a copy of such statement to the appellee. No further pleadings shall be required under this small claims procedure if the appellee intends to offer no other defense than that the property was not overassessed.

(c) The Chief Justice shall provide for a speedy hearing of all appeals to be heard under this informal procedure and he shall make every effort to reduce the expense of hearing cases by directing whenever possible, that petitions for abatement of taxes assessed upon property situated in the same general locality, be heard together, regardless of the identity of the appellants. The appellant may appear on his own behalf or may be represented by legal or other professional counsel. All testimony shall be given under oath.

SECTION 17. EXHAUSTION OF REMEDIES. No appeal to the [State Tax Court] shall be allowed until the party seeking to appeal has exhausted his remedies before the [County Assessor] or other assessing or taxing authority as the case may be.

SECTION 13. SEPARABILITY CLAUSE. [Insert separability clause.]

SECTION 14. EFFECTIVE DATE. [Insert effective date.]

Mr. FRIEDEL. The first witness is our colleague from Minnesota, the Honorable Ancher Nelsen. Mr. Nelsen, we will be glad to hear you at this time.

STATEMENT OF HON. ANCHER NELSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. NELSEN. Mr. Chairman and members of the subcommittee, I introduced H.R. 736, the measure now before the subcommittee, to afford railroads, and all other carriers subject to the Interstate Commerce Act, an additional remedy whereby they might obtain relief from the excessive and discriminatory portion of the property taxes levied in any State; that is, that portion which is attributable to the practice now prevalent of assessing carrier property at a higher proportion of its fair value than that at which other property, subject to the same taxes, is assessed. It is estimated that the amount of excess taxes on account of such discriminatory assessment of railroad property exceeds $100 million annually.

It is true that railroads in Minnesota are not taxed as they are in other States. Our railroads are taxed on a percentage (5 percent) of their gross receipts earned in Minnesota. This method of taxing railroads was adopted over a hundred years ago for the purpose of assisting in their construction and encouraging their continued operation. Briefly, it was done so that the railroads would not be required to pay taxes on their property until they were operating and earning money with which to pay such taxes. Now the financial well-being of our Minnesota railroads continues to be a matter of concern to all who are interested in our State and its future.

There are 8,057 miles of railroad in the State of Minnesota owned by 11 railroads, of which 9 are major class 1 carriers. The tracks of Minnesota's 9 principal lines do not stop at its border but extend into 27 States for 65,000 miles and, through their connections with other lines, reach every part of the United States, Canada, and Mexico served by railroads.

Included in the 27 States served by Minnesota's major lines are 17 States which are charged with practicing substantial discrimination in the matter of railroad assessments. And it is worthwhile to note that among them are three of the four States which border Minnesota.

Naturally, we in Minnesota have a substantial interest in everything that affects the ability of our Minnesota railroads to serve the people of

our State. The undue burden of the discriminatory taxes imposed on our Minnesota lines in these other States affects their Minnesota operations proportionately, because this is an added expense which must be spread over their entire systems. My State has a direct interest, therefore, in having such discriminatory practices eliminated.

It is common knowledge that the railroad industry is having difficulty raising its "head above water" without the added burden of State and local taxes that are demonstrably unreasonable and unjust. I share with you the responsibility of preserving our national transportation systems and, in doing so, to provide them every possible protection against unreasonable and unjust discriminatory action and undue burdens regardless of their source.

Mr. FRIEDEL. Are there any questions? If not, we thank you for your testimony, Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

Mr. FRIEDEL. Our next witness will be Mr. James N. Ogden, vice president and general counsel of the Gulf, Mobile & Ohio Railroad Co., appearing on behalf of the Association of American Railroads.

Mr. WATSON. Mr. Chairman, before Mr. Ogden begins, I notice you said there was a statement by the Attorney General's Office. I wonder if we might have a copy of that statement. If not, if you are aware of its contents, could you state whether or not it expresses an opinion as to the constitutionaliy of this bill?

I am informed by counsel that the Attorney General expresses a question concerning the constitutionality of it as well as the Bureau of the Budget. I think it might perhaps be helpful for the witness to have that information so that he could perhaps touch upon that in his testimony.

Thank you, Mr. Chairman.

Mr. FRIEDEL. You may proceed.

STATEMENT OF JAMES N. OGDEN, VICE PRESIDENT AND GENERAL COUNSEL OF THE GULF, MOBILE & OHIO RAILROAD CO, REPRESENTING THE ASSOCIATION OF AMERICAN RAILROADS

Mr. OGDEN. Mr. Chairman, and gentlemen, my name is James N. Ogden. I am vice president and general counsel of the Gulf, Mobile & Ohio Railroad Co., with headquarters in Mobile, Ala. I am representing the Association of American Railroads, whose members operate 95 percent of all the railroad mileage in the United States, employ 92 percent of all railroad workers, and haul more than 99 percent of this country's railroad line-haul freight and passenger traffic.

I wish to state the views of the railroad industry with respect to H.R. 736 and H.R. 10169 (identical bills) now before you for consideration.

The railroad industry strongly endorses and wholeheartedly supports these two bills. Since the bills are identical except for number and authorship, I will, for convenience, refer only to H.R. 736 in the remainder of my statement. But I wish to express the warm appreciation of our entire industry to Congressman Ancher Nelsen, of Minnesota, the author of H.R. 736, and to former Congressman Robert W. Hemphill, of South Carolina, the author of H.R. 10169, for their contribution toward the preservation of our common carrier system of transportation by offering the legislation here being considered.

The principal purposes of the bill are to declare that a portion of certain tax assessments of common carrier property shall be unlawful as constituting an unreasonable and unjust discrimination against and an undue burden on interstate commerce, and to provide a remedy in the Federal courts for such carriers against the collection of any tax based on such unlawfull assessment.

This unlawful proportion exists only when, and to the extent that, common carrier property is assessed at a greater proportion of its true market value than the proportion at which all other property in the taxing district subject to the same levy is assessed.

Before discussing the bill in detail, I would like first to review the facts and circumstances that cause this bill to be appropriate at this time. The bill deals with all common carriers of persons and property subject to the Interstate Commerce Act[1] but I will confine my remarks mainly to the railroad industry because I am appearing in behalf of that industry and because I believe it suffers most from the burdens which this bill seeks to remove.

Railroads require a great deal of property in order to do business. Right-of-way and rails; locomotives, cars, and other equipment that operate on those rails; and stations, buildings, shops and so forth, all are needed to conduct railroad operations.

At the close of 1963 the railroads in the United States had a total investment before depreciation of over $35 billion extending over and along 214,500 miles of line. This enormous property investment makes railroads prime targets for the tax assessor. Their property is easily identified and located. Cities, schools, counties, and other political subdivisions invariably attempt to include within their boundaries as much railroad property as possible and thus insure a steady income from property taxes.

For the 5 years 1958–62 the total tax payments by all class I railroads in the United States for all State and local purposes ranged from a high of $400 million in 1959 to a low of $364 million in 1962. The fact that over 80 percent of those payments went to satisfy ad valorem tax liens clearly identifies ad valorem taxes as the most important and the most burdensome of all railroad State and local taxes.

The vulnerability of our industry and the desire of State and local governments for revenue have combined to create a great many tax problems, few of which are resolved in favor of the railroads. The most pressing and persistent of these problems relate to railroad assessments.

The principal problem in the matter of railroad assessments is not one of how to value a railroad. In the hundred-year history of railroad taxation, the practice of valuing railroads for tax purposes has reached a substantial degree of refinement. Though not as simple as valuing a one-family dwelling, the method is neither incomprehensible nor even overly complicated. And it should be remembered that no greater effort is required to assess a railroad fairly and reasonably

[1] See app. B.

than is required to assess one unfairly and unreasonably. The real problem is to determine how much of the valuation that has been found should be assessed, which, in turn, depends upon how much of the valuation of other property is assessed. In other words, the problem is how to get the tax assessors in the several States to equalize the railroad's assessment with that of other property in the same taxing district.

True equalization requires that each parcel of property be assessed at a figure which is the same proportion of its full value as the assessment of every other parcel of property in the same taxing district is of its full value.

Railroad assessments are not equalized fairly and reasonably in numerous instances. Many tax assessors simply cannot or will not equalize railroad assessments with the assessments of other property even though both kinds of property are subject to the same tax levy. This is a well-known and widely publicized fact. In the Doyle report [2] it was shown that railroads paid ad valorem taxes in 1957 in 31 specified States by an amount that was excessive, when compared with the taxes on locally assessed property, to the extent of $141 million, or approximately 54 percent of the total railroad ad valorem tax bill in those States.

A second study made for 1961, which showed excessive taxes in 24 specified States amounting to $113 million, or slightly more than 58 percent of the total railroad property tax bill in those States, was the subject of an informative and readable article in the December 9, 1963, issue of the magazine Railway Age.

A third study made for 1962, and reproduced as appendix A, shows excessive ad valorem taxes paid in 24 specified States amounting to $111 million, or slightly more than 58 percent of the total railroad ad valorem tax bill in those States.

In describing the 1957 study, the Doyle report was careful to state that the information had been furnished by the Association of American Railroads, and it added the following significant statement beneath the detailed information for each of the States referred to: [3]

> The resources available to this committee were not such as to be able to conduct an independent survey to affirm or disprove the specific data presented to us. However, research has been sufficiently extensive to establish that relative discrimination, of considerable magnitude, does, in fact, exist against the railroads in the assessment procedures of State and local governments for ad valorem taxation purposes. Therefore, *the data is accepted as confirming the judgment of this study group that State and local assessment procedures do discriminate against the railroads.* [Emphasis added.]

It seems almost self-evident that excessive property taxes resulting from discriminatory equalization of railroad assessments would unduly burden interstate commerce. Railroads are responsible for moving the largest share of our intercity tonnage carried by any one

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[2] "National Transportation Policy," a report prepared by the Special Study Group on Transportation Policies in the United States for the Senate Committee on Interstate and Foreign Commerce, 87th Cong., 1st sess. (preliminary draft, 1961).

[3] "National Transportation Policy," supra note 2, at 487.

mode of transportation (43.1 percent in 1963). Any substantial addition to the railroads' cost of doing business obviously burdens interstate commerce, and where such added cost is a direct result of discriminatory action aimed at the railroad industry, then the burden is clearly an undue burden and interstate commerce should be protected against it.

The estimated $111 million annual additional tax for railroads which results from this discrimination, as shown in appendix A, is clearly substantial in amount. It represents 48.64 percent of all railroad State and local taxes of every kind and description in the 24 States listed in that appendix, and it represents 28.5 percent of all such State and local taxes for the entire railroad industry in the 48 States (Hawaii and Alaska excluded).

While appendix A lists only 24 of the 48 States involved, the tax discrimination which they are shown to practice actually has a much broader reach on the railroad industry. To illustrate, in 1962 the average road mileage operated in transportation service of all class I line-haul railroads in the 48 States was 218,780 miles, and those same carriers employed 70,146 persons and generated 592,862,417,000 revenue ton-miles. In respect of the 24 States listed in appendix A, the total mileage operated by all of class I line-haul railroads having property in any one or more of these 24 States was 209,643 (95.82 percent of the total). The number of employees of those same carriers was 667,106 (95.28 percent of the total); and the revenue ton-miles generated by those same carriers everywhere was 575,104,547,000 (97 percent of the total).

It is clear that legislation forbidding discriminatory taxation of carrier property may appropriately be made a part of the Interstate Commerce Act.

The undue burden on interstate commerce flowing from discriminatory tax assessments is comparable to the undue burden on interstate commerce resulting from discriminatory action of State authorities in their failure or refusal to act reasonably in the matter of rail rates and services.

H.R. 736 follows the language of section 13(4) of the Interstate Commerce Act in declaring that the proscribed action by any State or subdivision or agency (in taxing common carrier property on a basis higher than that at which other property in the same taxing district is taxed) "is hereby declared to constitute an unreasonable and unjust discrimination against and undue burden upon interstate commerce and is hereby forbidden and declared to be unlawful."

The fact that section 13(4) deals with one type of discrimination or burden and H.R. 736 with another is immaterial, because they are both concerned with "unreasonable and unjust discrimination against and an undue burden upon interstate commerce." In the former, the prohibition is against a State's requiring a carrier to charge intrastate rates so low as to be unfair to or discriminatory against, or to place an undue burden upon, interstate commerce—that is, so low as not

to contribute their fair share to the revenues required by the carrier properly to perform its interstate operations. In H.R. 736, the prohibition (simply stated) is against the action of a State or its subdivision in assessing and collecting taxes on carrier property at a higher rate or ratio than on other property in the same taxing district. In each case the act forbidden is unjust discrimination against interstate commerce, that is, against common carriers which are engaged in interstate operations and are subject to the Interstate Commerce Act. In each case the prohibition is against a type of discrimination or burden which would deprive a carrier of revenues needed in the performance of its services in interstate commerce.

The provisions and purposes of section 13a of the Interstate Commerce Act relating to rail services are to the same effect—discriminatory State action which unduly burdens interstate commerce will not be permitted.

To avoid unduly lengthening this statement and at the same time make readily available full information concerning this measure and certain questions that might be asked regarding it, I have prepared and attached as appendix B a memorandum dealing with the scope of H.R. 736 and the nature of the relief provided.

In addition to the material in the attached appendixes, I have obtained and now submit copies of the following documents which should be of interest and assistance to the subcommittee and its staff:

First. The Doyle report; that is, "National Transportation Policy," a report prepared by the special study group on transportation policies in the United States for the Senate Committee on Interstate and Foreign Commerce, 87th Congress, 1st session (preliminary draft, 1961).

Second. U.S. Bureau of the Census, U.S. Census of Governments: 1957, volume V, "Taxable Property Values in the United States."

Third. U.S. Bureau of the Census, Census of Governments: 1962, volume II, "Taxable Property Values."

Fourth. Report of the Advisory Commission on Intergovernmnetal Relations on "The Role of the States in Strengthening the Property Tax," volumes 1 and 2, June 1963.

I have these documents right here and available.

I thank the chairman and the members of the committee for this opportunity to appear before you. If there are any questions which you desire to ask, I shall be happy to try to answer them. If there is any additional information on this subject which you wish us to furnish now or in the future, we will do our very best to oblige you.

In closing, we submit that the duty of the Congress to protect interstate commerce from the undue burden of discriminatory taxes and, by so acting, to preserve our transportation systems in furtherance of the national transportation policy, is clear and compelling.

39-205—64——4

(The attachments to Mr. Ogden's statement follow:)

APPENDIX A

State	1962 railroad ad valorem taxes (1)	All other 1962 State and local railroad taxes (2)	Percent of value at which railroad property assessed in 1961 (3)	Percent of value at which property of others assessed [1] (4)	Estimated reduction in railroad ad valorem taxes if railroad assessments had been made at the same percent of value as were the assessments of property of others (5)	Percent of tax excessive
Alabama	$2,972,994	$2,152,513	40	20.2	$1,471,632	49.50
Arizona	8,508,321	324,214	89	14.2	7,150,393	84.04
California	24,457,046	4,953,288	[2] 46	17.8	14,992,169	61.30
Idaho	4,407,619	275,041	[2] 45	11.8	3,251,941	73.78
Illinois	34,007,222	8,017,110	[3] 100	46.0	18,363,900	54.00
Iowa	7,155,333	100,776	[2] 60	24.5	4,233,811	59.17
Kansas	12,529,471	618,446	[2] 55	19.0	8,200,539	65.45
Kentucky	5,359,975	595,553	60	27.7	2,885,275	53.83
Louisiana	4,173,331	1,623,704	[2] 40	20.4	2,044,932	49.00
Mississippi	3,068,830	664,404	[2] 35	14.0	1,841,298	60.00
Missouri	9,467,848	899,573	[2] 50	25.8	4,582,438	48.40
Montana	6,906,108	171,233	35	7.4	5,446,157	78.86
Nevada	2,241,215	1,423	35	23.2	755,514	33.71
New Jersey	16,948,285	1,244,378	100	29.1	12,016,334	70.90
New Mexico	2,050,838	275,999	[2] 70	15.7	1,590,835	77.57
North Carolina	2,138,786	2,953,561	[2] 50	32.4	752,853	35.20
North Dakota	5,467,012	139,765	40	19.0	2,870,181	52.50
Oklahoma	6,261,986	377,930	[2] 50	19.3	3,844,859	61.40
South Dakota	1,277,018	37,248	100	42.3	736,839	57.70
Tennessee	6,900,506	2,043,766	[2] 85	28.4	4,595,047	66.59
Utah	4,059,511	376,043	[2] 28	14.5	1,957,090	48.21
Virginia	7,355,454	6,789,650	[2] 40	29.1	2,004,361	27.25
West Virginia	7,829,137	4,215,690	[2] 50	33.7	2,552,299	32.60
Wyoming	3,314,969	40,633	100	20.4	2,638,715	79.60
Total	188,858,815	38,891,941			110,779,412	58.6

[1] Each percent used was the highest of the 4 1961 ratios reported by the Bureau of the Census, U.S. Department of Commerce, in "Census of Governments 1962, Taxable Property Values," vol. II, p. 94, table 13. This minimizes the extent of discrimination.
[2] Or higher.
[3] In 1963 Illinois enacted a law (S.B. 946, approved Aug. 26, 1963) requiring assessment of railroads at same percentage of full value as local property is assessed. However, a number of Illinois lines contested the 1963 assessments, claiming that arbitrarily increased values offset equalization.

APPENDIX B

SCOPE OF H.R. 736; NATURE OF RELIEF PROVIDED

This bill, if enacted, would amend the Interstate Commerce Act by adding thereto a new section, 25a. It would by its own terms apply to the taxation of "property owned or used by any common carrier subject to this act (i.e., the Interstate Commerce Act) engaged in the transportation of persons or property in interstate commerce." Thus it would include the following common carriers, all of whom are subject to the act:

(1) Those engaged in the transportation of passengers or property by railroad (sec. 1(a));

(2) Those engaged in the transportation of oil or other commodity (except water and natural or artificial gas) by pipeline (sec. 1(b));

(3) Those engaged in the transportation of passengers or property by motor vehicle (sec. 202(a));

(4) Those engaged in the transportation of passengers or property by water (sec. 302(d)); and

(5) Freight forwarders (sec. 402(5)).

The five types of carriers just listed are the only common carriers subject to the Interstate Commerce Act. The bill is limited in its application to common carriers, so it would not apply to contract carriers or private carriers of any

type. Freight forwarders are included in the above listing because of the statutory definition of a freight forwarder as any corporation, association, etc. "which holds itself out to the general public as a common carrier to transport or provide transportation of property," etc. (sec. 402(5) of the act).

The bill, section 1, states that certain action by any State or subdivision thereof "is hereby declared to constitute an unreasonable and unjust discrimination against and undue burden upon interstate commerce and is hereby forbidden and declared to be unlawful." The forbidden action is then described in detail, including (*a*) the assessment of common carrier property "at a value which bears a higher ratio to the true market value of such property than the assessed value of all other property in the taxing district subject to the same property tax levy bears to the true market value of all such property;" and (*b*) the collection of any tax on the unlawful portion of such assessment.

As will be noted, the action forbidden is any excess assessment (or collection) of taxes of the type described, whether the excess is great or little, whether the carrier is large or small, and whether it owns much or little property. If taxes should be assessed or collected on the forbidden basis, there would be unjust discrimination against interstate commerce and an undue burden upon it, thus making the practice unlawful and subject to being enjoined. A carrier might not elect to complain in court for every such violation (for instance, where the unlawful portion of the tax is small or inconsiderable) but, regardless of the amount involved, the carrier would have a cause of action under the provisions of the bill. Compare *Looney* v. *Crane Co.* (245 U.S. 177, 62 L. Ed. 230) where the court said (at p. 236):

"It is thus manifest on the face of all of the cases that they in no way sustained the assumption that, because a violation of the Constitution was not a large one, it would be sanctioned, or that a mere opinion as to the degree of wrong which would arise if the Constitution were violated was treated as affording a measure of the duty of enforcing the Constitution."

H.R. 736 would create a new cause of action in the district courts of the United States, available to common carriers subject to the act and complaining of tax discrimination of the type condemned by the bill. It provides in its section (2) that "the district courts of the United States shall have jurisdicion, upon complaint and after hearing, to issue such writs of injunction" or other process to restrain the doing of anything declared by the bill to be unlawful. This jurisdiction would be in addition to the general jurisdiction of the district courts prescribed by 28 U.S.C. 1331 and 1332. Section 1331 vests in the district courts "original jurisdiction" of all civil actions where the matter in controversy exceeds $10,000, and arises under the Constitution or laws of the United States; and section 1332 confers similar jurisdiction where the amount exceeds $10,000 and there is diversity of citizenship.

The question may arise whether a cause of action of the type which would be created by H.R. 736 would be subject also to the requirements of section 1331 or section 1332 as to the amount in controversy and as to diversity of citizenship. The answer is "No." Many Federal statutes have been enacted, creating causes of action which may be instituted independently of and without compliance with sections 1331 and 1332. Examples: Actions by carriers and others to enjoin or set aside orders of the Interstate Commerce Commission, 28 U.S.C. 1336; actions by the Commission to enjoin carriers and others from violating the Interstate Commerce Act, 49 U.S.C. 16(2), 16(12), 20(9), 222(b3, 316(b), 411(e); and, more recently, the various civil rights actions authorized to be brought in the district courts to enforce voting rights, etc., 28 U.S.C. 1343, and the Civil Rights Act of 1964.

The bill would vest jurisdiction in the district courts of the United States "Notwithstanding the provisions of section 1341, title 28, United States Code." Section 1341 provides that the district courts shall not enjoin, suspend or resrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State. The experience of many railroads over a number of years causes them to believe that State courts seldom provide a plain, speedy and efficient remedy in tax discrimination cases and that this is especially evident in the courts of those States where tax discrimination of the forbidden type now exists. The language in the bill is intended to leave no room for argument on this point. It provides, in effect, that section 1341 shall not be considered as a bar to actions of the type authorized to be instituted; that is to say, in actions of this type section 1341 shall have no

application. Such a provision would appear to be necessary in order to afford complaining carriers an unquestioned right to obtain relief.

Mr. FRIEDEL. I want to thank you, Mr. Ogden, for your very fine statement.

Mr. Jarman?

Mr. JARMAN. Mr. Ogden, I have two questions I would like to ask. On page 5 you refer to "many tax assessors simply cannot or will not equalize railroad assessments" and so forth. What do you mean by "cannot"? Do you mean by the law of the particular State they are not in a position to make a fair assessment? How would you elaborate on that?

Mr. OGDEN. That was not what I had in mind, Mr. Jarman. I had in mind that frequently through force of circumstance, through the habitual treatment of the property over the years, the fact that the assessors may be elected officials, that the public revenue of course is involved, it goes against traditional methods that perhaps have been followed for some time. They may feel it would be unpopular. It might hurt them in their chances for reelection. Frequently the railroads, which would be the ones to complain—you see the local people don't complain about low assessments.

They like them. Everybody hopes to have his assessment just as low as possible. Actually we feel the same way about it. Our only problem is that ours is just not as low as everybody else's.

But the local assessor who makes low assesments is popular.

Now the State assessor who fails to equalize the railroad assessment, he is the one of course that is caught, you might say, in the toils of tradition and the way the matter has been handled for so long, and it was that condition that I had in mind more so than any State law.

I know of no State law, Mr. Jarman, anywhere that prohibits the equalization of railroad property with other property, or in fact that prohibits any sort of equalization anywhere.

Mr. JARMAN. The other question I had was with reference to the adequacies of present remedies that the railroads or other carriers might have.

I understand that under the bill before us there would be created a new cause of action in the Federal district courts. How adequate are the present remedies that are available?

Mr. OGDEN. Well, of course as you know, Mr. Jarman, it is still possible to go into the Federal court in a tax case, if there is not a plain, speedy, and efficient remedy at law in the courts of the State.

The current State remedies we feel actually are not speedy and efficient. I dislike to be critical of any State, and left out a good bit that could have been put in the statement.

But I would be glad to give you some "for instances," and assure you that I can multiply the instances by just as many times as you would like to hear them. To illustrate, take the case of the tax problems of the railroads in the State of Arizona, which are immediate and very pressing, and have been the subject of a great deal of attention.

After paying its 1959 taxes, the Southern Pacific started litigation on the clear proposition that its property was assessed at a much higher percentage of value than the property generally in Arizona.

I don't think anybody ever really actually disputed that fact. And finally the case went to the Supreme Court, and the Court very fairly held that the Arizona law did provide relief, that the constitution of Arizona would not permit such discrimination, and that the railroad was entitled to relief. But there were several catches in it. One was the Court refused to make the relief retroactive, so that for the 2 or 3 years that had ensued while the litigation was in progress the railroad would recover nothing.

The Court provided that its decree would only be prospective in its operation, and that no relief could be had unless the railroad first obtained an injunction. When that case came out, the Governor of the State issued a statement, and he said this:

"What the Court has said in effect is that if discrimination does in fact exist"—and here is the important part—"and I think that everyone who has gone into the subject at all will concede that it does," and then he went on with his statement.

He suggested that the legislature should do something about it. Well, the legislature very promptly did do something about it. They first tried to pass a law that would permit the railroads to be assessed at a higher proportion of value than other property. That law failed of passage. Then in 1964, earlier this year, the legislature passed two laws that effectively denied the railroads the fruits of their victory if you could call them fruits. It enacted a law providing that no State injunction could issue in a State tax case.

Well, the Supreme Court had already held that the railroad couldn't recover any taxes and that the only remedy was to obtain an injunction. The second law passed was to the effect that a reappraisal figure on assessments in the State could not be used in a tax case until the entire State had been reappraised, and the legislature had authorized such a reappraisal, and everybody was confident that the reappraisal would be years and years off. And so after litigation that commenced in 1959–60, and extended through legislation in 1964, and a successful decision at the hands of the Supreme Court on the pleadings, the company is no further along toward relief than it was when it started.

These sort of illustrations take time. I can multiply them if the committee would like to have them. But by and large relief of that sort is tedious, expensive, and often utterly fruitless.

Mr. JARMAN. I think that is all the questions I have at this time, but I would like to say that I think you have made an excellent statement.

Mr. OGDEN. Thank you, sir.

Mr. FRIEDEL. Mr. Springer.

Mr. SPRINGER. Mr. Ogden, this statement is a good one and it rather intrigues me. Are you familiar with the *Nashville-Chattanooga-St. Louis Railway* v. *Browning?*

Mr. OGDEN. Yes, sir.

Mr. SPRINGER. You weren't referring to that in any context with Mr. Jarman of Oklahoma were you? You weren't talking about that?

Mr. OGDEN. Well, I could talk about Tennessee. We have property in Tennessee.

Mr. SPRINGER. Let me see if I understand this case right. Now, presumably this was made unlawful for any district to assess property owned or used by a common carrier at a value proportionately higher

to the true market value of its property than the assessed value of all other property in the taxing district proportionate to its true market value.

Now, I wish you would just develop for me if you could just how far the commerce clause can override the State authority to assess and collect ad valorem taxes on your property within that State.

Mr. OGDEN. You mean in the light of *N.C. & St. L.* v. *Browning*?

Mr. SPRINGER. Yes, you have to take that into consideration, because I understand that is the law.

Mr. OGDEN. Let me give you first a word about *N.C. & St. L.* v. *Browning*. As I say, I know a little something about it because our railroad operates through Tennessee, and we have our Tennessee assessments and have to keep up with those things. But in *Browning*, the railroad attacked the assessment which it claimed was excessive, on two grounds.

One ground was that the allocation of value to the State, because the N.C. & St. L. was not wholly within Tennessee, it lay within and without, that the allocation fraction or method of allocation employed by Tennessee was not proper, and it was in respect of the allocation fraction that the commerce clause was brought into play.

The popular concept of the commerce clause in tax cases of railroads in those days was that if the allocation fraction was not fair and reasonable, the effect of it was to import into the State values which were not actually there, and thus burden the Interstate Commerce or the commerce that was over in another State. In fact that was not only the favorite appeal to the commerce clause, it was the only appeal. Well, the Supreme Court in *Browning* held that the State's allocation, use of the allocation formula was not, generally speaking unfair. So there fell the commerce clause argument. But in that regard, Mr. Springer, I feel that actually *Browning* supports the constitutionality of this particular measure because Mr. Frankfurter was very careful to point out that had he found that the use of this allocation formula would have the effect of burdening interstate commerce, then he would have stricken it down. He just found that it didn't, and the courts have found that it didn't.

Now, the other ground of appeal on the part of the railroad had to do with a professed failure to assess the railroad property at the same level as other property as being assessed.

Mr. SPRINGER. That was the second point.

Mr. OGDEN. Yes, that was the second point. Now that point was actually decided against the railroad in the court below. The court below held that the railroad failed to prove it. But Mr. Frankfurter said that even if the railroad had proved it, that it would give them no comfort because, he said, and this has nothing to do with the commerce clause, he said the equal protection clause of the 14th amendment doesn't extend any protection in a situation of this kind.

Now again, gentlemen, at that time the popular concept of what to do in case of a failure to equalize when resort was not being had to the State constitution itself, was to claim the equal protection clause as your haven and refuge.

I don't know of a case where the commerce clause and the undue burden, the theory of an undue burden growing out of discriminatory action aimed at interstate commerce, has been claimed in a failure to equalize case.

If there has been one, I don't know of it.

Mr. SPRINGER. In other words, there is at the present time no decisions upon this question of failure to equalize based upon the commerce clause; is that true?

Mr. OGDEN. That is right, as far as I know.

Mr. SPRINGER. Let me read these words to you, and then I will ask a question. This is what Justice Frankfurter said:

> The States may classify property for taxation, may set up different modes of assessment, valuation, and collection, may tax some kinds of property at higher rates than others, and in making all these differentials between railroads and other utilities with that separateness which are distinctive characteristics and functions, these are among the commonplaces of taxation and of constitutionality. So far as the Federal Constitution is concerned, a State can put railroad property into one pigeonhole and other property into another.

Now there are two things I am trying to get out by this examination. First of all, can they do this without a State law? This is my first question. He hasn't said here whether or not the State law of Tennessee allowed them to do that or not, but I take it since the State Board of Equalization of Tennessee has charge of public utilities—isn't that true?

Mr. OGDEN. Yes, sir.

The State railroad and public utilities commission in that State and the——

Mr. SPRINGER. Now specifically in Tennessee, the local assessor lays the local tax assessment, doesn't it?

Mr. OGDEN. Yes, sir.

Mr. SPRINGER. In the State of Tennessee the State——

Mr. OGDEN. Railroad and public utilities.

Mr. SPRINGER. Railroad and public utilities sets that assessment; is that right?

Mr. OGDEN. Yes.

Mr. SPRINGER. Now Justice Frankfurter didn't say in this decision as to whether or not that they were allowed under the Tennessee law to set this. Now this is one question whether or not they were allowed by the law to do it or whether they just started out and did it on their own. Do you see what I mean?

Mr. OGDEN. Yes, sir.

Mr. SPRINGER. Now he has said here that the State can do it. I presume that what he is saying here is that they can do it by law. But as I understand it from what he has said here, he hasn't said, and I don't know whether or not, that under the Tennessee law they can do this. Now he has said here that Tennessee wants to do it by law, there isn't any question, they can put public utilities in one pigeon hole at one rate and they can put bank accounts, and which many States do at one-quarter of 1 percent, they tax everybody else at 4.5 percent as you well know, so apparently this is constitutional. The question in my mind is this: Are you saying that they can't do this by law, or shouldn't be doing it by law, or they shouldn't be doing it by law or otherwise and you are asking for this relief?

Mr. OGDEN. Let me see if I can answer, Mr. Springer, like this: As I understand this situation, on the point as to what Tennessee could do, Mr. Frankfurter was saying the constitution of Tennessee, unlike the constitution of Illinois, for instance, would permit classification of property. Of course as an Illinois lawyer you know all about the constitution.

Mr. SPRINGER. I know that law backward and forward.

Mr. OGDEN. Yes, sir; but Tennessee law differs from Illinois law in that regard because the constitution permits classification.

Now the statutes in Tennessee actually do not provide for classification. Mr. Frankfurter in effect held or said that the action of these assessors down through the years virtually amounted to classification, and he treated it as if the legislature had met, passed a law and said they had implemented the constitutional provision which would have permitted classification. That is the way I understand the decision.

Mr. SPRINGER. That is an effect that is almost statutory in nature by the fact that it has existed over a long period of time.

Mr. OGDEN. And the State constitution permits it, you see, permits classification. And of course many others don't. But it does in Tennessee. So he in effect held that that amounted to the same thing as if the legislature had passed a law on the subject.

Mr. SPRINGER. Now let me ask you two or three more questions.

By this legislation are you seeking in those States which have no statutes at all with reference to classification to prevent a State from either classifying or putting you in a different category?

Mr. OGDEN. Can I answer that provisionally. I am saying yes, if it would mean that in the property tax field, and where all property is subject to the same rates, that property devoted to interstate commerce would be required to pay a greater portion based on a higher assessment relatively than others; yes, sir.

Mr. SPRINGER. Now that is one where there is no State statute?

Mr. OGDEN. Yes; that is right.

Mr. SPRINGER. Now does this apply, this legislation you have suggested, does it apply also to those States which set up different classifications by statute and they put public utilities in one class and one assessment, one rate, and they put other property and other property and other property in different classifications?

Mr. OGDEN. Excuse me, Mr. Springer, but the answer there would be no, because you put in the word "rate."

Mr. SPRINGER. I beg your pardon.

Mr. OGDEN. You put in the word "rate."

Mr. SPRINGER. Let's take out rate and put in assessment?

Mr. OGDEN. Because you see it is so important to keep rate out of it.

Mr. SPRINGER. I understand. We are talking just about assessment.

Mr. OGDEN. That is right, but rate has to be in to the point that it is subject to the same rates, you see. Everything is equal except the assessment.

Mr. SPRINGER. All right. Now are you saying then that they could not assess—what you are advocating, even if the State statute says "we will assess railroads at 100 percent, we will assess local property at 46 percent," now are you saying by this legislation that that is going to supersede the local statute?

Mr. OGDEN. That is right.

Mr. SPRINGER. You are asking for relief both in those States where there is no statute and you are asking for relief also in those States where there is a statute.

Mr. OGDEN. That is right.

Mr. SPRINGER. Classifying we will say different assessment rates, or different rates of assessments, that is a better way to put it.

Mr. OGDEN. Yes, sir.

Mr. SPRINGER. So you are asking relief from both of those instances. Now I take it then that you are in effect asking for us to overrule the Frankfurter decision, because I take it the Frankfurter decision is the law at the present time. Do you agree on that, Mr. Ogden?

Mr. OGDEN. Well now, I would have to again qualify that answer, and I don't mean to be evasive, Mr. Springer.

Mr. SPRINGER. I understand.

Mr. OGDEN. Honestly, the point that is the basis for this suggested measure as I understand it actually was never passed on, never even presented in the *N.C. & St. L.* case. How the Court would have treated it I don't know of course.

It was not presented. It was not passed on. What the Court did say there would indicate that had it been presented, the Court would have held just as this suggested measure points up, because the Court was very careful to say, or to indicate at least, that an undue burden on interstate commerce under the commerce clause would not be permitted even if it grew out of the State assessment.

Now as far as overruling, for that reason I would have to say that in a sense the purpose of this as I conceive it would not be to overrule the *N.C. & St. L.* v. *Browning*, but it would be to provide relief in Tennessee and in any other State like it where property used in interstate commerce is singled out for discriminatory action in assessing it higher than other property, and this is the important thing, subject to the same tax rates and in the same taxing district.

Mr. SPRINGER. All right. Now you believe than that this legislation would be constitutional?

Mr. OGDEN. I do.

Mr. SPRINGER. In overruling. Well we will say this——

Mr. OGDEN. It isn't really overruling.

Mr. SPRINGER. In substituting itself we will say for a State statute. That is what I am thinking of. In other words, you believe this is within the commerce clause.

Mr. OGDEN. I don't think there is any question about it, Mr. Springer.

Mr. SPRINGER. In other words, you think if this went up to the Supreme Court, that you could justify your position to such an extent that you could make this law stand up?

Mr. OGDEN. Oh yes.

Mr. SPRINGER. You don't think there is any doubt about it?

Mr. OGDEN. I have no doubt.

Mr. FRIEDEL. I would like to ask one question.

Mr. SPRINGER. All right.

Mr. FRIEDEL. Speaking about true market in the bill.

Mr. OGDEN. Yes sir.

Mr. FRIEDEL. I am wondering what would happen in Baltimore, Md., where the B. & O. is exempt from taxation. Would the enactment of this bill rule out the exemption clause in Maryland?

Mr. OGDEN. I don't see how it would. Mr. Friedel, as I read the bill, it is a very narrowly drawn bill, and it only applies where all the property involved is subject to assessment, and you say that the railroad is exempt, so I presume that it couldn't possibly be involved, and it only applies again where they are all subject to the same rates. I must confess I don't know too much about the Maryland tax situation, but if I may, Mr. Friedel, I would have to say this: Keep in mind, gentlemen,

that this is sort of a situation that you might, to borrow an old phrase, if the shoe fits you can wear it.

If it doesn't you don't have to wear it. It merely goes to what is denominated as discriminatory action, and it merely goes to the excess. It doesn't go to the whole assessment.

It just goes to the difference that is brought about by singling out interstate commerce for an added burden.

In a State where it doesn't apply, why we are all happy. I assure you the railroads would be happy, and we would be happy if we never used it any time anywhere. It is just a remedy, in other words.

Mr. FRIEDEL. Would the passage of this bill make the B. & O. pay the true value on their railroad property, from which they are now exempt?

Mr. OGDEN. I assume that they are paying—if they are escaping anything they are the first railroad that ever has that I know of. But it doesn't change anybody's assessment practices. It doesn't change any assessment law. It doesn't change anything that any State wants to do. It merely says that if in the doing of it you single out interstate commerce for discriminatory action and add a burden to it, that you are not adding to anybody else in the same category, that is the category being subject to the same tax rate, then as to the excess, if the railroad can prove it, and they have to prove it in a hearing before the court, then they can issue an injunction against the excess.

Mr. WATSON. Will the chairman yield?

Mr. FRIEDEL. I yield.

Mr. WATSON. As I understand the chairman's question and the bill—and I don't believe personally that the bill would affect your particular situation, it would only prohibit discriminatory or overassessments against a railroad.

As I understand it, there is no tax on the railroad, and I am sure the railroad wouldn't object to that.

Mr. OGDEN. Of course not.

Mr. WATSON. I don't think it is directed toward underassessments but toward overassessments so far as the case is concerned.

This bill goes to the matter of assessment. I think it is a good bill, and fortunately South Carolina is not listed as one of those States which apparently practices discrimination.

Mr. FRIEDEL. And neither is Maryland.

Mr. MACDONALD. In what field?

Mr. WATSON. In a good many fields, and I might say in that regard I am surprised that the Supreme Court refused to let the *Browning* case come under the purview of the equal protection of the 14th amendment, because they allow everything else to come underneath it, and that is the first thing they have excluded from it. You might mention it again. When was the *Browning* case brought, in 1947 or 1948?

Mr. OGDEN. 1940.

Mr. WATSON. Well, they have a new philosophy over there now. If you bring the suit again you probably would get some relief. But this bill goes to the matter of discrimination in assessment.

Mr. OGDEN. Yes, sir.

Mr. WATSON. What is going to happen when you have the equal assessments according to the true value of the property, but the State

or the subdivision places the common carriers in a different tax bracket? Now this bill will not preclude such a maneuver as that.

Mr. OGDEN. No.

Mr. WATSON. And actually you are still in the soup again, aren't you?

Mr. OGDEN. If that could be done—Mr. Watson, I never heard of a situation like that.

Mr. WATSON. That they would place the common carriers in a different tax bracket?

Mr. OGDEN. Not bracket. You mean subject to a different tax rate.

Mr. WATSON. A different tax rate.

Mr. OGDEN. I have never experienced that. It may exist somewhere but it has never been brought to my attention.

Mr. WATSON. Let me ask you this. What is the method of assessing and apportioning the personal property of the railroads, the moving stock?

Mr. OGDEN. As a general rule the railroad is valued as a unit. That takes into account the rolling stock and everything. Criteria of value are used that would have the effect of valuing the whole property, franchise, rolling stock, money, everything that it has, and this is the so-called unit rule of valuation. The illustrations that are used here are only employed in States where the unit valuation is available, because actually there are some States, particularly in the Northeast, where I have heard some people grumble, but without the unit rule of assessment it is virtually impossible to make the kind of comparison that has to be made in order to find this discrimination. In the States in which I have any experience, through the Midwest and South, all use the unit rule of assessment.

Most of the States do have a unit rule of assessment that includes all railroad property.

Mr. WATSON. How do you determine the unit rule? The moving stock is constantly going from one State to another. Now how do you assess its valuation, and how do you apportion it among the various States?

Mr. OGDEN. When it is assessed on a unit rule, Mr. Watson, the whole property is valued; that is, the whole railroad is valued, you might say, as a going concern. The State that is doing the valuing determines through reference to the mileage in the State and the business that is transacted in the State and from a variety of other factors that, let us say, 25 percent of the total value of $10 million that they have decided the whole railroad is worth, is located in that State.

Then they spread the $2.5 million over the owned property in the State, and that has the effect of taxing the rolling stock and everything else in that State. There are some variations. Illinois is a variant in order to put some rolling stock valuation on trackage rights, but essentially that is the way it is gone about.

Mr. WATSON. You have not actually experienced any difficulty in the various States on the assessment of your personal property or rolling stock?

Mr. OGDEN. No, sir; not now Mr. Watson. States have been doing this railroad assessment for a hundred years, and they have a lot of

problems, but most of that type problem is pretty well ironed out. Every now and then a new one comes up.

Mr. WATSON. I want to say that certainly so far as I am concerned, I want to do what I can to take Mr. Hemphill's place in pushing this legislation. I think it is only fair.

However, I might comment, and I am sure that you are aware of it, that this matter of assessment is one of the knottiest, most difficult problems that you have. We are trying to get through a statewide assessment in South Carolina now.

We have already completed the countywide assessment, and it is difficult even on a small division such as a county in getting a true, proper, nonprejudicial assessment. Certainly I can appreciate the problems of the railroad in this regard, and I am delighted to see that South Carolina, while it might be accused, and unjustly so, of discrimination in some areas, has been excused of the charge of discrimination in regard to the assessment against railroads.

Mr. OGDEN. Thank you, sir.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. I have no questions.

Mr. FRIEDEL. Mr. Macdonald?

Mr. MACDONALD. Sir, you are obviously an expert in this field and it seems fairly technical so my question may be rather basic. However, I am trying to find out the purpose of the bill. You say on page 8 of your statement that legislation forbidding discriminatory taxation of carrier property may be appropriately made a part of the Interstate Commerce Act.

Obviously I have no quarrel with that. I think that is true. But that takes into the statement the fact that discrimination is practiced by States. Is that a fact?

Mr. OGDEN. Yes, sir.

Mr. MACDONALD. These States that practice discrimination in taxation, don't they have public utility boards, statewide?

Mr. OGDEN. Yes, sir. That is who does it.

Mr. MACDONALD. What prevents you from appealing to the public utility board?

Mr. OGDEN. We do, but that is where you get into long-drawn-out litigation, and you are fighting with the man before whom you have to go and have your property assessed next year.

Mr. MACDONALD. In other words, I take it this is an antistates rights bill, is that correct?

Mr. OGDEN. No sir; I wouldn't say that at all. It certainly doesn't extend states rights any, but I would say it is this kind of a bill. It is a bill that has Congress to exert its power and influence in the area that is reserved to it.

Mr. MACDONALD. Isn't this making me, as a Member of Congress, from Massachusetts, pass on whether or not Georgia or Alabama has overstepped their states rights and say that that right should not be preserved to the States, even though it is within the geographical boundary of the State, that it should come back up here to this big powerful National Federal Government and tell that poor little State what they can do and what they can't do in the field of taxation?

Mr. OGDEN. Well, no sir, I don't think so. I don't think that anybody should apologize for calling to a State's attention the fact that

they are singling out anybody for discriminatory treatment in the field of taxation.

Mr. MACDONALD. There has been a lot of people from your section of the country who have been arguing just the opposite for quite some months and years. I was wondering what caused the change.

I am glad to see Mr. Watson espousing this legislation now, but I heard him very forcefully and very talentedly defend the rights of South Carolina to make whatever proper laws they want within the State of South Carolina.

Mr. WATSON. If the gentleman will yield.

Mr. MACDONALD. I will be happy to yield.

Mr. WATSON. At that particular point my argument directed toward that end was against an alleged bill which would violate everyone's rights. Certainly, so far as this particular measure is concerned, the man has figures here, and he has outlined 24 States in which the excessive discriminatory assessment against the railroads ranges anywhere from 27 percent up to 84 percent. So there is no question about the alleged act of discrimination so far as this matter is concerned.

Mr. MACDONALD. I am sure that no witness comes in here with a set of figures that does his cause any damage, and, therefore, I assume that these figures are correct. But I have seen other figures in other fields in which the arguments were made that what belongs within a State belongs to that State, and that the powerful Federal Government and the allegedly socialistic Supreme Court should certainly keep their hands out of the States. I feel that if that is true in some areas, I suppose it should be true even with railroads. However, I do see, if the statements that are here contained are true, something should be done, and if you say it has been going on 100 years, I think you have said they have been making these unfair assessments against you——

Mr. OGDEN. Excuse me, Mr. Macdonald, if I said that I didn't mean to imply it. I said that railroads have been assessed for 100 years.

In other words, railroads have been in this country about a hundred years and we have had property taxes. I don't know that this type of discrimination has been going on that long. It has been going along for a pretty good while.

Mr. MACDONALD. Is this the first time such a bill has been introduced?

Mr. OGDEN. So far as I know. At the last session there was a bill similar to this by the same gentleman who introduced it in the last Congress.

Mr. MACDONALD. In closing out, my knowledge of railroads is fairly limited, but I do know two railroads that have got unique solutions, by not paying any taxes. You don't suggest that the railroads shouldn't pay any taxes, do you?

Mr. OGDEN. Oh, no sir. I would like to add on to that. We take it as a privilege as far as our company is concerned and all others that I know anything about to pay taxes. We insist that we are good citizens everywhere we operate, and we never stand back from anybody on paying taxes. We think it is our duty to do it and our privilege to do it. But I do object to paying too much and more than the other fellow.

Mr. MACDONALD. Right, sir. I don't blame you in that respect. I would just point out that in New England, the New York, New Haven

& Hartford when called on to pay these taxes told the city of Boston and told the State of Massachusetts including, I suppose, the legislature of that State, that they weren't going to pay their taxes that had been assessed against them, and if the city of Boston wanted to do something about it or the State legislature, the city of Boston could take over this property, and the State legislature could run its railroad. That seemed to me to be a pretty unique way of settling the tax problem.

I might say parenthetically that it is still running and they still haven't paid their taxes.

So I suggest that perhaps that is a way out for you.

Mr. OGDEN. That is a way out I would not like to take, Mr. Macdonald. They had to go into bankruptcy to do that.

Mr. MACDONALD. Well, the Boston & Maine have closed down practically all its passenger service and told the various localities in which it has real property in that they weren't going to pay any more taxes and if the localities didn't like it they could also take over the property.

Mr. OGDEN. I expect it is the old saying. You can't get blood out of a turnip. If they don't have money they can't pay.

Mr. MACDONALD. I see they weren't listed on your list here and therefore apparently their financial troubles didn't stem from the fact that they were being overly assessed.

Mr. OGDEN. That could just be one of many perhaps. We don't claim that every railroad here holds back taxes at all.

Mr. SPRINGER. Would the gentleman yield at that point?

Mr. MACDONALD. I will be happy to yield.

Mr. SPRINGER. Just to follow up what the gentleman from Massachusetts has said, I take it, Mr. Ogden, that you would be satisfied if we made a staff study to determine whether or not these rates are as they have been purported with justice on your side?

Mr. OGDEN. Mr. Springer, it would seem to me that a staff study would be very appropriate in a situation such as this. There are a lot of facets and factors to this problem. If you will pardon me, I came up here with two brief cases with just a few of the things that I thought might be gone into. There is just a whole lot to it. I would think that you would perhaps want that, and we would love to——

Mr. SPRINGER. Do you believe that this would have a very wide effect? I can't think of a law that would have any broader effect than the one you propose here, because almost every taxing body is going to take issue to it. I am just anticipating what we in politics would run into. Whenever you start something like this, unless you have got your facts pretty well grounded, and which you can substantiate in public the justification, if we attempt to put this kind of a law into effect, we certainly ought to be backed up not just with facts and figures which you, the taxing bodies or anybody else bring out, but I think we ought to have some fact on our own upon which this committee could rely.

Mr. OGDEN. I couldn't agree with you more, Mr. Springer, and we would be glad to help and assist in any way that we possibly could.

Mr. SPRINGER. I just want to say for the benefit of the committee that I know this railroad. I rode it from Chicago into my district.

It is a fine citizen in Illinois. They pay their taxes without any rhubarb and they are a fine railroad and we are glad to have them in Illinois.

Thank you.

Mr. OGDEN. Thank you, sir.

Mr. MACDONALD. I would just like to clear up in my own mind, sir, what the present status of the tax situation is. You say that you have to appeal to the very people who have already assessed you, is that correct, the public utility commission, for example, of Massachusetts?

Mr. OGDEN. That is correct.

Mr. MACDONALD. And after you—if you dislike their decision you have to take an appeal to them. Is there no appeal to the State court?

Mr. OGDEN. Oh, yes sir. In different States they have different methods of going about it, but therein lies the long drawn out expensive procedures that we find ourselves in, and it is sometimes utterly impossible to go anywhere.

Mr. MACDONALD. Would you feel that the State supreme court is less accessible?

Mr. OGDEN. That what, sir?

Mr. MACDONALD. Do you believe that the State supreme court, the appeal court of whatever State that you are taking the matter of overtaxation to, is more accessible than the Supreme Court of the United States, that their dockets are not as crowded as the Supreme Court of the United States?

Mr. OGDEN. Well, I don't know about the dockets in all of the courts of the 48 States, but I would say this. That it is pretty hard to get into some of those State courts. For instance, we were talking a little earlier about Tennessee.

The situation is utterly impossible in Tennessee. The only statutory method of going about it in Tennessee is not to take exception to your own assessment, but every taxpayer has a right to take exception to everybody else's assessment. Well, can you imagine a railroad in Tennessee taking exception to every assessment of every individual in the State? It just won't work.

You can't do it. That is the so-called remedy, but it is one that is just unthinkable.

Mr. SPRINGER. Would the gentleman yield for just an observation.

Mr. MACDONALD. Yes.

Mr. SPRINGER. To give you an idea, I formerly sat as a judge. One of my jobs was to hear these. In Illinois by statute it goes to the county court automatically if there is an objection filed. Well, we have 27 railroads of different types in our county. We used to hear those for 6 weeks at a time. That means that they had to go into 102 counties in the State of Illinois and have hearings in every single county where they were assessed.

It raises sort of a jungle. Each one of those you want to go to the appellate court you have to take one from each county. There is no such thing as joint or anything like that. If they object in say 20 counties, they find that the judge hasn't dealt them justice, they have to go on with 26 appeals to the appellate supreme court depending on what the gist of their appeal is.

And I think this is true in most States. In the State of Tennessee it is different because the assessment for railroads by public utilities is set by State board. This is a little unusual.

I think Massachusetts has the same thing. Out in the West very few do. Texas does I think. This is one of the problems that they have in taking appeals that it is supremely costly.

Mr. OGDEN. That is right.

Mr. MACDONALD. Thank you very much, sir. I appreciate your testimony. It is a very well thought out one, and I am delighted to hear some of you from south of the Mason-Dixon line who really want to come to Washington and have us be helpful to you within those States as a Federal court and Federal Government.

Mr. FRIEDEL. Mr. Ogden, are you aware of the special subcommittee of the Judiciary Committee, on special taxation for all States, trying to make taxes uniform? Are you familiar with that?

Mr. OGDEN. Is that the committee that recently come out with a report on income tax and sales tax allocation?

Mr. FRIEDEL. Taxation overall, sales tax, excise tax, assessments.

Mr. OGDEN. Yes, sir; I am familiar with it to some extent.

Mr. FRIEDEL. Did you ever appear before that committee?

Mr. OGDEN. No, sir.

Mr. FRIEDEL. To bring up this question?

Mr. OGDEN. The committee does not deal at all with this problem. That has never been dealt with by the committee in any way at all that I know of. In fact I have been told that it was specifically omitted. If it has, it has just escaped my notice.

Mr. FRIEDEL. Mr. Ogden, I want to thank you for your very straightforward statement and answers to questions. Many questions have been raised in this hearing this morning that I will take under advisement.

A staff study will be made between now and the convening of the next session of the Congress. I know that is in line with Mr. Springer's remarks and your line of thinking.

Mr. OGDEN. Yes, sir.

Mr. JARMAN. Mr. Chairman, in that connection I would like to go on record, and in line with your comments, and Mr. Springer's comments as to a staff study. We are just beginning these hearings on a tremendously important question. We know that we are in the final weeks of the congressional session this year, and I would like to say personally as a member of the committee that I would be very strongly in favor of a staff study of this question, pointing toward possible legislative action in the next session of Congress.

Mr. FRIEDEL. We will discuss that. I want to thank you very, very much.

Mr. OGDEN. Thank you.

Mr. WATSON. Mr. Chairman, if I might ask one question as to your interpretation of this bill. Earlier in our discussion you referred to the railroads being assessed on a unit basis. Is it your understanding that this bill would apply to both assessments on unit basis as well as the assessments of individual pieces of property?

Mr. OGDEN. It would apply—yes sir, it would perhaps make the proof a little more difficult. In fact the proof might become impossible.

Mr. WATSON. That was the question.

Mr. OGDEN. It is a question of the difficulty of proof. The unit method makes the proof more clearcut. But there again, Mr. Watson, that would be the carriers problem. If you couldn't prove your case, the bill can't perform the impossible. It merely provides a means. And if the carriers are unable to take advantage of it, they are incapable of mustering proof, they have nothing. They are not entitled to anything that they can't prove.

Mr. WATSON. Thank you, sir.

Mr. FRIEDEL. Thank you very much, Mr. Ogden. Our next witness is Mr. Robert E. Redding, vice president and general counsel of the Transportation Association of America.

Mr. Redding?

STATEMENT OF ROBERT E. REDDING, VICE PRESIDENT AND GENERAL COUNSEL OF THE TRANSPORTATION ASSOCIATION OF AMERICA

Mr. REDDING. Good morning, Mr. Chairman and members of the subcommittee. My name is Robert E. Redding. I am vice president and general counsel of the Transportation Association of America, with general offices located in Washington, D.C. This statement is submitted on behalf of the Transportation Association of America to express its policy position in support of H.R. 736 and H.R. 10169 respecting tax assessments of common carrier property.

Mr. Chairman, I would like to depart from my written statement simply to say that I hope you would receive it into the record together with the attachments that are with it.

Mr. FRIEDEL. The statement and its attachments will be included in the record.

Mr. REDDING. Thank you, sir. It doesn't seem to me necessary to read all the way through the statement, but simply to explain to the members of the subcommittee this morning that our purpose in being here is to indicate the interest of the membership of the TAA in the pending bills. The modes of transportation and the investors and the users are concerned about this problem. My association in 1961 adopted a policy position supporting legislation on this subject. It is obvious that Mr. Ogden is the acknowledged expert in this field, and I am certainly very glad to associate myself and my association with what he has had to say.

The first basic part of my statement, of course, is a description of TAA and its activities. The subject that is before the subcommittee this morning was considered by our board of directors and all of our panels. By the way, it was endorsed by all eight of our panels, all of the modes of transportation being represented, and we have attached to the statement a list of the current members of our board of directors.

The second basic part of my statement summarizes the background of how we took our policy position. It stemmed from the decision in the Doyle study report and the concern of the railroad industry about it.

On page 3 of my statement I have referred to the various pages in the Doyle report which discuss this subject, particularly the showing that in 1957 the overpayment of railroad ad valorem taxes re-

sulting from discriminatory assessments was in excess of some $140 million.

In view of your questioning of Mr. Ogden, I would like to draw your attention to a few of the comments quoted on page 4 of my statement. The Doyle report did touch on the problem of the taxation of rights of way of railroads and pipelines, and this is indicative of the interest taken by the oil pipeline industry in this legislation, and I might also say that other modes of transportation have expressed interest in this problem, including the water-carrier industry. I am not able to furnish the subcommittee this morning any facts and figures about the other modes, but I am confident that they can be elicited if a staff study is undertaken.

Mr. WATSON. Mr. Chairman, if I may interrupt at this point?

Mr. REDDING. Yes, sir.

Mr. WATSON. Usually before I read a book I like to know something about the author. Perhaps the committee is familiar with Doyle, but I am totally unfamiliar. Who is he and upon what basis did he make this study, just briefly?

Mr. REDDING. Mr. Watson, I have in my hand a copy of the so-called Doyle report. Mr. Doyle is a gentleman who was given the responsibility by the Senate Committee on Interstate and Foreign Commerce to undertake a rather extensive analysis of the transportation policy problems in the United States back in 1960.

Mr. WATSON. Mr. Doyle is not an industry representative, but he was selected by the Senate subcommittee?

Mr. REDDING. Correct, sir.

Mr. WATSON. To make this study?

Mr. REDDING. Yes. He brought together a very special study staff that worked on a number of the problems in transportation, and then in January of 1961 produced a report on "National Transportation Policy" which contains, at the pages to which I refer a discussion of the problems of discriminatory assessments. It was really the discussion in this report which triggered the efforts of our association to study the problem as it affected all modes of transportation.

Mr. WATSON. Thank you, sir.

Mr. REDDING. Certainly.

Mr. SPRINGER. May I ask just this one question. Did that study show that this so-called discrimination existed as to other modes of transportation, say to trucks, buses, airplanes?

Mr. REDDING. It did not, Mr. Springer.

Mr. SPRINGER. Only railroads?

Mr. REDDING. The special study group specifically requested the railroad industry, and particularly the Association of American Railroads, to submit a report on this problem which had come informally to the attention of this special study group, and this was done. It was on the basis of that particular report that the study group based its findings.

There was discussion in the report of pipeline rights-of-way problems and a consideration of the possibility of exempting such rights-of-way from taxation. But the study group went further to include findings in its statement, some of which are quoted, indicating the judgment that State and local assessment practices did discriminate against the railroads, but nothing specifically on the other modes.

I would like to refer you very briefly to the following quotation at the bottom of page 4 from that study report, as it pertains to State law:

> This proposed antidiscrimination tax bill, which could be available to all common carriers engaged in interstate commerce, has the obvious merit of insuring that such carriers would receive equal treatment with other taxpayers subject to the same tax rates in accordance with applicable State law. The proposal in no way alters the freedom of the State to tax its taxpayers as in its discretion it deems best, so long as such carriers are accorded equal tax treatment with other taxpayers.
>
> Passage by the Congress of such a bill would not change the substantive effect of the tax laws of the several States because, without known exception, all States, either by constitutional safeguard or legislative provision declare it to be State law that taxpayers within its jurisdiction shall be taxed uniformly. The addition of a procedural remedy, by authorizing Federal courts to enjoin collection of discriminatory taxes against interstate carriers, is consistent with the obligation of Congress to regulate interstate commerce, required under the Federal Constitution, and is thereby a proper and necessary action of the Congress.

Mr. MACDONALD. Mr. Chairman, could I ask a question, a serious question from my point of view?

Mr. REDDING. Certainly.

Mr. MACDONALD. You talk about carriers, interstate carriers. I can see perhaps a reason to have the Federal Government interfere with property that goes between States, and I am just asking this question and not arguing. It is your position that the Federal Government has a right to say to any State "No, you can't collect that State tax because you evaluated the depot, the train station, at too high a value? It that a serious proposal?

Mr. REDDING. Yes sir.

Mr. MACDONALD. The station that remains completely within the State made of concrete, brick, mortar, wood, etc., is built in a State, remains in the State, is never going to go out of that State, that the Federal Government will have the right to tell any State how much they think is reasonable for a tax on that property?

Mr. REDDING. In the event that property, Mr. Macdonald, whether it is made of concrete or is purely real estate, land, is assessed in excess of the assessable ratios applicable to other properties, a Federal problem exists because such real estate, the buildings and all that goes with it, is an incidence of interstate commerce.

It is utilized for the purpose of facilitating interstate commerce. I feel confident that the railroad industry and even the staff members of the Doyle study group would agree that this is an incidence of interstate commerce, and it should, therefore, be subject to the proposed legislation. If it is assessed on a discriminatory basis, this makes it an undue burden on interstate commerce.

Mr. MACDONALD. Thank you, sir.

Mr. REDDING. Mr. Chairman, the balance of my statement, beginning in the middle of page 5, is essentially a summarization of the arguments which Mr. Ogden has already advanced. I think the one thing I might draw to your attention was that as a result of that 1957 survey study, it was determined that in the States then reported, the rail facilities in the aggregate were assessed at an average of 58 percent of true market value, whereas nonrail properties were assessed at only 25 percent of value.

My statement continues by saying that property tax assessment is a function of local and State government well known to all property owners because it is the basis upon which property taxes are levied. No homeowner would long submit to an assessment ratio on his home twice that applied to his neighbor's home. We think all citizens would be sympathetic to the plight of the common carriers subjected to such treatment, if it was generally known that this practice widely prevails.

Moreover, one would not suspect from a reading of State constitutions, or State and local laws, that discriminatory assessments have imposed unjust taxation on the carriers. The problem instead results in large part from the failure of State and local assessing officials to comply with existing statutory mandates which guarantee assessment equalization.

I conclude my statement by summarizing the reasons why we felt Congress should act, involving the power of the Congress to regulate interstate commerce, the findings in the Doyle report, the special study approved by the Advisory Commission on Intergovernmental Regulations, referred to by Mr. Ogden, which acknowledged the possibility of Federal legislation in this area, the precedent brought about and already approved by the Congress in connection with the Interstate Commerce Commission having the authority to set aside State commission orders on the maintenance of intrastate rail rates and intrastate trains, the train discontinuance problem, and finally the fact that judicial relief at State and local levels has not been fully effective.

A substantial backlog of cases, involving a delay of years before final decision, exists in many States. Suits for recovery of local taxes are further impeded because of the necessity of being filed in multiple local jurisdictions.

And so, Mr. Chairman and members of the subcommittee, we certainly would endorse the pending bills and a study of this problem by your staff.

We appreciate the privilege of presenting the views of TAA at this hearing. Thank you, Mr. Chairman.

(The document referred to follows:)

STATEMENT OF ROBERT E. REDDING, VICE PRESIDENT AND GENERAL COUNSEL OF THE TRANSPORTATION ASSOCIATION OF AMERICA

Mr. Chairman and members of the subcommittee, my name is Robert E. Redding. I am vice president and general counsel of the Transportation Association of America, with general offices located in Washington, D.C. This statement is submitted on behalf of the Transportation Association of America to express its policy position in support of H.R. 736 and H.R. 10169 respecting tax assessments of common carrier property.

I. DESCRIPTION OF TAA AND ITS ACTIVITIES

For the information of this subcommittee, the Transportation Association of America (TAA) which was organized in 1935 is a nonprofit research and educational institution, devoting its efforts to the development and implementation of sound national policies aimed at the creation of the strongest possible transportation system under private ownership. It is an organization of transportation and general business interests of all kinds, including shippers, and other users, investors, and air, freight forwarder, highway, oil pipeline, rail, and water carriers. Its membership also includes individuals such as educators, transportation consultants, lawyers, and other professional persons. As such, it does not engage in the promotion of one form of transport against another, but seeks to represent what is best in the broad public interest.

In establishing basic policies to guide our overall efforts to strengthen the Nation's transportation system, we have set up a careful procedure to assure fair and thorough consideration of pending subjects before final positions are taken. The procedure is briefly as follows: Issues are initially considered by eight special, permanent advisory committees or panels of recognized leaders from all parts of the country who are representatives of users, investors, and air, freight forwarder, highway, oil pipeline, rail, and water carriers.

Recommendations of these panels are reviewed by the noncarrier policy committee of the board, which in turn submits its own recommendations to the TAA board of directors. Individual members of TAA also have an opportunity to submit their views on such matters to the board. The board of directors, which represents a balanced cross section of our general economic system and consists of approximately 115 members from industry, finance, and agriculture, as well as transportation, then takes final action to determine TAA policy. A list of our board of directors is attached to this statement.

II. TAA POSITION ON THE PENDING LEGISLATION

The two identical bills, H.R. 736 and H.R. 10169, propose to amend the Interstate Commerce Act by adding a new section 25a which would declare to be unlawful that portion of property tax assessments on properties owned or used by common carriers engaged in interstate commerce, which reflect higher assessment ratios than those applicable to other properties subject to the same property tax levies. Also declared unlawful would be the collection of any property tax derived from the excessive portion of any such assessment. Such unlawful actions are declared by the bills to "constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce * * *."

In addition, the bills would confer jurisdiction on the district Courts of the United States to restrain the performance of such unlawful acts.

The subject of discriminatory tax assessments was studied carefully by each of the eight TAA panels, culminating in the adoption of May 16, 1961, by the TAA board of directors of the following policy resolution:

"To declare unlawful, as an unreasonable and unjust burden upon interstate commerce, the assessment of property of any common carrier at a value which bears a higher ratio to its true market value than the assessed value of other property in the taxing district subject to the same property tax levy bears to the market value of such property.

"In order to provide a forum to decide such unlawful assessment and collection, jurisdiction should be conferred upon the Federal district courts to enjoin any such assessments."

The user, investor, and all six carrier panels of TAA approved this proposal to relieve common carriers of unreasonable and unjust taxation.

III. FINDINGS IN THE "DOYLE STUDY GROUP REPORT"

The development of TAA's position on this subject originated in a report dated January 3, 1961, prepared for the Committee on Interstate and Foreign Commerce of the U.S. Senate by a special study group on "Transportation Policies in the United States." This report has since become known as the "Doyle Study Group Report" or the "Doyle Report," named for John P. Doyle, staff director of the study group.

A discussion of the discriminatory assessment problem may be found in chapter I of part VII of the report. The subject is specifically discussed at pages 451–459, 465–466, and 475–491.

The conclusions in the "Doyle Report" on this subject are based essentially on a special study submitted by the Association of American Railroads at the request of the study group. Such study disclosed that in 1957 the overpayment of railroad ad valorem taxes resulting from discriminatory assessments exceeded $141 million.

Referring to the AAR study, the "Doyle Report" stated that it confirmed findings that "there is a studied and deliberate practice of assessing railroad property at a proportion of full value substantially higher than other property subject to the same tax rates" (p. 458).

The report further concluded at page 487, as follows:

"The resources available to this committee were not such as to be able to conduct an independent survey to affirm or disprove the specific data presented to us.

However, research has been sufficiently extensive to establish that *relative discrimination, of considerable magnitude, does in fact exist against the railroads in the assessment procedures of State and local governments for ad valorem taxation purposes.* Therefore, the data is [sic] accepted as confirming the judgment of this study group that State and local assessment procedures do discriminate against the railroads." [Emphasis added.]

In discussing the subject of State taxation of railroad and pipeline rights-of-way, and the possibility of Federal remedies, the report stated at page 465 as follows:

"At least with respect to ad valorem property taxes on the right-of-way of railroads and pipelines, the public interest in the preservation of adequate transportation service should supersede local law. The proposed national legislation would do this."

By this comment the "Doyle Report" was referring to and *recommending* Federal legislation similar to that now proposed in H.R. 736 and H.R. 10169. The "Doyle Report" statement on such legislation at page 466 was as follows:

"This proposed antidiscrimination tax bill, which would be available to all common carriers engaged in interstate commerce, has the obvious merit of *insuring that such carriers would receive equal treatment with other taxpayers* subject to the same tax rates in accordance with applicable State law. The proposal in no way alters the freedom of the State to tax its taxpayers as in its discretion it deems best, so long as such carriers are accorded equal tax treatment with other taxpayers.

"Passage by the Congress of such a bill *would not change the substantive effect of the tax laws of the several States* because, without known exception, all States, either by constitutional safeguard or legislative provision declare it to be State law that taxpayers within its jurisdiction shall be taxed uniformly. The addition of a procedural remedy, by authorizing Federal courts to enjoin collection of discriminatory taxes against interstate carriers, *is consistent with the obligation of Congress to regulate interstate commerce,* required under the Federal Constitution and is thereby a proper and necessary action of the Congress.

"Action by the Congress on * * * the antidiscrimination tax bill *for all interstate common carriers,* would be significant measures in relief of unduly burdensome States taxes on interstate commerce and would mark that assumption of control by Congress in the field of taxation of interstate commerce so vital to unhampered commerce between the States." [Emphasis added.]

Thus, the TAA board of directors considered the findings and conclusions in the Doyle report to be of merit and adopted its policy in support of antidiscriminatory assessment legislation such as that now pending. Also, in April 1962, a TAA information memo was published in support of such position, entitled "It's Time To Call a Halt to Discriminatory Tax Assessments." A copy of this document is attached to my statement.

IV. CONGRESS SHOULD GUARANTEE FAIR PLAY IN TAXATION

In recent years, the inequity of discriminatory assessment of common carrier property has been widespread. A fact of overriding significance, for example, is the disclosure from the 1957 AAR survey that in the aggregate rail facilities were being assessed at an average of 58 percent of true market value, whereas nonrail properties were assessed at only 25 percent of value.

Property tax assessment is an incident of local and State government well known to all property owners because it is the basis upon which property taxes are levied. No homeowner would long submit to an assessment ratio on his home twice that applied to his neighbor's home. We think all citizens would be sympathetic to the plight of the common carrier's subjected to such treatment, if it was generally known that this practive widely prevails. Moreover, one would not suspect from a reading of State constitutions, or State and local laws, that discriminatory assessments have imposed unjust taxation on the carriers. The problem instead results in large part from the failure of State and local assessing officials to comply with existing statutory mandates which guarantee assessment equalization.

While other witnesses will offer evidence of assessment trends since 1957 they will undoubtedly show that unfair and discriminatory assessments are still a serious problem. Congress can no longer ignore its obligation to protect common carriers engaged in interstate commerce from this historic and continuing burden. In sum, Congress must act because:

1. The Federal Constitution imposes the obligation on Congress to regulate interstate commerce and, in this instance, to provide protection to common carriers from tax discrimination.

2. The findings and conclusions contained in the 1961 Doyle report support such action.

3. The possibility of Federal action in this field was also acknowledged in a 1963 report on property tax policy and administration, approved by the Advisory Commission on Intergovernmental Relations.

4. Ample precedent for congressional action affecting State and local property assessments includes, for example, the power of the Interstate Commerce Commission to set aside orders of State commissions regarding the maintenance of intrastate rail rates and intrastate trains which unduly discriminate against or burden interstate commerce.

5. Judicial relief from discriminatory assessments and taxes at State and local levels has not been fully effective. A substantial backlog of cases, involving the delay of years before final decision, exists in many States. Suits for recovery of local taxes are further impeded because of the necessity of being filed in multiple local jurisdictions.

Accordingly, a compelling case can be made to justify enactment of H.R. 736 or H.R. 10169. In the event that such action is not possible before adjournment of the 2d session of the 88th Congress, we respectfully urge the subcommittee, Mr. Chairman, to undertake further study of this area of discriminatory taxation in order that similar legislation can be enacted early in the 89th session.

We thank you for the privilege of presenting the views of the Transportation Association of America at this hearing and respectfully request that the attachments to this statement, to which I have previously referred, also be received into the record of this proceeding.

A. B. Cozzens, vice president, vessel operations, Columbia Transportation Division, Oglebay Norton Co., Cleveland, Ohio.
James K. Crimmins, Chadbourne, Parke, Whiteside & Wolff, New York, N.Y.
Neil J. Curry, president, California Cartage Company, Inc., Los Angeles, Calif.
Harry G. Fair, vice president, Supply & Transportation Department, Phillips Petroleum Co., Bartlesville, Okla.
Charles W. L. Foreman, vice president, United Parcel Service, New York, N.Y.
Morris Forgash, chairman of the board, Universal Carloading & Distributing Co., New York, N.Y.
Welby M. Frantz, president, Eastern Express, Inc., Terre Haute, Ind.
L. E. Galaspie, director of traffic, Reynolds Metals Co., Richmond, Va.
J. C. Gibson, vice president, law, the Atchison, Topeka & Santa Fe Railway System, Chicago, Ill.
Donald M. Graham, vice chairman of the board, Continental Illinois National Bank & Trust Co., of Chicago, Chicago, Ill.
Allen J. Greenough, president, the Pennsylvania Railroad Co., Philadelphia, Pa.
W. P. Gwinn, president, United Aircraft Corp, East Hartford, Conn.
James F. Haley, vice president and director, Traffic and Transportation Department, Koppers Co. Inc., Pittsburgh, Pa.
Wm. Barclay Harding, Smith, Barney & Co., New York, N.Y.
B. W. Heineman, chairman of the board, Chicago & North Western Railway Co., Chicago, Ill.
J. W. Hershey, chairman of the board, American Commercial Lines, Inc., Houston, Tex.
Richard D. Hill, vice president, the First National Bank of Boston, Boston, Mass.
Hunter Holding, vice president, the Equitable Life Assurance Society of the United States, New York, N.Y.
Victor Holt, Jr., president, the Goodyear Tire & Rubber Co., Akron, Ohio.
Phelan H. Hunter, president, Humble Pipe Line Co., Houston, Tex.
A. C. Ingersoll, Jr., president, Federal Barge Lines, St. Louis, Mo.
Downing B. Jenks, president, Missouri Pacific Railroad Co., St. Louis, Mo.
William B. Johnson, president, REA Express, New York, N.Y.
Robert B. Johnston, vice president, the First National Bank of Chicago, Chicago, Ill.
W. A. Johnston, president and chairman, Executive Committee, Illinois Central Railroad, Chicago, Ill.
Loren F. Kahle, transportation coordinator, Standard Oil Co. of New Jersey New York, N.Y.
George E. Keck, president, United Air Lines, Chicago, Ill.
A. M. Kennedy, Jr., vice president, Westinghouse Electric Corp., Blairsville, Pa.
Carter Kissell, president, National Castings Co., Cleveland, Ohio.
Jervis Langdon, Jr., president, the Baltimore & Ohio Railroad Co., Baltimore, Md.
Maj. Gen. E. C. R. Lasher, president and chief executive officer, North American Car Corp., Chicago, Ill.
John C. Leslie, vice president and assistant to the president, Pan American World Airways, Inc., New York, N.Y.
Gordon C. Locke, general counsel, Association of Oil Pipe Lines, Washington, D.C.
Daniel P. Loomis, president, Association of American Railroads, Washington, D.C.
Karl D. Loos, Pope, Ballard & Loos, Washington, D.C.
Robert S. Macfarlane, president, Northern Pacific Railway Co., St. Paul, Minn.
Sidney Maestre, chairman of the executive committee, Mercantile Trust Co., St. Louis, Mo.
Dwight M. McCracken, vice president, general manager, loss prevention, Liberty Mutual Insurance Co., Boston, Mass.
Wilfred J. McNeil, president, Grace Line, Inc., New York, N.Y.
E. Spencer Miller, president, Maine Central Railroad Co., Portland, Maine.
Raymond W. Miller, president, Public Relations Research Associates, Inc., Washington, D.C.
Chester G. Moore, honorary secretary for life, American Trucking Association, Inc., Washington, D.C.
R. Stuart Moore, chairman of the board, Los Angeles-Seattle Motor Express, Inc., Oakland, Calif.
Edwin F. Mundy, vice president, traffic, National Biscuit Co., New York, N.Y.

D. H. Overmyer, president, D. H. Overmyer Warehouse Co., Toledo, Ohio.
Adrian B. Palmer, president, Rollins Burdick Hunter Co., Chicago, Ill.
Alfred E. Perlman, president, New York Central System, New York, N.Y.
James F. Pinkney, chief counsel, public affairs, American Trucking Associations, Inc., Washington, D.C.
Gregory S. Prince, executive vice president and general counsel, Association of American Railroads, Washington, D.C.
Alexander Purdon, executive vice president, United States Lines Co., New York, N.Y.
William J. Quinn, president, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Chicago, Ill.
L. D. Rahilly, president, Interstate Motor Freight System, Grand Rapids, Mich.
John S. Rice, president, Rice Truck Lines, Great Falls, Mont.
W. Thomas Rice, president, Atlantic Coast Lines Railroad Co., Jacksonville, Fla.
W. Lyle Richeson, vice president and assistant to president, Westinghouse Air Brake Co., Pittsburgh, Pa.
Stuart T. Saunders, chairman of the board, the Pennsylvania Railroad Co., Philadelphia, Pa.
John W. Scallan, president, Pullman-Standard, a division of Pullman, Inc., Chicago, Ill.
Harry G. Schad, president, Atlantic Pipe Line Co., Philadelphia, Pa.
Eugene A. Schmidt, Jr., vice president and treasurer, Metropolitan Life Insurance Co., New York, N.Y.
Henry E. Seyforth, Seyforth, Shaw, Fairweather & Geraldson, Chicago, Ill.
B. M. Seymour, chairman of the board, Associated Transport, Inc., New York, N.Y.
Samuel H. Shriver, chairman and chief executive officer, Alexander & Alexander, Inc., New York, N.Y.
Charles B. Schuman, president, American Farm Bureau Federation, Chicago, Ill.
Robert F. Six, president, Continental Airlines, Inc., Los Angeles, Calif.
Edgar W. Smith, Edgar W. Smith & Sons, Portland, Oreg.
F. Cushing Smith, executive vice president, American Oil Co., Chicago, Ill.
Geeorge A. Spater, executive vice president and general counsel, American Airlines, Inc., New York, N.Y.
William I. Spencer, senior vice president, First National City Bank, New York, N.Y.
Floyd T. Starr, financial vice president, the Penn Mutual Life Insurance Co., Philadelphia, Pa.
W. J. Sullivan, director of traffic, Allied Chemical Corp., New York, N.Y.
A. M. Thomas, director of traffic, General Mills, Inc., Minneapolis, Minn.
Robert E. Thomas, president, Mid-America Pipeline Co., Tulsa, Okla.
Stuart G. Tipton, president, Air Transport Association, Washington, D.C.
L. H. True, president, Magnolia Pipe Line Co., Dallas, Tex.
Kenneth L. Vore, vice president, traffic and transportation, United States Steel Corp., Pittsburgh, Pa.
R. C. Waehner, general manager, distribution division, Lever Brothers Co., New York, N.Y.
Giles A. Wanamaker, president, The Hertz Corp., New York, N.Y.
Hugo Waninger, vice president, traffic, Anheuser-Busch, Inc., St. Louis, Mo.
Donald G. Ward, general manager, container operations, General American Transportation Corp., Chicago, Ill.
William W. Ward, president, Ward Trucking Corp., Altoona, Pa.
T. Carl Wedel, vice president, CIT Financial Corp., New York, N.Y.
John L. Weller, president, Seatrain Lines, Inc., Edgewater, N.J.
William White, chairman of the board, the Delaware & Hudson Railroad Corp., New York, N.Y.
William G. White, president, Consolidated Freightways, Inc., San Francisco, Calif.
George K. Whitney, trustee, Massachusetts Investors Trust, Boston, Mass.
Francis R. Wilcox, general manager, Sunkist Growers, Los Angeles, Calif.
C. J. Williams, president, Hillside Transit Co., Inc., Milwaukee, Wis.
R. A. Williams, president, Stanray Corp., Chicago, Ill.
William W. Wolbach, president, Boston Safe Deposit & Trust Co., Boston, Mass.
C. E. Woolman, president and general manager, Delta Air Lines, Inc., Atlanta, Ga.
Elliott C. Youngberg, general traffic manager, Inland Steel Co., Chicago, Ill.

[Information Memo—Transportation Association of America]

IT'S TIME TO CALL A HALT TO DISCRIMINATORY TAX ASSESSMENTS

A Problem—and a Solution

CALLING A HALT TO DISCRIMINATORY TAX ASSESSMENTS OF RAILROAD PROPERTY BY STATE AND LOCAL GOVERNMENTS

The transportation industry has long since recognized its obligation to share in the cost of State and local governments. The Nation's railroads in particular have long been subjected to an inequitable and illegal discrimination practiced in many such jurisdictions which results in the unfair and confiscatory collection of State and local taxes. It's time to call a halt.

What is the nature of these unfair taxes?

They are the so-called ad valorem or property taxes historically collected by State and local governments from local property owners.

What is unfair about them?

They are based upon an assessment for tax purposes at a much higher ratio to true market value than is applied to other properties subject to the same tax levy. Therefore, these railroad properties bear more than their fair share of the tax load.

Why are these tax collections so large?

The railroads are the largest industrial owners of real estate in the United States, with almost 400,000 miles of track traversing 96 percent of the 3,067 counties in continental United States. Literally thousands of individual tax jurisdictions—State, county, city, town, village, school district, etc.—collect such taxes. There are over 6,000 such jurisdictions in the State of New York alone.

How extensive is the discrimination being suffered by the railroads?

A 1957 study relying on Census Bureau figures and rail industry records disclosed that the railroads were forced to pay some $140 million of excessive taxes in that year.

What discriminatory practices were involved?

The 1957 study brought to light the following unfair assessment methods in the 31 States under review:

In all 31 States the railroads were assessed at higher ratios to true market value than other properties subject to the same tax levies.

In 17 of the 31 States the rate of railroad assessments was at a rate more than double the rate applicable to other properties. These 17 States collected $158 million of railroad property taxes, of which $100 million was obtained by discriminatory property assessments.

A half dozen States assessed rail properties at 100 percent of value while permitting other properties to get by with ratios ranging from only 11 to 50 percent.

As proof of the pudding, a railroad with extensive terminal facilities in an eastern seaboard city tried to reduce its tax burden by selling 33 acres of land assessed at $621,000. Sale price? Less than $20,000!

Has there been any improvement in the situation?

Despite continuous efforts to correct this intolerable situation, the improvements which have occurred have been more than offset by worsening conditions in other areas. Such conditions, when combined with other critical elements of the current railroad industry crisis, literally cry for corrective action.

What does TAA recommend be done?

Because of the obvious burden on interstate commerce and the effect on the public interest, effective legislation appears mandatory. The Congress should declare unlawful, as an unreasonable and unjust discrimination against and an undue burden on interstate commerce, the assessment of property of any common carrier at a value which bears a higher ratio to its true market value than the assessed value of other property in the taxing district subject to the same property tax levy.

Can anything be done?

TAA urges that such Federal legislation include the conferral of jurisdiction on the Federal district courts to prevent such discriminatory assessment practices by injunction, if necessary. Present judicial appeal channels are simply inadequate. Many States prohibit the railroads from seeking an injunction against excessive assessments and thus force them to seek redress by refund lawuits.

Federal court relief is also limited because of the sharp restrictions on injunctive powers contained in the Judicial Code (28 U.S.C., sec. 1341) as follows:

"The district courts shall not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under State law where a plain, speedy, and efficient remedy may be had in the courts of such State."

Is any such legislation now pending in the Congress?

Yes. Congressman Hemphill, of South Carolina, introduced H.R. 7421 and Congressman Nelsen, of Minnesota, introduced an identical bill, H.R. 7497, in the 87th Congress which would carry out the TAA recommendation. These bills are now pending before the House Committee on Interstate and Foreign Commerce.

Is this relief for the railroads supported by any other group?

Yes. Such legislation was recommended in the January 1961 report of the Doyle Study Group on "Transportation Policies in the United States," prepared for the Senate Commerce Committee (pp. 465–466).

The U.S. Department of Commerce report entitled "Federal Transportation Policy and Program," issued in March 1960, urged that "ways and means must be found to encourage tax relief by local and State jurisdictions in helping solve the problems of commuter or local passenger deficits" (p. 7).

Property tax relief for the railroads has also been endorsed in the 1961 policy statement of the American Municipal Association, by the New England Governors' Committee on Public Transporation in 1957, and by the State of New York wherein the legislature has already alleviated the tax situation to some degree.

The user, investor, air transport, highway, pipeline, railroad, and water carrier panels of TAA support such legislation, while the freight forwarder panel does not oppose.

What can you do to help?

The need for an antidiscrimination tax law is plainly apparent. Corrective action of a lasting nature can be assured only by Federal legislation which should be supported by all persons concerned with the welfare of our national transport system and should be enacted by the Congress in 1962.

Mr. FRIEDEL. Thank you.

Mr. Macdonald?

Mr. MACDONALD. I just have one question.

This is stretching the commerce clause quite a long way; don't you think?

Mr. REDDING. This is the question that the committee must resolve, Mr. Macdonald. I would say that for a long, long time relief has probably been deserving here. This is the first time, to my knowledge, that this committee has considered the problem. It has already been under consideration by the Senate Committee's Special Study Group, and we are going to have to face it. The burden of excessive taxation on this industry is extremely large. I feel that if you will ascertain the facts as it applies to the other modes of transportation, and particularly the pipelines, you will find that they too are subject to the same discriminatory assessment problem. It just seems to be basic sound equity that all taxpayers subject to the same tax levy should be assessed on the same basis.

Mr. MACDONALD. Right. I couldn't agree with you more. We are all for the flag. We are against discrimination in all forms, all of us are, I am sure. But don't you think the next logical step, if this bill by some strange happenstance might pass this committee and might pass the Congress, that thereafter the owner of a building in any State in the Union would say to this committee that he is engaged in interstate commerce.

Therefore isn't it up to this commerce committee to see to it that his tax bill is looked into? Why confine it to the modes of transportation,

as you have pointed out, the pipelines and the railroad carriers? They are not the only forms of enterprise that are engaged in interstate commerce. And if we would do this, if we would stretch the commerce clause to this extent, where the Federal Government can tell a local entity or the State government or the taxing body in 50 States that their tax rate was unreasonable, how could we then turn our backs on somebody else who is also engaged in interstate commerce, and feels that he is being discriminated against?

Wouldn't we be getting into each 1 of the 50 States acting as a tax appellate board? Wouldn't that be the logical conclusion?

Mr. REDDING. I follow your question, Mr. Macdonald. It is a fair question and it deserves careful and thoughtful consideration. I think I would respond to you by saying that we must realize and recognize that the transportation industry is the second largest industry in the Nation. It is an important industry that affects all the citizens in this country. This committee has the responsibility of seeing to it that we operate our common carrier transportation as efficiently and economically as possible, and we are now bringing to you an area of discrimination that affects this industry, and unjustly so.

There will be a number of individuals who may come forward to all committees of the Congress to claim tax discrimination, and it may very well exist. The question is, "When do you reach the point where you should do something about it?" The Congress has already taken action in the field of unprofitable train discontinuances and the other area I mentioned in my testimony, and I know of no other sector of our economy affecting interstate commerce that has stepped forward to say that they have any taxing problem of this serious scope. I would say the thing that this committee must do, following its staff study, is to determine whether this is a sufficiently serious problem for the transportation industry to warrant taking action.

It will follow earlier precedents and is certainly deserving so far as the transportation industry is concerned.

Mr. MACDONALD. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Jarman?

Mr. JARMAN. No questions.

Mr. FRIEDEL. Mr. Watson.

Mr. WATSON. Mr. Chairman, if I might just make a comment relating back to my distinguished colleague from Massachusetts, which I make in all kindness. We just recently passed a bill here, with the gentleman's help, which makes a little restaurant up in Massachusetts subject to the interstate commerce provisions, or at least such an interpretation was drawn as a basis for the passage of that bill. I really find it difficult now to see how my illustrious friend from Massachusetts finds it difficult to determine how the railroads are, and whether or not they are involved in interstate commerce to the extent we should try to protect them against discriminatory taxes. Those are some of the exigencies and difficulties.

Mr. MACDONALD. I will be happy to answer, since the gentleman is so courteous as to ask why I felt that the public accommodations section was well drawn and certainly didn't go too far. The answer is simply in that the State of Massachusetts there already exists a State public accommodation committee which put forth recommendations

and ended up in the law that went a good deal further than did the so-called civil rights bill here in the Congress.

So as far as Massachusetts was concerned, the bill was not necessary, since the State law already covered it. This is a completely different thing.

As I recall the gentleman from South Carolina said that States rights should prevail, that the Federal Government had enough to do in carrying on Federal work, and it should not be telling the various 50 States what to do, and I would hate to see the gentleman have to go back to South Carolina and tell his people that he voted for a bill in which the Federal Government told the local communities how much taxes they could assess from any property within the State of South Carolina.

Mr. FRIEDEL. Gentlemen, I am afraid we are getting a little far afield.

Mr. WATSON. If you will yield there I am more than willing to go back to South Carolina and assure the people that South Carolinians in their typical style want to do what is fair and right and proper.

Mr. MACDONALD. I am sure of that.

Mr. WATSON. I am sure that the gentleman will agree with me that as far as the railroads are concerned there is no question that they deal in interstate commerce.

Mr. FRIEDEL. Mr. Ogden, I have some other questions, but because of the shortness of time I wasn't able to ask all the questions.

Mr. OGDEN. Yes, sir.

Mr. FRIEDEL. I am wondering whether if I submit them to you in writing you might answer them and they will be included in the record.

Mr. OGDEN. I will be happy to respond. Thank you, sir.

(The information referred to follows:)

REPLY OF JAMES N. OGDEN TO QUESTIONS PROPOUNDED BY HON. SAMUEL N. FRIEDEL

"(1) While in your discussion with Mr. Springer and with others you considered the present law respecting the extent to which the commerce clause can override the State authority in the taxation field, I think that beyond your firm statement that the bill is a proper exercise of the commerce clause the record does not contain any extended presentation of the basis for and authority upon which you rely for concluding that the commerce clause can override State authority in the assessment of ad valorem taxes on property located within the State. I would think it important that the committee have something in the nature of a brief on this subject and should appreciate your supplying it for us."

I fully realize that H.R. 736 is a new and unique approach but I do not believe that it is an unwarranted extension, or even an extension, of the commerce clause, or that it is an invasion of the power of the States to tax. On the contrary, I feel that Federal legislation is the only means of removing an invidious discrimination which seriously affects the most vital segment of interstate commerce—namely, the interstate carriers themselves—and I firmly believe that the constitutionality of the measure, if enacted, would be upheld.

The power of the Federal Government to regulate commerce among the several States has been the basis for so much legislation and so many court decisions that its breadth and scope cannot possibly be defined now by a few words. The Supreme Court's case-by-case approach to the interpretation of this clause, which is called for under our constitutional system, has produced over the years an evolution of its meaning which, more or less, has kept pace with the ever-expanding role of commerce in our modern civilization. At the hearing there was offered, as an example of the extreme lengths to which the commerce clause power has been extended, the public accommodations provision of the Civil

Rights Act of 1964, and many others can, of course, be mentioned. Here now for consideration, however, is a measure which affects only common carriers subject to the Interstate Commerce Act—a more appropriate field for exercise of the Federal Government's regulatory power can scarcely be imagined.

The bill proposes a legislative declaration that when a certain type of tax discrimination exists against these carriers (and, of course, the discrimination is narrowly defined and must be proved), such discrimination constitutes "an unreasonable and unjust discrimination against" and "an undue burden upon" interstate commerce. There is ample precedent for such a legislative determination in section 13(4) and 13a of the Interstate Commerce Act, and I have endeavored to show that the discrimination here involved is not less of a burden than those dealt with in the statutes just mentioned.

The real question, of course, has to do with what may loosely be described as "States rights." Does the exercise in this manner of the power of Congress to regulate commerce conflict—to the point of being unconstitutional—with the power of the States to tax? Apparently, the way to find the answer to this question would be to analyze various court decisions in which the taxpayer has invoked the commerce clause in an effort to have a State tax or taxing practice declare unconstitutional, as applied to him, as being a burden on interstate commerce. Of course, this contention has frequently been made, and sometimes sustained and sometimes rejected, but unfortunately the precise basis for a particular decision is not always entirely clear since frequently there are also involved other constitutional grounds, such as the due process and equal protection clauses of the 14th amendment. Suffice it to say, that no case has been found in which property tax discrimination of this sort has been declared unconstitutional under the commerce clause. This is to say, in effect, that apparently the strength of the commerce clause has not been tested in a situation such as those sought to be covered in H.R. 736. I feel confident that the commerce clause can and will successfully withstand any such test.

The *Browning* case (*Nashville, C. & St. L. R. Co.* v. *Browning*, 310 U.S. 362 (1940)), referred to at the hearing, is in no way a bar to this proposed legislation, nor would enactment of the bill constitute a legislative overruling of that decision, although it would undoubtedly have afforded relief to the railroad there involved, which relief was denied by the decision. The only discussion of the commerce clause in that case had to do with the taxpayer's contention that the State of Tennessee had, by its method of apportioning on a mileage basis, improperly taxed part of the railroad's system property which was outside the borders of that State and thereby burdened the commerce which the Federal Constitution protects. The Court rejected this argument and went on to hold that the classification of railroad property and its assessment at a higher level than other property, permissible under Tennessee law, was not unconstitutional under the 14th amendment, but this was in the complete absence of any Federal regulatory statute dealing with the subject.

It seems to me to be incontrovertible that where interstate common carriers are subject to property tax discrimination (and it should be remembered that we are speaking only of discrimination between carriers and others subject to the same tax rate—not of situations where separate and additional taxes are imposed on carriers, for the bill would not prevent this), such discrimination, even though it is permitted or condoned under existing State laws and practices, is (*a*) unreasonable and unjust, (*b*) unduly burdensome, (*c*) vitally affects interstate commerce (*d*) calls for appropriate Federal regulation and may properly be dealt with under the commerce clause, and (*e*) far from being a valid exercise of a State's taxing power, is precisely the sort of unwarranted and hampering interference with interstate commerce which this clause of the Federal Constitution was designed to protect.

It will readily be seen that the foregoing is scarcely a presentation in the nature of a brief. If the committee feels that such a brief, with a further examination into and analysis of such legal decisions as may be relevant, would be desirable, I will, of course, be pleased to prepare it. In order to do the job properly, however, an additional period of time will be needed.

"(2) If this theory that the interstate commerce clause may be used so as to prevail over State authority in the field of ad valorem taxes, is it not equally applicable to the assessment of the property of anyone engaged in interstate commerce as to the property of common carriers? Would you indicate why it is appropriate that the bill should be limited to common carriers and not include the contract carriers or perhaps private carriers?"

In my opinion the commerce clause is equally applicable to all carriers—common, contract, and private—who or which are engaged in the transportation of persons or property in interstate commerce; and I can see no objection in theory to broadening the terms of the bill so as to include all such carriers within its scope.

I think it should be recognized, however, that carriers other than railroads and pipelines are seldom, if ever, discriminated against in the matter of ad valorem assessment of real property, and for that reason such carriers are not in need of the relief which H.R. 736 is intended to provide. Much, probably most, of the property of railroads and pipelines is real property, has a fixed location, cannot escape assessment for ad valorem taxes, and is susceptible to the discriminatory practices which I attempted to describe in my prepared statement. On the other hand, the property of motor carriers consists largely of trucks, buses, and other personality, and the property of water carriers consists largely of barges and other vessels, all of which property is portable, constantly moving, and, I believe, usually taxed on the same basis as the personal property of taxpayers in general, without discrimination in the assessment thereof.

It should be kept in mind, also, that the only contract carriers and private carriers which are made subject to the Interstate Commerce Act are contract carriers and private carriers by motor vehicle and contract carriers by water. The act does not recognize contract carriers or private carriers by railroad.

In my opinion only common carriers by rail and by pipeline are suffering or likely to suffer from the unfair, unjust, and unduly burdensome tax assessment practices now sought to be remedied. Contract and private carriers by motor vehicle and contract carriers by water are believed not to be in need of the protection against such practices which would be afforded to railroads by H.R. 736.

I can see no practical reason, therefore, for making the bill applicable to contract and private carriers, although I offer no objection to its being so broadened.

"(3) But granting that the bill rests upon a firm foundation and that this exercise of the interstate commerce clause would prevail against the State powers of taxation, is not this legislation confined solely to ad valorem taxes, and cannot a taxing district achieve the same result of discrimination against railroad property—if such discrimination now exists—by substituting for or adding to the ad valorem tax other forms of taxes such as gross earnings taxes? In such connection, I note that the report of the Board of Investigation and Research on Carrier Taxation, September 1944, House Document 160, states at page 135:

"'Furthermore, since there is now no constitutional inhibition against ad valorem taxation of railroad property (footnote: *Nashville, Chattanooga & St. Louis Ry.* v. *Browning* (1940) 310 U.S. 362) more highly than nonrailroad property, there is no firm ground on which to deny the States the right to achieve the same effect by means of a gross earning tax.'"

I am familiar with the statement on page 135 of the 1944 report of the Board of Investigation and Research on Carrier Taxation that States may achieve the same effect (discriminatory taxation of railroads) by means of a gross earnings tax levied upon railroads in lieu of property taxes. In theory this might still be correct but I think it unlikely that any State at this time would single out the railroad industry for any additional tax that would burden it alone. During the last 15 or 20 years the public's attitude toward the railroad industry has changed. The railroads are no longer considered a monopolistic group operating for its own benefit without regard to the public's interest. Evidence that the public does not openly approve of tax discrimination against railroads is found in two successive defeats of a proposed amendment to the North Dakota constitution which would have required one assessment level for State-assessed railroads and public utilities and a lower level for other property.[1] H.R. 736 is limited in its application to ad valorem property taxes because its purpose is to insure the closing of only one loophole (but an extremely important one) in the overall tax structure as it applies to the railroad industry. Other tax problems confronting the railroads can be dealt with as they become more urgent.

"(4) Just what is the meaning of 'true market value'? Has it been judically defined? How far has determination of the value of railroad property for tax purposes been resolved as being the 'true market value' of the railroad property as against the value of the railroad property being determined from the market

[1] See footnote 98, p. 125, 1944 report of the Board of Investigation and Research on Carrier Taxation.

value of adjacent property? Is it possible for the 'true market value' of the railroad property to be much in excess of the market value of adjacent property, particularly when the right-of-way is marketed as one piece to a purchaser desiring such right-of-way? In other words, are you here fixing the standard to be used in assessing the value of railroad property as the 'true market value' of that property and excluding any other standard?"

"True market value" is the goal generally sought by all tax assessors either as the assessment figure or as a starting point from which final assessments of less than "true market value" may be computed. In an authoritative treatise published by the National Association of Tax Administrators the following statement appears:

"The statutes of the several States prescribing the value standard for tax purposes use such terms as 'fair market value,' 'fair cash value,' 'full market value,' and the like. All of these terms are synonymous; they mean nothing more and nothing less than what we mean in this report by the term 'market value' or the word 'value' without a qualifying adjective." [2]

These have been judicially defined in numerous cases. For instance, I call your attention to *New York Bay R. Co.* v. *Kelly*, 22 N.J. Misc. 204, 37 A. 2d 624, 628 (1944); *Fort Worth & D.N. Ry. Co.* v. *Sugg* (Tex. Civ. App.) 68 S.W. 2d 570, 572 (1934); and *Guyandotte Valley Ry. Co.* v. *Buskirk*, 57 W. Va. 417, 50 S.E. 521, 526 (1905).

Of course, the proportion of "true market value" at which assessments are finally fixed varies among the several States. In some States the law requires assessment at "true market value," in others at 60 percent thereof, in others at 35 percent, et cetera.

Railroad property in most of the States is valued and assessed as a unit; that is, the whole system as it exists in 8, 10, or 15 States is valued; this value is distributed among the several States on the basis of recognized allocation factors; and then, in turn, the value in a particular State is apportioned among the several taxing districts in that State on the basis of mileage. In other words, when railroads are assessed as a unit the total value is first determined and then apportioned; the total assessment is not determined by adding the assessed value of individual items that make up the railroad plant.

As to the few States in which railroad property is locally assessed, I have no specific information concerning the assessment methods but I suppose it would be natural for the assessors to compare adjoining properties.

Let me emphasize that H.R. 736 does not suggest or require a State to change its assessment standards, assessment practices, or the assessments themselves. It merely provides a single standard against which all affected assessments must be measured in order to determine their relationship to each other. It is not a standard for determining value; it is a standard to which values that have already been determined must be compared. This standard is "true market value" (also the generally accepted standard for assessment purposes) and the requirement is that carrier property be assessed at the same proportion of such value as the proportion at which all other property subject to the same tax rates is assessed.

"(5) In stating that the ratio must be no higher for railroad assessment than the assessment of nonrailroad property, are you stating that it shall be no lower than that rate? Is the assessment you are talking about solely the property owned or used by the carrier in the transportation of persons or property in interstate commerce? Can this assessment ratio be lower than the ratio in the property used in intrastate commerce, which property, in the bill, is included in 'all other property in the taxing district'? Accordingly, if it were lower, would not this throw a burden, as described in section 13(4), on interstate commerce as a result of the operations of intrastate commerce being a burden on interstate commerce and thus be unlawful? I haven't thought it through to a conclusion, but somehow doesn't this mean that the two ratios must be the same so that you have set a minimum as well as a maximum by the bill?"

In stating that the ratio must be no higher for common carrier property than for other property we are not also stating that it must be no lower, although undoubtedly this would be the practical result, for it is hard to imagine railroads and other carriers receiving more favorable treatment than individual property

[2] National Association of Tax Administrators Committee on Unit Valuation, "Appraisal of Railroad and Other Public Utility Property for Ad Valorem Tax Purposes" (1954), p. 13.

owners. Your second question in this paragraph must be answered in the negative—that is, the bill does not have reference solely to property owned or used in the transportationn of persons or property in interstate commerce, as distinguished from intrastate commerce—and this perhaps disposes of the remainder of your questions in paragraph (5) since they seem to be based on the assumption that carrier property used in intrastate commerce is taxed separately from that used in interstate commerce.

With very minor exceptions, this assumption is not true and for a good reason—namely, segregation of a carrier's property on an interstate-intrastate basis would be virtually impossible, for the same property is used for both types of commerce, at the same time and without distinction or separation. The same tracks, the same cars, the same locomotives, the same terminal facilities handle both interstate and intrastate shipments, yet all of this property is subject to State and local taxation and is usually assessed all together by a central assessing agency. It would be inaccurate, therefore, to say that a carrier's property used in intrastate commerce is in the same category as "all other (than carrier) property in the taxing district." This being the case, it is impossible to make a comparison of the ratios of the level of assessment of a carrier's interstate and intrastate property in order to determine whether the taxation of the intrastate portion throws a burden on interstate commerce. Section 13(4) of the Interstate Commerce Act is limited to an undue burden caused by a "rate, fare, charge, classification, regulation, or practice * * * made or imposed by authority of any State," and has never, to my knowledge, been applied to matters of taxation. But, in any event, the comparison which would be required is one which cannot be made.

"(6) How does the proposed legislation approach the assessment for purposes of property tax of the equipment owned or used by a railroad in several States or taxing districts? How is the value of this equipment allocated as between the States or taxing districts? Is there anything in the legislation which prevents the property from being duplicately valued?"

We would expect the proposed legislation to deal with the equipment owned by or used by a railroad in several States or taxing districts in exactly the same manner as it deals with other operating property belonging to the railroad. In most instances, a railroad's rolling stock is treated as part of the system unit referred to in the response to paragraph (4). Thus, when the unit is valued and assessed and apportioned among the States and their several taxing districts, the rolling stock included therein and belonging to the railroad being assessed is necessarily valued and assessed only in those States in which the owner railroad has fixed operating property. When this method is applied to all railroads in the country, it is readily apparent that all rolling stock in the country will be assessed only in the States in which the owner line operates, regardless of the location of the cars at any particular time.

For many years this has been recognized as the proper manner to deal with the valuation and assessment of rolling stock belonging to a railroad:

"As a general rule, the value of foreign cars (those owned by a railroad other than the using carrier) is not included in the unit appraisal of the using carrier. On the other hand the value of that carrier's rolling stock which may be operating on other railroad lines during some part of the year is included in its unit appraisal. * * *

"It is apparent that the courts have assumed that the average rail carrier operates as many foreign cars as it leases to others." [3]

There is nothing in H.R. 736 which would prevent railroad rolling stock from being duplicately valued, but this is not likely to occur in view of the general acceptance of the assessment method just described. Again, it is appropriate to emphasize that the proposed legislation will have no bearing on the valuation and assessment of rolling stock or the apportioning thereof to the several States; it will merely insure that railroad owned rolling stock will be assessed at the same proportion of its "true market value" as other property within the same taxing district and subject to the same tax rates.

"(7) The second paragraph of the bill would provide that notwithstanding the Constitution or laws of any State, the district courts of the United States should have jurisdiction in the cases of assessment for property taxes of common carriers.

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[3] National Association of Tax Administrators, Committee on Unit Valuation, "Appraisal of Railroad and Other Public Utility Property for Ad Valorem Tax Purposes" (1954), pp. 18–19.

Just what is the effect of this shift of the multitudinous tax proceedings in State and local courts to the Federal courts?"

There would be no shift of tax proceedings from one court to another. If any carrier should be able to avail itself of the Federal remedy created by the proposed legislation, there would undoubtedly be only one such case by that carrier in any one State, and such a case might very well be treated as a representative proceeding for the benefit of all carriers in the particular State. Once the decision is rendered, it should establish a precedent and end litigation in that State. Furthermore, it is even possible that the policy of nondiscrimination established by the Congress in the bill would be recognized and followed by at least some of the States without litigation. This, of course, would be most desirable.

"(8) I am aware of the some-487-page report of 'Carrier Taxation' issued in September 1944 by the Board of Investigation and Research pursuant to the study authorized by the Transportation Act of 1940. Just what was accomplished in carrying out the recommendations made by that report, and what has your association done in pursuing those recommendations?"

There has been some activity since 1944 on the part of the National Association of Tax Administrators in developing programs for unit appraisal and assessment of railroads and for uniform methods of allocation of such values or assessments among the States and also in publishing a guide for making sales-assessment ratio studies which could provide the basis for equalizing assessments. Some benefit has resulted from this work but, in view of the widespread discrimination that still exists in so many of the States, it seems obvious that little has really been accomplished in carrying out the recommendations of the Board concerning ad valorem property taxation of carriers as set forth in the 1944 report.

The Association of American Railroads did not take any group action in pursuing the Board's recommendations regarding property taxes since they were directed primarily to State government officials and organizations. Some individual railroads had made attempts to solve this problem of discrimination in certain States, either administratively or by litigation, but it was not until 1959, when the Bureau of the Census ratio study for 1956 first became available, that it was possible for the issue to acquire national prominence. Since that time the association has been most active in its efforts to gain public recognition of the problem and to seek its solution at the national legislative level. It should be added that the worsening financial plight of many of its railroad members now makes it imperative that they exert every effort to protect themselves against this expensive discrimination.

"(9) What is being done by the Advisory Commission on Intergovernmental Relations? I understand on the basis of a comprehensive study, reported in June 1963, on the role of the State in the property tax, they have recommended a draft bill for State adoption. How far does this draft bill (dated June 1964) in its title III relating to assessment standards and measurement of assessment performance and title IV relating to equalization procedures meet your needs?"

We have no information concerning the activities of the Advisory Commission on Intergovernmental Relations aside from the June 1963 report on the "Role of the States in Strengthening the Property Tax" (two volumes), and the draft bill which has been recommended by the Commission for State adoption. We are advised that the draft bill has not yet been perfected for submission to the several States but will be the subject of a conference with the Council of State Governments to be held at an early date. The present language of the draft bill, if adopted and enacted into law by each of the States, would take care of the discrimination in assessments, since the draft bill provides that all property subject to ad valorem taxation shall be assessed or taxed at the same percentage of current market value. However, acceptance and passage of this comprehensive legislation by each of the States is such a remote possibility that it cannot seriously be considered as promising any relief.

We are here seeking relief that can be made available promptly through the action of one body, the Congress of the United States, through the creation of a new cause of action which can only be used if a State fails to adhere to a policy of equal treatment for all ad valorem property-tax payers and the carrier complainant is in a position to prove the discrimination charged. In spite of the good work that has been done by the advisory commission in publicizing the inefficiencies of the State tax systems and drafting a bill that would cure them, we have no assurance that anything like uniform action will be taken by all of the States or by even a few States or by any at all. Even if a program of this kind could actually be developed into full

fruition, it more than likely would take many years, particularly since the first step of the plan involves a property tax survey in all of the States which itself would require years to complete.

"(10) In connection with your request that the subcommittee take under advisement the creation of the initiation of a staff study in this field, I should welcome information as to what study is being given by the Committee on the Judiciary under Public Law 86–272 to the taxation by the State of income arising from business activities in interstate commerce? Has this study undertaken to approach your problem? What presentation have you made to this committee? I noted that while the study originally was to cover State taxation of income derived from within the States from the conduct of business activities which are in furtherance of interstate commerce, the purpose of the study was amended by Public Law 87–17, April 1961 'to expand the scope of the study authorized by Public Law 86–272 to include all matters pertaining to the taxation of interstate commerce by the States * * * or any political or taxing subdivision of the foregoing.' "

It has never been our understanding that the study of the Special Subcommittee on State Taxation of Interstate Commerce of the Committee on the Judiciary appointed pursuant to Public Law 86–272, as amended, would reach the ad valorem taxation of property although, as you point out, the amendatory language of Public Law 87–17 expanding the scope of the study is certainly very broad. I understand that no consideration was given, during the course of the extensive hearings conducted by this subcommittee, to State property taxes and, consequently, our industry had no occasion to make any presentation on this subject and none was made. As you know, the first section of the committee's report (on income taxes) was released on June 15, 1964 (H. Rept. No. 1480, 88th Cong., 2d sess.). Still to come are those portions of the report dealing with sales and use taxes, gross receipts taxes, and capital stock taxes, and I understand that the subcommittee will not have time, within its limited existence expiring on June 30, 1965, to do more than complete its work on income taxes and deal with sales and use taxes, gross receipts taxes, and capital stock taxes. Thus, ad valorem taxes have not been and will not be considered by the subcommittee absent an extension of its existence and an expansion of the scope of its present program.

Mr. FRIEDEL. The committee is adjourned.

(The following letter was later received for the record:)

NATIONAL ASSOCIATION OF TAX ADMINISTRATORS,
Chicago, August 13, 1964.

Re H.R. 736 and H.R. 10169.

Hon. JOHN BELL WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics,
Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. WILLIAMS: In further reference to my letter of August 10 regarding H.R. 736 and H.R. 10169, there are several points involved in this proposal that should be carefully considered by the committee.

First, there is the question whether Federal legislation is needed in this area. The premises on which the proposal is based are that there is a general policy to discriminate against interstate carrier property by assessing it at a higher percentage of its value than other taxable property, and, where discrimination is shown to exist, that there is no effective remedy in the administrative agencies and courts of the States.

As to the matter of discrimination, it is true that property tax assessments in many States are not uniform over the whole range of properties taxed, but this is a general problem and by no means limited to carrier property. Moreover, it is rather difficult to demonstrate, on the basis of an overall table such as that appearing in the Doyle report, that the alleged discrimination against carrier property does exist or that it is of the degree indicated. The principal factor which differentiates carrier (and public utility) property tax assessments from tax assessments on other property is that carrier property is customarily assessed on a statewide basis by a central assessment agency whereas other property is assessed by local officials. In the case of local assessments, the average level of assessment can be determined within acceptable limits because the kinds of property involved usually change hands frequently and sales

prices and tax assessments can be compared. On the other hand, the assessed value of carrier (and other public utility) property is not subject to such a sales comparison test because sales of railroads or pipelines as going concerns are for all practical purposes nonexistent. Thus, while the assessment percentages applicable to property generally in the table submitted to the subcommittee are based on objective standards derived from Bureau of the Census data, the assessment percentages relied on to show that carriers are relatively overassessed are subjective and ex parte in nature. If these estimates are to have any probative value in this connection, they need to be tested in at least two respects, in some kind of adversary procedure where the facts can be brought out; namely, (1) as to the basic full value appraisal of each carrier property, and (2) as to the percentage of that full value appraisal which is put on the assessment roll.

The second point on which the proposal is based is essentially that there is no real remedy in the State courts for any discrimination that might be proved to exist. The record is to the contrary. In the last decade, the courts of the States have more and more recognized the necessity of emphasizing uniformity of assessment over compliance with the legal standard so that specific relief is now commonly ordered by the courts in cases involving discriminatory assessments even though the challenged assessment is less than the constitution or statutes of the State require. Instances of such action are cited at pages 6 and 7 of the enclosure, which is reprinted from the Western Political Quarterly for March 1963.

The effectiveness of the remedy in discrimination cases has been further increased by the availability of assessment ratio survey data and the willingness of courts to accept these data as evidence of the prevailing assessment level.

The tax administrators of the several States have been aware of the problem of discriminatory assessments of all kinds and have taken many steps to remedy this situation. For example, practically all the assessment ratio studies undertaken in the States have followed the procedures outlined by a committee of this association in the "Guide for Sales-Assessment Ratio Studies," and these studies in turn have provided the basis by which the fact of discrimination is easily proved in an administrative or judicial proceeding. In the public utility assessment field, a committee of this association has formulated extensive procedures for the valuation of public utility property including railroad property and also a standard procedure for allocating an appropriate portion of the valuation of an interstate railroad among each of the States in which it operates. All of these activities have contributed significantly to the development of effective administrative and judicial remedies to deal with cases of discriminatory assessments as outlined above. An objective appraisal of recent developments along these lines will be found in the recent two-volume report of the Advisory Commission on Intergovernmental Relations entitled "The Role of the States in Strengthening the Property Tax."

The foregoing indicates, I suggest, that it is far from clear that Federal legislation is needed to deal with the problem of discriminatory assessments. A further comment or two is in order on the specific provisions of H.R. 736 and H.R. 10169 as well as the impact of any Federal legislation which would authorize resort to the Federal courts as an ordinary incident of the review procedure for State and local property taxes.

First, these bills, as drafted, would arbitrarily override State policy permitting classification of specific types of property for tax purposes; that is, a classification by type of property without regard for the use or ownership of that specific type of property. If it is the general policy of a State to classify a particular type of property for tax purposes, there is no reason why property of that kind owned by a carrier should not be similarly treated. Second, in those instances where relief is sought directly against the State agency making the property tax assessment, these bills raise a constitutional question because under the typical State statute authorizing suits for refunds and reviews, the consent to sue the State is limited to proceedings in State courts. This difficulty, however, would not arise in connection with suits against local governments. The third, and from a practical standpoint the most important point about this proposal, is that what it really does is to clothe the Federal courts with a veto power over State property tax assessment procedures with con-

sequent adverse effects on local budgets. This follows because the remedy provided is an injunction against the collection of any tax adjudged to be invalid on the basis of the criteria laid down in the bill. If tax collection were enjoined, it would mean that substantial amounts of revenue anticipated in local budgets would not be available for expenditure during the tax year as expected. Such a situation could be extremely serious for small- and medium-sized units of local government including school districts and particularly those operating under tax rate and debt limits. This is in contrast to the procedure ordinarily involved in the States which requires the payment of the tax on the due date under protest. If it is subsequently determined that the assessment should be revised, the difference in the tax is refunded to the taxpayer. In the meantime, though, the operations of local governments are not jeopardized by the withholding of the entire amount of the tax.

It is, of course, possible that once the Federal court takes jurisdiction of a case on the basis authorized in these bills, it will proceed to revise the assessment itself and fix the amount of tax due in each local jurisdiction where the carrier property is situated. Whether such an intrusion by the Federal courts into the ordinary property tax assessments and review procedures historically reserved to the States and localities is within the general jurisdictional powers of Federal courts is not clear. At any rate, it certainly does not appear desirable. Aside from this point, there is the further objection that the whole review process would then be channeled through the Federal system—to the circuit courts of appeal and the U.S. Supreme Court—rather than through the administrative review agencies and courts of the States. The valuation and assessment of utility properties is a specialized field and the main function of the courts is to see that procedures reasonably directed to obtaining a fair appraisal and assessment. The cases cited in the enclosed article indicate that the State courts perform this function effectively. Therefore, it is neither necessary nor desirable to provide parallel or alternative channels of review through the Federal courts.

A final point that has to be considered is the potential impact of these bills on the whole process of property tax administration. Inequities in property tax assessments have always been a problem but in recent years a good deal has been achieved in the way of reducing the extent and degree of these inequities. As noted above, the availability of assessment ratio studies and the decision of courts to make uniformity rather than full value or other statutory standard the keystone of validity are the main reasons why this progress has been made. As a practical matter, the progress toward an acceptable standard of uniformity has to be gradual. The predominant position of the property tax in the State-local revenue system (it accounts for almost half of all State and local taxes) is such that to attempt to remedy all inequities overnight, so to speak, would be disastrous to local government finance. This is something, it should be emphasized, which involves not only public utility property but all types of property: business and nonbusiness; real and personal; tangible and intangible; residential, farm, vacant lots, commercial, and industrial; inventories, work in progress, stock in trade, and such other classifications and types. If property under one type of ownership or use is singled out for special treatment under a Federal statute, there is no reason to deny similar treatment in the long run to any owner of property that is used in or becomes the subject of trade in interstate commerce. Such a policy would be tantamount to Federal supervision of the local property tax through Federal judicial procedures, a function for which the Federal judiciary has no particular qualifications and, judging from the statements appearing now and then in U.S. Supreme Court opinions, no desire to undertake. On the other hand, the States and local governments have achieved a good deal of improvement in this field in recent years and the prospects are that they can do a good deal more if the responsibility and means of dealing with the problem are left in their hands.

On the whole, then, I suggest that these issues bear careful study before any action along the lines recommended in H.R. 736 and H.R. 10169 is approved.

Sincerely.

CHARLES F. CONLON, *Executive Secretary.*

(Whereupon, at 11:50 a.m., the committee was adjourned.)

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