STATE WITHHOLDING TAXES ON EMPLOYEES IN INTERSTATE COMMERCE

HEARINGS

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. 10743 and S. 1719

TO AMEND THE INTERSTATE COMMERCE ACT AND THE FEDERAL AVIATION ACT OF 1958 IN ORDER TO EXEMPT CERTAIN WAGES AND SALARY OF EMPLOYEES FROM WITHHOLDING FOR TAX PURPOSES UNDER THE LAWS OF STATES OR SUBDIVISIONS THEREOF OTHER THAN THE STATE OR SUBDIVISION OF THE EMPLOYEE'S RESIDENCE

AUGUST 4, 5, AND 6, 1964

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Committee on Interstate and Foreign Commerce

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STATE WITHHOLDING TAXES ON EMPLOYEES IN INTERSTATE COMMERCE

TUESDAY, AUGUST 4, 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. John Bell Williams, chairman of the subcommittee, presiding.

Mr. WILLIAMS. The committee will be in order, please.

This morning the subcommittee on Transportation and Aeronautics is opening hearings on two bills, H.R. 10743 and S. 1719, a bill which has already passed the Senate, which would relieve certain transportation carriers from the duty of withholding local and State income taxes from wages of an employee who performs his regularly assigned duties as an employee on a vehicle in more than one State except as to the withholding in the State or local subdivision of the employee's residence. It also relieves these carriers of the duty to file information or reports on such wages except to the State or subdivision of the employee's residence.

(H.R. 10743 and S. 1719 are as follows:)

[H.R. 10743, 88th Cong., 2d sess.]

A BILL To amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That part II of the Interstate Commerce Act is amended by inserting after section 226 a new section as follows:

"EXEMPTION OF CERTAIN WAGES AND SALARY OF EMPLOYEES FROM WITHHOLDING BY OTHER THAN RESIDENCE STATE

"SEC. 226A. (a) No part of the wages or salary paid by any motor carrier to an employee of such motor carrier engaged in the operation of a motor vehicle in interstate commerce in two or more States shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of such carrier; nor shall such carrier file any information return or other report for tax purposes with respect to such salary or wages with any State of subdivision thereof other than such State or subdivision of residence.

"(b) For the purposes of this section, the term 'State' also means any possession of the United States or the Commonwealth of Puerto Rico."

SEC. 2. Title XI of the Federal Aviation Act of 1958 is amended by inserting after section 1111 the following new section:

"EXEMPTION OF CERTAIN WAGES AND SALARY OF EMPLOYEES FROM WITHHOLDING BY OTHER THAN RESIDENCE STATE

"SEC. 1112. (a) No part of the wages or salary paid by any air carrier to an employee of such air carrier engaged as a flight crew member or flight attendant (including a flight steward or stewardess) aboard aircraft operated in air transportation shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of such carrier; nor shall such carrier file any information return or other report for tax purposes with respect to such salary or wages with any State or subdivision thereof other than such State or subdivision of residence.

"(b) For the purposes of this section, the term 'State' also means the District of Columbia and any of the possessions of the United States."

SEC. 3. That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading "TITLE XI—MISCELLANEOUS" is amended by adding at the end thereof the following:

"Sec. 1112. Exemption of certain wages and salary of employees from withholding by other than residence State."

[S. 1719, 88th Cong., 2d sess.]

AN ACT To amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That part I of the Interstate Commerce Act is amended by redesignating section 26 as section 27 and by inserting before such section a new section as follows:

"EXEMPTION OF CERTAIN WAGES AND SALARY OF EMPLOYEES FROM WITHHOLDING BY OTHER THAN RESIDENCE STATE

"SEC. 26. (a) No part of the wages or salary paid by any railroad, express company, or sleeping car company, subject to the provisions of this part, to an employee who performs his regularly assigned duties as such an employee on a locomotive, car, or other track-borne vehicle in more than one State, shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of any such carrier; nor shall any such carrier file any information return or other report for tax purposes with respect to such wages or salary with any State or subdivision thereof other than such State or subdivision of residence.

"(b) For the purposes of this section, the term 'State' also means the District of Columbia."

SEC. 2. (a) Section 202(b) of the Interstate Commerce Act is amended by inserting after "Nothing in this part" a comma and the following: "except as provided in section 226A,".

(b) Part II of the Interstate Commerce Act is amended by inserting after section 226 a new section as follows:

"EXEMPTION OF CERTAIN WAGES AND SALARY OF EMPLOYEES FROM WITHHOLDING BY OTHER THAN RESIDENCE STATE

"SEC. 226A. (a) No part of the wages or salary paid by any motor carrier subject to the provisions of this part to any employee who performs his regularly assigned duties as such an employee on a motor vehicle in more than one State, shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of such carrier; nor shall such carrier file any information return or other report for tax purposes with respect

to such wages or salary with any State or subdivision thereof other than such State or subdivision of residence.

"(b) For the purposes of this section, the term 'State' also means any possession of the United States or the Commonwealth of Puerto Rico."

SEC. 3. (a) Part III of the Interstate Commerce Act is amended by redesignating section 323 as section 324 and by inserting before such section a new section as follows:

"EXEMPTION OF CERTAIN WAGES AND SALARY OF EMPLOYEES FROM WITHHOLDING BY OTHER THAN RESIDENCE STATE

"SEC. 323. No part of the wages or salary paid by any water carrier subject to the provisions of this part to an employee who performs his regularly assigned duties as such an employee on a vessel in more than one State, shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of such carrier; nor shall such carrier file any information return or other report for tax purposes with respect to such wages or salary with any State or subdivision thereof other than such State or subdivision of residence."

(b) The table of contents contained in section 301 of the Interstate Commerce Act is amended by striking out

"Sec. 323. Separability of provisions."

and inserting in lieu thereof:

"Sec. 323. Exemption of certain wages and salary of employees from withholding by other than residence State.
"Sec. 324. Separability of provisions."

SEC. 4. (a) Title XI of the Federal Aviation Act of 1958 is amended by inserting after section 1111 the following new section:

"EXEMPTION OF CERTAIN WAGES AND SALARY OF EMPLOYEES FROM WITHHOLDING BY OTHER THAN RESIDENCE STATE

"SEC. 1112. (a) No part of the wages or salary paid by any air carrier to an employee who performs his regularly assigned duties as such an employee on an aircraft in more than one State shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of such carrier; nor shall such carrier file any information return or other report for tax purposes with respect to such wages or salary with any State or subdivision thereof other than such State or subdivision of residence.

"(b) For the purposes of this section, the term 'State' also means the District of Columbia and any of the possessions of the United States."

(b) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading "TITLE XI—MISCELLANEOUS" is amended by adding at the end thereof the following:

"Sec. 1112. Exemption of certain wages and salary of employees from withholding by other than residence State."

SEC. 5. The amendments made by this Act shall become effective on the first day of the first calendar year beginning after the date of enactment of this Act.

Passed the Senate June 19 (legislative day, March 30), 1964.

Attest: FELTON M. JOHNSTON, *Secretary.*

Mr. WILLIAMS. H.R. 10743 pertains only to operating employees of motor and air carriers. S. 1719 was so limited when introduced but as it passed the Senate and is before us, it also covers certain employees of railroad, express, and sleeping-car companies.

The committee shall follow the testimony with great interest, for while it recognizes that the carriers are faced with a troublesome problem, it also is appreciative of the fact that some very fundamental policies are here involved.

These bills raise the same question which was inherent in the two other bills before this subcommittee last week, namely, the extent to which the commerce clause of the Constitution may override the taxing powers of a State where access of a State or local subdivision may be such as to create an undue burden upon interstate commerce.

Unlike the two bills which the subcommittee had last week, however, which went to questions of discrimination in the assessed valuation upon which State ad valorem taxes were collected, these two bills today are confined to the matter of the burden imposed on interstate commerce by using common carriers as tax collectors and not as to any burden resulting from the tax itself. Indeed, the record in the Senate on these bills seems to indicate that the legislation is not intended in any way to relieve employees of any income taxes, but merely to relieve the employer from collecting them.

It is my hope that we shall have a thorough discussion on the issues in the testimony which is presented to the committee.

Our first witness representing the American Trucking Associations will be Mr. James Fort, who will introduce his witnesses. Before we start, at this point if there is no objection we will include the sundry agency reports on the legislation.

(The documents referred to are as follows:)

TREASURY DEPARTMENT,
Washington, May 22, 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 of April 14, 1964, for this Department's views on H.R. 10743 (88th Cong., 2d sess.), entitled "A bill to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salaries of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence."

This bill deals solely with the jurisdiction of State and local governments to require certain employers engaged in interstate commerce to withhold State and local income taxes from the wages of nonresident employees. The bill does not deal with and will not directly affect any Federal tax questions. Accordingly, this Department does not wish to express any views concerning the merits of this legislation.

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

Sincerely yours,

STANLEY S. SURREY.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., April 24, 1964.

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

DEAR CHAIRMAN HARRIS: Your letter of April 14, 1964, addressed to the Chairman of the Commission and requesting comments on a bill, H.R. 10743, to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence, has been referred to our Committee on Legislation. After consideration by that committee, I am authorized to submit the following comments in its behalf:

Section 1 of H.R. 10743 would amend the Interstate Commerce Act by adding a new section 226A, which would, in effect, provide that wages of motor carrier

employees engaged in the operation of motor vehicles in two or more States, shall only be subject to withholding for State or local income tax purposes in the States of their respective residences.

Section 2 of the bill would amend title XI of the Federal Aviation Act of 1958 by adding similar provisions relating to certain employees of air carriers.

It is not clear why this bill, which relates primarily to State and local tax policies, contemplates an amendment to part II of 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 may be resolved by an appropriate amendment (by inserting "Notwithstanding the provisions of section 202(b)" at the beginning of proposed section 226A), it is our view that the objective sought in H.R. 10743 lends itself to consideration separate and apart from the Interstate Commerce Act, and, if favorably considered, should be enacted as a separate statute to be codified in an appropriate title to the United States Code.

Subject to the foregoing, we would not be opposed to H.R. 10743 based on the limited information we now have.

It is also noted that H.R. 10743 would apply only to moter and air carriers. The committee may also wish to consider expanding the scope of this measure to include carriers of other modes of transportation.

Respectfully submitted.

ABE MCGREGOR GOFF,
Chairman, Committee on Legislation,
LAURENCE K. WALRATH.

FEDERAL AVIATION AGENCY,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., April 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 request for the views of this Agency with respect to H.R. 10743, a bill to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence.

This Agency does not have information as to State income tax withholding practices and the effects of those practices on individual air carriers and air crew members. However, we understand that some States have specifically requested the air carriers serving those States to withhold State income taxes from wages of air crew members whose only connection with the State is to land within its boundaries in the course of an interstate flight. If many States were to base their taxing authority on this very casual relationship, the resultant complexity of withholdings for the carrier and the crew members could very possibly unduly burden those instrumentalities of interstate commerce. Reportedly a few States have requested air carriers to withhold taxes from crews on an even more tenuous connection, the mere overflight of the territory of the State.

It appears to us that current State withholding demands, and potential future demands, pose serious enough problems as to possible interference with interstate commerce that a thorough investigation is warranted. If the facts show that a burden on interstate commerce is developing from State taxing practices, then some Federal legislation would seem to be in order.

Congress in Public Law 86–263 has acted to prohibit withholding of State and local taxes from the wages of officers and crews on vessels in coastwise, intercoastal, interstate, or noncontiguous trade. In Public Law 86–272, wherein income from certain wholly interstate business transactions was exempted from State taxation, provision was made for a broad study by the Congress of State taxation of interstate commerce.

It would seem to us that since H.R. 10743 deals with only a part of the overall problem of State taxation of interstate commerce, it should be considered as a part of the larger study authorized by Public Law 86–272. If that is not feasible, congressional consideration should at least encompass all modes of interstate transportation.

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

Sincerely,

HAROLD W. GRANT,
Lieutenant General, USAF, Deputy Administrator.

CIVIL AERONAUTICS BOARD,
Washington, D.C., April 16, 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 April 14, 1964, requesting the views of the Board with respect to H.R. 10743, a bill to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence.

Although the provisions of the bill relate to employees of air carriers, such provisions do not affect the functions and activities of the Board. It does not, therefore, have any comments to offer with respect to the bill.

Sincerely yours,

ROBERT T. MURPHY,
Vice Chairman.

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE SECRETARY,
Washington, July 17, 1964.

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

DEAR MR. CHAIRMAN: This is in further response to your request for our views on H.R. 10743, a bill to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employees' residence.

We have no comments to offer regarding the need for or merits of this legislation. However, we are concerned about the possible adverse effect of the proposed legislation on the Federal-State unemployment insurance and temporary disability insurance programs. In three States, the unemployment insurance program is financed in part by employee contributions, and in four, employee contributions finance temporary disability insurance programs. H.R. 10743 would restrict existing authority to withhold contributions of airline and motor carrier employees for these two programs to those States in which the employee resides, although residence is not a significant factor in determining coverage under either program. It could also relieve employers from their obligation to file wage and contribution reports for these employees with any State other than the State of residence. Without such reports there would be no basis for determining a worker's rights or the employer's tax liability. The initial effect of the bill would be to relieve the affected employees of a tax liability under State law and may place that liability on their employers. The probable long-range effect would be the exclusion of these workers from protection under both State programs. Their employers, however, would be required to pay the full Federal unemployment tax without tax credit.

We might also point out that the absence of duplication in tax liability under State unemployment insurance and temporary disability insurance programs distinguishes these taxes from other forms of tax withholding and thus makes it unnecessary to apply the proposed legislation to them.

As we have indicated earlier, we are not in a position to comment on whether legislation of this type is needed or desirable. However, in the event Congress finds that this legislation should be enacted, for the foregoing reasons, we suggest that the bill be amended to exclude withholding and reporting under State unemployment insurance and temporary disability insurance laws from its application.

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

Yours sincerely,

W. WILLARD WIRTZ,
Secretary of Labor.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., August 3, 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 request for the Bureau's views on S. 1719 and H.R. 10743, bills which would exempt the income of certain employees from State and local tax withholding requirements.

H.R. 10743 provides that no part of the wages or salary paid certain operating employees of motor carriers and air carriers shall be withheld by State or local governments other than the State or local government of the employee's residence and prohibits the carriers from filing information returns for tax purposes with respect to the income of these employees with any State or local government other than the one of residence. As introduced, S. 1719 was identical to H.R. 10743, but as it passed the Senate its coverage was broadened to include operating employees of railroads and water carriers.

In a letter to us, copy attached, the Executive Director of the Advisory Commission on Intergovernmental Relations advises against undue speed in the consideration of this legislation. He points out that the bill can have a significant revenue impact on at least some States, that it would impinge upon long-established jurisdictional rules in State and local taxation, and that it would be contrary to the Federal Government's policy of assisting State and local governments in the enforcement of their tax laws. He suggests that alternative solutions be fully explored. He points out that at least some of the States are cognizant of these problems and that they have already discussed alternative remedies. For example, the States could resolve the problem by reciprocally exempting nonresident operating employees of carriers from one another's withholding requirements. In addition, such a remedy could be made applicable by the States to other groups of employees who are in similar situations.

In its report to your committee, the Department of Commerce points out a number of substantive issues which it believes the legislation raises and indicates that the problem at which S. 1719 is directed might appropriately be included in the studies authorized under Public Law 86-272 of matters relating to taxation by the States of interstate commerce.

The Bureau believes that the issues raised in the attached views letter and in the Commerce report are substantial. They raise important questions of Federal-State relations which the Bureau believes require further careful consideration in an effort to develop alternative solutions. Accordingly, we recommend against the enactment of this legislation at this time.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS,
Washington, D.C., July 31, 1964.

MR. PHILLIP S. HUGHES,
Assistant Director, Bureau of the Budget, Washington, D.C.

DEAR MR. HUGHES: This is in response to your request for this Commission's views on S. 1719, a bill to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence.

The apparent objective of the proposed legislation is to deny to State and local governments (except to those in which the employee resides) the use of (*a*) withholding at-the-source and of (*b*) employer information returns, for the collection of income taxes on the wages and salaries of certain employees of regulated railroads, express companies, sleeping car companies, motor carriers, air carriers, and water carriers. The income tax liabilities of these individuals

would not be explicitly affected; only the obligation of their employers to withhold such taxes and make information returns.

The income tax status of these and similarly employed nonresident persons under State and local tax laws is a long-standing problem, brought to the fore in recent years by the widespread introduction of withholding for the collection of State and local income taxes. Wages and salaries are now subject to income taxes in 34 States and the District of Columbia and in one or more local jurisdictions in 6 States. In total, 37 different States are involved in the taxation of earnings since in 3 both local and State taxes are imposed. All but 3 of the 37 employ withholding at-the-source and all require some informational return from employers. The District of Columbia income tax exempts nonresidents.

States (just as the Federal Government) generally impose their income taxes on all income earned within their borders, regardless of the residence of the income recipient. This rule has prevailed since Wisconsin introduced income taxation at the State level a half century ago. The Supreme Court sustained it on the ground that the States contribute to the public services essential to the economic activity which enables the nonresident employee to earn the income. Under this jurisdictional rule, the employees of interstate carriers coming into or traversing the State are technically subject to income tax liability on the allocate share of their earnings unless explicitly excluded by legislation or interstate credit arrangement. The provision has been difficult to enforce in practice and not infrequently has doubtless remained unenforced.

The introduction of withholding to assist in the collection of income taxes pioneered by Oregon and Vermont a dozen years ago, has brught the problem to limelight by shifting to the employer the burden of collecting at least part of the tax. The obligation of a regulated motor carrier employer who operates across State lines, for example, to withhold income taxes from wages paid for services performed within each State, in effect requires him (*a*) to maintain separate records for each employee on behalf of each State in which he drives, (*b*) to deduct State and local taxes from the salary of each in accordance with the varying withholding provisions of the several jurisdictions, and (*c*) to file tax reports on behalf of each employee to each jurisdiction involved. In some circumstances, the clerical burden involved can be substantial and may be of a different order of magnitude than that generally imposed in connection with the administration of State and local motor fuel taxes, motor vehicle, and business profits tax.

In short, while the income tax status of the employees of regulated carriers and the corresponding withholding and reporting obligations upon their employers is a necessary consequence of deeply rooted, long standing, and generally applicable State and local jurisdictional rules, the compliance burdens imposed on employers incident to the operation of withholding provisions is some cause for concern.

In the time available, it is not practicable to acquaint ourselves fully with the relevant facts in all of the States on the specific issues raised by the S. 1719. It is our understanding, however, that at least some of the States are cognizant of the problem involved and that alternative remedies, such as reciprocal credit arrangements, have already been discussed.

In Public Law 86–263, approved September 14, 1959, the Congress has previously prohibited the withholding of State and local taxes from the wages of masters, officers, and other seamen who are members of the crew of a vessel engaged in coastwise, intercoastal, interstate, or noncontiguous trade. That legislation, however, affects only some of the income tax States and is of relatively minor revenue significance to them. The subject bill could possibly have implications for the taxation of the employees of other employers engaged in interstate commerce.

In general, the Congress has traditionally refrained from intruding on the taxing jurisdiction of State and local governments, preferring to look to the States themselves for the resolution in their own ways of their jurisdictional problems with one another. Indeed, the Congress by legislation and the executive branch by administrative action has in several ways affirmatively assisted these jurisdictions in the enforcement of their tax laws.

The States, if they so elect, can resolve this problem by reciprocally exempting regulated carriers from one another's reporting and withholding requirements with respect to employees who are nonresidents. In our view, this solution is much to be preferred to Federal legislation on several grounds, principally Federal-State comity. Moreover, a remedy developed by the States themselves

could be made applicable also to other groups of industrial and commercial employers whose employees regularly perform services in several States.

Since the proposed legislation can have significant revenue impact for at least some States, would impinge upon long-established jurisdictional rules in State and local taxation, and would be contrary to the National Government's policy of assisting State and local governments in the enforcement of their tax laws, we would counsel against undue speed in its consideration. Specifically, the Bureau may want to suggest to the House Committee on Interstate and Foreign Commerce that it afford representatives of State and local tax administrations an opportunity to present their views and more particularly that it urge these representatives to come to the committee with an alternative solution to the problem. Alernatively, the committee may want to request this Commission to explore solution possibilities with the States. The latter procedure would necessarily be more time consuming since, within the Commission's budgetary resources, such an investigation would have to be handled largely by correspondence.

In the time available, the subject matter of this report could not be placed before the members of this Commission and the views expressed herein are those of the staff alone.

Sincerely yours,

WILLIAM G. COLEMAN,
Executive Director.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., August 3, 1964.

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

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department concerning S. 1719, an act to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence.

The act would prohibit withholding for State or local tax purposes by airlines, motor carriers, railroad and water carriers with respect to wages of employees actually engaged in aircraft, motor vehicle, railway, or water vessel operations unless the taxing State or subdivision is that of the employee's residence. The purpose of the act as indicated by the sponsor in his remarks at the time of introduction of S. 1719, is to eliminate multiple withholding and resulting administrative burdens upon the carrier based upon transit of the employee through a number of States during the year.

S. 1719 as passed by the Senate removes one of our objections to the bill as originally introduced since it would now apply to employees of all carriers rather than merely to those of motor carriers and air carriers.

We recognize that if each State which a carrier's employee transits in the course of his employment were to assert a right to have taxes withheld from his wages, the result would be an enormous burden both on the employer and upon the employee who in many cases would be entitled to file for refund of the taxes withheld. However, the same considerations would also apply with respect to any other person whose employment required him to work in more than one State for his employer. S. 1719 by providing relief only for operating employees of carriers would therefore appear to be discriminatory. Moreover, S. 1719 appears deficient in that it would permit withholding only for the State of residence as shown in the employment records of the employer. We believe that this might encourage avoidance of withholding by employees who could furnish, for purposes of employment records of the employer, a mailing address in a State having no income tax.

Finally, S. 1719 would appear to present serious problems with respect to those employees to whom it would apply. It would prohibit tax withholding for any State or locality other than the State or locality of residence. This would appear to deny to the State of domicile of the taxpayer the right to have wages withheld for taxes due to that State unless the State of domicile also was the State of residence which in many instances is not the case. Generally income taxation on the basis of domicile is regarded as an appropriate exercise of the taxing power of the State. Moreover, the bill would prohibit furnishing of an information return to any State other than the State of residence, thus denying a second avenue of tax enforcement to other States.

For these reasons we are unable to recommend enactment of S. 1719.

We believe, however, that the problem at which S. 1719 is directed might appropriately be included in the study authorized under Public Law 86-272 of matters relating to taxation by the States of interstate commerce or in a similar study directed solely to the problem of multiple taxation by States of the incomes of individuals. Such a study might well develop a solution to the problem which avoided the difficulties we believe would result from enactment of S. 1719.

Furthermore this Department would have no objection to recommending congressional consent to an appropriate compact between the States agreeing to an equitable assessment and collection of State and local income taxes from those whose employment in interstate commerce requires that they travel through two or more States.

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.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., July 23, 1964.

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

DEAR CHAIRMAN HARRIS: Your letter of June 24, 1964, addressed to the Chairman of the Commission and requesting comments on S. 1719, an act to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence, has been referred to our Committee on Legislation. After consideration by that committee, I am athorized to submit the following comments in its behalf:

S. 1719 would amend the Interstate Commerce Act to provide:

(1) that "No part of the wages or salary paid [by rail, motor, and water carriers subject to the provisions of the act] * * * to any [operating] employee who performs his regularly assigned duties * * * in more than one State, shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of such carrier", and

(2) that no such carrier "shall file any information return or other report for tax purposes with respect to such wages or salary with any State or subdivision thereof other than such State or subdivision of residence".

In addition, it would amend title XI of the Federal Aviation Act of 1958 by adding similar provisions relating to certain employees of air carriers.

We are of the view that interstate carriers should not be burdened with the cumbersome and expensive administrative task of complying with an indeterminate number of diverse State and local nonresident withholding procedures for each individual operating employee. The complexity of this task becomes apparent when one considers that such employees may in the performance of their duties pass through virtually every State in the Union. Accordingly, we favor the general objective of S. 1719 and, subject to the opinion of those more versed in taxation matters concerning the technical aspects of this measure, recommend its enactment.

Another matter, although of relatively minor importance, deserves mention. It is not clear why this measure, which relates primarily to State and local tax procedures, contemplates amendment of the Interstate Commerce Act. We suggest that the objective sought in S. 1719 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 in an appropriate title of the United States Code.

Respectfully submitted.

ABE MCGREGOR GOFF,
Chairman, Committee on Legislation,
CHARLES A. WEBB,
LAURENCE K. WALRATH.

Mr. WILLIAMS. Mr. Fort?

STATEMENT OF JAMES FORT, COUNSEL, PUBLIC AFFAIRS, AMERICAN TRUCKING ASSOCIATIONS

Mr. FORT. Mr. Chairman, I simply wanted the opportunity to introduce the witness for the American Trucking Associations. Our witness this morning is Mr. William J. Hickey, vice president and general counsel of Consolidated Freightways of California.

The American Trucking Associations, as Mr. Hickey will elaborate on, favors enactment of the pending legislation, and we felt that an active carrier could tell a better story in this instance certainly that a staff man, and that is why we have Mr. Hickey here from California this morning.

STATEMENT OF WILLIAM J. HICKEY, GENERAL COUNSEL, CONSOLIDATED FREIGHTWAYS, MENLO PARK, CALIF., APPEARING FOR AMERICAN TRUCKING ASSOCIATIONS

Mr. HICKEY. Good morning, Mr. Chairman. My name is William J. Hickey. I am vice president and general counsel of Consolidated Freightways, Inc., of Menlo Park, Calif. I appear here today to testify in support of H.R. 10743 and S. 1719 and I speak for American Trucking Associations, Inc., as well as Consolidated Freightways.

As you may know, H.R. 10743 and S. 1719, if enacted, would provide that certain regulated transportation companies shall not be subject to the income tax withholding requirements of the various States relative to the income earned by employees of such companies when, as nonresidents, they operate into or through a State.

In illustrating the scope of the problem as it relates to my company, I am, in general, describing the problem as it affects all interstate regulated motor carriers.

Consolidated Freightways is a common carrier of motor freight and has been engaged in such business since 1929. Under authority of the Interstate Commerce Commission and of the regulatory bodies of the several States, it carries on its activity on a regular route basis in 32 of the States and certain Provinces of western Canada, performing interstate and—in some 15 States—intrastate motor carrier services. Certain limited irregular authorities are exercised in 11 other States. The particular problem involved here concerns the performance of its interstate common-carrier authority.

Consolidated has approximately 7,000 employees who drive the tractor-trailer combinations used in rendering interstate service. Each of these drivers operates in several States and a substantial number perform services in as many as 32 States within the period of a calendar year. Furthermore, due to the distances traveled, the Interstate Commerce Commission hours of service regulations, union work rules, and the irregular flow of freight, it is impossible for Consolidated to dispatch all of its drivers on regular assigned routes. The result is that Consolidated has employees driving trucks into and through many States on a basis that varies from day to day, both as to the States involved as well as to the individual employees.

The interstate drivers are generally paid on the basis of driven miles plus hourly wages, for stopped time. The record from which they are paid is a drivers' trip report record, from which is developed the

number of equipment miles driven on each trip. This information is used by the company to develop an equipment-miles-by-States record, which is the basis for prorating State license fees, State property taxes, State fuel taxes, State mileage taxes, and corporate State income taxes. But there is no record of miles by States by drivers as would be required to satisfy State requirements as to withholding. The company has found, through a study by competent certified public accountants, that the development of this additional information for a single State would cost it more than $45,000 per year. This figure is based upon a report developed with the cooperation of International Business Machines and certified by Peat, Marwick, Mitchell & Co.

The company presently reports the employees' wages to the Federal Government and to the employee's home State for individual income tax purposes, and withholds income taxes for the Federal Government and for the employee's State of residence. While we are not overly enthused with this practice, we are not seeking relief therefrom. It is relief from the situation as it applies to the nonresident that we desire, and such is the gist of this legislation.

Specifically, some 20 of the 32 States in which Consolidated Freightways regularly operates, and some 12 to 15 of the cities, have income taxes. While most of these jurisdictions have a requirement as to withholding of income tax from wages of nonresidents, the majority of them have in the past not sought to require withholding from the wages of our drivers performing interstate commerce. However, beginning in 1962, certain of these States have sought to require motor carriers to withhold from the wages of nonresident truckdrivers. In one State, the company became involved in a lawsuit, seeking relief in the courts of that State, from the onerous burden of computing a mileage prorate of drivers' wages in order to comply with a statute that would benefit the State far less than the cost of compliance to the company.

I might deviate from my prepared remarks at this point to say it would have cost Consolidated Freightways in this particular case $45,000 to $50,000 a year to develop a report that would yield the State $3,000 in taxes from these employees, and ultimately the State did change the law and has now passed a new law to provide relief from this particular situation.

Mr. WILLIAMS. What State is that?

Mr. HICKEY. The State of Wisconsin.

Unfortunately, the number of jurisdictions in which taxes on nonresident income are levied is on the increase. These jurisdictions have found that enforcement of such levies is enhanced by requiring employers to withhold tax from wages; in addition, such withholding steps up collections of tax receipts, and in the first year assists the States in meeting the cash requirements of their budgets. When one of these jurisdictions requires withholding from drivers' wages, the neighboring jurisdictions move to enforce the same requirement to protect their revenues, inasmuch as their residents will get a credit in their home State for income taxes paid to other States. It is obvious that once this chain reaction gets underway all jurisdictions would enforce such withholding. If rates and deductions were the same in these jurisdictions, the end result would be no gain to any one State. However, the expense to the employer would be a major burden. In fact, it is rapidly becoming one.

Furthermore, envision the plight of the unfortunate employee. His pay check soon begins to show, in addition to the present deductions, a deduction for tax due on wages earned in each of the various States through which he happens to drive. In practice, this has more of an adverse effect than is portrayed by such a statement. To illustrate, the driver's State of residence requires withholding based on 100 percent of his wages and the other jurisdictions require withholding based on a proportion. The result invariably is collections greatly in excess of the final tax liability to any jurisdiction. To obtain the return of his money—of which he has had no use during the year—the driver is required to file a State tax return for each withholding State. All but one of these will be nonresident returns involving possible refunds from all of such States. This refund will depend on the existence of a reciprocal agreement between the nonresident State and the State of residence and will require the computation of a highly complicated tax credit. While a number of our drivers are college graduates, I do not think they are qualified to individually complete the involved returns particularly as knowledge of the laws of many jurisdictions is a prerequisite. Unless the driver is fortunate enough to have a lawyer or accountant for a wife, he must employ professional assistance.

Having briefly discussed the problem as it relates to the employer and the employee, let us turn to the taxing jurisdiction.

The variation in State income tax rates would result in some net gain to the higher rate States and an equal loss to the employee, since the employee usually receives a credit on his local State tax only to the extent of the rate in his home State. In our case, the States with large population centers would lose a little to the States without large population centers, because we now withhold in the home State only and more of our drivers are residents of our larger base terminals in major cities. Seemingly, the cost of administering such a procedure would in most instances be greater than the gain.

While this expense and confusion is not greatly relished by any employer, it is particularly burdensome to employers engaged in the conduct of interstate commerce, adding to the cost of a service carried on in the public interest. Consolidated Freightways, unlike a private carrier, is specifically required by its ICC authority to traverse and serve certain States—it cannot detour to avoid imposition of the State law.

H.R. 10743 and S. 1719 do not challenge the right of a State to tax the income of either residents or nonresidents; rather, it only would prevent the burdening of regulated interstate commerce by unreasonable withholding requirements which are not in the end productive of revenues to the States. Furthermore, it creates an exception only for a regulated industry—a small segment of the business area concerned.

We cite as a precedent for the relief we desire, the enactment by the Congress in 1959 of Public Law 86–263 which prohibited State and local governments from requiring withholding on the wages of seamen on vessels engaged in foreign, coastal, intercoastal, or noncontiguous trade.

I would like to express my personal appreciation and that of Consolidated Freightways for the opportunity to present our views in support of H.R. 10743 and S. 1719.

Thank you.

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Mr. WILLIAMS. Thank you, Mr. Hickey.

Mr. Friedel, do you have any questions?

Mr. FRIEDEL. Not at the moment.

Mr. WILLIAMS. Mr. Springer?

Mr. SPRINGER. Mr. Hickey, I have read 1719 here. It seems to me this is quite clear. You have just one idea in mind, and that is to make the income tax deduction applicable only in the State where the person resides, is that correct?

Mr. HICKEY. Withholding only in the State of residence.

Mr. SPRINGER. Then I take it from that that the only tax to which he would be subject would be in the State of his residence.

Mr. HICKEY. That is not the intention of this bill. This would not go to the right or the power of the State in which the employee earns some of his wages to tax it. We do not contest that right at all. We recognize that right. Now, this does go to the method of enforcement of collection of that tax.

Mr. SPRINGER. All right. Let us say, for instance, that this man resides in Hannibal, Mo., and he does all of his work in the State of Illinois, and his residence is Hannibal. He returns to Hannibal every 48 hours, the time he is off, and that is where he lives.

Now, it is your thought that the only State that could withhold the tax would be the State of Missouri.

Mr. HICKEY. That is correct.

Mr. SPRINGER. All right. Now, then, how would you expect the State of Illinois to collect its share?

Mr. HICKEY. I would assume that the State of Illinois, after it had determined the amount of tax that was owed by this particular individual in Missouri, would take whatever legal recourse it had to collect the tax from this particular individual that it would have from any nonresident.

Now, I am not quite sure what it would be in Illinois, whether or not it could enforce a tax levy. I would assume they could serve it on his employer who is a citizen of Illinois for purposes of service. If you take our company as an example, our company would have a terminal and does have terminals in Illinois. If we were withholding only in Missouri, I think we would be subject perhaps to service in the State of Illinois as to this employee, but this would not involve our preparing the records on his employment. It would not involve our preparing the driver-miles-by-State record that is required for the State to enforce this withholding.

Mr. SPRINGER. Now, I suppose, then that the State of Illinois would file a suit against the State of Missouri in order to collect their share?

Mr. HICKEY. To a suit against the State of Missouri?

Mr. SPRINGER. Yes.

Mr. HICKEY. I shouldn't think so.

Mr. SPRINGER. Then would you say that if some of the work or the major portion of the work or all of the work was done in the State of Illinois that under this law, if you had it in effect, if you had the withholdings applied as in this bill, that then it would be a sole defense to you to say we have paid the State of Missouri? In accordance with this law.

Mr. HICKEY. Of course, the answer to your question would be "yes." On the other hand, you are taking as an example a situation that is

unusual because we do not have many situations where any of these drivers earn a substantial part of their wages in one State. They traverse so many States that the spread is quite substantial, and the breakdown would be merely a fraction for any one particular State. And this is, of course, what complicates our problem. If we had a simple problem like—if we only had terminals in two States, so a substantial portion of the income would be earned in one or another of the States, it would not be so great a problem for us. But we do not have that situation.

On the other hand, the answer to your question is "Yes," if we had one isolated situation where we only had a two-State division of income.

Mr. SPRINGER. Let me give you another: I think this problem is going to arise and I might as well get to the central part of this. Suppose that your company had a terminal at Quincy, Ill., which is on this side of the river, and the other terminal was in Kansas City, Kans., and that your company did business only between Quincy, Ill., and Kansas City, Kans. All three States have a provision for withholding—a provision for taxation of that particular driver.

Now, how do you propose that their being no terminal in the State of Missouri, only in Quincy and Kansas City, Kans., how do you propose that the State of Missouri would collect its share of withholding tax?

Mr. HICKEY. I do not have a firm proposal as to how the State should remedy this enforcement. I am more concerned with the negative effect on interstate commerce by the enforcement of the withholding. How they would get their tax is quite another question.

Now, I am not sure, when you cite an example like this with terminals in Illinois and Kansas but merely operating through Missouri, how much of the driver's wages should be taxed in Missouri. I think this is still another question aside from the enforcement. How Missouri would go about this I really don't know. As I said before, I assume that the State of Missouri would pursue this tax in the fashion that they would against any nonresident without withholding.

You see, they just happen to have a carrier who runs through there that they can get to. Now, if it was someone else like a traveling salesman who went through that and earned part of his salary in Missouri, how would they get to his tax?

Mr. SPRINGER. The reason I am raising these—these are both extreme examples, but they present the question right on the face of it—if this truckdriver drove only between Kansas City, Kans., and Quincy, Ill., very obviously, the overwhelming portion of his mileage or of his work would be in the State of Missouri, and the problem immediately raised is, if Missouri is entitled to withholding, how would they collect? This is the thing that is going to arise immediately when this bill, the knowledge gets out to the States, is: How are we going to get our share? This would relieve you of a problem, I can well understand it. Maybe it has justice on your side. I can certainly understand what you are getting at, that a whole lot of States are going to try to get their share. This is a problem that is immediately going to arise: How do we collect our share?

Mr. HICKEY. Well, I might say, this problem came about in the State of Wisconsin, too, when we had the situation come to a head there and we had to take that particular statute and litigate in the

courts to get attention for the problem that we had. The obvious answer to the question that they asked there and the question you are asking is that the motor carriers should not be subjected to the withholding that we are talking about here because, in their particular business, you don't normally have the kind of situation that you are talking about. We do not normally have a high concentration of earnings in one State. We would not normally have a driver going from Quincy to Kansas City and spending 90 percent of his time in the State of Missouri. This just does not exist in our company. At least I can never identify a situation like that. So that when we asked relief in Wisconsin, and obtained relief from the legislature there, it was on the basis of a motor carrier in interstate commerce being a peculiar type of animal that is subject to a great deal of harrassment in this type of thing. That does not deprive the State of a large amount of revenue, but we are talking about such fractional portions of a driver's wages that it does not substantially affect the States and yet constitutes a tremendous harrassment to the particular carrier involved.

Mr. SPRINGER. I understand your position on this perfectly. The legislation does not contemplate or does not provide any remedy or any division of withholding. All it does is relieve the transportation itself, we will say, from the burden of having to figure withholding through the States in which it travels, providing that it may be withheld only in the State in which the person resides.

Mr. HICKEY. That is correct.

Mr. SPRINGER. That is all, Mr. Chairman.

Mr. WILLIAMS. Mr. Friedel?

Mr. FRIEDEL. I would like to ask this question: How would it affect the State? Just using a figure of 1 percent withholding tax on nonresidents, and that would be at his home base, and also he would have to pay his income tax in his home State. Use, for example, Baltimore as the home base, and he goes all through New York State, and New York State would require a 1-percent withholding tax on nonresidents. How would this bill affect other than common carriers? How would it affect the other people involved?

Mr. HICKEY. Nonregulated?

Mr. FRIEDEL. Nonregulated.

Mr. HICKEY. It would have no effect at all.

Mr. FRIEDEL. In other words, the State could collect their 1 percent for nonresidents tax, and the employee would get credit from their home State. They generally get credit from the State where they pay the withholding tax.

Mr. HICKEY. That is correct; this would have no effect on nonregulated businesses.

Mr. FRIEDEL. Only regulated.

Mr. HICKEY. That is correct. This legislation goes solely to regulated carriers and in particular the motor, rail, and air carriers. The water carriers already have the relief in the bill that I cited in my remarks.

Mr. FRIEDEL. Thank you.

Mr. WILLIAMS. Mr. Jarman?

Mr. JARMAN. Mr. Hickey, I have been given a statement of California's position on the bill before us and I would like to get your comment on one or two things that are set out in that statement.

One thing they argue is that California has not enacted a general withholding tax law and that, therefore, their main tool in income tax enforcement is information returns. They say that the information returns, however, are not required to be filed until an employer pays salaries and wages to a single employee in excess of $1,500 a year, that amount soon to be increased to $2,000 under the 1964 amendment, or over $3,000, that amount to be increased to $4,000, under the 1964 amendment in the case of a married couple.

They argue that, with that limitation, nominal payments are not subject to withholding or reporting. California law creates no undue burden on carriers or their non-resident-operating employees.

I would be interested in any comments you might make on that contention.

Mr. HICKEY. Their point is that if a single employee earns less than $2,000 a year in that State?

Mr. JARMAN. That is my understanding under California law. At least, that is what is set out in this paper. California has no general withholding tax law.

Mr. HICKEY. That is true.

Mr. JARMAN. But California has this requirement based upon the amount of money earned, either as an individual or as a married man.

Mr. HICKEY. Of course, this would nevertheless constitute a burden in the particular State you cite there because we do have a number of operations for example, between Seattle on the one hand and Los Angeles on the other, so that perhaps as much as one-half of the total trip would be through the State of California. And these drivers who would make that run as a regular assignment, if there are any, would perhaps be earning in the neighborhood of $16,000 to $18,000 a year. So that easily even if it were a married couple, $4,000 would be exceeded in the State of California. Thus if they had withholding, we would have to withhold or provide the same information.

Now, I agree with them that under the present law it is not a burden because they do not have withholding. And if they had it and they had an exemption for $2,000 or $4,000, it would provide some relief, but nevertheless we would have enough people operating above the limitation in California in particular so that it would be a burden.

Mr. JARMAN. Out of your own company's 7,000 employees, do you have any—have you compiled any figures as to the number on which you would have to supply information statements?

Mr. HICKEY. I do not have that information offhand.

Mr. JARMAN. I wonder how it affected your own company.

Mr. HICKEY. Well, I can say this, that we have a highly advanced IBM concentration of machines in Portland, and I would estimate that 25 percent of that machine time is spent on employee pay reports and information reports of the type you are talking about.

Now, to break it down by the exact number of employees would be most difficult because we have in fact many more than the 7,000 employees. These are just 7,000 truckdrivers.

Mr. JARMAN. I have just one other part of that California statement that has been given me on which I would like to ask for a comment. They say apparently it is not the intent of H.R. 10743 to deprive the State of its right to tax. Under California law, if the

employer does not withhold the State unemployment compensation disability tax from employees, the employer becomes liable for the tax. Thus the effect of the bill may be to shift the tax liability from the employee to the employer. Do you have any——

Mr. HICKEY. That is correct. We understand that to be the effect of the bill.

Mr. JARMAN. I think that is all.

Mr. WILLIAMS. Mr. Devine?

Mr. DEVINE. Mr. Hickey, do you or your organization, either Consolidated or the trucking associations, have a basic feeling against withholding just as a general principle?

Mr. HICKEY. No. Not at all. We have a very definite opinion as to withholding on the income taxes that I have talked about in my remarks because of the de facto burden that it creates on the administrative processes of our particular company, but we have no predisposition against withholding in general.

Mr. DEVINE. The withholding principle was adopted I guess because of the ease of collection; that the Government could not afford to send people out to collect income taxes from the Federal standpoint clear across the Nation, and the States have now adopted it, and it is becoming broader and broader, so that even municipalities are permitted to withhold. I just thought perhaps your organization had a set policy either for or against the withholding principle.

Mr. HICKEY. No. If we have any policy it is in favor of cooperating with those States where withholding is reasonable, and doing all that is required under the law.

However, our position here is that multiple withholding in our situation which could be as many as 32 or more for 1 individual is unreasonable.

Mr. DEVINE. It could become overwhelming. Of course, many persons have stated that over the years as far as the Federal withholding plan is concerned that it is a very serious situation, that if the taxpayers of this Nation realized how much was being withheld, they would probably revolt against this whole system because today the wage earner is not concerned with what he makes. He is concerned with what his take-home pay is. That is all he looks at. He does not care about what is withheld.

Mr. HICKEY. That is correct.

Mr. DEVINE. These laws lend themselves to a situation where they are not concerned with what is withheld in Washington nor what these fellows down in Washington are doing with their money.

Mr. HICKEY. Well, the burden, as I pointed out before, the burden on the employee is just as substantial in a sense of the word as the burden on the employer in this case because it could get to a point where a substantial part of the employee's wages would be kept out of his use or beyond his utilization during the full year until he could get it back, if he ever got it back. This is so because some of these people might not take the appropriate steps to get refunds when they had them coming. So I think both from the standpoint of the employer and the employee, this particular bill limiting withholding is certainly most desirable and reasonable.

Mr. DEVINE. I have no further questions, Mr. Chairman.

Mr. WILLIAMS. Mr. Watson?

Mr. WATSON. Thank you, Mr. Chairman.

Mr. Hickey, since we represent by and large a group of residents rather than nonresidents, help me to justify in my mind the propriety of forcing the resident to have his income tax withheld and the nonresident of being excluded from that. After all, you have in mind that we represent more resident constituents than we do nonresidents. Now, you help me to go back home and tell my people that we won't require the nonresident to have his income taxes withheld, but we do require 99 percent of our own people to have theirs withheld.

Mr. HICKEY. Mr. Watson, I would rather turn that around and if I could help you, help you in this way to go back to South Carolina and point out to the residents who are there who happen to be truckdrivers for interstate truckers, and I understand you have quite a few who are based in your State, I would rather have you explain to them that you have supported a bill that would relieve them from an undue burden because I do not think that what we are talking about is depriving South Carolina of any revenue. On the contrary, I think we are talking about protecting the income, not only of the employee truckdrivers in South Carolina but the financial well-being of the interstate motor carriers who are based in your State.

Mr. WILLIAMS. Would the gentleman yield at that point? You used the term of "protecting the income" of these people. Are you suggesting that without—in the absence of the withholding tax on nonresidents, that there would be no tax on the income of these people?

Mr. HICKEY. No. That was not my suggestion. I was going back to the point that I made before, that with multiple withholding, these people are deprived of more money during the year than they actually owe in taxes.

Mr. WILLIAMS. There is no depreciation of income.

Mr. HICKEY. No.

Mr. WILLIAMS. Nor is there any release from the liability or obligation to pay the income tax——

Mr. HICKEY. Not at all.

Mr. WILLIAMS (continuing). In these other States.

Mr. HICKEY. I was directing my remarks more to the protection of the utilization of part of the income because as I pointed out before, a substantial part of the employee's salary which would not ultimately be due in taxes would be beyond his reach during the year, and perhaps never recovered if he didn't make the appropriate refund applications.

Mr. WILLIAMS. There is nothing novel about Federal withholding programs and all of the withholding programs in the several States, is there?

Mr. HICKEY. No; the only novel point is the multiplicity of the withholding.

Mr. WATSON. Mr. Hickey, on page 4 you admit in the second paragraph that such withholding procedure "steps up" collections of tax receipts. So you admit by your statement that certainly this method does step up the tax receipts of the individual States.

Mr. HICKEY. I think that is certainly one of the prime purposes of withholding.

Mr. WATSON. Yes; and there is no admission nor is there any contention on your part at this time that any State is collecting any tax from any truckdriver which is not due.

Mr. HICKEY. Pardon me? I didn't hear all of that.

Mr. WATSON. Certainly you do not contend now that any State is collecting any income tax from any truckdriver which is not due.

Mr. HICKEY. That is correct.

Mr. WATSON. That is correct. So this whole problem is not a matter of a State collecting any income tax which is not due that State, but rather is directed to the bookkeeping problem which you and others similarly situated have.

Mr. HICKEY. That is correct.

Mr. WATSON. Now, your business is not typical of the trucking business in general. I mean, most of them are not as large as yours, are they?

Mr. HICKEY. No; I do not know of any other that is as large. On the other hand, the problem is typical, I think. I think if you looked at a cross section of the interstate motor common carriers, the average truckline, if there is an average truckline, would operate in at least six or seven States. I must admit our 32 States is somewhat unusual. I would guess there are not more than 7 to 10 carriers in that position. But even if you reduced the problem to seven, eight, or nine States, which I think would be average for an interstate motor carrier, the problem is still significant because as you reduce the number of States served, you reduce the size of the carrier, too, and the burden that 32 States is to our company doing over $100 million a year is perhaps quite the same for a carrier doing perhaps $2 or $3 million a year in 7 or 8 States.

Mr. WATSON. Of course, you have a responsibility of gathering information for a great portion of this burden already in the matter of filing your mileage taxes, prorating that among the States wherein you operate, and additionally the filing of your corporate income taxes. You still have to break it down among the various States within which you operate, don't you?

Mr. HICKEY. Yes; but this information comes from the driver trip record that goes with the piece of equipment and is very easy to convert to the machines that we have. It would be much more difficult to break down the mileage by drivers than by equipment because we can keep the records with equipment. We may have three different drivers driving one piece of equipment when it goes from one terminal to the other and we take the record from the truck and we know how many miles it is driven. It has an odometer on it. But we have to go back through a very complicated process to determine just how many of those miles are driven by each driver, and this is not nearly so susceptible to machine accounting as the miles we talk about in my prepared remarks that we use in preparing our reports to States on fuel taxes and mileage taxes.

Mr. WATSON. Would your company have any objection to the filing of information returns to the various States within which you operate, so far as it relates to employee income tax?

Mr. HICKEY. I think at the present time we do—we are required in certain States to file information returns, but I would have to say that cautiously. I am not sure. We would have perhaps the same objection to an information return if it required the same amount of recordkeeping that the withholding would because the actual withholding itself, the actual act of withholding rather than the computation of all the information necessary to compute the withholding, is not so burdensome as the gathering of this information.

Mr. WATSON. Then, to develop the line of questioning my colleague, Mr. Springer, projected to you a moment ago, explain to me as a practical matter how a State would be able to determine who owes what tax in what amount, in the absence of either the withholding or of an information return filed with the respective States. As a practical matter, how could this be determined?

Mr. HICKEY. I think that question probably has been asked three or four different ways, and the answer I can't improve upon. It is that the States would have to collect this particular tax and get the information to collect the tax in the way that they presently do against any nonresident, as they would against a corporate nonresident.

Mr. WATSON. But so far as the matter of a State being able to determine what driver owes any income tax to that particular State for work performed within it, and the amount of the tax, it would be impossible to determine that, would it not?

Mr. HICKEY. I think the answer to your question, and I have said this before, is "Yes"; that they would be at somewhat of a disadvantage in the matter of getting the information necessary to compute the tax, but I think the mere fortuitous situation that you have with the regulated carrier who operates in and through and is subject to service in every State through which it operates puts it in a peculiar position because you certainly have many other nonresident wage earners who are individually earning a portion of their annual income in a particular State and from whom the State could never collect the tax or get the information, so we have the fortuitous situation where you happen to have a regulated carrier who actually is in a position where they can get the information from him at greatest expense. Of course, the other party, for instance, a salesman who does not have an office in the State but earns a good deal of his income in the State, is not subject to the same burden.

It seems to me this is the real heart and soul of this bill, that the withholding on nonresidents in the fashion we have described discriminates unduly against regulated carriers and clearly places a burden on it that is not at all within reason. It is strictly a burden on the administrative processes of a company such as ours.

Mr. WATSON. I can appreciate the burden that you have. Of course, it naturally follows when you have a big business that you have these additional burdens and responsibilities both to the Federal Government and I think likewise to the various State governments.

Answer this question. Help me get a little light on it in my thinking. Is that not going to open the door for all other nonresidents, companies, to ask for the same consideration? And would they not be justified in asking for the same exemption?

Mr. HICKEY. It certainly is not our intention to open the door to a blanket relief from withholding tax. Certainly we have tried to make it very evident in this bill that what we are directing our attention to is a very, very limited situation. I think that beyond the question of regulated carriers of the type we describe in the bill we do not propose any relief from this because I do not think the problem becomes as great when you get beyond the regulated industries. I think when you are talking about just a manufacturing company, it is not nearly such a great problem, and certainly the only aspect of this problem that we intend to reach here or that we intend to remedy by this bill is that portion which relates solely to regulated transportation.

Mr. WATSON. Are you aware of the fact that there has been a bill already introduced in the House to exempt those nonresidents employed on Government reservations from the same provisions of State withholding as you are requesting now?

Mr. HICKEY. I am not familiar with the bill.

Mr. WATSON. I would say for your information that such a bill has been introduced, and I can see where very well it could present a problem to these States. Frankly, in my mind, if we exempt one we should exempt all, regardless of the size. I see no basic justification, simply because one company is larger and has a particularly heavy burden, including all of this information, for exempting it if the little company is not exempted. That is the problem with which I am wrestling in my mind, especially in view of the fact that you stated that no State is attempting to collect any tax from any nonresident individual which is not due that State. You did agree with that, didn't you?

Mr. HICKEY. You were talking about our company in particular.

Mr. WATSON. Yes, sir.

Mr. HICKEY. Well, of course, there is no State collecting any tax from us now except the State of residence.

Mr. WATSON. I understood from your statement that more and more States are going out and requiring the withholding of income taxes from your employees; or did I misunderstand you? If I misunderstood you, then I fail to understand why you are here today.

Mr. HICKEY. No. This is—the statement that I made, and I think you are referring to page 4 of my statement, is that the number of jurisdictions in which taxes on nonresident income are levied is on the increase. Now, as to what taxes are paid by the employee, we would not know that because they do not withhold. The only one that has actually enforced the withholding requirement against the nonresident was the State of Wisconsin that I am familiar with.

Mr. WATSON. But you anticipate that more and more States will——

Mr. HICKEY. That is correct.

Mr. WATSON. Thank you.

Mr. HICKEY. Now, as to what tax they would collect and whether it would be all that we said or not, of course, I cannot answer.

One point that you brought up—perhaps it was Mr. Jarman—that I should clarify, when I agreed that the employer would be responsible for the unemployment compensation tax, my thought was that this bill relates only to income tax. However, if H.R. 10743 is a broad exemption of withholding, then it would, I assume, cover the unemployment compensation tax as well so that the employer would not be responsible.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. WILLIAMS. Mr. Sibal?

Mr. SIBAL. Mr. Hickey, in that lawsuit having to do with the State of Wisconsin, what was the decision in that case? What was the decision of the court?

Mr. HICKEY. The lawsuit became academic because the law was changed.

Mr. SIBAL. Prior to decision.

Mr. HICKEY. That is correct.

Mr. SIBAL. So that the suit was withdrawn, was it, or dropped?

Mr. HICKEY. It is in the process of being dismissed now.

Mr. SIBAL. I know you stated this, but just to make the record clear, at the moment you do not have any problem of having to comply with this withholding. You anticipate a problem, is that correct?

Mr. HICKEY. That is correct at the present moment. When this bill was introduced, we did. This was an active problem. But at the present time I do not know of any particular state that is requiring withholding. I say that rather boldly. I do not know of any State where we have the problem. I know of two or three States where the problem is rapidly coming to a head because we have been told that the withholding is going to be enforced.

Mr. SIBAL. So you have this—this is not just some theoretical problem.

Mr. HICKEY. No, no.

Mr. SIBAL. It is right around the corner.

Mr. HICKEY. This is just around the corner.

Mr. SIBAL. Now, we always hear a lot of criticism about people putting their nose in private business. Can you anticipate if we pass a bill to prevent withholding, some kind of a system evolving where your private records would be scrutinized constantly by some agent of some State or some agency to find out this information?

Mr. HICKEY. At the present time we have a situation with the various States through which we operate whereby they are scrutinizing our records for information of this type. This would be one answer to the previous question. If they wanted to find out about our employees, our records are available, and if the State auditors want to come in and look at them, we make them available and they could determine from that how much the driver's total mileage was in a particular State and divide that back against his wages.

Mr. SIBAL. And you prefer this to having to withhold yourself.

Mr. HICKEY. Well, clearly if we have to dig this information out as I have indicated before, the cost to us in just one State is between $40,000 and $50,000. And it is obviously preferable from the standpoint of a public service company such as Consolidated Freightways not to spend what dollars it gets in revenue on what it considers to be useless recordkeeping of this type.

Mr. SIBAL. Don't you have to make personnel available to these government people, though, in order to help them find information, keep the thing under some kind of an orderly procedure?

Mr. HICKEY. Normally the individuals that I have encountered from the various State governments who visit our offices to examine our records are so familiar with the records of that particular type of industry that they need very little help. In fact, many times they don't particularly want it. But if it is required, we would make it available. Yet we are not talking about anything in the range of $40,000 to $50,000 a year, though.

Mr. SIBAL. I see. Thank you, Mr. Chairman.

Mr. WILLIAMS. Any further questions?

Mr. SPRINGER. Just one question. Mr. Hickey, what did you say the outcome of the Wisconsin decision was?

Mr. HICKEY. The suit became academic when the last session of the legislature there amended their law to provide relief.

Mr. SPRINGER. All right. Then in fact you didn't get any result from that decision one way or another.

Mr. HICKEY. That is correct.

Mr. SPRINGER. Now, I take it that at the present time if you raised this question, and it would be possible for you to raise the question, the burden on interstate commerce at the present time, you could raise that question in court proceedings now.

Mr. HICKEY. If a State were to enforce its withholding tax, we could raise that question.

Mr. SPRINGER. Now, if this law is passed, you still would have the constitutional question, would you not, whether or not it is a burden on interstate commerce?

Mr. HICKEY. Yes. On the other hand, you would have the clear statement in the law that limits the withholding to the place of residence of the employee.

Mr. SPRINGER. What I am trying to get at is this. At the present time you do have the power and the legal right to raise the question of whether or not this is a burden on interstate commerce.

Mr. HICKEY. That is correct.

Mr. SPRINGER. Now, we pass this law and assume it is already on the books. It still would be a constitutional question even with the law on the books, as to whether or not it is actually a burden on interstate commerce.

Mr. HICKEY. I think as an academic question, perhaps what you say is so. On the other hand, I think that the bill that we have before us is not of the type that would be subject to that kind of an attack. For example, the bill that was enacted into law concerning the water carriers and the employees of water carriers to my knowledge has never been challenged.

Mr. SPRINGER. In other words, what you would be in fact doing would be strengthening the case, substantially.

Mr. HICKEY. Or hopefully eliminating the possibility of having to litigate the constitutional question.

Mr. WILLIAMS. Mr. Hickey, you indicated in your statement, I believe, that your company operates in some 32 States. I think that is on page 1. And certain provinces of western Canada with which, of course, we cannot concern ourselves here, performing interstate, and in some 15 States, intrastate motor carrier operations.

Of those 32 States, how many have withholding statutes?

Mr. HICKEY. I have discussed this problem once before, and I believe the number of States to be 14 of the 32 that we are talking about at the present time. In addition several cities require withholding. But I would prefer if I may, Mr. Chairman, to supply for the record information on this particular point at a later date.

(This information appears on p. 28.)

Mr. WILLIAMS. All right, sir.

Do you operate in Utah?

Mr. HICKEY. Yes, sir.

Mr. WILLIAMS. According to information which has come to me in the form of a letter from the commissioner, State tax commissioner of the State of Utah, they have in effect a regulation purported to deal with this problem that provides as follows:

> Withholding will not be required in the case of wages paid by licensed common carriage or employers with similar type business operations to employees who are bona fide residents and domiciled in a State other than Utah and who engage in services that originate outside of Utah and either terminate in or pass through Utah.

I would like to know how many of these 10 States have in effect the same type of regulation.

Mr. HICKEY. I do not believe any do.

Mr. WILLIAMS. I think it would be well for the committee to have that information also.

Mr. HICKEY. Well, my recollection, Mr. Chairman, is that in the case of the State of Utah, the problem of withholding nonresident income tax did come to the fore at one point in the past and that the restriction that you speak of was in the way of amendatory language.

Now, to the best of my knowledge, none of the other taxing jurisdictions which have withholding provisions have a similar exemption other than Wisconsin which has just passed it.

Mr. WILLIAMS. Wisconsin does have a similar provision.

Mr. HICKEY. After this last session when a bill was passed to relieve us from the problem that was raised in the lawsuit, we have an exemption. It is not in that form, but it is an exemption from the withholding.

Mr. WILLIAMS. Now, do I understand correctly, in your response to a question asked a moment ago, that this is not an existing problem but that you anticipate difficulty in the future?

Mr. HICKEY. Well, the problem when it first came to the surface was a very real problem that we had at that time with Wisconsin. The problem today insofar as Consolidated Freightways is concerned is one which is just around the corner because we have been told it is going to be enforced. However, I am informed that other carriers, since we only operate in 32 States, and there are 18 others involved, I am informed that carriers operating in some of the other 18 States do have this problem, that it is real today, and I am here today to speak not only for Consolidated Freightways but the American Trucking Associations.

Mr. WILLIAMS. Let us see how widespread the problem is at present, if you can, not anticipated but at present. How many of the 50 States employ withholding tax?

Mr. HICKEY. I do not have that answer, Mr. Chairman. I would have to supply that information.

Mr. WILLIAMS. Do you know how many States who do have withholding taxes or withholding tax laws subject nonresidents engaged in interstate carrier operations to withholding?

Mr. HICKEY. I do not have that information abstracted, Mr. Chairman. However, in the Senate hearing on this bill, on page 3 of that report there is a schedule. I could go through it if you wanted me to, but I do not have the information abstracted at this time.

Mr. WILLIAMS. I think it might be well to include this letter in the House hearings also, and we will do that later.

Mr. Hickey, you understand that in this legislation is involved an issue that raises a serious problem in connection with the Federal-State relationships. Would you agree with that statement?

Mr. HICKEY. Yes.

Mr. WILLIAMS. There is a serious question in my mind, at least, and apparently it also concerns others—I have just read several of the agency reports on this legislation, and they raise the point also—that this legislation may in some way encroach upon the constitutional rights of the several States.

Would you like to comment upon the extent to which you believe here is a definite encroachment on the reserve powers and the designated constitutional powers of the several States?

Mr. HICKEY. Our position, Mr. Chairman, has been that the thrust of this bill goes solely to the right of the State to enforce withholding by the employer of a nonresident employee. It does not go to the right of the State to tax this employee, or to collect the taxes due to it, which, of course, we don't challenge in any way. We do challenge their right to enforce these withholding laws in a fashion that we consider to be unreasonable, an undue burden on interstate commerce. However, we feel that the bill does not encroach on any of the constitutional rights of the State in this respect.

If, on the other hand, the bill were designed to somehow limit the right of the State to collect taxes, I would feel differently, but this is not our intention at all.

Mr. WILLIAMS. Isn't that answer to some extent equally applicable to the Federal withholding tax laws, getting away from the State-Federal relationship just a moment, and getting into the constitutionality of withholding as such?

Mr. HICKEY. Well, of course, the problem of——

Mr. WILLIAMS. The point that I want to make is this. The point of my question is this. Under our Constitution, wouldn't you say that a State had as much right to withhold income taxes as the Federal Government does? Is there any limitation in the Constitution other than the undue burden or other than the commerce clause that you——

Mr. HICKEY. Not in so far as the State withholding of income taxes resembles the Federal withholding of income taxes, I don't think there is any question but it is the constitutional right of the States, and we do not challenge the right of a State to require withholding from an employer of a resident of the State or one who is principally employed there which is after all what the Federal Government does. They do not have a situation that is at all similar to the one we described here since you do not have the problem of multiplicity of jurisdictions for withholding.

Mr. WILLIAMS. All right. You pay a corporate withholding tax in several States in which you operate.

Mr. HICKEY. Corporate withholding tax?

Mr. WILLIAMS. Yes, sir.

Mr. HICKEY. Corporate income tax.

Mr. WILLIAMS. Corporate income tax.

Mr. HICKEY. Yes, sir.

Mr. WILLIAMS. And you have to file informational returns, I suppose, in those States.

Mr. HICKEY. That is correct.

Mr. WILLIAMS. This bill does not relieve you of that responsibility, does it?

Mr. HICKEY. No, it does not.

Mr. WILLIAMS. But it does relieve you of the responsibility of filing informational returns on your employees who are nonresidents of that State.

Mr. HICKEY. That is correct.

Mr. WILLIAMS. Isn't the principle the same as to the taxation of an individual and a corporation?

Mr. HICKEY. I would think not, Mr. Chairman, since a corporation sees fit to do business in a State and desires affirmatively to be for certain purposes a citizen of that State, it undertakes voluntarily some of the obligations of an ordinary resident, and in that respect is required, and rightfully so, to pay corporate income taxes and to make reports to the State. But on the other hand, when you have a nonresident employee who has no control, nor does the employer, over the routes over which he must travel and the time he must spend in certain States, I think it is a little different. You have a little different situation than the voluntary act of citizenship in a particular State.

Mr. WILLIAMS. The report of the Bureau of the Budget is accompanied by a statement of policy or a recommendation commenting on this legislation over the signature of the Executive Director of the Commission on Intergovernmental Relations. He makes this statement in his closing paragraph. I would like to have you comment on it in view of the fact that this appears not to be a widespread problem at the moment but one which is primarily anticipated. He says this:

> Since the proposed legislation can have significant revenue impact for at least some States, would impinge upon long-established jurisdictional rules on State and local taxation, and would be contrary to the National Government's policy of assisting State and local governments in the enforcement of their tax laws, we would counsel against undue speed in its consideration. Specifically, the Bureau—

and they are suggesting this to the Bureau of the Budget—

> the Bureau may want to suggest to the House Committee on Interstate and Foreign Commerce that it afford representatives of State and local tax administrations an opportunity to present their views and more particularly that it urge these representatives to come to the committee with an alternative solution to the problem. Alternatively, the committee may want to request this Commission—

that is the Commission on Intergovernmental Relations—

> to explore solution possibilities with the States. The latter procedure would necessarily be more time consuming since within the Commission's budgetary resources such an investigation would have to be handled largely by correspondence.

What would be your objection, if any, to this committee's requesting this Commission to make a study and report back to them?

Mr. HICKEY. The principal objection, Mr. Chairman, would be the amount of time involved in having such a study, and while the letter from the Bureau of the Budget reports the problem not to be widespread at the moment, this is something that I would like to provide you with more information on, and I am not certain that I agree with that statement at all. I think that problem may be a very real problem.

Mr. WILLIAMS. To what extent have you sought to straighten this out at the State level? Apparently you were successful in Wisconsin. Evidently they have been successful in Utah.

Mr. HICKEY. Yes. We were successful in Wisconsin at great expense. I do not honestly believe that we could be successful in the other States without similar expense. It is hardly a palatable solution for us to go to each of the States that decides to enforce withholding tax and to litigate the question repeatedly. This is the whole purpose of the Federal legislation, to in one motion avoid the problem.

The State tax people, I understand, are here today, too, and will have an opportunity to speak on this, so if they were to report to this Commission, I think they could report to the committee today as well.

Mr. WILLIAMS. Where have you sought to straighten this out at the State level where it has not been straightened out?

Mr. HICKEY. In what particular State?

Mr. WILLIAMS. Just how unreasonable and arbitrary have you found State legislatures in recognizing and dealing with the problem?

Mr. HICKEY. I speak, as I say, for the American Trucking Associations but with respect to the impact of this problem, on many of the other carriers who are members of this association, I would ask your indulgence and supply this information because I do not have it offhand. But as one of thousands of carriers in this country, I can say that it took us 2 years to straighten the matter out in Wisconsin; 2 years and a great deal of expense.

(Subsequent information supplied by Mr. Hickey is as follows:)

SUPPLEMENTAL INFORMATION SUPPLIED BY CONSOLIDATED FREIGHTWAYS, INC.

During the years Consolidated Freightways, Inc., has been approached by a number of States concerning its duty to withhold State income tax from the wages of nonresident drivers engaged in the performance of interstate commerce in and through those States.

Montana contacted this company by mail in 1958. After an exchange of correspondence it was advised by a letter from the State dated August 13, 1958, that "as you are not engaged in business in Montana and your trucks are only passing through this State, you will not be required to withhold Montana State income tax on your nonresident drivers under our present law." There were several terminal facilities in Montana at that time. The letter was accepted for what it said, and there have been no subsequent requests to withhold.

Shortly thereafter, Utah wrote to the company and asked for withholding. On advice that Montana would not require withholding, Utah agreed not to require it since it was only protecting itself because Montana had been requiring it theretofore. By regulation, Utah now does not require withholding from common carriers from the wages of nonresident employees engaged in the performance of interstate commerce. This was the statutory language quoted by a member of the committee during my testimony.

It appears that several years ago Iowa approached Midwest trucking companies for withholding, and that they were convinced by the local trucking association and the unions that they should not. But Iowa is now requiring withholding. Its statute requires withholding from nonresidents and its regulations require withholding on a time or mileage basis from wages of nonresident truckdrivers.

Indiana, which had a gross income tax prior to 1963, once administratively decided not to require withholding from wages of nonresident truckdrivers. But its new net income statute requires such withholding on a mileage-proportion basis.

Missouri's income tax statute requires withholding from the wages of nonresidents and Missouri is enforcing its statute. Consolidated's operations in Missouri are such that except for very minor situations its drivers in Missouri are Missouri residents, therefore, Consolidated Freightways, Inc., is not withholding for nonresidents in Missouri and is not in any substantial violation.

Wisconsin is the State which brought the whole problem to the forefront. Faced by a problem of Wisconsin residents working in Minnesota, which required withholding from the employer in Minnesota, Wisconsin's retaliatory statute specifically required withholding from wages of, among others, nonresident truckdrivers. After 18 months of violation during which Consolidated Freightways, Inc., sued in the Wisconsin courts for an injunction, Wisconsin amended its statute to provide that unless and until the employer expected any drivers' wages would exceed $1,500, no withholding would be required. Consolidated Freightways, Inc., will settle its lawsuit and its prior (company) liability for failing to withhold; and the company is now withholding from the wages of five

nonresident drivers for Wisconsin, the remainder being exempt under the $1,500 minimum statute.

In the balance of the States, which have minimums of from $1,500 in California down to zero, Consolidated Freightways, Inc., continues to withhold on all the wages of an individual for the State of his working domicile, or, if that State has no income tax and his different resident State does, for the residence State. Thus, the company is withholding for one State only, on all the wages of the employee.

It is respectfully suggested that if H.R. 10743 and S. 1719 fail of passage a number of States will start enforcing their withholding statutes; and when they do the rest of the States will have to enforce theirs in order to protect their revenues.

The States which presently require withholding from the wages of nonresident truckdrivers passing through their States, and their minimums, are:

Alaska	$600	Massachusetts	$0
California	1,500	Minnesota	600
Delaware	600	Missouri	1,200
Indiana	100	Montana	500
Iowa	1,000	New York	600
Kentucky (and cities)	600	Oregon	600
Maryland	800	Wisconsin	1,500

The States which exempt nonresident truckdrivers' wages are Arizona, Colorado, Utah, and Idaho.

Mr. WILLIAMS. How much withholding tax did you pay during that time?

Mr. HICKEY. In Wisconsin?

Mr. WILLIAMS. Yes.

Mr. HICKEY. None. On the other hand, they were attempting to collect it. This was a matter of disagreement between Wisconsin and ourselves and the question of the back tax has not yet been resolved.

Mr. WILLIAMS. In Wisconsin—and I am not trying to be argumentative but simply trying to get information—you did find an avenue of relief without having to go to the Federal Government for it?

Mr. HICKEY. Yes; however, the suggestion that is implicit in what you say is that the proper way of relieving this problem would be to litigate in each State that brings up the question of withholding from nonresidents and then attempt, if you cannot get relief in the courts, to seek legislative relief there as well which is a very expensive, time-consuming, and somewhat doubtful process.

Mr. WILLIAMS. I believe that is all I have.

Mr. SPRINGER. Mr. Chairman, may I ask one more question?

You raised the question, Mr. Hickey, a moment ago which I did not know. Did you say that the water carriers now have this relief?

Mr. HICKEY. That is correct.

Mr. SPRINGER. Can you tell me when such a statute was passed—approximately when?

Mr. HICKEY. In 1959.

Mr. SPRINGER. 1959?

Mr. HICKEY. That is correct.

Mr. SPRINGER. Out of this committee?

Mr. HICKEY. Merchant Marine and Fisheries.

Mr. SPRINGER. It came out of Merchant Marine and Fisheries, and it not only took the commercial waterways over which we have jurisdiction but the coastwise and intercoastal waterways.

Mr. HICKEY. That is correct.

Mr. SPRINGER. Now, I take it you believe you are entitled to the same kind of relief. Is that in essence what you are saying?

Mr. HICKEY. Well, we are saying that and even more so because I think the problem is greater with respect to some of the people involved.

Mr. SPRINGER. There is no doubt but that other industries will be testifying today but what you are asking is the same treatment as water.

Mr. HICKEY. That is correct.

Mr. WILLIAMS. Will the gentleman yield at that point? According to the statement of the Commissioner of Governmental Relations making reference to Public Law 86–263, which you just mentioned, approved on September 14, 1959, they state: "Congress has previously prohibited the withholding of State and local taxes from the wages of masters, officers, and other seamen who are members of the crew of a vessel engaged in coastwise, intercoastal, interstate, or noncontiguous trade. That legislation, however, affects only some of the income tax States and is of relatively minor revenue significance to them. The subject bill could possibly have implications for the taxation of employees of other employers engaged in interstate commerce."

I thought perhaps that should go into the record at this point for certain clarification. That is the answer of the Commissioner of Intergovernmental Relations.

Mr. WATSON. Mr. Chairman, carrying the point made by my distinguished colleague, Mr. Springer, just a moment ago, you are asking for this legislation because of simple justice inasmuch as the water carriers have such an exclusion now.

Mr. HICKEY. I think we use, as one of the arguments to support the passage of this bill, the existence of similar relief for a similar need. However, I think the cause for relief, here based purely on the merits of our own case, is strong enough to support the passage of this bill.

Mr. WATSON. I agree you have a real problem. Of course, there is every indication that others will come in and it would be perfectly logical and justifiable for us to grant them the same relief. In fact, since this bill has come over to the House, we have an additional group of employees who want to be included in the bill. Are you aware of that?

Mr. HICKEY. I know of one group that wants to expand its coverage.

Mr. WATSON. That is right.

Mr. SIBAL. Will the gentleman yield?

Mr. WATSON. Yes; go ahead.

Mr. SIBAL. Just for my own clarification, the gentleman has referred to "others" a couple of other times and I am not clear on what you mean. It seems to me this bill relates pretty clearly to carriers. Would you care to clarify for the rest of us what you mean by "others coming in"?

Mr. WATSON. Well, as I understand, this bill would include only the operating employees of railroads, and they wish to expand it to include the nonoperating employees. The only fear I have—not necessarily a fear, but I think it is perfectly logical that we are just going to open the Pandora's box and we will have to include all other groups.

Mr. HICKEY. Of course, I do not support opening Pandora's box in any sense of the word and, as the bill was originally introduced, it

was limited to motor and air. The inclusion of other carrier-regulated carrier groups in here has come about since the original introduction of the bill.

Mr. WATSON. Yes. That is a perfectly logical development and, as soon as the others find out about this bill being considered, it is perfectly logical that they would come in and ask to be included. In fact, in response to my colleague over there, I understand from counsel that perhaps others who asked to be included will be testifying even today that this legislation should be broadened to include them. That is the major problem I am trying to point out.

Mr. HICKEY. I only speak for Consolidated Freightways and for the American Trucking Associations and for all of the motor carriers—the interstate motor carriers—who have this problem. Now, if the problem exists of expanding the bill, it does not diminish the existing problem and the merits of the case of these interstate motor carriers who are faced with the real problem.

Mr. WATSON. I grant you that, but you must admit that it does increase the problem, so far as this committee is concerned, in trying to keep in proper perspective the responsibilities of the Federal Government not to place any roadblocks against a State in the collection of taxes which are justly due. That was the only point I was trying to make, and I hope you appreciate the problem that we have, as I appreciate the very real problem that you have.

Mr. HICKEY. I appreciate your problem.

Mr. FRIEDEL (now presiding). Any other questions, gentlemen?

(No response.)

Mr. FRIEDEL. I want to thank you, Mr. Hickey, for coming.

Mr. HICKEY. Thank you.

Mr. FRIEDEL. Our next witness will be Mr. Paul L. Courtney, executive vice president, National Association of Wholesalers.

STATEMENT OF PAUL L. COURTNEY, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF WHOLESALERS

Mr. COURTNEY. Thank you, Mr. Chairman.

My name is Paul L. Courtney. I am appearing here today as executive vice president of the National Association of Wholesalers, a federation of 39 national wholesale-distributor associations with over 17,500 member firms. The merchant wholesale distribution industry is a $160 billion industry with over 2 million employees in the 50 States.

The problems of interstate taxation, Mr. Chairman and members of the subcommittee, have long plagued our industry. The particular aspect of the overall problem which you are contemplating action on in your consideration of the bill before you, S. 1719, is of vital concern to our industry. A large segment of our industry is actively engaged in interstate commerce. A goodly percentage, probably as many as 20 percent of all our employees are truckdrivers and helpers, many of whom cross State lines daily and, in some instances, many times each day.

The bill, S. 1719, as written, and as passed by the U.S. Senate would—

exempt the wages and salaries of certain employees of regulated interstate transportation carriers from the withholding tax requirements of States and local subdivisions, except in the State or local subdivision of the employee's resi-

dence. It would also relieve these carriers of any duty to file information returns for tax purposes on the wages and salary of certain employees, except in the State or local subdivision of such employee's residence. In so doing, the bill would remove the substantial burden to interstate commerce which the imposition of withholding taxes on the nonresident employees of these carriers by States and local subdivisions has caused.

The above is a direct quote from the Senate Committee Report, No. 1076, accompanying the bill S. 1719 to the floor of the Senate for consideration. Our industry is in hearty accord with the objectives of the bill, Mr. Chairman. We agree with the conclusions of the Senate committee and the Senate that the withholding requirements of State and local subdivision income tax laws constitute a serious burden on interstate business.

We applaud the recognition of the problem by the Congress and urge early action. We feel compelled to point out, however, Mr. Chairman, that the path being taken in the bill before you for consideration today is very narrow; it is very limited in its effectiveness. The problem is much broader than that of regulated interstate carriers. In fact, if it is only your intent to prohibit States and subdivisions from requiring employers engaged in interstate transportation from withholding taxes and filing information returns on the wages and salary of employees who are nonresidents of the State or subdivision, we would suggest that you consider amendment of the bill to include all interstate carriers, nonregulated as well as regulated.

If the Congress feels it is wise to pass "stopgap" legislation at this time to relieve employers of air, rail, and truck transportation crews from the tremendous burden that would arise as a result of State and subdivision enforcement of their withholding tax laws, should not interstate private truck operators be given the same protection? The burden on them would be as great, if not greater.

We wholesale-distributors operate tens of thousands of our delivery trucks across State lines. We cross and recross State and political subdivision boundary lines many times a day in thousands of cases. The burden on us of keeping track of minutes or hours worked in each subdivision, or even each State, would be many times the amount of tax to be withheld as is so clearly set forth in the Senate report on S. 1719. We are already engaged in the task of keeping track of hours worked in the State or subdivision of residence of our employees. This is a real problem in some border market areas such as the New York-New Jersey-Connecticut-Pennsylvania area, and the District of Columbia-Delaware-Maryland-Virginia area, to cite only two readily recognizable market areas. There are dozens of others almost as bad, Mr. Chairman.

We realize that this expense and trouble is one of the hazards of the business world and do not seek relief from it. On the other hand, with more and more States and political subdivisions seeking more and more sources of tax revenues and looking to out-of-State, nonvoting, nonresident vendors of all types as sources of new revenue income through the device of sales and use taxes, income taxes, license taxes, franchise taxes, and a host of others not yet dreamed of, our bookkeeping burdens with respect to taxes alone are becoming insurmountable. All these burdens increase the cost of doing business and tend to cause higher prices as all costs must be borne by the ultimate consumer, in the end.

We would therefore suggest, Mr. Chairman, that if your subcommittee feels it is wise to act to protect interstate air, rail, and truck carriers from the burden of withholding income taxes on their employee's wages and salary in States and subdivisions other than their places of residence, we would ask that you amend S. 1719 to include employees of private carriers of property who perform regularly assigned duties on a motor vehicle in more than one State or subdivision thereof.

We would respectfully suggest that this might be accomplished by the following language:

Paragraph (3) of subsection (a) of section 204 of the Interstate Commerce Act is amended by striking out "and 224" and inserting in lieu thereof "224; and 226A."

We realize that this legislation has been proposed by interstate carriers as a result of actions initiated against them to enforce them to withhold taxes on wages and salary payments to employees engaged in interstate activities in States and subdivisions other than their places of residence. As I stated earlier, Mr. Chairman, we applaud this prompt consideration by the Congress of the problem and the Senate's action to relieve the situation.

We submit, however, that this bill would extend the provided relief to only a small segment of the business community that is faced with the problem. There are thousands of salesmen, detail men, promotion men, service technicians, maintenance engineers, et cetera, in our industry alone, that earn their wages and salary in more than one State and subdivision other than that of their legal residence.

I mention only some of the types of traveling employees of wholesale-distributor firms. There are millions of employees of manufacturing, mining, construction, petroleum, distribution, and service industries that regularly earn their wages and salary in the performance of their assigned tasks in more than one State or political subdivision other than their legal place of residence.

I do not wish to seem facetious, gentlemen, but I would ask you to consider my own particular case, for example. I am a trade association executive, and as such, my board of trustees and executive committee insist that I attend many committee meetings, conventions, regional and local meetings of the 39 affiliated national wholesale-distributor trade associations who comprise the National Association of Wholesalers. In the performance of these assigned tasks I spend over half of my time each year in travel, most of it by air.

When I fly to Chicago, for example, I am working—I am earning my salary. I pass over part of Virginia, West Virginia, Pennsylvania, Ohio, Indiana, possibly Michigan for a few seconds, and Illinois. Heaven knows what subdivisions I am over for a few second or minutes that have income tax laws with withholding tax provisions applicable to nonresident employees earning wages and salary there. What kind of log could I keep that would allocate my time to the hundreds of possible States and subdivisions in which my employer might incur withholding tax liability as a result of my travels on just one such trip.

In the course of 1 year, I am usually in, or over 40 or more of the 50 States, I am sure. For how long and over what States and subdivisions would be an impossible task to allocate. Yet, under present laws, State and subdivision, my employer is supposed to withhold from my salary a proportionate share of taxes due on my income earned

in 30 States and 26 subdivisions. It is 30 States and 26 subdivisions today, or it was when the Senate committee report was written and filed on June 12th. How would I know what it is today actually, August 4?

I am told that there are 110,000 political subdivisions in the 50 States. Could each of the millions of employers in the Nation that have people traveling in more than one State or subdivision, other than their place of residence, keep track of the actions of those 110,000 political subdivisions? They are required by law to do so, today.

The Congress in its wisdom faced this problem in 1959 and enacted the Interstate Tax Act of 1959 (Public Law 86-272). When it was being debated on the floor of the Senate it was referred to as "stopgap" legislation and the Congress wisely provided for a study of the overall problem and a full report to be submitted. The original act was directed only to income tax problems. However, in 1961, the Congress broadened the study to include "all matters pertaining to the taxation of interstate commerce by the States * * * or any subdivision thereof * * *" (Public Law 87-17, 75 Stat. 41, 1961).

This study is now going on, being conducted by the Special Subcommittee on State Taxation of Interstate Commerce, of the Committee on the Judiciary of the House of Representatives, under the able leadership of the Congressman from Louisiana, Mr. Edwin E. Willis, chairman. The first two volumes of reports by this special subcommittee were released within the past month, dealing specifically with the income tax problems. It is my understanding that the special subcommittee is now studying and will report next on the problems arising under State sales, use, and franchise tax laws and their possible burden on interstate commerce.

We would respectfully suggest, Mr. Chairman, that if your subcommittee deems it advisable to protect interstate carriers from the withholding provisions of State and subdivision income tax laws at this time, that S. 1719 be amended to include private interstate truck carriers, as outlined earlier. We would further suggest that your subcommittee take cognizance of the broader, remaining problem of many of the same employers with respect to some of their other employees, especially we wholesale distributors, as well as the millions of other employers to whom this bill would provide no protection whatsoever, and to whom the problem is equally real and burdensome.

We are fearful that restrictive action in one narrow segment of the overall problem, without mention of the remaining problem, might lead some to the conclusion that the Congress believes it should act to restrict interstate withholding only in these areas. It is hoped that if you report S. 1719, both the committee report and the legislative record in discussion on the floor would make it abundantly clear that this is "stopgap" legislation to temporarily protect industries already subject to litigation from further harassment until such time as the Congress may study the total problem and arrive at an equitable solution.

Thank you very much, Mr. Chairman.

Mr. FRIEDEL. Thank you, Mr. Courtney.

Mr. Jarman?

Mr. JARMAN. No questions.

Mr. FRIEDEL. Mr. Springer?

Mr. SPRINGER. No questions.

Mr. FRIEDEL. Mr Watson?

Mr. WATSON. I appreciate your statement which touches on the early apprehension I had concerning this particular problem.

Let me ask you this. I do not know whether or not you are a lawyer. But in your judgment, would not the passage of this bill, as it is presently written, give rise to a suit by a member of your association, a private interstate truck carrier, or perhaps any nonresident taxpayer who has his income withheld, against a particular State for nonprotection of the laws as provided in the bill?

Mr. COURTNEY. I am not a lawyer, Mr. Watson, and I do not know that the passage of this bill protecting a segment, a specified segment of the industry, from the necessity of withholding would give other nonprotected segments the right to go into court and sue under State law. Public Law 86–272 was attacked on constitutional grounds in the courts of the State of Louisiana. The Louisiana Supreme Court has upheld the constitutionality of this law which prohibited States from levying and collecting income taxes on nonresident business corporations who had no nexus with the State; that is, no place of business, no office, no sales office or warehouse.

Mr. WATSON. Let me ask you this. While I am not against making preparations to prevent a problem from arising, actually, as you are presently situated now, this does not constitute a problem for you and your associates.

Mr. COURTNEY. This is merely a threat to our membership.

Mr. WATSON. Merely a threat.

Mr. COURTNEY. Yes, sir.

Mr. WATSON. And additionally I ask you, sir, whether you had initiated any action to get a bill, comparable to the one which we are presently considering, introduced into Congress prior to finding out that this bill had been introduced?

Mr. COURTNEY. Sir, in answer to that question, the National Association of Wholesalers was one of the organizations who first brought this whole question of interstate taxation to the attention of Congress back in 1958. We strongly supported the passage of 86–272 and the bill that was passed in 1961 to broaden the area of investigation to cover the whole area of interstate taxation because it is becoming a tremendous burden on interstate commerce, not only with respect to income taxes and withholding taxes but also with respect to franchise taxes, license taxes, sales and use tax collections, and the voluminous files of exemption certificates that we must keep, et cetera, when we are engaging in interstate business transactions.

Mr. WATSON. One final question. Do you personally feel that it would be advisable to proceed with this legislation or should we await the final determination of the study being made under the chairmanship of Mr. Willis of Louisiana?

Mr. COURTNEY. Well, sir——

Mr. WATSON. So as to have an all-inclusive solution to this problem, if one can be found?

Mr. COURTNEY. I would say in all fairness that the hammer hangs heavy over the heads of some of those in the room, I am sure, because of the easy access to them and their operations by State tax collectors, and they very possibly might be proceeded against as some of them

already have been in the next few months while the overall study is taking place. I understand perfectly their concern for quick action by the Congress because I am sure that many State tax commissioners plan to move if nothing is done in this session.

Mr. WATSON. But in sense of fairness, it would be better to deal with the overall problem and treat all aspects alike.

Mr. COURTNEY. Eventually; yes, sir.

Mr. WATSON. Thank you very much.

Mr. JARMAN (now presiding). Any other questions?

Mr. SPRINGER. No.

Mr. JARMAN. Thank you, Mr. Courtney.

STATEMENT OF LEO SEYBOLD, VICE PRESIDENT, AIR TRANSPORT ASSOCIATION, WASHINGTON, D.C.

Mr. JARMAN. Our next witness this morning is Mr. Leo Seybold, vice president of the Air Transport Association.

Mr. SEYBOLD. Thank you, Mr. Chairman.

My name is Leo Seybold, vice president of the Air Transport Association of America. Our membership consists of substantially all of the certificated scheduled U.S.-flag airlines. We appreciate the opportunity to appear before this subcommittee in support of S. 1719 and H.R. 10743.

S. 1719 is designed to protect the instrumentalities by which interstate commerce is conducted from unduly burdensome and duplicative tax compliance procedures. It would amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt wages and salary of certain employees of regulated interstate transportation carriers from withholding for tax purposes under the laws of States or subdivisions thereof in instances other than those involving the State of that employee's residence. We are in agreement with its purpose.

States and cities which require withholding of wages for income tax purposes frequently further require that withholding be made from wages earned in that State or city even though the wage earner may not be a resident thereof. From the point of view of the airlines' accounting and reporting requirements, an involved and expensive situation develops if a State attempts to require reporting or withholding of wages earned by crews of aircraft while engaged in flying into or over the State. This arises out of the various employees' flight assignments and the many tax jurisdictions in or over which some of their income would be determined to have been earned during the course of a year.

In the case of air carirers receiving public service payments, the National Government would be paying a portion of these additional costs.

We believe that such a burdensome development should not be permitted. We, therefore, support S. 1719 with a suggested amendment to section 4, that section of the bill dealing with aviation, intended to clarify its application and purpose.

Neither the bill as it passed the Senate nor the suggested amendment would in any way affect the liability of any individual to pay any tax on his income which any State or political subdivision might levy.

The suggested change clarifies the primary intent of the bill by precluding States and their political subdivisions from requiring the withholding of employees' wages solely by reason of the fact that some portion thereof may have been earned in the course of performing duties on board aircraft in or over the geographical area of a State or its subdivisions without reference to any other justification, such as residence of the employee within the State or the location therein of his principal place of employment. We suggest, therefore, that lines 8 through 14 of page 5 of S. 1719 be stricken and the following inserted in lieu thereof:

to the laws of any States or subdivision thereof solely by reason of the operation of such aircraft into any State or subdivision thereof, or through or in the airspace overlying any State or subdivision thereof; nor shall such carrier file any information return or other report for tax purposes with respect to such salary or wages with such State or subdivision thereof.

This amendment would not affect any other basis for lawful imposition of withholding or reporting requirements by the States or their cities.

With this amendment, proposed subsection (a) of section 1112 of the Federal Aviation Act of 1958 would read as follows:

SEC. 1112. (a) No part of the wages or salary paid by any air carrier to an employee who performs his regularly assigned duties as such an employee on an aircraft engaged in air transportation in more than one State shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof solely by reason of the operation of such aircraft into any State or subdivision thereof; nor shall such carrier file any information return or other report for tax purposes with respect to such salary or wages with such State or subdivision thereof.

As thus amended, S. 1719 has our full support.

Thank you, Mr. Chairman. That concludes my statement.

Mr. WILLIAMS (now presiding). Thank you.

Any questions?

Mr. SPRINGER. Mr. Seybold, I think in connection with your statement, would you explain that amendment to section 4 again, please?

Mr. SEYBOLD. Yes. As one who spent a number of years of my life promoting interstate and Federal-State cooperation as an employee of the Council of State Governments, I became quite aware of the problems of the States in the administration of their tax laws. It is the feeling of the air carriers that, while we have no serious problem at the moment—at least that I have been informed about, it is partly because of the failure to enforce laws which State administrators now have an obligation to carry out but which they are not carrying out. That is why we have been able to solve this problem satisfactorily.

The purport of the amendment is to say that residence alone might not be the only basis for requiring tax withholding or an information return, and we suggest by this language, as the alternative of either the place of employment or the residence. In other words, this amendment tends to narrow down the jurisdictions which could require withholding or an information return to two principal State jurisdictions, either the residence or the place of employment or both.

Mr. SPRINGER. You say, then, the State could say with which it would——

Mr. SEYBOLD. We would then leave it to the States to work out between themselves and with the employer what return should be filed or what wage should be withheld.

Mr. SPRINGER. Will that bring it complications?

Mr. SEYBOLD. We think that is the basis on which most of this is being worked out at the present time. At least in complex metropolitan areas such as the Connecticut-New York-New Jersey area, or the St. Louis area or similar metropolitan areas where you have employees living in one State and going to work in another State, reporting to work in another State. We are simply concerned with the fact that the State laws in many cases at the present time require this information to be returned or wages to be withheld, but the administrators, because of the practicalities of the problem are not enforcing it with respect to operating employees of interstate carriers.

It is a threat that is held over our head, and it is an obligation that they have which they are not carrying out. They are not complying with their own law. That is a practical administrative way to meet the problem.

Mr. SPRINGER. That is all, Mr. Chairman.

Mr. SEYBOLD. Maybe the States have some other way of approaching it.

Mr. WILLIAMS. Mr. Watson?

Mr. WATSON. Mr. Seybold, since under the provisions of this bill the tax would no longer be withheld on the nonresident employee, and information returns would not be filed, would you or would the members of your association agree to assume the tax liabilities of the individual employees if and when the States were able to establish such liability?

Mr. SEYBOLD. I do not think they would ever agree to assume the tax liability of the employee. What we are suggesting is not necessarily only the State of residence. We have suggested that the State of the principal point of employment may also have the right and perhaps an administrable right to ask us to withhold or file returns. In other words, we are not saying only State of residence.

Mr. WATSON. Since you would be excluded from the burden of withholding the taxes and also the burden of filing the informational returns, you do not believe that the members of your association would be willing to cooperate with the States to the extent of trying to help them to collect their taxes.

Mr. SEYBOLD. Oh, heavens, I certainly would not agree to that. Our members want to cooperate with the States all the time, any time.

Mr. WATSON. To the extent of letting the tax later be a charge against the salary of your individual employees?

Mr. SEYBOLD. What would be the situation in which that would arise? Do you mean if an employee flying over a State has been determined by that State administrator to be liable for a tax for having flown over his State, would our members agree to accept the liability for that tax?

Mr. WATSON. At least to the extent of deducting it from the wages of the particular employee involved.

Mr. SEYBOLD. Well, at the present time we are doing that if the State requires it. That is what we are—that is the purport of the bill, to say that no, we should not have to do that.

Mr. WATSON. I understand, but this bill would exclude you from that requirement. The States are going to have a difficult time in

establishing who is responsible for any income taxes within the State, and additionally over the burden of trying to collect the taxes. The only question I would have is whether you would be willing to help the States in the collection of those taxes once they have been established.

Mr. SEYBOLD. We want to cooperate with the States, but I believe they have an obligation and a job here to do to help work out this problem.

Mr. WATSON. I agree with you. But do you think it is Congress' responsibility to try to increase the burden of local political subdivisions in collecting taxes?

Mr. SEYBOLD. Well, I do not think Congress should ever make it more difficult for States to collect taxes unless there is a good reason for them to. It has only—this bill is only suggested because there have been problems in the States in requiring the withholding of information, I mean, the filing of information returns or the withholding of wages, in situations where ultimately there was no tax or there was no liability or possibly there should not have been, and as I said, we have situations where the State law today apparently requires the administrator to collect a tax from an employee who has earned it in flying over the State somehow or other. We do not know how much he has earned. He does not know how much he has earned. The administrator does not know how much he has earned in flying over a particular State.

I am not saying whether they do have that right, but that is the contention.

Now, shouldn't the States approach the problem by working out some other basis for determining their tax liability of the individuals who are engaged in interstate commerce?

Mr. WATSON. Whatever basis should be worked out, it seems to me it must be tied in somehow with cooperation, if not actual information, received from the employer.

Mr. SEYBOLD. Well, as far as the airlines are concerned, they want to cooperate and have cooperated and I am sure will continue to cooperate with State tax administrators in solving these problems and in determining liability of a given employee.

Mr. WATSON. Do you agree with the earlier witnesses that actually this is an anticipated problem rather than a presently existing problem?

Mr. SEYBOLD. It is my understanding from the carriers' tax people that they have one way or another been able to work things out reasonably satisfactorily.

On the other hand, they have these laws hanging over their heads. Therefore, something should be done to remove what is at present a legal obligation which the administrator or the companies or the employee determines is not an enforceable one, I think.

Mr. WATSON. Thank you, sir.

Mr. WILLIAMS. Mr. Springer?

Mr. SPRINGER. No more questions.

Mr. WILLIAMS. Thank you, Mr. Seybold.

Mr. SEYBOLD. Thank you, Mr. Chairman.

Mr. WILLIAMS. Mr. Larsen?

Mr. Larsen, the time is 12 o'clock. We anticipate we will be called over to the House session in a few minutes. I see that you are located here in Washington anyway, aren't you?

Mr. LARSEN. No, I am not in Washington, sir. I am from New York.

Mr. WILLIAMS. Well, would it seriously inconvenience you to be available in the morning rather than today?

Mr. LARSEN. No, indeed. I can suit your convenience on it, Mr. Chairman.

Mr. WILLIAMS. All right. I would hate for you to get into your testimony and then have it interrupted. I think that it would be perhaps best to wait until tomorrow and let you start out anew if that is all right with you.

Mr. LARSEN. Fine. I can arrange it.

Mr. WILLIAMS. The committee will adjourn until 10 o'clock tomorrow morning. Mr. Larsen will be the first witness.

(Whereupon, at 12:05 p.m., the subcommittee was recessed, to reconvene Wednesday, August 5, 1964, at 10 a.m.)

STATE WITHHOLDING TAXES ON EMPLOYEES IN INTERSTATE COMMERCE

WEDNESDAY, AUGUST 5, 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 recess, at 10 a.m., in room 1334, Longworth House Office Building, Hon. John Bell Williams (chairman of the subcommittee) presiding.

Mr. WILLIAMS. The subcommittee will be in order.

Yesterday I told Mr. Larsen that we would call him first. It is the usual practice of the committee to call any Members of the Congress first. We have two Members of Congress present who would like to make statements to the committee. The first is the Honorable Robert F. Ellsworth.

STATEMENT OF HON. ROBERT F. ELLSWORTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. ELLSWORTH. Certainly at the outset I want to say how much I appreciate the opportunity to appear and, also, I want to thank you for letting me go first. I have two other committee meetings that I am supposed to attend.

If it pleases the chairman and the subcommittee, I would just like to file my statement and say very briefly three things about this measure, and my interest in it.

First of all, the problems of the States and the municipalities withholding on employees who are engaged in interstate commerce, such as airline pilots, railroad employees, or truckdrivers, came to my attention because of the fact that I have a great many airline pilots living in my district.

The problem seems to be that a number of States and municipalities are insisting on withholding on a pro rata basis the men's and women's wages on what I think is a pretty tenuous basis.

For example, in the case of one city they will withhold the pro rata share of the man's wages if he just lands the airplane in their city.

The committee has numerous examples of the kind of problems which have given rise to this legislation.

The second point that I want to make is that, so far as I can see, all employee and employer associations and organizations are in agreement on the necessity for some kind of legislation in this field and the benefits that will come from it, and the inequities that will be corrected by the enactment of this kind of legislation.

And the third point that I want to make is that this legislation, as I am sure the subcommittee knows, has no effect whatsoever on the States rights or powers to tax. That is a completely separate question.

The think that this legislation is aimed at is simply the unfair and inequitable application of the methods of collection.

It appears that some States and municipalities are taking advantage of the withholding device to withhold wages from employees or to put taxes on wages of employees when, really, they would not have the right to levy a tax or, at least, certainly not as much tax as they withhold.

That concludes my brief summary of my statement. If there are any questions, I shall be glad to answer them.

Mr. WILLIAMS. Thank you very much. Are there any questions? Mr. Friedel.

Mr. FRIEDEL. Thank you. No questions.

Mr. WILLIAMS. Your prepared statement will be made a part of the record at this point.

(The statement of Hon. Robert F. Ellsworth follows:)

STATEMENT OF HON. ROBERT F. ELLSWORTH

I am pleased to appear before the subcommittee today in strong support of my bill, H.R. 10743, and the general purposes of S. 1719, which has already been passed by the Senate.

First, I want to thank Senator Monroney for his action in initiating this vital legislation and for his efforts to secure prompt and favorable action by the Senate on S. 1719.

This deplorable multiple taxation problem facing employees of regulated interstate transportation companies was first brought to my attention by a number of airline pilots who are based in the Greater Kansas City area and have their residences in my district. These gentlemen are paying their full share of taxes to the Federal Government and the State, city, and county governments where they have their legal residences. However, without corrective legislation, as embodied in H.R. 10743 and S. 1719, they face continued harrassment by other States attempting to withhold taxes on their wages because they simply land in these States or, in some cases, lay over for a day or 2.

The problem also confronts employees of regulated motor carriers, water carriers, and railroads operating in more than one State. Again, this is especially pertinent to the Greater Kansas City area since it serves as a rail and trucking center for movement of commodities to the West and for transportation of agricultural products, primarily wheat, wheat products, and beef to the East.

Since the legislation would not impair the taxing authority of State and local governments in any way, and would not relieve the workers exempted from withholding of their liability to pay any taxes which are properly due to the State and local governments, I can see no valid objection to its enactment.

AMENDMENT TO S. 1719 BY HON. ROBERT F. ELLSWORTH

Through an oversight, I believe, and not by intent, the Senate bill we are considering, S. 1719, would provide only partial and inadequate coverage to railroad and railway-express workers who perform their assigned duties in more than one State, and H.R. 10743, as originally drafted would have applied only to motor and aircraft carriers.

The Senae bill would extend withholding tax exemption on nonresident employees to all employees who work on regulated motor carriers, air carriers, and water carriers in more than one State but, in the case of railroad, express company, or sleeping car company employees, the exemption would be limited to those described as an employee who "performs his regularly assigned duty as such an employee on a locomotive, car, or other track-borne vehicle." This

provision would appear to limit the exemption in the case of railroads, express, and sleeping car companies unduly and by doing so it unfairly, in my view, omits thousands of other railroad workers, including maintenance of waymen, signalmen, shop craft workers, and others, who also are required to cross State lines in the performance of their duties in railroad employment.

Therefore, I urge that the committee adopt the following amendment to S. 1719:

On page 2, line 7, strike out "regularly".

On page 2, line 8, strike out "on a locomotive, car, or other track-borne vehicle."

Mr. WILLIAMS. We have our colleague, Mr. Quillen, from Tennessee. We shall be glad to hear from you now.

STATEMENT OF HON. JAMES H. QUILLEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. QUILLEN. Mr. Chairman and members of the subcommittee, I am delighted to have this opportunity to be here this morning. I have long recognized this problem of nonresident income taxation. Living on the border of two States, I fully recognize the problems involved in transportation, particularly, with the trucking industry, the railroads, the airlines, and the water carriers when the employees travel though one or more States and a nonresident income tax is levied on their earnings while they are traveling through these various States. It presents quite an inequity; a discriminatory matter.

For many years, as a member of the Tennessee Legislature, I have been cognizant of these problems. In 1959 I traveled to Richmond, Va., when the legislature there was in session and appeared before the sessions and the Governor of the State of Virginia, at that time asking for relief for Tennesseeans.

After that I went to the Council of State Governments, to the National Legislative Conference, and introduced a resolution calling for a national study of the problem involved. The resolution was adopted. I was named chairman of the committee and made a national study of the overall picture of nonresident income taxation.

The bill I introduced yesterday covers that. And, at this point, Mr. Chairman, I would like to have made a part of the record this bill I have presented. I should like to have that made a part of the record, without objection.

Mr. WILLIAMS. It will be made a part of the record at this point.

(The bill follows:)

[H.R. 12219, 88th Cong., 2d sess.]

A BILL To amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That part I of the Interstate Commerce Act is amended by redesignating section 26 as section 27 and by inserting before such section a new section as follows:

"EXEMPTION OF CERTAIN WAGES AND SALARY OF EMPLOYEES FROM WITHHOLDING BY OTHER THAN RESIDENCE STATE

"SEC. 26. (a) No part of the wages or salary paid by any railroad, express company, or sleeping car company, subject to the provisions of this part, to an employee who performs his regularly assigned duties as such an employee on

a locomotive, car, or other track-borne vehicle in more than one State, shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of any such carrier; nor shall any such carrier file any information return or other report for tax purposes with respect to such wages or salary with any State or subdivision therof other than such State or subdivision of residence.

"(b) For the purposes of this section, the term 'State' also means the District of Columbia."

SEC. 2. (a) Section 202(b) of the Interstate Commerce Act is amended by inserting after "Nothing in this part" a comma and the following: "except as provided in section 226A,".

(b) Part II of the Interstate Commerce Act is amended by inserting after section 226 a new section as follows:

"EXEMPTION OF CERTAIN WAGES AND SALARY OF EMPLOYEES FROM WITHHOLDING BY OTHER THAN RESIDENCE STATE

"SEC. 226A. (a) No part of the wages or salary paid by any motor carrier subject to the provisions of this part to any employee who performs his regularly assigned duties as such an employee on a motor vehicle in more than one State, shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of such carrier; nor shall such carrier file any information return or other report fo tax puposes with respect to such wages or salary with any State or subdivision thereof other than such State or subdivision of residence.

"(b) For the purposes of this section, the term 'State' also means any possession of the United States or the Commonwealth of Puerto Rico."

SEC. 3. (a) Part III of the Interstate Commerce Act is amended by redesignating section 323 as section 324 and by inserting before such section a new section as follows:

"EXEMPTION OF CERTAIN WAGES AND SALARY OF EMPLOYEES FROM WITHHOLDING BY OTHER THAN RESIDENCE STATE

"SEC. 323. No part of the wages or salary paid by any water carrier subject to the provisions of this part to an employee who performs his regularly assigned duties as such an employee on a vessel in more than one State, shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of such carrier; nor shall such carrier file any information return or other report for tax purposes with respect to such wages or salary with any State or subdivision thereof other than such State or subdivision of residence."

(b) The table of contents contained in section 301 of the Interstate Commerce Act is amended by striking out

"Sec. 323. Separability of provisions."

and inserting in lieu thereof:

"Sec. 323. Exemption of certain wages and salary of employees from withholding by other than residence State.
"Sec. 324. Separability of provisions."

SEC. 4. (a) Title XI of the Federal Aviation Act of 1958 is amended by inserting after section 1111 the following new section:

"EXEMPTION OF CERTAIN WAGES AND SALARY OF EMPLOYEES FROM WITHHOLDING BY OTHER THAN RESIDENCE STATE

"SEC. 1112. (a) No part of the wages or salary paid by any carrier to an employee who performs his regularly assigned duties as such an employee on an aircraft in more than one State shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of such carrier; nor shall such carrier file any information return or other report for tax purposes with respect to such wages or salary with any State or subdivision thereof other than such State or subdivision of residence.

"(b) For the purposes of this section, the term 'State' also means the District of Columbia and any of the possessions of the United States."

(b) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading "TITLE XI—MISCELLANEOUS" is amended by adding at the end thereof the following:

"Sec. 1112. Exemption of certain wages and salary of employees from withholding by other than residence State."

SEC. 5. The amendments made by this Act shall become effective on the first day of the first calendar year beginning after the date of enactment of this Act.

Mr. QUILLEN. This is one facet of the overall problem in America today, and I sincerely believe that the passage of the bill which I introduced will start a movement which will cover this situation. And I concur in the statements made by my colleague, Robert F. Ellsworth.

The bill I have introduced is similar to the Senate bill, but in listening to the remarks of Mr. Ellsworth I urge that an amendment be added in accordance with his suggestion, which is contained in his remarks on page 2, line 7, to strike out "regularly" and on page 2, line 8, strike out "on a locomotive, car or other track-borne vehicle."

This is a serious matter that I am glad to see this subcommittee undertaking. I believe the passage of this bill would adequately stimulate a better relationship between the States, and certainly with the employees involved, because the man who lives in a locality and travels to perform his duties and his work should only be required to pay taxes on his earnings in the place of his residence.

Thank you very much for the opportunity of being here this morning. I urge favorable consideration of the bills here before the subcommittee.

Mr. WILLIAMS. Thank you very much. Let me ask you a question before you leave. You say that you feel that he should pay taxes only at the place of his residence, that you feel that way? This legislation that is before the committee—I do not know about your bill—but Senate 1719 and H.R. 10743 do not relieve a person of the tax liability in the State, other than the State of his residence, when he is engaged in interstate commerce. These bills certainly relieve him from the duty of having wages withheld for those taxes. Does your bill relieve him of that?

Mr. QUILLEN. My bill is the same as the Senate bill.

Mr. WILLIAMS. All right. Thank you.

Are there any questions by the members of the committee?

Mr. FRIEDEL. I should like to cite the law that I know affects the city of Philadelphia. People come over from Camden, N.J., and work in Philadelphia. The city of Philadelphia puts a tax on their earnings. Would this in any way affect that situation? And as another example, people living in Baltimore County work in Baltimore City. They have all of the benefits of the city of Baltimore, but pay nothing there whatsoever in the way of taxes.

We are trying to get authority from the State legislature to impose that tax on wages.

Mr. QUILLEN. I think that is a real good point. I think that this study and this legislation involve that question, and I think, Mr. Chairman, that this subcommittee could well consider an amendment to my bill and the other bills where it would actually make the point of residence where the taxes would be imposed on the earnings. If

a man travels through one State, then the nonresident provision would apply—that particular State could not collect the taxes, whereas my bill does not include that.

I would recommend to this committee that the point of residence be the only place where income taxes could be charged to these carriers, whether it is the trucking industry, the rails, the airlines, or the water carriers. And I think in doing that, if an amendment is adopted, it would be one way of probably getting the foot in the door to correct the inequity that the Member here mentioned in his area. And, certainly, that exists in my area, too.

Mr. FRIEDEL. I have a letter from the Comptroller of the Treasury's office, signed by Mr. Benjamin F. Marsh, Chief of the Income Tax Division, which handles the matter of income tax and, naturally, he is opposed to the provisions in S. 1719. He says:

> We feel that this is a matter to be handled by the States and that there is no actual need for Federal intervention.
>
> What can be done by the States in this regard can be clearly demonstrated by the present reciprocal provisions of the laws of the District of Columbia, West Virginia, Virginia, and Maryland.

In other words, if they pay their tax in the District of Columbia, they do not pay it in the other two States. If they pay it in Virginia they would not pay it in Maryland. They pay only in one State. It is a reciprocal arrangement.

On the other hand, we have people who live in Delaware who work in other States and we do not have a reciprocal agreement with Delaware and they claim that they would not be able to collect these taxes unless they received the information and the withholding tax would not be collected. Definitely, I am in sympathy with the employees, the pilots, and the railroad men who have taxes withheld in three or four different cities and States, and something ought to be done about it.

I would like to have this letter inserted in full in the record.

Mr. WILLIAMS. Yes. It will be made a part of the record at this point.

(The letter dated August 3, 1964, follows:)

STATE OF MARYLAND,
COMPTROLLER OF THE TREASURY,
Annapolis, Md., August 3, 1964.

Re S. 1719.

Hon. SAMUEL N. FRIEDEL,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN FRIEDEL: There is pending before a Subcommittee on Transportation and Aeronautics, of which you are a member, S. 1719 which has to do with State taxation of employees engaged in regulated interstate transportation.

S. 1719 passed the Senate, apparently, with no hearing insofar as the opponents of the measure were concerned.

As chief of the income tax division, Office of the Comptroller of the Treasury, State of Maryland, I wish to voice our opposition to this bill.

The bill does not accord exemption to those employees of certain regulated interstate transportation companies, but it would prohibit the withholding of State income taxes from their wages, and would, thus, leave those States, including Maryland, with no provisions for the collection of the tax, and to a great extent would make next to impossible the enforcement of State income taxes as now imposed on nonresidents who are engaged in interstate transportation pursuits.

We feel that this is a matter to be handled by the States and that there is no actual need for Federal intervention.

What can be done by the States in this regard can be clearly demonstrated by the present reciprocal provisions of the laws of the District of Columbia, West Virginia, Virginia, and Maryland.

Residents of Maryland, for example, who are engaged in interstate transportation, are exempt for income taxes on wages earned in the District of Columbia, West Virginia, and Virginia. While in Delaware a Maryland resident employed in that State has no Delaware income tax withholding on wages of less than $160 per week.

These reciprocal provisions have not been designed for relief of interstate transportation workers alone, but they apply to all nonresidents.

While S. 1719 would have no appreciable effect on our revenue, it is, as we have already indicated, a matter which should remain within the jurisdiction of the States, and should S. 1719 be enacted we fear that it may open the door to more and more Federal legislation which in time will cripple the States and act adversely on their sources of revenue.

We therefore most respectfully request that you oppose the bill and that you do whatever you can to bring about its defeat.

Very truly yours,

BENJAMIN F. MARSH,
Chief, Income Tax Division.

Mr. QUILLEN. To digress a moment, without considering any content of either of these bills, when I was chairman of the national committee making the study on nonresident income taxation I found out that many, many of the States have problems involved.

Well, for instance, take Tennessee versus Virginia—Tennessee has no income tax and I represent a border city with the State line being the center of one of the streets. People living in Tennessee and working in Virginia must pay an income tax on their wages earned in that State, but the residents of Virginia working in Tennessee contribute nothing to the State of Tennessee.

So in many cases there are inequities that should be corrected.

I feel that this bill, if the committee in its deliberations considers an amendment making the State of residence the only State that could impose taxes of any kind on the wages of that individual, that it would be one way of beginning to solve the problem.

On the other hand, if this bill passes as it is, it is a beginning to solve the tremendous problem that faces all of the people who work across the border lines.

I want to commend the committee again for its taking this study under advisement because I think only good can come from it.

Thank you very much.

Mr. WILLIAMS. Are there any further questions?

Mr. Devine?

Mr. DEVINE. I have no questions.

Mr. WILLIAMS. Thank you very much.

Mr. Irvine H. Sprague, deputy director of the State Department of Finance of the State of California was to appear here today, but circumstances have made it impossible for him to do so, and I request permission to insert his statement of position on this legislation into the record. And without objection it will be received into the record at this point.

(The statement referred to follows:)

STATEMENT OF IRVINE H. SPRAGUE, DEPUTY DIRECTOR, CALIFORNIA STATE DEPARTMENT OF FINANCE

POSITION OF CALIFORNIA ON H.R. 10743

H.R. 10743 provides that no part of the wages paid to employees of certain interstate carriers who perform services in more than one State shall be withheld for tax purposes by any State or subdivision thereof other than the State or subdivision of the employee's residence. H.R. 10743 further provides that none of these carriers can be required to file information returns or tax reports except by the State or subdivision of the employee's residence. Each of these two provisions would present problems under California's temporary disability law and income tax law.

SUMMARY OF STATE LAW AND PROBLEMS

A. Temporary disability law

California law requires employers to withhold 1 percent of each worker's annual wages up to $5,100 to support a program of unemployment compensation disability benefits. They protect the worker who is injured or suffers an illness that is nonwork connected. They fill the gap between unemployment compensation and workmen's compensation. Unemployment compensation protects the unemployed worker able to work but who loses his job because his employer no longer has work for him. Workmen's compensation protects the disabled worker who is hurt on the job. Unemployment compensation disability benefits protect the disabled unemployed worker who becomes ill or is injured off the job. Based upon an annual maximum premium of $51, the worker may obtain a maximum weekly benefit of $77 for 26 weeks of such benefits, totaling $2,002. In addition, he may receive $12 a day for 20 days if hospitalized.

Many workers have their principal place of employment in California although they reside in bordering communities such as Oregon, Nevada, Arizona, and Baja California.

H.R. 10743 raises grave doubts as to California's right to require a 1-percent contribution of nonresident workers who are otherwise subject to California's unemployment compensation disability law. The bill imperils the benefit rights of these workers.

B. Income tax law

California has not enacted a general withholding tax law. Therefore, our main tool in income tax enforcement is information returns. Information returns, however, are not required to be filed unless an employer pays salaries and wages to a single employee in excess of $1,500 or over $3,000 in the case of a married couple. This amount will soon be increased to $2,000 and $4,000 as the result of a 1964 amendment.

Since nominal payments are not subject to withholding or reporting, California law creates no undue burden on carriers or their nonresident operating employees. But if California is denied information returns its tax enforcement program as to nonresidents is impaired and the State will be deprived of income tax revenue now obtained from nonresident employees of interstate carriers.

DETAILED DISCUSSION OF CALIFORNIA POSITION

A. Temporary disability law

The State of California finances its unemployment compensation disability law by a 1-percent tax on employees. The tax applies to the wages paid a worker in employment subject to the California law, up to $5,100 annually. The employer is required to withhold the employee's tax from wages paid. He transmits the tax money quarterly with his tax returns specifying the employee's name, social security account number, and amount of wages. California records this information and uses it to pay claims for disability benefits and unemployment insurance benefits.

Many nonresident employees of the various carriers covered by H.R. 10743 (except those covered by Federal unemployment compensation laws) who perform services in several States are subject to California's State unemployment compensation disability law. This coverage applies where some work is performed in California and their out-of-State service is incidental to primary

employment in California, or their base of operations is in California, or their services are directed or controlled from California.

H.R. 10743 apparently would prohibit California from requiring the carrier employers to withhold unemployment compensation disability taxes from these covered nonresident employees. It would also prohibit California from requiring that such carrier employers file quarterly information returns with the State of California with respect to the wages paid these nonresident employees. Apparently it is not the intent of H.R. 10743 to deprive the State of its right to tax. Under California law, if the employer does not withhold the State unemployment compensation disability tax from employees, the employer becomes liable for the tax. Thus, the effect of H.R. 10743 may be to shift the tax liability from the employee to the employer. If, however, California cannot properly require information returns from the employer, then it would appear that tax moneys will be received from the employer without identifying the employee and his wages. Employees would then have the onerous burden of proving that they had received such wages as a part of the conditions for establishing a valid claim for disability benefits or for unemployment insurance benefits.

H.R. 10743 is apparently directed solely at problems in connection with the withholding of income taxes. We are not aware of any objection by carrier employers to withholding employee taxes or filing quarterly returns under California's unemployment compensation disability law as to nonresident employees who are covered. In order to avoid impact on other State taxes, California suggests that clarifying language be inserted to apply to each Federal act which would be amended by H.R. 10743. The proposed language is as follows:

SEC. 6. The amendments made by this Act shall not be applicable to any temporary disability law or unemployment compensation law of any State which requires the withholding of taxes or contributions from the wages paid to employees subject to such law.

This language would prevent any impact under H.R. 10743 upon the temporary disability law of California, New York, New Jersey, and Rhode Island. It would also avoid any impact upon the withholding from employees of taxes for unemployment insurance purposes under the State laws of Alabama, Alaska, and New Jersey.

B. Income tax law

As was noted by letters from the Department of Commerce and Federal Aviation Agency directed to the chairman of the Senate Committee on Commerce, which accompany the Senate bill, committees of the Congress are now studying all matters relating to taxation by the States of interstate commerce. The letters suggested and California agrees that the problems which the bill seeks to resolve should be considered only after all facts have been developed by the existing committees or through some other study.

If the scope of the problems to which the bill relates are not under active consideration by existing congressional committees, it is suggested that this committee might request the Advisory Commission on Intergovernmental Relations to find the facts and consider the feasibility of alternative solutions to whatever problem is found to exist. If so referred the Commissioi should be requested to determine among other facts:

1. The total number of employees and employers involved.
2. The total amount of revenue now obtained by States from nonresident employees of carriers.
3. The amount of revenue which States will lose if deprived of information returns and their additional enforcement costs in the absence of such returns.
4. Employers' cost of compliance.
5. The extent to which employees' addresses, as shown by their employment records, reflect their current State of residence or domicile.
6. The number of employees which would be affected if, for example, the first $1,000, $2,000, or $3,000 earned by affected employees is exempted from withholding or reporting requirements.
7. Whether or not the provisions of the bill should be extended to any other employees or employers.
8. Whether or not some alternative might be developed which would enable States to obtain information essential to proper tax enforcement.

Only when such information has been developed can the need for the bill and its effect on State revenue be properly evaluated.

California agrees with the objective of the bill, which is to relieve interstate carriers and their nonresident operating personnel from any unduly burdensome and duplicating tax compliance procedures. On the other hand California, and other States, should not be deprived of taxes or essential tax enforcement information when no burdensome and duplicating tax compliance procedures are present. For example, if a taxpayer lives in a State which has not imposed an income tax, but derives 95 percent of his income from a neighboring income tax State neither the employee nor his employer is unduly burdened by complying with the laws of the State where substantially all of the income is earned.

The California law is selective in its application and is designed, insofar as possible, to avoid any undue burden. Only nonresidents are subject to withholding, and then in the case of a married person only as to wages or salary in excess of $3,000. This amount will soon be increased to $4,000 as a result of a 1964 amendment to the law. As a result of this high starting point, employees of interstate motor carriers have not been subject to withholding and the total amount withheld annually from rail and air carriers is about $8,000. This, however, does not take into account taxes assessed or collected through the use of information returns. Thus, it is evident that California law has affected only a few of interstate carriers' employees, and then only where their earnings are substantial.

In the absence of a general withholding tax law, the main enforcement tool in income tax administration is information returns. Even with information returns one of the tax administrator's most difficult tasks is to assess and collect tax due from nonresidents. Such taxpayers seldom have permanent ties or assets within the State where they have earned their income; therefore, they may not be compelled to discharge voluntarily their tax obligation.

If, as the bill provides, employers are not required to report information concerning income of their nonresident employees who enter States in the normal discharge of their duties and thereby incur a tax liability, proper tax administration is seriously impaired. Without this vital information nonresidents will either avoid their just tax liability or the tax administrator will be forced to adopt more complex and undoubtedly more costly enforcement techniques. For this reason California believes that it should not be denied information returns.

If the bill is not to be subjected to a comprehensive study at this time, it is suggested that before further action is taken the best solution to the problem is for Congress to permit the States an opportunity to adopt a de minimis policy. Under such policy the States would exempt from withholding or information return requirements an amount to be set high enough so as to avoid any undue hardship on carriers and their employees, without eliminating withholding and information return requirements where there is no hardship. The amount could be determined through hearings conducted by this committee, or if preferred, the Advisory Commission on Intergovernmental Relations could be requested to develop the necessary facts.

Once the facts have been developed the States might then be permitted a reasonable time to voluntarily adopt such policy, and if they failed to do so Federal legislation would then be in order.

If the bill is approved at this time without further study, California suggests that it be modified as follows:

(a) That the provision exempting carriers from filing information returns or other reports for State tax purposes be deleted; and

(b) That its provisions be restricted to instances where the burden of compliance upon carriers and their employees is clearly disproportionate to the tax liability involved.

The proposed amendments are as follows:

(a) On page 4, line 18, of S. 1719, as amended in Senate June 12, 1964, after "carrier" strike out "; nor" and lines 19 and 20.

On page 5, strike out lines 1 and 2.

On page 6, line 1, after "carrier" strike out "; nor shall such carrier" and lines 2 to 5, inclusive.

On page 6, line 22, after "carrier" strike out "; nor shall such carrier file any in-" and lines 23, 24, and 25.

On page 7, line 16, after "carrier" strike out "; nor shall such" and lines 17 to 20, inclusive.

(b) On page 4, line 10, page 5, line 14, page 6, line 15, and page 7, line 10 after "No part of", insert: the first $ of

Mr. WILLIAMS. Our next witness is Mr. A. E. Larsen, director, Accounting Division, and assistant controller of Railway Express Agency, Inc.

We shall be glad to hear from you now.

STATEMENT OF A. E. LARSEN, DIRECTOR OF ACCOUNTING DIVISION AND ASSISTANT CONTROLLER OF REA (RAILWAY EXPRESS AGENCY, INC.), ACCOMPANIED BY JOEL H. GROSS, ATTORNEY, REA

Mr. LARSEN. My name is A. E. Larsen. I am director of the Accounting Division and assistant controller of REA (Railway Express Agency, Inc.).

Let me first express REA's appreciation for permitting me to appear before your subcommittee to present its views on S. 1719 and H.R. 10743.

REA operates in all 50 States of the United States and in the Commonwealth of Puerto Rico.

The following table indicates the various State and local income tax withholding requirements to which REA is presently subject:

1. Total number of States which require withholding of income tax at source:	
(a) Residents only	2
(b) Nonresidents only	1
(c) Residents and nonresidents	28
Total	31
2. Total number of States which require filing of information returns in lieu of withholding:	
(a) Residents only	---
(b) Nonresidents only	---
(c) Residents and nonresidents	6
Total	6
3. Total number of municipalities which require withholding of income tax at source:	
(a) Residents only	12
(b) Nonresidents only	---
(c) Residents and nonresidents	67
Total	79

REA has approximately 1,300 train service employees who ride railroad trains as messengers, guarding express traffic in railroad cars, arranging lading to expedite off-loading en route and at destination, and actually handling the loading and unloading of express traffic at the various station stops.

Approximately three-quarters of this total number of employees is assigned to runs which operate in two or more States. This includes about 400 employees on runs which are in 3 States, 100 employees on runs which are in 4 States, and 50 employees on runs which are in more than 4 States.

The task of calculating State withholding tax for more than one State, in situations such as this, imposes a tremendous burden. The major problem is that of apportioning the employee's time to each of the several States. Is it to be on the basis, for instance, of mileage

covered in each of the several States? This might be the easiest approach but it is not necessarily the most accurate.

Since the pay of these train service employees is ultimately based upon the number of hours worked multiplied by the established rate of pay for the position, the more accurate way to calculate the withholding tax for more than one State is to prorate to each State the earnings of these employees on the basis of time worked in each of the several States. This requires an accurate recording of time actually worked in each State.

These employees frequently earn overtime. Is their overtime pay to be apportioned to the State in which the overtime is put in, based on the hours in excess of the established norm for a day or for a run, or should the additional time be apportioned to the several States in which the employee works? In either case, the magnitude of the task of computing the tax to be withheld for the several States where working conditions vary for each employee from day to day creates an onerous and costly burden for REA.

The bulk of REA intercity line haul transportation services is performed by rail, air, and motor carriers under various contractual arrangements. REA employees are not involved in this phase of our service. In many cases, however, REA performs intercity line haul service in its own trucks operated by REA personnel; 175 of such routes operated by REA are interstate in character. The withholding problems related to train service employees are prevalent in this over-the-road truck service as well.

One other type of REA service requires consideration in this overall problem. This is the regular pickup and delivery service performed by REA. Normally this is restricted to one community or to several communities located relatively close to one another. Nevertheless, REA has about 75 offices located in 32 different States serving 352 communities, in which interstate operations are involved. For this type of service, the problem of apportioning earnings to the various States on the basis of time worked in each is similar to the difficulties encountered with train service employees and those in over-the-road truck service operations. Again, the problem is magnified by the need to maintain separate individual daily records for each employee to accurately apportion the time to the respective States.

REA, as do most modern transportation companies, utilizes mechanized accounting to the maximum extent possible. Modern business machines are best adapted for turning out great volumes of work in relatively short periods of time where specific factors are repetitive. As an illustration, calculating payrolls for employees who are on a normal 40-hour week, and who work at a fixed wage rate is a relatively easy proposition. When the hours worked vary, the problem becomes more difficult because of the need to determine the deviation from the normal workweek. Similarly, if employees are paid on a basis of an hourly wage rate, the addition of overtime hours at varying rates of pay further complicates the process. The difficulty lies in preparing the basic data which must be fed into the mechanized equipment to make necessary calculations automatically.

Machines can be programed to compute earnings, deductions, prepare checks, and to perform related operations at great speeds. In addition, modern equipment with so-called memory capacities are capable

of storing specific wage rates so calculations may be made when deviations from the norm are furnished to machine operators.

It is imperative, however, that the underlying source data be available. If in the interstate operations of train service employees, over-the-road truck operators, or our pickup and delivery drivers, the respective State portions are fixed on the basis of mileage or some fixed factor, the problems of allocating earnings and computing withholding tax for each of the several States involved is simplified to some extent.

When the earnings and subsequent withholdings are based on actual hours worked in each State, the problem is far more complex. What happens is that each employee's payroll must be computed separately for each day, since an employee whose services are performed in two or more States would not be dividing his time between each of the several States in exactly the same way each day of each week throughout the year. If payroll and withholding computations must be performed each day anew for each employee in this type of service, the advantage of using mechanized equipment for payroll and related work is defeated.

The legislative relief which S. 1719 would afford would go a long way toward resolving the problems that I have just discussed. However, the same cannot be said for H.R. 10743, which is actually the original version of S. 1719 as first introduced by Senator Monroney in the Senate.

As I pointed out to the Senate Commerce Committee during its hearings on S. 1719, REA's status as a common carrier is unique in that it is subject to part I of the Interstate Commerce Act as an express company and to part II of the Interstate Commerce Act as a motor carrier.

Since, with respect to the Interstate Commerce Act, H.R. 10743 proposes to amend only part II of that act, REA would be faced with the additional burden of determining which of its employees are engaged in part I operations, and therefore not entitled to the withholding exemption, and which of its employees are engaged in part II operations and consequently entitled to the benefit of the exemption. Since any single REA employee may be engaged in both types of operation during any one pay period, it is easy to see how H.R. 10743 would inadvertently compound REA's accounting problems.

S. 1719, in the version in which it passed the Senate and is now before this subcommittee, avoids this pitfall to some extent. By including an amendment to part I of the Interstate Commerce Act, it brings all REA employees who perform regularly assigned duties on trains, as well as in motor vehicles in over-the-road service, in more than one State within the ambit of the withholding exemption.

However, this leaves REA employees engaged in pickup and delivery service which, in some cases, involves crossing State lines, subject to the same burdensome circumstances that the amendment is intended to cure, and leaves REA with the same difficulty of determining to what extent they are engaged in part II operations, and therefore entitled to the withholding exemption, and to what extent they are engaged in part I operations, and therefore subject to multiple withholding.

There is no logical reason why there should not be uniform treatment of all REA employees who may be subject to these onerous multiple-withholding requirements.

It is with this thought in mind that we urge this subcommittee to adopt S. 1719 as passed by the Senate with the following modification:

Page 2, line 8, delete "on a locomotive, car, or other track-borne vehicle."

Subsequent to submission of my original statement in this hearing, it was called to my attention that the deletion of the words "on a locomotive, car, or other track-borne vehicle" from the Senate-passed version of S. 1719 might have the effect of broadening the coverage of the withholding exemption more than it was intended.

It is with that view that, in addition to the deletion on line 8 of page 2 which I have suggested, I also recommend that the following words be added on line 9 of page 2, after the word "State":

but not including an executive, administrative, or clerical employee of any such carrier who may perform his duties in more than one State.

Mr. WILLIAMS. Does that complete your statement?

Mr. LARSEN. Yes.

Mr. WILLIAMS. Are there any questions, Mr. Friedel?

Mr. FRIEDEL. No.

Mr. WILLIAMS. Mr. Devine?

Mr. DEVINE. No.

Mr. WILLIAMS. Mr. Jarman?

Mr. JARMAN. I have no questions.

Mr. WILLIAMS. Mr. Sibal?

Mr. SIBAL. No questions.

Mr. WILLIAMS. Mr. Watson?

Mr. WATSON. Just one question. I would appreciate your helping me understand the equities involved in this matter of failing to treat resident and nonresident taxpayers alike. I never could understand and explain to my people why we would require the residents to have taxes withheld from their salaries, but not requiring that of nonresidents. Help me understand the equities involved, will you, please?

Mr. LARSEN. We have the interstate characteristics of the work performed by the nonresidents. I have the feeling that we are subjected on our side of it to a heavy administrative cost to attempt to divide the man's wages between States A, B, and C—to attempt to compute some part of the tax for each of the several States. I am not sure that we should necessarily be subject to this additional administrative work in order to have the man's wages and subsequently tax withholding divided between the several States.

With the resident, on the other hand, if we restrict the withholding to the resident in his own State, tax is withheld from his salary only in the State of his residence and he works out his tax liability with the several States involved, if he has this complication.

Mr. WATSON. I notice from your figures that presently this, really, is not a burden on you, but you anticipate, as have the others who have testified, that the States will in increasing numbers require withholding the tax. Do you anticipate that it really could become quite an onerous burden?

Mr. LARSEN. It could become an onerous burden if several of the States were to adopt this and we have to file detailed records which it would seem to me to be necessary in order to come up with the correct allocation of salary. It is not a problem at the present time but,

if you look ahead and if the States are going to insist that there be an accurate distribution of the man's wages, there would be a withholding based upon some accurate calculation of salaries and it could become a problem.

Mr. FRIEDEL. The purpose is to have the withholding at the place of residence. In other words, you will have the withholding tax but you will not have a multiple withholding tax.

Mr. LARSEN. That is correct.

Mr. FRIEDEL. You will have the withholding.

Mr. LARSEN. Yes, indeed; there would be a withholding tax based upon the requirements of the State of the man's residence.

Mr. WATSON. That is purely on the basis of his residence. You would not have any withholding on nonresidents if the bill were passed?

Mr. LARSEN. That is correct.

Mr. WATSON. Do you agree with the earlier witnesses that there is no question about or any allegation that a State has attempted to collect or levy any tax which was not due, but the problem is simply a bookkeeping burden which you anticipate on your individual business?

Mr. LARSEN. Yes; I would say that essentially. Certainly it is difficult to predict whether the amount withheld from a man's wages in interstate activity will actually equal the amount of the tax that would be due if the salary were allocated to the several States. To that extent there could possibly be overwithholding and underwithholding, perhaps. Fundamentally, I would say that the attempt with withholding is to obtain from the wage the amount of the tax that would normally be due for the services performed in the State.

Mr. WATSON. One final question: Should this bill become law, when a State or political subdivision should determine that the tax is due from one of your nonresident employees, would you, as a company, still assist the State in the collection of that tax that may be due?

Mr. LARSEN. I think that we would assist in the collection of that tax to the extent of cooperating with the State. That is our policy at all times, to do so in the furnishing of such data as the State may require to determine the length of the run in the particular State. I do not know what basis of allocation of salary they would make, but we certainly would cooperate with the State authorities in making available what records we might have which would assist them in the collection of the tax. I do not know about how far we would have to go with withholding wages or whether there would be a suit brought or levied against the employee for nonpayment of taxes. I think that this would get into the area of the legal side of it.

Fundamentally, we would cooperate with the State. As I say, our policy is to do it in all matters anyway. We would continue that policy.

Mr. WATSON. Thank you. That is all.

Mr. WILLIAMS. We want to thank you very much.

Mr. LARSEN. Thank you.

Mr. WILLIAMS. We now have the representatives of the National Association of Tax Administrators.

Mr. Charles F. Conlon, I believe, is the executive secretary of the National Association of Tax Administrators. Would you like to

make the presentation by your people? Do you want to call one after the other?

Mr. CONLON. If I may, I will say a few words and then I will call on the other gentlemen following me.

Mr. WILLIAMS. All right. You may proceed.

STATEMENT OF CHARLES F. CONLON, EXECUTIVE SECRETARY, NATIONAL ASSOCIATION OF TAX ADMINISTRATORS

Mr. CONLON. Mr. Chairman and members of the subcommittee, my name is Charles F. Conlon, and I am the executive secretary of the National Association of Tax Administrators with headquarters in Chicago, Ill. This is an organization maintained by the tax departments of the several States to conduct research in matters of substance and administration relating to the tax laws of the several States, to assist in the solution of the interstate and intergovernmental tax problems, to exchange information among the States on operating techniques and to promote uniformity in the application of State tax laws affecting interstate commerce.

Two illustrations of this latter activity would be the association's recent recommendation that any possibility of double taxation in the sales-and-use-tax field be eliminated by the provision of a tax credit in the several States. This proposal has been accepted by about one-half of the States imposing sales and use taxes, and a good many of the States will have bills of that type in the legislative sessions in 1965.

Another instance of this work of simplifying compliance with tax laws where interstate commerce is concerned involves the development of a withholding form which could be used for both the Federal withholding and the State withholding requirements in a single machine application.

Through some slip-up in communications there was no testimony presented on behalf of the State tax departments in the hearings on this bill before the Senate, but Mr. McGowan, the counsel for the Senate Commerce Committee asked that the views of the State tax departments on this proposal be compiled and this testimony is based on his request and on the statements submitted by the tax departments of the several States.

Mr. WILLIAMS. As I understand you, you say that the States did not express their views to the Senate Commerce Committee?

Mr. CONLON. Yes, sir. Through some slip-up in communications the hearings had been completed before we knew that the hearings had been scheduled. They were originally set last year and were postponed and we just did not have any word of the reconvening, but Mr. McGowan asked that the material be compiled and it was.

Mr. WILLIAMS. You were not notified of the hearings?

Mr. CONLON. We did not receive word of them.

The tax commissioners of 23 States and the District of Columbia have expressed their opposition to S. 1719 on several grounds: (1) That it is undesirable on principle as an interference with State tax powers; (2) that it would be a bad precedent; (3) that it is unnecessary; and, probably most important of all, because it would eliminate

enforcement procedures that are necessary for the fair and equitable administration of State income tax laws.

These States are:

Alabama, Alaska, California, Colorado, Delaware, District of Columbia, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Mexico, New York, North Carolina, Oklahoma, Oregon, South Carolina, Vermont, Virginia.

There are three other States, Mississippi, Utah, and West Virginia, where S. 1719 would not affect the State's current practice, in Mississippi, for example, because the State does not have withholding. However, the tax commissioners of these States have expressed their opposition to the bill on the grounds that this affects a matter that can be handled by the States.

We are dealing with income taxes here, but I might point out to the committee that in addition to the income tax question, S. 1719 would also affect the unemployment compensation disability program which is financed by withholding taxes on employees' incomes and such programs are, in effect, I believe, in the States of California, New Jersey, New York, and Rhode Island.

I think that the statement that Mr. Sprague has submitted to the committee deals with this point and the effect of the bill beyond the income tax field strictly speaking.

I would also at this time, Mr. Chairman, like to introduce a resolution that was adopted by the Southeastern Association of Tax Administrators at their meeting just concluded last week in Biloxi, Miss., in which the States in that region also expressed their opposition to S. 1719, for the general reasons I have already stated.

Mr. WILLIAMS. That will be made a part of the record at this point.

(The resolution in opposition to S. 1719 follows:)

RESOLUTION, IN OPPOSITION TO S. 1719, UNANIMOUSLY ADOPTED BY THE SOUTHEASTERN ASSOCIATION OF TAX ADMINISTRATORS AT ITS 14TH ANNUAL CONFERENCE, BILOXI, MISS., JULY 29, 1964

Whereas S. 1719 would eliminate withholding and information return requirements with respect to income earned by nonresident employees of various transportation companies, and

Whereas information at the source is an indispensable requirement for the fair and equitable administration of State income taxes on wages and salaries earned within a State by nonresidents, and

Whereas such action would seriously jeopardize the fair and equitable enforcement of State income tax laws, and

Whereas the enactment of S. 1719 would constitute a precedent for exemption or preferred treatment of other groups of nonresident employees, and

Whereas the limited problem which S. 1719 is intended to deal with can be remedied by reciprocal State action along the lines already followed by a number of income tax States: Now, therefore, be it

Resolved, That the Southeastern Association of Tax Administrators opposes the enactment of S. 1719 because it is unnecessary, it would set an undesirable precedent, and it violates the principle that Congress should refrain from interfering with the operation of State tax laws to remedy difficulties that are within the powers of the State; and be it further

Resolved, That this resolution be presented to the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce as an expression of the tax commissions of the several States constituting the Southeastern Association of Tax Administrators in opposition to the enactment of S. 1719; and be it further

Resolved, That a copy of this resolution be forwarded forthwith to each member of the House Committee on Interstate and Foreign Commerce before which this proposed legislation now stands.

Mr. CONLON. One point that has been made by the tax commissioners in commenting on S. 1719 is that it really is not necessary to have Federal legislation to deal with this problem. Several tax commissioners with long experience in the administration of withholding laws point out that there is no need for sweeping legislation of the kind proposed in S. 1719. Mr. Paul F. Liniger, member of the Oregon Tax Commission said that the Oregon withholding law—the first one enacted by a State—has been in effect since 1947 and that the commission has had no protests with respect to the operation of its withholding provisions that required more than merely an explanation of the law's application and certainly nothing that would indicate that the withholding requirement was such an onerous one as to require the introduction of S. 1719.

Commissioner of Revenue James E. Luckett, of Kentucky, and Collector of Revenue Ashton Mouton, of Louisiana, make the same point.

Director of Revenue Wayne E. McCoy, of Kansas, indicates his experience is similar with respect to information return requirements. Kansas being a State which does not have general withholding.

The characteristic application of the withholding requirement does not automatically constitute a hardship situation warranting congressional action. All tax administrators agree that to the extent employment in several States might give rise to unnecessary and multiple withholding requirements, appropriate action should be taken through interstate cooperation by means of reciprocity agreements to relieve the employer of this burden. This type of action has been taken in many instances already—with eminently satisfactory results and there is no reason to believe it will not be equally satisfactory in any such situations arising in the future.

Mr. WILLIAMS. May I interrupt you at that point? Are there any efforts being made to provide for any kind of uniform reciprocity agreements between the several States?

Mr. CONLON. Three general approaches are now used to deal with this problem. One involves the reciprocity agreement. There are some other methods by which the same effect is achieved. I will mention these a little later on. Also, I have a further suggestion with respect to uniform provisions that I would like to make at the end of my presentation. It will include these reciprocity agreements.

For example, the North Carolina Department of Revenue has an agreement of the type referred to with its neighboring States of South Carolina and Virginia, providing for the withholding of income tax from employees of common carriers on the basis of residence unless the employee has his principal job situs in a State other than his State of residence.

You will recall that the basis of the job situs was recognized as appropriate for the withholding. Actually, this was the substance of the amendment that Mr. Seybold recommended yesterday.

The commissioner of revenue of North Carolina will make a similar agreement with any other State where a multiple withholding problem might arise. This agreement further provides that an employer in North Carolina may discontinue withholding if the North Carolina

resident works outside the State and his employer is required to withhold for another State.

In that type of situation you still have only one withholding.

West Virginia similarly has reciprocal agreements with its neighboring States of Virginia, Kentucky, and Maryland. South Carolina has agreements with North Carolina and Georgia.

The Commonwealth of Kentucky has agreements with West Virginia and Indiana and Virginia. And since Mr. Friedel mentioned it this morning, there is the area of Maryland, the District of Columbia, Virginia, and West Virginia where a similar policy prevails with respect to the reciprocal agreements affecting withholding, where there is employment in the State other than the State of residence.

Another example is Indiana, a State which has only recently adopted a personal income tax. The commissioner of revenue of Indiana has expressed his willingness to make such an agreement with any other income tax State on a reciprocal basis and has already entered into agreements with Kentucky, Wisconsin, and Georgia, and has agreements pending with the States of West Virginia and North Carolina.

That is one way of handling this problem. Another way is by agreement worked out within the State between the tax department and the employers.

In Oklahoma, the tax commission has handled this problem with the railroads by providing that the tax on wages paid to road and bridge crews be withheld on the basis of source; and that on wages paid to train crews, on irregular routes, on a domiciliary basis.

If the employee's domicile is outside of the State of Oklahoma, the State of Oklahoma does not require the employer to withhold on salaries paid for those services.

The State of Colorado is another one where the railroad problem is handled in that way.

In the State of Utah, the tax commission achieves the same result by a regulation which provides that withholding is not required on wages paid by licensed common carriers to employees who are bona fide residents and domiciled in a State other than Utah and who are engaged in services that originate outside and either terminate in or pass through Utah.

A fourth method mentioned at the hearing yesterday has been used effectively. This method relieves multiple withholding burdens on employers of nonresidents by specifying a minimum amount under which the withholding requirement does not apply. This is done by regulation in Minnesota, and is provided by a statute, recently enacted, in Wisconsin, the annual amounts being $700 and $1,500, respectively.

It should be noted that these reciprocal agreements generally recognize the desirability of maintaining the withholding requirement where the principal job situs is within the State and thus they are not tantamount to general exemptions for nonresident employees as S. 1719, in practice, actually would provide. From the standpoint of orderly and fair administration of the tax laws, these reciprocal agreements are, therefore, much superior to the meat axe approach of S. 1719, considering the interests of the State and its residents as well as nonresidents.

These are examples of steps which State tax officials have taken to meet this practical problem when it has been brought to their attention; and I think that the same kinds of procedures could be applied to any other specific problems of this type which would come up in the future. As I recall the testimony yesterday, there were no specifically identified instances of insoluble problems that are presently causing a difficulty of the kind sought to be eliminated. So I suggest that the inference is that the approaches that the States have taken here in either of these ways I have described have been effective to meet the withholding problem.

There are some adverse effects that might be anticipated from the operation of S. 1719, and I would like to advert to these very briefly.

In some metropolitan border situations the practical consequences of S. 1719 would be to provide wholly unwarranted tax exemptions. This would be so, for example, in a situation where an employee based in a border city in State A derives 95 percent of his income from services performed wholly in neighboring State B on a regular daily trip basis. Under present law, the employer withholds the tax due State B. Under S. 1719 he would not withhold tax and would not even file the information return. Neither of these requirements could possibly be characterized as burdensome in any practical sense let alone being sufficiently serious to warrant action by Congress.

Specific examples of situations of this kind were cited by Mr. R. E. Wilson, director of the Oklahoma Income Tax Division, with respect to Oklahoma-Arkansas border areas, in a letter to a member of this committee, Mr. Jarman, with respect to the Oklahoma-Arkansas border areas, and by Mr. Wayne E. McCoy, director of the Kansas Department of Revenue, with respect to the Kansas City, Mo., and Kansas City, Kans., areas. There are many other instances of turnaround situations involving truck routes where S. 1719 would have a similar effect.

The other point, probably, that is the most important of all about S. 1719 would be its effect on enforcement procedures.

A number of the tax administrators, including some who would not oppose the elimination of withholding, said that in any event the bill should impose on the employer the responsibility of maintaining accurate and current records on the actual residence of the employee.

They point out that S. 1719 provides that the employee's statement is governing and that if he lists as his residence a State which does not impose an income tax, there will be no withholding and no information return filed in any State. While the bill does not purport to affect the employee's liability for taxes in any State, the practical effect may be that neither the State of his residence nor any other State will have information as to the source of earnings. Therefore, if in such a situation the employee does not voluntarily file a return, there is not much the tax official can do to identify and locate such a taxpayer and collect the tax from him.

It might be noted that there was no suggestion that would really be effective in overcoming this basic difficulty made in the testimony yesterday, although the question was put several times.

The general feeling about the impact of the bill is summed up very well by Mr. Joseph H. Murphy, president of the New York Tax Commission, who said that the proposed elimination of the withholding

and information requirements would so hamper the administration of State income tax laws as to constitute an unwarranted impairment of the rights of States to impose taxes within their respective jurisdictions.

There is another point that the tax administrators have commented on, namely, that the enactment of the legislation would be a precedent for special tax treatment of other groups of nonresident employees.

Practically every tax administrator who commented on S. 1719 made the point that the enactment of this legislation would serve as a precedent for special tax treatment of other groups of nonresidents who are employed in income tax States and subject to taxation there. The amendment of S. 1719, prior to passage by the Senate, so as to take in two additional groups of nonresident employees—those engaged in railroad and water carriage—is an example of what might be expected. You will find in the Senate record a subsequent request that all airline employees be covered by this bill. You will also find a request that the bill be broadened to include wholesaler employees who are engaged in many aspects of interstate commerce; that it include private carriers of one kind or another who are operating across State lines. And there are, also, a number of bills pending in Congress right now that would also provide a type of tax exemption for nonresident employees.

Bills presently pending in Congress that would provide tax exemptions for nonresident employees include H.R. 1719, covering any employee in interstate commerce, H.R. 3823, relating to Federal employees and H.R. 11279, relating to services performed on Government reservations. In addition, House Joint Resolution 130 and House Joint Resolution 395 call for a constitutional amendment to prohibit the States from taxing income earned within a State by nonresidents.

So much for the precedents. I might add a note on a law that was commented on yesterday, namely, Public Law 86–263 which applies primarily to the personnel of the merchant marine. This is a rather restricted situation that can be distinguished from the present one by the fact that the services involved are practically all performed outside of the territorial limits of the United States, and the application of the bill mostly affects only those States in which port cities are located. There is a technical job situs at these ports even though the man may be a nonresident of the port city and a resident of some inland city, but the distinguishing point here is that this bill is dealing with income that is earned practically outside of the territorial limits of the United States.

Now, it is true that the withholding procedures are very effective as to the operation against nonresidents. They have been a big help in the collection of State income taxes. There is a representative of the Massachusetts Tax Department here who will tell you more in detail about this. But let me point out the importance of withholding as to nonresident taxes, which is best illustrated by the fact that in the Commonwealth of Massachusetts when withholding was authorized by the legislature a number of years ago, the number of nonresident income taxpayers practically doubled during the first year the law was effective.

The chairman commented yesterday on the suggestion from the Advisory Commission on Intergovernmental Relations with re-

spect to the possibility of a study to determine the extent to which there are actual hardship situations that result from the multiple application of the withholding laws and the possibility of eliminating these through reciprocal agreements or otherwise. In view of the testimony presented here yesterday and the absence of any specific identifiable areas of difficulty where this problem is now actually encountered, I do not know whether this committee feels there is a need for such a study but I would assure the chairman that if there is any need for it in the opinion of the chairman and in the opinion of the subcommittee and the Congress, you will find that the State tax commissioners will cooperate 100 percent in any effort of this kind to isolate and to identify any situations where there is actual difficulty resulting from multiple withholding situations.

Now, I would like to summarize here briefly by saying that insofar as remedial action is called for, the comments of most of the responding States might be put as follows: On the whole, it would be the best policy to permit the States to work out some de minimis policy or reciprocal policy with respect to withholding and information return requirements in the carrier field so that undue compliance burdens are done away with as they already have been in many States, without at the same time eliminating withholding and information return requirements in situations where the only effect of the legislation would be to make it practically impossible to collect income taxes from some nonresidents.

I might emphasize here that there is no question whatsoever in any of these situations of the employee having to pay a tax on the same income to more than one State, because every one of the States imposing income taxes have statutory authorizations for the allowance of credit for taxes paid in another State. So there is no question whatsoever here on the possibility that the employee would have to pay taxes on the same income in more than one State. This reciprocal action has been worked out very satisfactorily over the years, and I think that on the basis of this record that the States can deal with any of these multiple withholding sections that are actually present and prevent problems in the same way. And I suggest, Mr. Chairman, that we recommend and I would be willing to take the initiative to do so, to recommend that the Council of State Governments Committee on Suggested State Legislation, which presents various legislation proposals to the State legislatures every year, take notice of this problem and the authority to enter into these reciprocal agreements of the type that I have described, such as those among South Carolina, North Carolina, Virginia, and all of the other States I mentioned, in order that a policy recommendation favoring them might be forwarded to the States, so that in case this authority is lacking in any instance the legislature of that State would be alerted to the problem and could proceed to give the administrator the authority to deal with the situation.

Thank you. That concludes my testimony.

Mr. WILLIAMS. Thank you, Mr. Conlon. In your introductory remarks, which I believe were made aside from the statement, you mention the difficulties that would be encountered in connection with the collection of unemployment taxes.

Mr. CONLON. This unemployment compensation disability program is one that is in effect in a number of States. I do not know how

many others have it, but it is in the four States I mentioned. It is designed to fill the gap between the situation where the man is out of work simply because he cannot find a job (that is covered by the straight unemployment compensation program) and the situation where the man is out of work because he has been disabled by an accident on the job (that is covered in practically every State by workmen's compensation). But you have this situation in between where the man is unemployed not because he has not a job but because he has been hurt or disabled in some way off the job and this unemployment compensation disability program has been designed to fill in this gap. It is financed by a tax on the wages earned by the employee, up to, I think, a maximum amount of salary that can be covered of around $5,000. This is not a general income tax. This is a tax on his income that is earmarked for the support of this unemployment compensation disability program. It applies to nonresidents who are employed within the State in about the same way that the employee who is employed wholly within the State is covered by unemployment compensation that is paid to the State of employment, even though he may live in another State. Since S. 1719 would prohibit the withholding of the tax on the employee's wages—it would interfere, I suggest, with the support of this particular type of unemployment compensation program. It is a side effect—it is incidental and probably unintended.

Mr. WILLIAMS. Maybe I do not understand you at the moment, but I was under the impression that that was the type that was paid by the employer.

Mr. CONLON. The unemployment, that is, the State unemployment compensation program is financed by a tax on the employer, but this is a supplementary type of program that is intended to deal with that particular type of situation that I referred to; namely, where the unemployment results from the fact that the man has been disabled, not in his work, but in some kind of an accident off the job. Ordinarily he would not be covered by unemployment compensation in this situation, I understand, so we have this supplementary program that is financed by a tax on the employee.

Mr. WILLIAMS. You feel that this would be in addition to this.

Mr. CONLON. The bill says that no State—rather, no employer may withhold taxes on wages or salaries paid to a nonresident employee. I think it would apply in this situation, too.

Mr. WILLIAMS. Are there any questions?

Mr. Friedel?

Mr. FRIEDEL. You have a Special Committee on Taxation headed by Mr. Willis?

Mr CONLON. Yes, sir.

Mr. FRIEDEL. Has it covered this subject?

Mr. CONLON. No, sir. The committee has limited its consideration to the matter of corporation taxes that are imposed by the States on multistate business activities. It has not concerned itself with personal income tax problems at all.

Mr. FRIEDEL. It has nothing to do with interstate employees like the railroads and the airlines, et cetera?

Mr. CONLON. No. I understand—I do not know whether this is certain or not—that the special subcommittee will deal with income

and sales taxes and unless they decide to have some additional hearings for this type of problem, it would not be considered by them.

Mr. FRIEDEL. Thank you. That is all.

Mr. WILLIAMS. Mr. Devine?

Mr. DEVINE. No questions.

Mr. WILLIAMS. Mr. Jarman?

Mr. JARMAN. From your experience in contact with the different State tax agencies do you conclude that there has been very little complaint as to the withholding requirement in these different States?

Mr. CONLON. I included, Mr. Jarman, those comments made by the State tax commissioners who wondered about the necessity for this legislation, because in their States where they have had withholding for some time, they have, apparently, had no problem of this kind, that is, that calls for any special action on their part.

Mr. JARMAN. Have you had contact with any State officials who have indicated there have been protests and complaints?

Mr. CONLON. The only one that I was aware of was this situation involved in the State of Wisconsin. Even while that complaint was in process the legislature had authorized a change in the law. That change would have done away with the problem. That amendment was vetoed by the Governor, for what reason I do not know, but subsequently, thereafter, this minimum payment provision was made a part of the law and, as the witness yesterday explained, it solved the problem in that State.

Mr. JARMAN. Thank you.

Mr. WILLIAMS. Mr. Sibal?

Mr. SIBAL. No questions.

Mr. WILLIAMS. Mr. Watson?

Mr. WATSON. Who is president of your National Association of Tax Administrators?

Mr. CONLON. At the present time it is Mr. Lawton Chandler, tax commissioner of the State of New Hampshire.

Mr. WATSON. You have already pointed this out, but I would like to have it set out more clearly.

Do you know of any instance when a request was made for one of these reciprocal agreements where the agreement was not worked out?

Mr. CONLON. I do not know of any.

Mr. WATSON. And you are not aware—pursuing the question Mr. Jarman asked—of any State wherein a complaint has been registered and the matter was not resolved to the satisfaction of the complainant?

Mr. CONLON. I am not. I might point out, Mr. Watson, in connection with this matter of multiple withholding, when you get down to 10, 15, or 20 percent of the employee's time, the possibility of a number of States requiring withholding on that basis does not exist as a practical matter, because in this situation there usually is no tax liability. Withholding would involve useless bookkeeping and refunding. The tax commissioners are just as eager to eliminate any unnecessary reporting and recordkeeping or other paperwork as is the employer.

Mr. WATSON. Mr. Chairman, if I may at this point say this. Mr. Livingston, the chairman of our South Carolina Tax Commission, has written Mr. Harris and, also, has written me that he would like to be here to testify. However, he is ill and he has asked me to state

for the record that he concurs fully in the position that was taken by you in your testimony today, Mr. Conlon.

Mr. CONLON. Thank you.

Mr. WILLIAMS. Thank you. Are there any further questions?

If not, we thank you very much.

In what order would you like your witnesses to appear next?

Mr. CONLON. We would ask first that Mr. Breen be heard, and then Mr. Tuttle and then Mr. Carson.

Mr. WILLIAMS. We shall be glad to hear from you now, Mr. Breen.

STATEMENT OF DANIEL B. BREEN, CHIEF, BUREAU OF PLANNING AND RESEARCH, MASSACHUSETTS DEPARTMENT OF CORPORATIONS AND TAXATION

Mr. BREEN. Mr. Chairman, and members of the subcommittee, my name is Daniel B. Breen. I am chief of the Bureau of Planning and Research of the Massachusetts Department of Corporations and Taxation.

I wish to record the opposition of Leo E. Diehl, commissioner of Corporations and Taxation of the Commonwealth of Massachusetts to S. 1719, and to convey his regret for being unable to attend this important hearing.

We in Massachusetts are opposed to S. 1719 because it would: (1) minimize a valid taxing power of Massachusetts by eliminating necessary and successful means of enforcement; (2) reduce revenue; (3) cause inequity in the taxation of nonresidents; and (4) it would not solve or relieve any undue burden.

These statements are substantiated by brief reference to the history of the income tax withholding system which was adopted in Massachusetts during 1959.

The number of nonresidents filing returns increased from 17,977 to 37,136, and revenue from such nonresidents increased about $500,000.

There was some initial confusion in the apportionment of wages by employers of the subject nonresident employees of interstate carriers as well as of other nonresidents. However, most questions were resolved by telephone, and this department has been commended for its cooperative spirit and actions in this area over 5 years ago. In addition employers are compensated for their services in withholding the Massachusetts income tax.

Generally, the portions of the subject nonresidents' wages earned in Massachusetts are readily determined on a mileage basis for ground carriers and a time basis for air and sea carriers. However, the Massachusetts withholding law also provides for difficult cases by allowing employers to estimate quarterly a percentage of wages earned in Massachusetts, and this percentage is applied to each payment. The amount of tax to withhold is determined by applying the withholding tables or the electronic payroll method to the apportioned wages, and this allows full exemption and deductions.

The employer issues a withholding statement in duplicate to the employee and sends a copy to the Department. This reporting requirement, which has applied to nonresidents since 1955, is vital to proper enforcement, especially in cases of underwithholding. When the year is over, the nonresident employee taxpayer files a tax return and either pays the balance due or receives a refund.

It might be pointed out that we have the draft of a regulation which would exempt transient nonresidents from withholding. Those nonresidents who would be exempted are the ones who reasonably would not be expected to earn over $2,000 per year in Massachusetts. Because the problem has been worked out and there has been no real demand for additional relief in this area, the possible regulation has not been issued.

Enactment of S. 1719 would lead to situations such as the following: Two neighbors or brothers living in a bordering State, such as New Hampshire, could work for a trucking company, one as a mechanic in Massachusetts and one a driver operating mostly in Massachusetts but driving a few miles a day, week, month, or year in one or more other States. The employer would continue to withhold from the wages and report the name, address, and wages of the nonresident mechanic but not those of the nonresident truckdriver. If the latter chose not to file a Massachusetts income tax return, our means of enforcement would be reduced to the time-consuming and expensive method of additional auditing of employers' records for names and addresses, with each such nonresident becoming an individual case to be contacted by mail and/or in person.

Therefore, we in Massachusetts are opposed and urge your adverse recommendation to S. 1719 because enactment would minimize the means of enforcing our income tax law and cause inequity in the nonresident area, would reduce revenue, and because there is no serious burden which requires a remedy.

Mr. WILLIAMS. We thank you, Mr. Breen. Are there any questions, Mr. Friedel?

Mr. FRIEDEL. No questions.

Mr. WILLIAMS. Any questions, Mr. Devine?

Mr. DEVINE. No.

Mr. WILLIAMS. Any questions, Mr. Jarman?

Mr. JARMAN. I think that I would like to comment on the last thing that you said that there is no serious burden which requires a remedy.

We have had testimony before this committee of one company that operates in a number of States. The testimony has been that each of the drivers operates in several States and a substantial number perform services in as many as 32 States. The witness for the company has stated that the difficulty in complying with an individual State withholding law lies in the fact that the company has no record of the miles by States by the drivers as would be required to satisfy the State requirements. The witness concluded by saying that the company has found from a study by competent certified public accountants that the development of this additional information for a single State would cost more than $45,000 per year. Therein lies a very serious complaint in terms of analyzing what the burden would be upon a particular company.

Do you have any comment to make on that?

Mr. BREEN. I would say, Congressman Jarman, that we have a man who works out such problems with the trucking employers, and on a particular employee, if it appears that he is not going to earn over $500 in the State, that he is not subject to withholding. This is reviewed at the end of the quarter and a determination is made for the next quarter. They do have mileage records in these trucking com-

panies, and this is the main basis on which the employer determines that for the employee, and we accept the word of the employer. This is a matter of cooperation which is between the employer and the department, and it works out very well. Our man who handles this happened to work with the American Airlines before, so that he has a view of travel, and it works out quite well. We do not get complaints on this.

Mr. JARMAN. You mean that you accept the word of the employer as to the amount of the mileage?

Mr. BREEN. That is the amount of the travel that Mr. Truckdriver Jones will be doing in Massachusetts—the amount of miles compared with his total number of miles traveled.

Mr. JARMAN. But therein lies, as I understand it, the basis for a real complaint and that is the time-consuming work on the part of the company; the compilation of the mileage by the States by drivers, et cetera, the keeping of records, and a conclusion as to what the mileage is within the State of Massachusetts, for example.

Mr. BREEN. They do have trip records. We do not get involved in the stop time—just the mileage.

Mr. JARMAN. So, then, as I understand it, this company should have no reason to be concerned about excessive expenditure of money to comply with the Massachusetts laws; is that your conclusion?

Mr. BREEN. That is true for Massachusetts.

Mr. JARMAN. That is all. Thank you.

Mr. WILLIAMS. Mr. Friedel.

Mr. FRIEDEL. And most of the States work the same way?

Mr. BREEN. To the best of my knowledge, sir, all States work with a cooperative spirit in this area. We know there are situations on both sides where the nonresident employee is working almost all of this time out of the State or almost all of his time within the State, and then there are situations where a good percentage of time is close to 50 percent in one State and 50 percent out.

Mr. FRIEDEL. Do you know of any States that do not cooperate?

Mr. BREEN. No, sir.

Mr. FRIEDEL. None that find it burdensome to do the bookkeeping?

Mr. BREEN. No, sir; I do not know, but I am really not in a position to be a judge of that.

Mr. FRIEDEL. That is all. Thank you.

Mr. WILLIAMS. Are there any further questions?

If not, thank you very much.

Mr. BREEN. Thank you.

Mr. WILLIAMS. Who is your next witness?

Mr. CONLON. Mr. Tuttle.

Mr. WILLIAMS. We will be glad to hear from you now, Mr. Tuttle.

STATEMENT OF WILLIAM E. TUTTLE, DIRECTOR, INDIVIDUAL INCOME TAX DIVISION, DEPARTMENT OF REVENUE, STATE OF LOUISIANA, BATON ROUGE, LA.

Mr. TUTTLE. Mr. Chairman and members of the committee, I must apologize for not having prepared copies for distribution to you and the members of the committee. I have furnished the reporter with the basic paper, however. If I may, I will attempt to follow that.

Mr. WILLIAMS. Would you like to have your entire statement included in the record?

Mr. TUTTLE. Yes; I would.

Mr. WILLIAMS. It will be included in the record.

Mr. TUTTLE. I am William E. Tuttle, director of individual income tax division of the Department of Revenues of the State of Louisiana.

This presentation is for the express purpose of acquainting you with the objections of the Department of Revenue of the State of Louisiana to the passage of S. 1719 now pending before your committee.

Louisiana is not appearing here to bemoan the immediate loss of revenue which might result from passage of the subject legislation, because the carrier employee will still be required to file an income tax return at the close of the year and, assuming complete compliance, there would be no loss. We are here to convince you that no real problem exists; that if one does exist, S. 1719 is not the solution, and to urge your most careful consideration toward emphatic rejection of what has to be recognized as undesirable, unwarranted, and unrealistic congressional action.

Louisiana is at least representative of the States in the number of carrier employers who operate within our borders. New Orleans is the southern terminus of the vast water transportation system afforded by the Mississippi River and its tributaries and is the end of the line for at least three of the major railway systems of the country. It is also the southern continental port for many of the major airlines and is a substantial crossroads for the trucking industry. Thus, we are eminently acquainted with all forms of transportation governed by this proposed legislation.

Despite the tremendous activity of our transportation systems, carrier employers operating within the State number only 139, only 67 of whom employ, within Louisiana, persons who are not residents of the State. This compared with total business entities of over 68,000.

We are, consequently, considering in this act less than one one-hundredth of 1 percent of business firms established and operated in Louisiana. Because of an extremely high personal exemption and withholding tax exemption, individual taxpayer employees are similarly insignificant in number. As a matter of fact, there are only 50 carrier employers required to withhold tax on a total of 430 carrier employees who are nonresidents.

We cite these figures that you may individually and collectively realize the net effect of your valuable considerations and ponder whether this is the type of situation which would demand, or even suggest, congressional action, regardless of the nature of the problem.

We conclude that S. 1719 is intended to solve and eliminate an allegedly serious problem—that of some unbearable burden on interstate carriers. Let us pause to analyze just what the burden may be and to honestly evaluate both the problem and whether the bill offers any semblance of a solution.

So far as we can determine, the only possibility of a legitimate burden would be that withholding requires undue recordkeeping on the part of the carrier employer and that S. 1719 presumably would eliminate the burden.

First, let us take a careful look at the amount of recordkeeping involved which might be eliminated. As members of the Committee

on Interstate and Foreign Commerce, you are eminently informed of the voluminous detailed records required to be maintained by ICC and FAA regulation. These and other governmental regulations demand that the minute-by-minute movement of all equipment and personnel be meticulously logged and recorded. Disregarding any bookkeeping which might be done for the sake of pure prudent business survival and as displayed in every rate pleading, I suggest that with or without withholding tax, the records must be and are maintained and that, in glaring reality, the only legitimate burden would be one of compilation of data, for the record is, in fact, already mandatorily available.

I might add that in the case of Louisiana the employer is compensated by the State for the additional burden caused by the withholding and, incidentally, at a rate in excess of three times as great as the cost of the collection otherwise incurred by the department of revenue.

Now, let us assume that this may be subject to scrutiny and that there is an undue burden because of the additional recordkeeping. Is S. 1719 the solution?

You all recognize that this legislation is not intended to and can in no way affect the income tax liability of the interstate carrier nonresident employee to the State where he performs services. The States will unquestionably, and legally, pursue their claim against the carrier employee to the best of their financial ability. So that now, instead of the carrier employer having previously compiled and filed data with each of the States, in one single routine operation, the same information must be compiled on an individual employee basis when demanded. The only alternative to this type of demanded service would be complete disregard of responsibility of the employer to his employees, making it necessary that every employee, ill-equipped as he may be, maintain his own individual record. From your own personal experience in keeping records to support a tax deduction, you know that this is an unrealistic approach and will not suffice or succeed.

In this truth, we submit that S. 1719 does not solve or eliminate any problem now faced by carrier employers but simply spreads the burden and problem across the component parts thereof—the unfortunate individual carrier employee. We suggest that our citzens, both resident and nonresident, expect and demand that we, as their tax administrators, lighten their burden in any way possible and that your constituents think no differently.

Realize, then, that S. 1719, in the case of Louisiana, purports to eliminate a problem of questionable existence for some 50 employers but does, in fact, create a positive problem of unmeasurable dimension for 430 of the people without whom no commerce could exist.

At the outset of this discussion it was pointed out that we are not drastically disturbed about the immediate loss of tax revenue to the State of Louisiana. I did not for one minute intend to imply that we were oblivious to this loss or to the increased cost which would be necessary to proper administration of our law. Under the prevailing system, I now have but one employee who is totally capable of determining when any one of the over 28,000 registered employers are delinquent in filing withholding tax returns.

If S. 1719 becomes law, there will be no practical way to determine whether or not any one of the 430 nonresident carrier employees has

failed to pay tax on his increase in wealth derived from Louisiana sources, for indeed we will not even know his identity. Any effort in this area would result in cost prohibitive compared to the tax which might be collected.

This, we submit, would force the State of Louisiana to complete abandonment of any attempt to collect from the employee. We would reasonably expect that if this is the ultimate end, certainly the resident employee in the same identical employment capacity, and at the same union-decreed salary, would have every right to, and would, forthwith institute litigation to contest the constitutionality of our 31-year-old tax law on the basis that it was no longer an indiscriminatory tax. Thus, the final result might be more severe than the most ardent supporter of this legislation could accept.

From the financial viewpoint, Louisiana is even more disturbed because of the possible disruption of stability, and the fact that this legislation would place the State's entire financial status in serious jeopardy.

Upon passage of the Louisiana income tax law in 1933, all funds to be derived from this tax were dedicated by constitutional amendment to an activity which ultimately lends itself to the borrowing power of the State. If the tax collections are in any way impaired, there is a resulting impairment of the borrowing power and capacity to repay, notwithstanding the fact that this dedication has been in legal existence for over 30 years. We can find no authority in the Constitution, stated or implied, for restricting the borrowing power of a State under the guise of regulating interstate commerce. This factor alone should lead you to reject S. 1719.

Our major objections to this legislation stem from the knowledge that the problem you are attempting to solve can be, and is being handled by the States individually in a much more satisfactory manner. This legislative effort is obviously designed toward reducing the burden on interstate commerce. You are surely aware that to dilute a burden from one entity and to spread it over many components is no solution, but actually the creation of additional problems. We know, of our positive knowledge, and think that you will agree, that there are better solutions to lightening the burden on commerce. We offer in support of this contention a review of the steps already taken by Louisiana.

Upon enactment of our law in 1933, all employers were required to furnish the State with information reports setting forth data on numerous types of payments, including salaries and wages. When the withholding tax law was put into effect, the law was changed so that information returns with respect to salary payments were no longer required and that a carbon copy of the withholding tax receipt furnished to the employee would suffice for that purpose.

Recognizing that the mountain of paper work required of commerce diminished the wealth of industry and of our State, Louisiana administratively decreed that in the future information returns would not be required with respect to any type of payment.

The Louisiana withholding tax law itself provides that the collector of revenue may permit an employer to estimate the amount of taxes due by any employee, without the undue burden of detailed record-keeping.

In our most recent session of the legislature, the department of revenue took the initiative in providing that in addition to the authority of the collector to permit estimated withholding, an employer may be granted permission to file withholding tax returns on an annual basis, requiring but one calculation of tax to be withheld rather than a calculation for each payroll period. Of most significance, historically, the State has prohibited the imposition of an income tax or withholding by every village and hamlet, town or city of our State.

Gentlemen, we urge that these are the solutions to the problem you are attempting to solve and that S. 1719 is no solution and does no more than multiply problems already in existence.

In conclusion, we emphasize that Louisiana is diametrically opposed to this particular legislation, and to any other that might be similar in nature. We shudder at the undesirable trend now upon us in the area of restriction of the States ability to maintain financial responsibility because of congressional action, and suggest that your own House bill 1719 should also be given more than a superficial analysis. Above all, we believe that in your infinite wisdom, you will recognize the true character of Senate bill 1719, and in doing so, will lend your effort to defeat this unwarranted measure.

Mr. WILLIAMS. Thank you.

Are there any questions, Mr. Jarman?

Mr. JARMAN. I can see difficulty for a company operating in a number of States where the rules and requirements would be so different. How much chance do you think there is of achieving uniformity?

Mr. TUTTLE. We, of course, operate in an effort toward uniformity. Fortunately, Louisiana has been in a situation where the surrounding States have not had a withholding tax; as a matter of fact, Texas has no income tax, Mississippi has no withholding tax. So that we have had no problem of duplication of withholding.

We have taken some steps toward uniformity insofar as the taxpayer is concerned, in that we have, as a part of our law, a credit allowed to any resident for taxes that he pays to another State, and it is the entire amount of the tax that he pays and not a proration or a complicated calculation to determine that amount.

In addition, Louisiana has always taken the position that with respect to our residents who may be working in another State, our withholding tax law does not apply. Our law covers only services performed in Louisiana and not services performed somewhere else, so that we do not create any duplicate withholding by having an employer withhold on one of our residents outside the State.

Mr. JARMAN. Thank you.

Mr. WILLIAMS. Mr. Springer?

Mr. SPRINGER. I think you have made an excellent statement of your position. I take it that you have no complication, principally because you do not have an income tax in Texas and no withholding in Mississippi. And those States in greater part surround your State, with the exception of Arkansas.

Mr. TUTTLE. That is true.

Mr. SPRINGER. This would mean that you have no complications for the people who live in New Orleans but work in Mississippi, is that true?

Mr. TUTTLE. I do not know of any serious problem that we have in that respect. We have received no complaint from anyone in that area.

Mr. SPRINGER. What would be the injustice of allowing, say, a resident of Mobile who drives across Alabama, Mississippi, Louisiana, and Texas, what would be the injustice for withholding in Mobile?

Mr. TUTTLE. Do I understand the question properly, what would be the injustice?

Mr. SPRINGER. In Louisiana.

Mr. TUTTLE. In Louisiana not witholding on that man?

Mr. SPRINGER. No, what would be the injustice, the fact that the trucking company has its home in Mobile, withholds in Mobile, what injustice would be in that situation?

Mr. TUTTLE. I really do not know the complete answer to that. I am not too sure that I fully comprehend the question itself.

Our position is that the employer in Mobile should withhold Louisiana tax on the employee who works in Louisiana. Now, if withholding was not accomplished by the emloyer, then Louisiana would not only have no information concerning it, we would not have the tax; we would have no information concerning the employee; we would not even know who he was. We feel tht the employee would be in direct competition with residents of the State in the same capacity as those who drive across Louisian and who would be required to pay tax on his earnings within the State.

Mr. SPRINGER. If a truck from Mobile drives across your State, does he not get some kind of a plate from the State—does he get some kind of a plate from the State of Louisiana?

Mr. TUTTLE. I believe that a trucking company is required, of course, to have a license to cross the State. I am not too sure on that. That is outside of my line.

Mr. SPRINGER. Do you require this information that there are employees who do cross the State of Louisiana?

Mr. TUTTLE. They let us know there are employees who are crossing—it does not identify them to us.

Mr. SPRINGER. Does that give you that information?

Mr. TUTTLE. No.

Mr. SPRINGER. Is it not possible for you to request that identification?

Mr. TUTTLE. Yes; it is possible.

Mr. SPRINGER. If you had withholding in Mobile on all of the taxes that are supposed to be withheld, are you not entitled to your share of that withholding in the State of Louisiana?

Mr. TUTTLE. True.

Mr. SPRINGER. There would not be any real injustice under this legislation; would there?

Mr. TUTTLE. Provided that the employee did voluntarily file his return, but without the withholding—without the information relative to the amount of the salary that he earned—we suspect and we know that a goodly number of these employees would not voluntarily file that return; then, consequently, our only recourse would be to go back to the employer and request the same information that they would be prohibited from furnishing to us so that ultimately the employer, it appears to me, will have to bear the brunt of the work in

assembling and compiling the data with respect to the movement of these people, either when we request it or at the end of the year, when the employee himself goes back to the employer and says, "Look, I am required to file a return in Louisiana—how much money did I make there?" The employer will still have to come up with that same information.

Mr. SPRINGER. In section 26(a) it states:

> No part of the wages or salaries paid by any railroad, express company, or sleeping car company, subject to the provisions of this part, to an employee who performs his regularly assigned duties as such an employee on a locomotive, car, or other track-borne vehicle in more than one State shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of any such carrier; nor shall any such carrier file any information return or other report for tax purposes with respect to such wages or salary with any State or subdivision thereof other than such State or subdivision of residence.

What kind of an injustice can be done to you by that?

Mr. TUTTLE. Because there are nonresident employees performing services in Louisiana and we would no longer have any information that would permit the assessment of a proper tax liability on the employees.

Mr. SPRINGER. Louisiana is bounded on the south by the Gulf of Mexico?

Mr. TUTTLE. That is true.

Mr. SPRINGER. It is bounded on the east by the Mississippi River which is the largest waterway, probably the largest water carrier, in the United States. Do you collect taxes on your water carriers?

Mr. TUTTLE. We have not collected a tax on nonresident employees of the water carrier system operating on the Mississippi or any of the other inland waterways. We have not demanded withholding on resident employees of the water carriers. There are some companies and some employees who voluntarily pay withholding and remit it to us but we have not demanded that they withhold in view of the restriction on water carriers already in existence.

Mr. SPRINGER. Do you think that it would be any more unfair, or would it be unfair, to apply the same rules to other modes of transportation like the water carriers?

Mr. TUTTLE. Well, I should back up first and say that we question the real necessity for not withholding on the water carriers. We do not feel that the restriction was absolutely necessary. It really did not solve any problem. We still have to collect the taxes from these water carriers. On the water carrier, too, incidentally, they furnish us with the information—the companies do that voluntarily, furnish us with the information—so that we can and do have some means of collecting taxes on those employees.

Mr. SPRINGER. All right, now, you do have a State income tax in the State of Louisiana?

Mr. TUTTLE. That is true.

Mr. SPRINGER. On those employes, you do collect income taxes from those who are residents; do you not?

Mr. TUTTLE. True.

Mr. SPRINGER. But you do not collect upon the movements of cargoes such as is done at the present time on other modes of transportation; is that correct?

Mr. TUTTLE. We collect an income tax on all residents and nonresidents engaged in the carrier business. We collect an income tax from the company itself on the net profits derived from the carrying of goods or passengers.

Mr. SPRINGER. But you do not collect this tax suggested in this bill—you do not collect a tax at the present time on water carriers that you do collect on carriers that, probably, cross the State, like air, rail, and trucks?

Mr. TUTTLE. That is true, except only on a voluntary basis by the employer and the employee. We do not force the issue on the collection of withholding tax from the water carriers. As I say, we do have some who voluntarily pay their withholding tax to the State.

Mr. SPRINGER. Let me ask you this, then: I am not trying to embarrass you in any way—at the time there was a hearing on this water carrier proposition before the House committee—did you appear in opposition to that?

Mr. TUTTLE. To my knowledge, no.

Mr. SPRINGER. Did anybody representing the State of Louisiana appear at that time?

Mr. TUTTLE. Not to my knowledge.

Mr. SPRINGER. Thank you. That is all.

Mr. WATSON. You were aware of the fact that they were holding hearings on that particular measure?

Mr. TUTTLE. I was not personally aware of it at that time.

Mr. WATSON. Pursuing the matter of equity which my friend Mr. Springer brought up, which also involves me, do you think that it is equitable to require a resident of the State of Louisiana who is operating a truck in that State to have income tax withheld from his salary while not requiring this of a nonresident who is operating another truck within the State of Louisiana? Do you think that is equitable?

Mr. TUTTLE. Well, I, personally, do not. After all, income tax is imposed on net income. It is not imposed on residence. There are other taxes to take care of that situation, such as real estate taxes, et cetera. And the obvious answer to your question is that the populace of Louisiana itself felt that it was not equitable, when they urged the Legislature of Louisiana to put a withholding tax in for that very purpose, because we did not have, not necessarily in the transportation area such, but in other employment situations, we had people living outside of the State, earning their entire net income within Louisiana, who were paying no tax. That was the reason that the withholding tax was put in to start with.

Mr. WATSON. And should this bill pass and become law, it would, really, make it very well impossible for your State or any other to pursue the matter of any income tax which may be derived from the nonresident people?

Mr. TUTTLE. I think, practically, the State would be pretty much in the situtation of having to abandon any real effort to collect from the nonresident, because the employer would be prohibited from furnishing the information to the State, identifying the man or setting out the information. So as a practical matter what would be left? It would be necessary then for me to determine what employees were working in Louisiana. Could I put people on the train and approach every em-

ployee and say, "Hey, fellow, what is your name—where do you live—are you paying taxes to us or are you not paying taxes to us?" And that is just impossible. I mean, it is a very impractical situation. I feel that we would have to practically abandon our efforts in that field.

Mr. WATSON. In fact, the resident would have a good argument that it is much more logical for you not to withhold his tax, because after all, he is readily accessible for you to collect the tax from him. It would be logical for him to make that argument, would it not?

Mr. TUTTLE. That is an argument that they have advanced, believe me.

Mr. WILLIAMS. The opposition to this bill, or to these bills appears to be based exclusively, not exclusively, but primarily on the argument, the premise that the bill is unnecessary, that it is undesirable, that it will hamper the activities of the States in the collection of taxes and the enforcement of their tax laws.

I realize that that is a very cogent argument, but there is an overriding issue, in my opinion, that we must concern ourselves with here, and that is the power of the Congress under the Constitution, to use the commerce clause in order to set aside the State withholding tax laws. Would you like to comment on that? I have not heard anyone challenge the authority of the Federal Government in that respect.

Mr. TUTTLE. Well, we do so to the extent that setting aside our withholding tax law could impair the collection of our income tax and, consequently, impair the borrowing power of the State, and it would have that effect.

Here we have a dedicated tax. Our income tax is dedicated entirely to homestead exemption or property tax relief. That fund is in turn, or, those tax collections are in turn, used as security behind bonded indebtedness, necessary for issuance, and if in any way the orderly collection of the tax is impaired, then necessarily the borrowing power of the State will be impaired.

Mr. WILLIAMS. Do you make a distinction between the power of the Federal Government to set aside State withholding tax laws and the power of the Federal Government to set aside State taxes in this way?

In other words, if the Federal Government has the right to do one, does it also have the right to do the other?

Mr. TUTTLE. That is exactly what we think may ultimately come if this trend is continued. If the Federal Government can in fact set aside our method of collection of the tax, we fear that they may also extend that ultimately to say, "Well, we will set the whole tax aside." Destroying the complete financial responsibility of the States.

Mr. WILLIAMS. Do you consider the timing of this withholding tax on nonresident persons to be an undue burden on interstate commerce?

Mr. TUTTLE. We do not because ultimately the tax is borne by the employee. As we see it, the only possibility of a burden is in whatever recordkeeping may be necessary and, of course, in our case we compensate the employer for that extra burden.

Now, it could well be that if there is an unbearable burden there, the solution would be to convince us of that in Louisiana. Maybe it (the compensation) should be a little bit more.

Mr. WILLIAMS. The Federal Government seems to have no reluctance in requiring people to keep records, do they?

Mr. TUTTLE. That is true. That is true.

Mr. WILLIAMS. Mr. Watson, do you have any questions?

Mr. WATSON. No questions.

Mr. WILLIAMS. Thank you very much, Mr. Tuttle.

The bells have rung for the meeting of the House. The House is now in session. The committee is going to have to adjourn.

I believe there is one more witness to appear on behalf of the State tax administrators, Mr. Joel Carson. Mr. Carson, I am informed that you have a very brief statement but that in the interest of saving time you would be willing for that to be included in the record. Is that right?

STATEMENT OF JOEL M. CARSON ON BEHALF OF THE BUREAU OF REVENUE OF THE STATE OF NEW MEXICO

Mr. CARSON. Yes, sir. That is correct.

Mr. WILLIAMS. We appreciate your kindness and cooperation with the committee, and if there is no objection, your statement will be included in the record.

Mr. CARSON. Thank you.

(Mr. Carson's statement in full is as follows:)

STATEMENT OF JOEL M. CARSON ON BEHALF OF THE BUREAU OF REVENUE OF THE STATE OF NEW MEXICO

My name is Joel M. Carson. I am an assistant attorney general for the State of New Mexico. I appear here on behalf of Charles C. Brunacini, the commissioner of revenue for the State of New Mexico to record New Mexico's opposition to H.R. 10743 and S. 1719.

New Mexico is listed among those States concurring in the statement made by Mr. Conlon of the National Association of Tax Administrators. I will, therefore, limit my remarks to pointing out some of the difficulties which these bills, if enacted into law, will cause tax administrators, and to explain to the committee some of New Mexico's experience with its withholding tax law.

A withholding tax law, in our opinion, is essential to the successful administration of an income tax act. It would be most difficult, if not impossible, as a practical matter, for New Mexico to collect the taxes due it from nonresidents earning wages in New Mexico without the aid of a withholding tax act. For example, there are located near the southern border of New Mexico, the White Sands Missile Range, and Holloman Airbase. Many of the people employed at these two installations live in El Paso, Tex. Prior to our entering into an agreement with the United States for the withholding of taxes from the wages of these employees very few nonresidents working at White Sands or Holloman reported or remitted New Mexico income tax.

In order to collect the tax we would first have to find who was working on the installations. We would then have to go to Texas and find each taxpayer and audit his records to determine how much income he earned in New Mexico. After auditing the taxpayer's records, if we could find who he was, and if we could find him we were then faced with the problem of collecting the tax if the taxpayers were unwilling to remit it voluntarily. Under New Mexico law we would have two alternatives. First, we could sue the taxpayer, get a judgment against him and hope to get the Texas courts to honor our judgment. Our second alternative would be to issue a distraint warrant and have the sheriff seize any property of the tax debtor located in New Mexico. Since nonresident taxpayers of this type seldom own property within the State we were left with no effective remedy to enforce our tax laws.

The problems with which we were faced in attempting to collect the tax were so great as to make it impracticable for New Mexico to attempt to collect from these nonresidents. The practical effect was that while we had the power to tax,

the nonresidents were exempt from the tax because of the enforcement problems.

After we entered into our withholding agreement with the United States, taxes were withheld from the employee's wages by the Government. If we want to verify the return of the taxpayer all we have to do is verify it by the pay records of the Government.

While we would concede that H.R. 10743 and S. 1719 do not purport to reach the tax situation mentioned above, the problems which they will precipitate will be of a similar nature.

New Mexico is also concerned with the problem of the interstate carrier which does much of its business within the taxing State from a base located outside the State. H.R. 10743 and S. 1719 would exempt the carrier from withholding taxes from the wages of the nonresident employee although the employee might earn a majority, if not all, of his wages within the taxing State. We believe that this causes an unwarranted inequity in the taxation of nonresidents.

New Mexico believes that the problems which H.R. 10743 and S. 1719 seek to solve are essentially State problems. To my knowledge we have not encountered any of the situations whereby the interstate carrier is spending $5,000 or $10,000 to collect a thousand dollars in taxes. Should such a situation ever arise, I am sure that it can be worked out either administratively or through the passage of legislation at a State level.

Mr. WILLIAMS. The committee will be unable to meet this afternoon because of legislation that is scheduled for the floor of the House. As a matter of fact, there is a bill presently before the House which has been reported for this committee and following that, the rule will be considered on the so-called poverty bill.

There is also the prospect that the House might consider the resolution that was suggested by the President last night in his message dealing with the international situation. In view of that, I think it would be futile to try to set a meeting for this afternoon, so the committee will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 12:05 p.m. the committee was recessed, to reconvene Thursday, August 6, 1964, at 10 a.m.)

39-668—64——6

STATE WITHHOLDING TAXES ON EMPLOYEES IN INTERSTATE COMMERCE

THURSDAY, AUGUST 6, 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 recess, at 10 a.m., in room 1334, Longworth House Office Building, Hon. John Bell Williams (chairman of the subcommittee) presiding.

Mr. WILLIAMS. The subcommittee will come to order, please.

I believe that our first witness this morning is Mr. Kennedy C. Watkins, tax attorney, Association of American Railroads, Washington, D.C.

We will be glad to hear from you now.

STATEMENT OF KENNEDY C. WATKINS, TAX ATTORNEY, ASSOCIATION OF AMERICAN RAILROADS, WASHINGTON, D.C.

Mr. WATKINS. Mr. Chairman and members of the subcommittee, my name is Kennedy C. Watkins. I am tax attorney in the law department of the Association of American Railroads, whose offices are in the Transportation Building in this city.

My appearance before your committee in respect of H.R. 10743 and S. 1719 is on behalf of the Association of American Railroads, a voluntary, nonprofit organization whose members operate more than 95 percent of the total railroad mileage in the United States and have operating revenues of approximately 98 percent of the total railroad operating revenues of all railroads in the United States.

The purpose of H.R. 10743 is salutary. It proposes to exempt wages and salaries of certain interstate airline and motor carrier employees from withholding at source for tax purposes under the laws of States or political subdivision thereof except in the case of the State or subdivision of the employee's residence.

In the opinion of the railroad industry, the bill is deficient in that it does not include within its provisions the employees of a railroad or sleeping car company subject to part I of the Interstate Commerce Act.

As you know, the railroad members of this association operate throughout the continental United States. They are subject to the laws and regulations of the States and political subdivisions thereof in which they operate.

Of such States, there are 36 which, according to Commerce Clearing House, State Tax Guide (p. 1542), imposed income taxes on individuals in 1963.

Of these, according to the same source, 28 required withholding at source whether the wage earner was a resident or a nonresident, 2 States limited the withholding requirement to nonresident, 6 had no such requirement.

It should also be noted that of these 36 States which impose an income tax on individuals, 33 require the filing of an information return, 2 may require such a return, and 1 State has no such requirement.

The obligation to withhold tax at source and to file an information return with respect to taxable income often go hand in hand. But this is not always true as in the case of North Dakota which has no withholding requirement but does impose on employers the burden of filing information returns (C.C.H., supra, p. 1542).

In addition to the impact of State income tax provisions in these areas on interstate employers, the burden of compliance with the requirements of municipalities must not be overlooked. In some situations, though the State may not impose an income tax, a city within such a State may have such a tax. For example, Michigan has no income tax, yet the city of Detroit imposes such a tax on residents as well as nonresidents with respect to "work or services performed in Detroit" (C.C.H., supra, par. 15–543). The city also requires that the tax be withheld by the employer as to both residents and nonresidents; as to nonresidents only if 25 percent or more of the work done or services performed within the tax year is performed in Detroit. This qualification imposes a burden in and of itself. Similar situations obtain in Ohio, which has no income tax but whose cities of Akron, Canton, Cincinnati, Columbus, Dayton, Springfield, Toledo, and Youngstown impose such a tax.

From this rather cursory summary of the provisions of State and municipal requirements in this area, it seems apparent that their adverse impact on interstate employers of thousands of employees is great.

For example, in 1963 employment by class I line-haul carriers approximated an average of some 700,000. (Wage Statistics of Class I Railroads, statement No. M–300, June 1963, ICC.) Of this number, some 200,000 employees were engaged in train and engine service, which includes personnel operating or assisting in the operation of trains and engines in road and yard service. This category covers, among others, passenger and freight conductors, passenger and freight brakemen and flagmen, passenger and freight engineers and firemen. These are the men, in general, who operate the trains in interstate transportation service and this is the type of personnel most subject to the various withholding requirements of the income tax laws of the various States and their political subdivisions.

It must not be overlooked, however, that in addition to the train and engine service personnel there is a substantial number of railroad employees who are engaged daily in maintaining roadway, signals, communications, and structures. Because some of this work, principally roadway maintenance, is seasonal, the number of these employees varies. In June 1963, for example, there were some 105,000 such employees (M–300 Report, supra), which exceeds the yearly average of some 99,230. These employees maintain the track, road-

bed, bridges, signals, and communication equipment. In the discharge of their duties, these employees frequently cross State lines, but more often municipal boundaries. This subjects them to the withholding provisions of any such State or municipality. The services of these employees are essential to the railroads in the discharge of their obligation to maintain their road property, and so forth, at their own cost. Public crews do this for the highway users and the airline do not have this problem.

Many railroad operating employees, particularly in freight service, do not consistently perform the same service every day. This employee fluidity enhances the difficulty of maintaining records to determine the employer's obligations with respect to which of its employees it must withhold, on what basis and to what taxing authority it must report. Not only is this difficult; it is costly.

Typical of a large class I railroad is the Pennsylvania Railroad which operates in nine States and the District of Columbia which require withholding. In the District of Columbia withholding is required of residents only, which affects 48 train and engine service employees.

In 8 States, withholding is required with respect to residents and nonresidents alike, which includes some 7,500 train and engine service personnel.

There are 373 municipalities in 5 States through which this railroad operates which require withholding. Of these, 200 require withholding as to residents only, which affects 3,800 train and engine service personnel. The balance of 173 cities require withholding as to residents and nonresidents alike, which cover some 3,000 such employees.

Pennsylvania estimates its annual cost of compliance with these State and municipal laws to be $43,000. Of this, $31,000 is attributable to coding daily timecards as to nonresident taxable areas and punching IBM cards therefrom. The balance of $12,000 is attributable to calculating tax deductions, making them on the payrolls, maintaining cumulative records of taxes withheld for each employee, paying the taxes to the various tax authorities, and preparing the annual withholding statements.

A further illustration is provided by the case of the Wabash Railroad, which operates in four States which require withholding—New York, Indiana, Missouri, and Iowa. Of these, the first three require withholding regardless of whether the individual is a resident or a nonresident; Iowa requires withholding only in the case of a nonresident but an information return in the case of a resident.

The varied nature of these different requirements applicable to one railroad involved with four States only forms the predicate for envisioning confusion compounded in contemplating this situation in its application to all of the railroads operating throughout the United States.

Adverting again to the Wabash, withholding for State purposes is applicable in the case of 1,050 resident and nonresident train and engine service personnel. This railroad also operates in five cities which require withholding—Maumee, Defiance, and Toledo, Ohio; Detroit, Mich.; and St. Louis, Mo. This affects some 300 train and engine service personnel.

Mr. WILLIAMS. May I interrupt you?

Mr. WATKINS. Yes.

Mr. WILLIAMS. In the paragraph just preceding the one that you are now reading, the last sentence, starting with the words "The varied nature"—do you see that?

Mr. WATKINS. Yes.

Mr. WILLIAMS. I will read the sentence:

> The varied nature of these different requirements applicable to one railroad involved with four States only forms the predicate for envisioning confusion compounded in contemplating this situation in its application to all of the railroads operating throughout the United States.

The use of the word "envisioning confusion"—does that mean that you anticipate confusion or that you already have confusion?

Mr. WATKINS. No, Mr. Chairman, that indicates that we are encountering confusion and that is designed to form a basis for suggesting to you gentlemen that if you imagine this in four States you can see what it is in the 48 States.

Mr. WILLIAMS. The reason that I ask the question is that I would like to know if there is an existing problem or a problem that is anticipated.

Mr. WATKINS. Mr. Chairman, this is an existing problem.

Mr. WILLIAMS. You are now withholding?

Mr. WATKINS. We are now withholding. It is costing one railroad $43,000 a year to do this. The Wabash, in the next paragraph that I am about to read, is paying $14,000 to do this. We have made no endeavor to poll the entire industry to ascertain a dollar cost figure. This is not an academic problem with us—this is an ad hoc, practical, costly typical present situation.

Mr. WILLIAMS. Thank you.

Mr. FRIEDEL. Do you get cooperation from the States? The commissioners from the States who testified here said that they tried to correct this situation.

Mr. WATKINS. Mr. Friedel, I have an illustration a little later on in this statement which will indicate, I think, that in one instance there has been little, in fact, no cooperation. The gentlemen yesterday gave me the impression, and possibly you the impression that this area was all sweetness and light. There is no conflict. That there is no complaint and any complaints that had been made had been settled; that there really was not any need for considering this problem. If you will take a look, if you would like——

Mr. FRIEDEL. If you cover that later in your statement, you may proceed.

Mr. WATKINS. We will get to this point later, then.

Mr. FRIEDEL. Very well.

Mr. WATKINS. But I might say, Mr. Friedel—excuse me, Mr. Watson—that we have had in this one instance no similar type of compliance or suggestion of help for relief as we were led to believe yesterday would be forthcoming. All we received was a jeopardy assessment. Now, Mr. Watson, excuse me.

Mr. WATSON. That is all right. I want to understand this sentence that the chairman asked you about.

Mr. WATKINS. Yes, sir.

Mr. WATSON. My understanding of its meaning is that you have some problems now in the four States, but all of this is an anticipated problem?

Mr. WATKINS. No, Mr. Watson, if I might interrupt you. This is not an anticipated problem. If you will advert to page 4 of my statement in regard to the Pennsylvania Railroad, they are operating in eight States where this is required. They are not the same States in which the Wabash operates. It is costing the Pennsylvania Railroad $43,000 in that situation. This is not a hypothetical anticipatory, potential problem. This is an existing problem. It is a costly problem. It is an ad hoc problem. We live with this problem. We have our payroll people working on this manually. This problem does not adjust itself to automatic machine devices. There are different computations which have to be made. In the case of Detroit, for example, you have to figure out 25 percent of the time of the man who is actually working in Detroit. In the case of a sleeping-car porter who gets on the train at the beginning point and goes to the terminal point he sleeps on the way. He does not get paid while he is sleeping—he gets paid while he is working yet where you have a proration in one of the States that he goes through you have to determine manually and analyze each trip that he makes in order to determine how much pay he earned when he was awake.

The gentleman yesterday, I think it was Mr. Breen from Massachusetts, implied that this was a very simple thing—that we simply should do this on a mileage basis. Maybe the mileage basis will work where there is mileage involved but these people do not get paid on the basis of mileage. In the case of the sleeping-car porter, he gets paid on the time he is awake and what he does, not the mileage that he undertakes.

Mr. WATSON. I believe he further said, too, that they allowed the carriers—and I assume that he includes the railroads—to approximate the percentage of the time, and they never questioned the approximation nor the figures given them by the carriers.

Mr. WATKINS. You do not resort to any approximation of the time worked in the particular States. You try to get the details right down to the cent. This is a manual operation. There is an analysis of each crew's trip and it is worked out to a technical nicety, to the extent that it can be done.

Mr. WATSON. Thank you.

Mr. WATKINS. When it comes to the question of the withholding, in general, Mr. Watson, most of these withholdings are approximations and estimates. Very few of the States will permit you to withhold on the basis of the number of exemptions and credits you might have and anticipated deductions. Generally they provide that 1 percent of your wage will be withheld. And the net result of this is that at the end of the year, the facts having been determined, the individual taxpayer will file his final return and he will show his then number of dependents. He may have had another child born within the year, for example. He will show his deductions and so forth. Generally, you find that the total amount of taxes is less than that which has been withheld. The question then comes up as to a refund. In many instances, these refunds are so small that the individual taxpayer does

not go to the trouble of filling out more forms or getting an attorney to do the job, so that the net result is that these municipalities and the States get a windfall. This is true. This is a demonstrated fact.

Yesterday when the gentlemen were talking about the loss of revenue, it was not clear to me whether they were talking about the loss of this kind of revenue or the loss of revenue that you might get from not withholding tax on nonresidents. Certainly, there is the question whether it is illegal for a State to lay claim to this type of revenue. Also whether these gentlemen come in with clean hands in opposing this bill.

Mr. WATSON. I gained the impression from the testimony that has been adduced thus far that there has been no charge of the State collecting taxes which were not due, but if I understand your statement correctly, you place such a charge.

Mr. WATKINS. Definitely, Mr. Watson, in regard to your statement the States are imposing the tax and we are withholding the tax where the tax is due. But where they are retaining funds to which they are not entitled, because no refund has been claimed with respect to them, is a question that has not been raised.

Mr. WATSON. Do you not agree that it is not the State's fault if the taxpayer does not apply for the relief or refund?

Mr. WATKINS. In the testimony of Mr. Breen you will recall yesterday that in the State of Massachusetts he indicated that when the year was over a bill was sent to the taxpayer which would indicate the tax due versus the tax withheld. Where there was a deficiency in the amount the taxpayer would pay the difference. Where there was an overage the State would refund it. According to Mr. Breen's statement the State of Massachusetts, at least, takes the position that where it has received more funds by way of withholding than it had a right to receive, it voluntarily, returns the amount of money.

Now, all of these States are different. Unfortunately, the requirements are different. The statutes are different. Other States will put the burden on the taxpayer to file the claim for the refund. And if the taxpayer decides that the cost, either in terms of bother or dollars, is not worth the amount involved, I do not see how you can really find fault too much with the State for holding onto the funds, but whether it is morally right is a different question.

Mr. WATSON. In most cases the State would not know whether or not an individual was entitled to a tax refund until that individual files a return, is that not correct?

Mr. WATKINS. That is correct.

Mr. WATSON. Usually, in most States, when you file a return, and if you are due a refund, there is a simple procedure of merely checking on the form whether you want to apply it to next year's taxes or to receive a refund—is that not generally true?

Mr. WATKINS. That is generally true where a refund is requested. I was talking to Mr. McMurray, another witness to be heard later, in regard to this matter and he might like to elaborate on it when he appears before you later this morning. However, there are instances where many attorneys have filed claims for refunds on behalf of their nonresident taxpayer clients in regard to these States and the refund situation has just been the same as when you shoot an arrow into the air, it never seems to land. These claims for refund have been ignored,

some denied. Maybe you have to go to court to get your money. Mr. McMurray might like to elaborate on this, because it appears to be something as to which he has personal knowledge.

For your information, you may be interested to know that there is so much money involved in this area of refunds of excess collections by way of withholding that attorneys have approached many—and I say that in capital letters underscored—employees of the Pennsylvania Railroad requesting permission to represent them on a contingent basis to prosecute claims for refunds in this area. When the request has been granted, the attorneys have come to the railroad. They have asked for the particular form—it amounts to about the same as the W–2 of the Federal Government—of the Pennsylvania Railroad, to represent these fellows. The administrative burden of running back into the records and getting these forms in so many instances is such that the railroad has directed its employees not to honor these requests any more. If the individual taxpayer requests it, that is all well and good. This is a good business for certain attorneys. This is on just one railroad.

Mr. WATSON. I thought that the law forbids that practice of an attorney going out and soliciting business. You say that is practiced in Pennsylvania?

Mr. WATKINS. I do not know what States these men operate in. Our railroad employees operate in different States, but this was the case in regard to the Pennsylvania Railroad. And whether it is against the law or not, it does not mean that it is not being done. It is sometimes against the law to exceed the speed limit but it is done, and it is only stopped when you get a ticket.

Mr. WATSON. Excuse me for interrupting you.

Mr. FRIEDEL (presiding). You may proceed.

Mr. WATKINS. It has been pleasant talking with you on this. Thank you for giving me the opportunity.

The burden placed on the accounting division of the Wabash Railroad alone in complying with these provisions is, we believe, obvious and this railroad states that the administrative cost of compliance approximates $14,000 per year.

The Chicago, Rock Island & Pacific Railroad Co. tells a similar story with respect to withholding and filing of information returns for nonresidents. This road goes on to say:

> In order that we may make the proper withholding deductions from the individuals in train and engine service, they being nonresidents, it is necessary for the various superintendents to advise the accounting department of any changes in the crew consist, and also the changes of residence of the crew. It would be most helpful to us, that is, the Rock Island, if no deductions were made for nonresident employees.

This, of course, underscores the purpose of the bill and emphasizes the necessity for its extension to employees of railroads subject to part I of the Interstate Commerce Act.

If I may depart from my statement at this point, I would like to insert here that after S. 1719 was introduced and hearings were scheduled before the Senate committee, the bill came to the attention of the Association of American Railroads just prior to the hearing date. We had nothing to do with the motivation of this measure. We were not included in the measure when it was introduced. When it came up

for hearing we requested to be heard. We wanted to be included. This is a problem that is presently hurting us.

Questions were raised the other day as to whether the truckers, I think, motivated this bill. Who motivated it, I do not know, but I think that you gentlemen would like to be informed that we did not. This is a pressing present problem and we want to be included. When S. 1719 was reported out and passed, the railroads were included. It is our urgent and most fervent desire that your committee will do likewise.

One of the most striking illustrations supporting the need for the enactment of this legislation is provided by another member of our association. This sleeping-car company operates in all the States of the United States except Alaska and Hawaii. It has an employee on each of its cars and a conductor on every train where more than one of its cars is used. Generally, these sleeping-car employees work through to destination and, thus, in a single trip, may cross several States.

Under its work rules, these employees receive sleep time en route for which they are not paid. Similarly, at the end of each trip they also have their layovers of various duration. While these operations are regular and are on a fixed schedule, this company has a number of special movements and seasonal operations of short duration. Extra employees may be used to operate in a number of States in the course of a year.

This company is primarily concerned with the problem of withholding on nonresidents for State income tax purposes. The period of time such a nonresident employee is in the State determines, where proration is used, the percent of his salary or wages subject to withholding, as well as the amount of his exemption. This is true as to 16 of the States in which this company operates. Consequently, any employee whose base annual salary exceeds that State's annual exemption is subject to withholding even though his time in the State may be limited to a single trip. Proration of salary of these employees presents a problem since their rate of pay is not based on miles but on hours of the basic month.

Furthermore, if time in the State is used as a basis for proration for withholding purposes, this company is confronted with the problem of unpaid sleep periods and layover time with respect to these nonresident employees for which they are not paid.

To these problems is added additional complexity resulting from a constant turnover in personnel and employee substitution for vacation periods. "The problems are such that no practical method of machine accounting can do the job," says this company.

There are instances where the cost of collecting a State tax by withholding is greater than the amount collected on the one hand and the apparent net benefit to the State on the other.

For example, this same company made a study of this matter in 1962 in relation to just one State based on its 1961 operations therein. It had 172 nonresident employees filling regular lines in this State during this period. Of these, 43 had less than 5 percent of their time in the State; 66 more than 5 percent and less than 10 percent; 12 between 10 percent and 15 percent; 11 between 15 percent and 20 percent; 29 between 20 percent and 25 percent; 4 between 25 percent and 30 percent; and 7 over 30 percent.

Withholding on a semimonthly basis under the State withholding table resulted in less than 25 cents per pay day for each of these 172 employees. Extending this for a year on the assumption that the same number of exemptions and the same proportion of earnings in the State would remain constant as to each of these employees resulted in a total withholding of $1,200 for State tax purposes. However, the total amount due the State on an annual basis was $900, so that a refund of $300 was due the group, or less than $2 to each of these 172 nonresident employees. For the $900 involved, the State had to process each of these returns and risk processing 172 claims for refund. It seems clear that the State would not net anything in this situation. For this company to make the computations and the payroll deductions, each man's time sheet had to be checked each payday. Since no formula method would have been accurate, this work had to be done manually. The result to this company for this one State alone was a cost in excess of $5,000 per year; $5,000 to collect $1,200 when only $900 was due.

Mr. FRIEDEL. You do not name the State.

Mr. WATKINS. I could give the name of the State, but if you will permit me not to do so, I would prefer that. I think the reason is obvious. I want to be cooperative, but we may have to deal with this State again. I did not mention the name of the company and I do not want to put anybody in jeopardy.

Mr. FRIEDEL. You may proceed.

Mr. WATKINS. Whether it was Maryland or not, I do not know. Let us assume that it was not.

Mr. FRIEDEL. I do not think it was Maryland.

Mr. WATKINS. I would assume that it was not Maryland or any of the other States so ably represented here.

It should be noted that when this was called to the attention of the State taxing authorities with the purpose in mind of obtaining some measure of relief, they were "sympathetic but pointed out that their law was clear and that the Commission was powerless to change it. Thereupon a jeopardy assessment was made against us."

Mr. WATSON. What is the jeopardy assessment?

Mr. WATKINS. That is a tax device. It is an enforcement device whereby the State fearing that the assets might be removed from the State, or that the taxpayer may skip the jurisdiction of the State, bypasses the normal procedure for assessment. Where jeopardy in assessment is involved in the collection of a tax, this procedure is used to levy on and freeze all of the accounts and most everything else.

Mr. WATSON. Is that levied against the company or the individual?

Mr. WATKINS. In this case it would be against the company, because they were the withholding agent. You see, the companies in this area, Mr. Watson, are nothing more than agents of the collectors for the States in the collecting of the tax.

Mr. WATSON. That is a novel point. We would like to look into that. I did not know that the company was responsible for the tax liability of the individual.

Mr. WATKINS. You are quite correct, they are not, but they are responsible for doing the job and for turning over the money, and if they use the funds for their own use they are likewise responsible. So to this extent they feared that the money may not be available and a jeopardy assessment was issued in this case.

Mr. WATSON. The mechanics of the matter is that the company automatically withholds the money. The company does not keep it. They must submit the funds to the tax commission or the political subdivision involved. Is that not the way it works?

Mr. WATKINS. That is the way that the regulations require. That is the practical situation. There are cases, however, where these funds have been collected and have been used by the employer, the corporation, for its purposs. This is not novel. I do not say that the railroads have been doing this. They are public utility companies and are regulated and carefully scrutinized.

In the case of the Federal withholding, you may remember years ago the case of Vivian Kellems. She was ardently opposed to this withholding. She precipitated a real situation, and she went to jail.

There are other cases of corporations today which are on the fringe of bankruptcy and they need operating capital. This withholding money is available and the money has been used.

Mr. WATSON. Is that the case in the terms of this particular company?

Mr. WATKINS. I would not think so, because this company is not bankrupt. It is still an entity. Why the State tax authority thought that a jeopardy assessment was necessary in this instance, I do not know. You asked me what it was, and I have tried to tell you. I do not know why the taxing authority used this particular enforcement device.

Mr. WATSON. You must agree with me that it is a rather novel situation.

Mr. WATKINS. The use of the jeopardy assessment is unique. I think that the company felt rather hurt when they asked for relief in this area and they only got some measure of sympathy—and no measure of relief and had this unusual, as you say, novel device used on them.

Mr. WATSON. All they had to do was submit the taxes which were justly due to the tax commission, and they would have been out of the picture altogether. Then your argument would have been between the tax commission and the individual.

Mr. WATKINS. The company is suffering only to the extent of its cost in the collection of this, you see. And I think that the company was trying to say to the taxing authority, "You do not really net very much on this."

Mr. WATSON. I agree with you.

Mr. WATKINS. "Why do you not just forget it"—instead of that the full onus of the enforcement provisions of that State law were thrown at the company. I do not suggest for a minute that the company was not turning the money over. I feel sure that it did. With this background that you so ably laid, Mr. Watson, I think that you can see that there is considerable doubt in my mind about the sweetness and light that was spread yesterday by the representatives of the State taxing commissions where they indicated that no complaint has ever been raised that they knew about but where it had been raised everything had been settled—they do not see any real problem in this area—they do not see any need for this bill—they believe this is more of an anticipated evil than a present situation. I could not disagree with anything more strenuously.

Mr. WATSON. You present some facts that show that you have justification for your statement.

Mr. WATKINS. Yes, your honor.

Mr. WATSON. Excuse me.

Mr. WATKINS. Before closing, it should also be pointed out that recourse to litigation in this area is not believed to be the answer. The rules governing the right of the taxing authorities to impose and collect taxes on nonresidents are clear and the possibility of successful litigation in this area is remote. Were this not the case, the widespread operations of the railroads or any one railroad would subject them or it to a multiplicity of suits which would be costly to undertake.

The enactment of H.R. 10743, amended to cover employees of railroads and sleeping-car companies coming under the jurisdiction of the Interstate Commerce Commission, would be a simple means of alleviating this difficult and costly problem. With this in mind, it is to be noted that H.R. 10743 corresponds to S. 1719 as it was originally introduced in the Senate. In its appearance before the Senate Committee on Commerce with respect to S. 1719, this association also urged its extension to all employees of railroads and sleeping-car companies subject to part I of the Interstate Commerce Act whose regularly assigned duties require them to cross State lines or municipal boundaries thereof.

As reported by the Senate Committee on Commerce on June 12, 1964, and passed by the Senate on June 19, 1964, the bill is restricted to—

an employee who performs his regularly assigned duties as such an employee on a locomotive, car, or other trackborne vehicle in more than one State * * *.

While S. 1719, as passed by the Senate, will cover the majority of railroad and sleeping-car company employees who, in discharging their regular duties across State lines or municipal boundaries, such as train and engine service employees, dining-car and sleeping-car employees, for example, it fails to provide relief for a substantial number of railroad employees who are engaged daily in maintaining roadway, signals, communications, and structures.

As stated above, these employees, in performing their tasks, frequently cross State lines, but more often municipal boundaries. This subjects them to the withholding provisions of any such State or municipality. The services of these employees are essential to the railroads in the discharge of their obligation to maintain their road property, operate their trains, and so forth.

There is no logical reason why this segment of the railroad labor force, so important to railroad operation, should be deprived of the benefits of S. 1719 as passed by the Senate. Neither is there a basis for distinguishing, either logically or in practice, between such an employee and one who discharges his duties on a locomotive, car, or other trackborne vehicle.

In addition to maintenance-of-way, personnel, and so forth, as above mentioned, there is another group of railroad employees who would be prejudiced by S. 1719 as passed by the Senate. This is a relatively small group of employees who operate out of railroad terminals on motortrucks, who are under the provisions of part I of the Interstate Commerce Act, and who may, in the course of discharging their duties, cross State lines or municipal boundaries. Neither the relative smallness of the size of this segment of the railroad labor force, not the fact

that they are not on a locomotive, car or other trackborne vehicle in the discharge of their interstate duties, is a justification for their loss of the benefits otherwise provided by S. 1719.

The Association of American Railroads urges the committee to amend H.R. 10743 to conform with S. 1719 as passed by the Senate but so modified that it will cover not only all railroad employees presently included but also those who, like members of crews engaged in maintaining ways, structures, signals, communication systems, and so forth, are required in the course of performing their daily duties to cross State lines or municipal boundaries. The committee is urged to receive this request favorably.

It is understood that other witnesses testifying in respect of these bills will urge a similar extension of S. 1719 and offer suggested language for its accomplishment. Since the proposals differ only as to wording rather than objective as to which all are in agreement, the Association of American Railroads would like to reserve its opportunity to submit its language until it has conferred with the other witnesses in this regard, after which it is believed that a mutually agreeable proposal can be presented for your consideration.

No attempt has been made in this statement to pinpoint the cost to the industry of compliance with the varied requirements of the numerous State and local tax withholding laws. Nevertheless, it is clear from the illustrations cited that the cost to the industry is more than modest.

Now, Mr. Chairman, and gentlemen, for a few minutes I would like to suggest to you that the substance of the bill presently under consideration is not a new problem. The substance of H.R. 10743 and S. 1719 was before the Congress in 1959 when it had before it for consideration S. 1958. That bill was passed and became Public Law 86-283. That public law amended section 601 of title 46 of the United States Code. The public law reads as follows, and I quote:

> And provided further that no part of the wages due or accruing to a master, officer, or any other seaman who is a member of the crew on a vessel engaged in foreign, coastwise, intercoastal, interstate, or noncontiguous trade shall be withheld pursuant to the provisions of the tax laws of any State, territory, possession, or commonwealth or subdivision of any of them.

The legislative history of S. 1958 is set forth in United States Code Congressional and Administrative News, 86th Congress, 1st session, 1959, beginning on page 2530. The Senate report issued with respect to this bill reads in part as follows; and I read from page 2531:

> Furthermore, your committee believes that the costly and complex bookkeeping imposed on seamen and shipowners by multiple State withholding laws is all out of proportion to the benefits to the States in the case of seamen; all the more so since it is likely that several States will enact similar withholding provisions. Consequently, the shipowner will have to prepare withholding tax forms for each seaman for each State for each voyage covering the wages to be paid in each State. Similarly, the seaman will be subject to multiple taxation by a large number of States and municipalities. That the multiple State tax laws imposed upon the seaman will make it impossible for him to handle his tax without employing professional help.

The conference report with respect to this same bill begins on page 2535 of the aforesaid authority and reads in part as follows:

> Enactment of this legislation will resolve the complicated question resulting from attempts by shipowners to follow a myriad of State withholding tax laws and a growing number of such laws in subdivisions of States such as counties,

municipalities and in, at least, one instance, a school district. The conferees considered the fact that such State and local withholding tax laws vary widely as to the scope of their coverage and the amounts to be withheld. Consideration of this legislation thus brought out the existence of tax problems of very great complexity involved in the withholding of State and local income and wage taxes as it affects persons whose salaries and wages are derived from interstate and foreign activities, both in the case of persons who are residents of the State or locality for whose benefits the tax is withheld and the persons who are nonresidents of such States or localities.

Now, Mr. Chairman and gentlemen, if we were to substitute for the word "shipowners," the words "railroads," "sleeping-car companies," or "express company," and the word "employees" for "seamen," the language as read would be as apt in the present circumstances as it was in regard to S. 1958.

Assume, for example, that we have a resident of Massachusetts who is a seaman on a boat operating on a regular freight schedule leaving Boston and touching at the ports of New York, Philadelphia, Norfolk, and Charleston, S.C. Each of those States has income tax laws, each has withholding. At each place this seaman is loading and unloading his cargo and would be subject to the income tax and the withholding laws of those several States. But for the fact of this particular statute, this would be an onerous burden to his employer. As it is, under the present law he is subject to withholding in the State of Massachusetts.

I raise this point, because yesterday one of the gentlemen from the local tax administrators cited this law and said that it was distinguishable from the present situation because the services were performed on the high seas and beyond the territorial waters of the United States. Nothing could be more in error and I think the distinction is without merit as, in fact, I think is most of his testimony.

If you gentlemen would like to consider the constitutionality of this I will go into it, because I observed your concern from the penetrating questions raised by you learned gentlemen yesterday and the day before in this area. It seems to me that these questions were also inherent in S. 1958; also that the Congress of that day must have considered them. There is no evidence to the contrary. The law was passed. It is the law of the land. It seems to me that this answers the constitutional questions. For your further information I have checked and find no cases, not a single case, in which the question of the constitutionality of this provision has been raised or challenged in the courts.

This matter does not at all restrict the right of the States to tax. It is directed simply to the application of the method of collecion; namely, withholding at the source. It does not in any way adversely affect that method. It curtails the application only in a certain area, in the area of nonresidents. It does not apply to all nonresidents. It only applies to nonresident employees of certain regulated carriers but not as to all of those nonresident employees. It only applies to those nonresident employees whose duties require them to go into different States in order to discharge their daily tasks.

And why do we think this particular measure is necessary? Because it imposes a cost to the carrier to withhold and collect these taxes. In shifting this burden from the State collecting officers to the carrier, the employer, for collection purposes by withholding in the case of the Pennsylvania Railroad, the cost is $43,000 a year, in the case of

the Wabash the cost is $14,000 a year. We do not claim that these are astronomical sums, but we do claim that they are a burden on these regulated carriers engaged in interstate commerce; in fact we say this is an undue burden on interstate commerce. We believe that there is plenary authority for the Congress to act in this area by reason of section 8 of Article I of the Constitution which empowers the Congress to regulate commerce among the several States. We feel that this is an undue burden and that it falls within that area of authority.

Mr. FRIEDEL. I want to thank you. I think that you have made a very, very strong case in the examples that you have given.

Mr. WATKINS. Thank you, Mr. Chairman. I hope that I have not exceeded my time by too much. I notice that the time is running out, but this is of vital importance to us, and because of that I wanted to make the record patently clear.

Mr. FRIEDEL. Do you have any questions, Mr. Macdonald?

Mr. MACDONALD. I did not hear the entire statement. I have a question. You said that the seamen were distinguishable from this case because they were not employed locally, but were on the high seas.

Mr. WATKINS. Mr. Macdonald, my point is that there is no distinction at all in the seaman's case from our situation. My point was that yesterday one of the witnesses stated that Public Law 86–263 was distinguishable on the grounds that the services performed by the seamen were without the territorial waters of the United States. This does not make any difference. If the seaman is tied up in a boat in the harbor at New York or Baltimore, Md., or Charleston, S.C., and is engaged in activities or not, he is subject to the laws of that State. That is just what this bill applies to, so that the distinction made yesterday in my judgment, is without merit.

Mr. MACDONALD. The distinction that you make is, is it not, a question of degree? Most of the seaman's time is spent on the ocean and much less time is spent in port.

Mr. WATKINS. I do not think that is a proper distinction. A man could be in port a short time or a long time, depending upon how much cargo is involved. How long does it take to go from Boston to New York? I do not know.

Mr. MACDONALD. It depends on the ship that you are on.

Mr. WATKINS. These, I think, are really, you might say, distinctions without differences. The point of the matter is that when he comes to a port he is then subject to the jurisdiction of that port and laws of that State and that is where he gets caught for the taxes and withholding.

Mr. MACDONALD. I am asking these questions for my own information. If he comes into the port at New York, and he is in port only an hour or 2 hours, he becomes subject to the laws of New York?

Mr. WATKINS. We have a situation where a railroad passenger train goes out of the State of Illinois, crosses the Mississippi River, and goes into St. Louis and stops for 10 minutes to let off passengers and then goes on. That 10 minutes subjects the employee to tax in Missouri. This time is multiplied throughout the year. This goes on every day, Mr. Macdonald. If it is a regular run throughout the year and you multiply this out, you find that this particular individual has satisfied the requirements of the State law for nonresident tax liability.

Mr. MACDONALD. That is a very interesting point. Do you have any case that defines what makes him subject and liable?

Mr. WATKINS. The right to tax a person depends upon several things. One is citizenship, another his residence, again where he earns his income—those are several of the bases for tax. While this man is going in and out of the station in St. Louis he is earning his income. While he is loading and unloading cargo in New York he is earning a salary. In fact, he gets paid there. This is the basis for imposing tax.

Mr. MACDONALD. Let us say that it is a 1-minute stop.

Mr. WATKINS. The accumulation of many 1-minute stops is the thing.

Mr. MACDONALD. How many?

Mr. WATKINS. That depends upon the State law. Sometimes they say 25 percent of your time in the State. You have got to figure out how much time he is in the State in proportion to the total work time. And if it is 25 percent, he is caught and so is the employer. This is one of the complexities that makes this difficult.

Mr. MACDONALD. Is that the minimum; 25 percent?

Mr. WATKINS. I do not know. I merely cite this because I alluded to it in my statement in regard to its application in Detroit—the withholding situation there.

Mr. MACDONALD. And in St. Louis that situation where he runs in for 10 minutes.

Mr. WATKINS. The accumulation of those 10 minutes over a year is the thing that does it. You see, he is liable for the tax but whether or not he is liable to pay a tax depends upon whether he has satisfied all of the conditions of that particular State law. He may be within the exempt category. He may be subject to the tax but be exempt from the tax. These are nice distinctions.

Mr. MACDONALD. Thank you.

Mr. FRIEDEL. Are there any more questions?

Mr. DEVINE. You have done an outstanding job of presenting this situation to us. I have no questions.

Mr. WATKINS. Thank you. I appreciate your words of commendation. I am hoping that Mr. Watson is going to ask me one of the three questions that he has been asking every witness. I hope that he will not let me down.

Mr. WATSON. Perhaps I do not recall the question immediately so we can start off with that if you recall it.

Mr. WATKINS. You were concerned, as I recall it, in regard to the inequitable treatment with respect to resident employees of a State vis-a-vis the nonresident employees who might not be subject to this withholding. If we had two contiguous States, A and B, a resident of State A goes into State B to work, he becomes a nonresident of State B. If he discharges all of his functions in State B, as a nonresident of State B he is subject to the income tax withholding of State B whether this law is enacted or not. Your concern yesterday was what will happen in the case this law is enacted.

Mr. WATSON. I believe my concern was just in defining the equity of withholding from the resident, while not withholding from the nonresident. Please answer that, if you will.

Mr. WATKINS. I want to point out that the nonresident is the subject of withholding as is the resident in State B.

Mr. WATSON. He would not be, were this bill enacted.

Mr. WATKINS. Yes; he would be.

Mr. WATSON. Subject to withholding?

Mr. WATKINS. This is the point that I want to make: In State B he is performing all of the services. He is not going from one State to the other in the discharge of the performance of his services. So he would be receiving the identical treatment that a resident would be receiving. A resident of North Carolina going into South Carolina and staying in South Carolian and performing all of his duties in South Carolina would be a nonresident in South Carolina but would be taxed and subject to withholding just as a resident of South Carolina if this bill were on the books today.

Now, the distinction that I think you have in mind is what about the resident of North Carolina who goes into South Carolina and in South Carolina picks up his traincrew assignment and goes into Kentucky and Tennessee and Illinois and Missouri. If the law were passed, in that case, he would not be subjected to the withholding requirements in South Carolina because in the course of discharging his duties he would be engaged in interstate commerce. He would still be subject to tax in South Carolina but it would be up to the taxing authorities to collect that by means best known and available to themselves. He is not exempt from tax. He is also taxed in his home State of North Carolina where withholding applies.

Mr. WATSON. Yes, sir; but not for work in South Carolina.

Mr. WATKINS. Oh, yes. He is taxed on his wages that he earns for services rendered regardless of where he renders them. And if he renders them partly in South Carolina and other places, he pays the tax not to South Carolina—he pays the tax to North Carolina.

Mr. WATSON. Should he not pay it to the State wherein the work is performed or do you differ with that?

Mr. WATKINS. I do not differ with that. I merely said, as I said before, he is liable to the South Carolina tax. It is up to the South Carolina taxing authorities to enforce their own law. He is merely not subject to withholding for that tax.

Mr. WATSON. Of course, one of the provisions for the collections of the income tax is the withholding procedure. I believe you will agree, as others have testified, that it is a very effective way of collecting taxes. Would you agree with that?

Mr. WATKINS. I would agree that it is one of the methods used for collecting but I would not agree that it is one of the methods used for enforcing it. It is a very effective collecting device but the enforcement function is still available to the State-taxing authorities and the collection function is also available.

Mr. WATSON. You think that it is fair, then, and equitable to require the wages of the resident; that is, the tax on the wages of the residents, to be withheld and to exclude the withholding process for nonresidents?

Mr. WATKINS. Yes; I think that is equitable. I think it is fair. I think, on the other side of the coin, where a person sits at his desk in South Carolina and discharges his function and draws his salary that he should be subject to withholding. Where another person in the course of discharging his duties must go into different States and is liable for the tax in each place, I think it is up to the tax collectors of those places to collect it and not to shift their responsibility to a regulated carrier to the point that it is a costly burden.

Mr. WATSON. Actually, everyone has the burden of withholding taxes. Do you disagree with the process of withholding altogether?

Mr. WATKINS. There is a considerable sentiment in that regard, Mr. Watson, because it is a costly undertaking for which there is no compensation. Many bills have been introduced into Congress to provide a measure of compensation to employers who have to undergo this costly procedure. Whether I am in favor of it or not is really irrelevant, but the point of the matter is that there is a considerable body of opinion that feels that this is a very undue burden in regard to withholding.

Mr. MACDONALD. Which body is that; the Birch Society?

Mr. WATKINS. I am not a member of the Birch Society. I cannot speak for it. Bills have been introduced along this line.

Mr. MACDONALD. How far did they get?

Mr. WATKINS. They did not get very far. I merely cite it.

Mr. MACDONALD. Would you introduce a bill to do it your way?

Mr. WATKINS. I do not know.

Mr. MACDONALD. It might bounce your way.

Mr. WATKINS. I do not know; it might.

Mr. FRIEDEL. May I say that we have many witnesses present who have not yet been heard.

Mr. WATSON. May I just ask him another question?

Mr. FRIEDEL. Yes.

Mr. WATSON. I shall not pursue that matter any further because, frankly, we differ on the interpretation right at the beginning. Suppose this bill passed. We all agree that it shall not remove the liability of the nonresident to pay income tax on work performed within a State. We all agree to that; do we?

Mr. WATKINS. Yes.

Mr. WATSON. Let me have your comments concerning a possible request made of the company, the railroad, by a State tax commission for the names of all employees who perform work within that particular State and the amount of the work performed in that State. By law, if this is passed, you do not have to withhold and you do not have to file information returns. What would be the position of the railroads should that request be made by every tax commission in the United States?

Mr. WATKINS. I can give you my opinion. I cannot speak for the industry because I am not authorized in this area, but I think this would happen, and I will say this, "You gentlemen of the State taxing authority, you may have your agents come in here, we will make the records available to you—you can go through and check all of the names and get all the information that you want."

Mr. WATSON. I see. So that the net result of that would be, in view of the figures that you have given in this one particular case, where the tax refund amounted to $2 each for a group of employees, that the State would be ill advised to pursue any tax against a nonresident for work performed within that State?

Mr. WATKINS. That might be true. I do not really know the average on this.

Mr. WATSON. So again you would consider it equitable that the nonresident would not pay his tax to that State, although it be only $2, while the resident pays his tax, exen if it be only $2?

Mr. WATKINS. I think that is really where the shoe pinches in regard to these local State taxing authorities. It was indicated yesterday that one man supervises a large number of nonresident accounts and he was fearful that if this law passed that it would be costly to the State to enforce and collect—to enforce the tax—and that is perfectly true, because the carriers in this instance are paying the freight and defraying the costs of this undertaking. It is on this basis that we think that it is an undue hardship and burden on interstate commerce. That is why we are here, because we hope that you gentlemen will agree with us.

Mr. WATSON. I agree that you have a problem, but I believe that you as a businessman are interested in seeing governmental costs kept to an irreducible minimum.

Mr. WATKINS. Yes, but I think that the equities are on both sides and it should not be piled up to the prejudice of the taxpayer and the railroads are large corporate taxpayers and this is an expensive undertaking.

Mr. MACDONALD. If you will yield.

Mr. WATSON. Yes.

Mr. MACDONALD. Aren't these costs deductible for income tax purposes?

Mr. WATKINS. That thought went through my mind too, but it would still be costly.

Mr. MACDONALD. There would be a loss in this situation?

Mr. WATKINS. There is a 50-percent loss. The rate is 50 percent. We spend $1 and we get a 50-cent deduction. It costs us 50 cents to do the job so that we are not free and clear. We are all getting the same rate. If you assume that the corporate be 50 percent, then it will cost us 50 cents per dollar spent because we get a 50-cent deduction for every dollar. Are you with me?

Mr. MACDONALD. I think so.

Mr. WATKINS. If it costs us $1 to do the job, and the rate is 50 percent, then we get a deduction that is worth 50 cents, and the other 50 cents comes out of our pocket.

Mr. WATSON. One final question: Ultimately, the cost of all of this will be borne by the user of the railroads.

Mr. WATKINS. We hope there will be a lot of those, we just hope there will be a lot of those. That is one of our big problems.

Mr. WATSON. I am sympathetic with you. I hope that you appreciate that my questions were an attempt to arrive at the equity of the matter.

Mr. WATKINS. We hope that you will be sympathetic with us and give these measures your most favorable consideration.

Mr. FRIEDEL. Thank you.

Mr. WATKINS. Thank you.

Mr. FRIEDEL. Our next witness will be Mr. Kay McMurray, executive administrator of the Air Line Pilots Association.

STATEMENT OF KAY McMURRAY, EXECUTIVE SECRETARY, AIR LINE PILOTS ASSOCIATION, CHICAGO, ILL.

Mr. MCMURRAY. Mr. Chairman and members of the subcommittee, since we have a little time problem and in the interest of assisting you

people a little bit, perhaps if we could just have the full statement introduced into the record I could skip some of it and get to the points that I wish to emphasize. Would that be acceptable?

Mr. FRIEDEL. That may be done. And your full statement will be made a part of the record.

Mr. MCMURRAY. On page 1, for example, that page is merely a description of who we are and who we represent. Some of you are already familiar with that.

If you will go to the top of page 2, the first paragraph, I will begin there.

Under current conditions, with State governments and their subdivisions seeking methods of obtaining increased revenues to support their various programs, it is anticipated that the problem will increase rather than diminish.

Of recent interest to our membership is the fact that the tax commission of at least one State has taken the position that the State has a right to tax flying personnel on income earned in flying over the State even though the plane does not touch down inside the State itself. When the foregoing is applied to schedules normally flown, the matter of compliance quickly become almost impossible.

For example, with modern jet aircraft, a crew based in New York may fly the following schedule for a month: New York, Pittsburgh, Chicago, Omaha, Denver, Salt Lake City, San Francisco, with a nonstop return from San Francisco to New York. The return trip, San Francisco to New York, for purposes of wind advantage or to avoid storm areas, may be flown on routes as far north as the Canadian border and as far south as Texas. In a month's flying time the crew will have flown over or through practically all the States of the Union with the exception of the extreme Southeast States, Hawaii, and Alaska. The next month may find the same crew operating a schedule as follows: New York, Cleveland, Miami, with a return—Miami, Tampa, Pittsburgh, Cleveland, New York. (The foregoing schedules are actual examples with layover problems eliminated for brevity.)

As can readily be ascertained, the crew will be affected by the tax matter here under consideration in practically every State. Let us assume that it is possible for the employer to determine the proportionate amount of flying done over or through each State. (This alone is a problem of great magnitude and we doubt that it could be done equitably in view of the versatility of the aircraft and the variables which enter the selection of flight routes.) Our people would then be confronted with deductions of burdensome proportions.

In addition, since income taxes are the responsibility of the individual rather than the employer, it would be necessary to file returns in each of the States in order to assure proper credit for taxes paid to one State as among all the others and so on.

If the committee will permit a little speculation, I am confident our members would much rather face the most difficult hazards of their profession than be exposed to the maze of tax problems with which they would be confronted each year. We doubt that any accountant could provide the answers at the present time.

Of course, while what I have outlined applies to our people, as other witnesses have testified to you gentlemen it is also of extreme

concern to the carriers, and we subscribe wholeheartedly to their position. As a matter of fact, I cannot recall hearing a witness precede me that I could agree with more heartily than I do with Mr. Watkins who just told you of the troubles that the railroad corporations have.

I have followed the hearings with a great deal of interest, and all of the testimony that has been given has been appropriate and necessary, but it does seem to me that, perhaps, we ought to give some consideration to the individual, the citizen, the fellow who really foots the bill.

As can readily be seen, no matter what arrangements are made between carriers and the various States in the final analysis, it is the people who I represent and other like people who suffer, because it is their paycheck from which the deduction is made.

I am assuming that you could hold this to proportions that would not be too burdensome. But can you conceive yourself of being in a position where even though you live in New York, for example, you have to file State income tax returns in 10 or perhaps 12 States. I do not know how you would do it. I do not know anybody who could relate the various State taxing measures to one another for proper credit pro and con, and so on.

It is just something we do not feel we can live with.

There are a couple of points that I would like to make which have been touched on briefly. I concur completely with Mr. Watkins and I was quite amazed to learn of the sweetness and light existing with the State tax commissioners because it is not the way it has been presented to me in dealing with them on the home front. This matter is currently a specific problem to us; at least two States are requiring withholding and as of 4 months ago one municipality in the center of the country started it. We do not know how you would arrange reciprocity among a municipality and a State, such as Alaska, for example, nor in listening to the State tax commissioners talk about reciprocity did we learn what is meant. I presume that it would mean that you would take this share, and we will take that share, and so on. I do not know how this problem would be resolved but I do want to make it clear that it not only is a current problem to us but one which is increasing.

I have just witnessed in one State, which I do not mind naming, something which is peculiar to me. The State of New Jersey is beginning to question how much tax they should collect from a pilot based in Los Angeles who has to fly over a piece of New Jersey to land at Idlewild. What happens to our individual member is simply this: He goes to the employer, and the employer, for obvious reasons, is not very interested in arguing too hard with the tax commissioner of the State it does business in. So then the employee comes to us. And for the simple reason that the taxes are so complicated we do not have a staff sufficient to handle the taxes in all of the various jurisdictions and we cannot help the individual. We do not have the funds for that. So a situation develops where groups of pilots get together and assess themselves to hire lawyers simply to find out how they deal with this matter.

And I submit that if it reaches the ultimate, and I am frank to say that I think it will unless something is done to stop it, because I cannot

conceive of one State collecting from a pilot who lands there for a period of time and the adjacent State not doing it. Eventually they all want revenues and if it is all right for Kansas, it is all right for Missouri, and it is all right for California. I find it difficult to believe that some States will not collect it if some other States start doing it. And, as we have pointed out, some are doing it right now. So it is already a real and present problem at this time. Moreover, it has every indication of getting worse rather rapidly and we feel, rather obviously, something should be done about it.

A while ago somebody asked, I think it was the chairman, who was the sponsor of this measure. I suppose that we can take as much credit as anybody because this became a real problem to us about 2 years ago. I suppose our association did as much as anybody to sponsor this legislation, if you are interested in that facet of it.

Mr. FRIEDEL. Let me ask this question. At the present time an airline flies from Boston to Miami and return—where would that pilot be taxed as of now?

Mr. MCMURRAY. Probably in New York. New York has an arrangement with some carriers. This is the other strange thing about this matter.

Mr. FRIEDEL. The plane makes up in Boston and flies to Miami. It might stop at New York and at Friendship in Maryland but——

Mr. MCMURRAY. Where would the pilot be taxed?

Mr. FRIEDEL. Yes.

Mr. MCMURRAY. First of all, at his domicile, and that could be either Boston or Miami, up and down the coast, so he would be taxed in Florida, I presume, and then at the present time he would be taxed in New York for the portion of the time that he is there.

Mr. FRIEDEL. Under the present law?

Mr. MCMURRAY. Yes; I tried to make this clear. In some areas this is just in the developmental stage so I cannot specifically answer your question. I do not know, for example, how the State of New Jersey is finally going to come out with the position that the man out of Los Angeles should be taxed for the proportion of the time that he flies over New Jersey. This is in the discussion stage at present. I do not know how it will come out.

The State of Oregon, is concerned, because the pilot based in Seattle flies to Los Angeles over Oregon part of the time. It has further complications. Let us presume that the State of Oregon can collect taxes for the time that the airplane is over Oregon. In order to determine accurately the tax you would have to follow every trip, because weather conditions and the versatility of the aircraft are such that he may go westbound down off the Oregon coast 20 miles and never touch or go over Oregon. And on another trip he may fly across Oregon. If you are going to try to figure these accurately it gets to be a problem of monumental proportions.

And as I stated, our individual member who gets his check with all of these deductions from it, has a difficult thing to face. But the problem of filing the State income tax returns as all of the laws require, with all of the various States, seems impossible to us.

One other comment on the seamen's bill——

Mr. WATSON. May I interrupt you there?

Mr. MCMURRAY. Yes.

Mr. WATSON. I am sure that you appreciate the fact that this bill, if it should be passed, would not remove the tax liability from any of your individuals.

Mr. MCMURRAY. I agree completely.

Mr. WATSON. Basically, it would just shift the responsibility from the company to the individual to compute the time over these various places.

Mr. MCMURRAY. To the individual.

Mr. WATSON. To the individual.

Mr. MCMURRAY. Yes.

Mr. WATSON. Then your individual members would prefer to wrestle with this problem, rather than have any company assistance whatsoever?

Mr. MCMURRAY. Yes; they would prefer to have a little money left in the paycheck to wrestle with.

Mr. WATSON. I am sure that we are all interested in that.

Mr. MCMURRAY. Yes.

Mr. WATSON. It will be an additional burden on your membership?

Mr. MCMURRAY. Yes.

Mr. WATSON. I might say this, I can see some justification for having no tax liability so far as flying over a State is concerned. I can see that. But, actually, this bill does not exclude you from any liability, and yet you, representing your association, want this burden shifted from the company to let each of you individually wrestle with the problem, rather than to have the company assist you?

Mr. MCMURRAY. We are trying to eliminate part of the problem. We are not trying to eliminate the tax problem, but we are trying to eliminate the part where you take it away from him before he sees it and all of the complications that arise.

Mr. WATSON. All of us have it taken away before we see it. We are all faced with that.

Mr. MCMURRAY. We do not all have it taken away from us in 20 States.

Mr. WATSON. That is true.

Mr. MCMURRAY. That is where it gets complicated.

Mr. WATSON. That is true. I can see some justification for nontaxation of pilots, for example, for just flying over a State, but at the same time this bill would just shift the burden from the company to you individually.

Mr. MCMURRAY. That is correct.

Mr. WATSON. And your members want to wrestle with this problem.

Mr. MCMURRAY. That is correct.

Mr. WATSON. And leave the company out of it?

Mr. MCMURRAY. Yes. Under current and future withholding practices, money would be deducted from the employee's paycheck for all affected States. At the end of the year, it would be necessary for the individual to file requests for refunds from the various States, which refunds would be due him as a result of the interplay of the various credits which States allow for taxes in other taxing districts. It does not seem equitable to us that, due to the nature of his employment, an individual should have his salary withheld in an excess amount. We are not contesting proper taxation but we do object to this system which by its very nature constitutes an undue burden on the individual.

Mr. MACDONALD. And I suppose that the corollary to that would be that the pilot feels that he would not want to pay the tax—is that about the size of it?

Mr. MCMURRAY. That is an assumption that you can make about my membership that I will not. I think that they would be honest about it.

Mr. MACDONALD. I do not see why any State should tax you just to fly over it—you are not doing any business in the State. The air is controlled by the Federal Government. I do not see what justification a State would have for doing that.

Mr. MCMURRAY. I agree with you, but from the comments we are running into, if you do not do something we are faced with it. We are arguing about it right now. It may sound ridiculous to you.

Mr. MACDONALD. What is the basis that they say they have a right to do that?

Mr. MCMURRAY. I do not know. It is a matter that has recently come up. As a matter of fact, I will tell you how I came across it. The most recent example comes from the members in the area involved. They say that in some instances the tax commission has come to them and said, "We have got to start paying taxes on flying done over the State. What will we do?" And in the last year I have received any number of such complaints.

As the Congressman from Kansas testified yesterday, the airline pilot group in Kansas City, in that area, came to him personally without any urging and presented this problem to him.

Mr. MACDONALD. I think that you have a problem, all right, if the States are doing it. I could not agree more. I do not think that this bill is the answer to your problem, however.

Mr. MCMURRAY. Not the total answer but it certainly would be a measure of relief from the withholding that currently will come about.

Mr. MACDONALD. What State is that that you say in your statement presently does it?

Mr. MCMURRAY. Alaska and the municipality of Kansas City, and this happened just 6 months ago. My presumption is—and I think it would be a fair one—that if Kansas City put in a withholding tax 6 months ago, approximately, some other municipalities can be anticipated to do it 6 months from now.

Mr. MACDONALD. That tax is on the people who are based there?

Mr. MCMURRAY. No; who fly through. It is an arbitrary agreement with the management.

Mr. MACDONALD. Why do they feel that they have the right to tax?

Mr. MCMURRAY. They just decided it.

Mr. WILLIAMS (presiding). If you will yield.

Mr. MACDONALD. Yes.

Mr. WILLIAMS. Could you furnish that?

Mr. MCMURRAY. I did not bring it down. It is the understanding that the company has with the municipality as to the percentages and so on. I will be very happy to mail that to you, if you want that.

Mr. WILLIAMS. This bill will not cure that.

Mr. MCMURRAY. It would stop the withholding.

Mr. WILLIAMS. But it would not relieve the employees of the burden of having to pay the tax.

Mr. MCMURRAY. That is correct.

Mr. WILLIAMS. And to some extent you still would suffer.

Mr. MCMURRAY. I agree with you, except that if you cannot take away all of the pain, it would help to take away a little of the pain. Maybe that is it.

Mr. WATSON. And the States would not pursue it as easily as they are doing it now.

Mr. MCMURRAY. Some of my membership might try to evade it, I agree that might happen, but my membership will not do anything but the proper thing, and pay their taxes, you know.

Mr. WATSON. But, of course, we all try to avoid as many taxes as we can.

Mr. MCMURRAY. Legally, they would probably try and do it just as you and I would.

Mr. WATSON. We all would.

Mr. MCMURRAY. Yes.

Mr. WATSON. I am concerned about your problem. I do not think that this bill would do anything to help you there.

Mr. MCMURRAY. We do not feel that way. At least you have money left in the paycheck.

Mr. WATSON. As you pointed out to me earlier, your membership consists of those who are all honorable, and I am sure that they are very able men. Being so, if they realize that a State is looking to them for income taxes, they would go ahead and voluntarily file in that individual State. So you will have this problem. It will be a continuing one.

Mr. MCMURRAY. We are in agreement. It does not solve the total problem, I agree.

Mr. MACDONALD. What about a chartered plane, say a ball club uses a chartered plane, to go from Boston to San Francisco or San Diego—who would take care of that?

Mr. MCMURRAY. We would have to make a couple of other assumptions. Did they charter the plane from one of the regular carriers, say such as United, to go from Boston to Los Angeles? It would be treated as a regular scheduled run, because it would have the next pilot up and his salary would be paid by United. It would be handled the same as a regularly scheduled run would be.

Mr. MACDONALD. Say that it is a supplemental carrier.

Mr. MCMURRAY. If it is a supplemental carrier I cannot answer your question. It would depend on the State he is based in and we have them all over.

Mr. MACDONALD. How would the local tax people know about it?

Mr. MCMURRAY. Taking a supplemental carrier, we have a large one based in Nashville. He keeps a regular pilot crew, and he deducts social security and workmen's compensation. He would handle it the same way. All of these supplemental carriers have certificates from the Civil Aeronautics Board, have pretty decent accounting systems because they are subject to all of the laws.

Mr. MACDONALD. Thank you.

Mr. MCMURRAY. Can I make one more comment and then I am through, and that is with respect to the seamen's bill. I agree completely with Mr. Watkins that the seamen's law and this bill are synonymous and exactly the same. It is a strange thing that each time we think of a seaman, we think of those that operate at sea, but

a man who gets on a ship and goes down the Mississippi River is also a seaman, such as on the intercoastal and inland waterways, too. And I will stand corrected if that is not true. I really cannot refer to a seaman as someone who just touches the New York area, for example, and spends the rest of his time going across the ocean.

Our people, for example, do not spend much time in the United States when they leave Kennedy Airport to go to London. They are outside the territorial waters of the United States in a very short order but they pay withholding on all of the money that they earn, whether it is in Germany or any place else. So there is no differentiation in the two bills so far as we are concerned. Congress has already looked at the problem, has studied it, and has passed a law and we are just asking for a similar treatment, because it is difficult to explain to a pilot why a man running a ship out of Boston is treated differently than he on an airplane out of Boston. They are both in interstate commerce and both are carrying goods and serving the public.

Thank you. We will be glad to furnish any additional information you would like.

Mr. WILLIAMS. Thank you, sir. As stated previously, your prepared statement will be made a part of the record at this point.

(The prepared statement of Mr. Kay McMurray follows:)

STATEMENT OF KAY MCMURRAY ON BEHALF OF AIR LINE PILOTS ASSOCIATION

Re a bill to exempt certain wages and salaries of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence

The Air Line Pilots Association is an association of the professional airline pilots of the scheduled U.S. carriers. At present, it has a membership of 18,000 active and inactive members employed by 47 certificated airlines. The association represents airline pilots in all aspects of their professional life. It is their bargaining agent under the Railway Labor Act, maintains an extensive air safety organization in 141 councils scattered throughout the United States and foreign countries, and is spokesman for the airline pilot in his relationship with municipal, State, Federal, and international organizations.

Internationally, we are an active participant in the International Federation of Air Line Pilots Associations which is a federation of the pilots representing organizations of 43 countries and represents the professional pilots of practically all civil aviation in the world outside the Iron Curtain countries.

We are pleased to appear before you today to state and discuss our views on H.R. 10743.

The crew members represented by the association operate aircraft through or over all of the 50 States. Consequently, any duplicating tax compliance procedures among States and their local subdivisions quickly presents a problem of burdensome proportions. The magnitude of the problem is apparent when it is realized that of 37 States imposing income taxes, 35 impose net income taxes on individuals. All of them require withholding on the full amount earned by residents and 31 States require withholding on amounts earned by residents and nonresidents within their borders. In addition, 27 cities impose taxes and 26 require withholding as to both residents and nonresidents.

Under current conditions, with State governments and their subdivisions seeking methods of obtaining increased revenues to support their various programs, it is anticipated that the problem will increase rather than diminish. Of recent interest to our membership is the fact that the tax commission of at least one State has taken the position that the State has a right to tax flying personnel on income earned in flying over the State even though the plane does not touch down inside the State itself. When the foregoing is applied to schedules normally flown, the matter of compliance quickly becomes almost impossible. For example, with modern jet aircraft, a crew based in New York may fly the

following schedule for a month: New York, Pittsburgh, Chicago, Omaha, Denver, Salt Lake City, San Francisco, with a nonstop return from San Francisco to New York. The return trip, San Francisco to New York, for purposes of wind advantage or to avoid storm areas, may be flown on routes as far north as the Canadian border and as far south as Texas. In a month's flying the crew will have flown over or through practically all the States of the Union with the exception of the extreme Southeast States, Hawaii, and Alaska. The next month may find the same crew operating a schedule as follows: New York, Cleveland, Miami, with a return—Miami, Tampa, Pittsburgh, Cleveland, New York. (The foregoing schedules are actual examples with layover problems eliminated for brevity.)

As can readily be ascertained, the crew will be affected by the tax matter here under consideration in practically every State. Let us assume that it is possible for the employer to determine the proportionate amount of flying done over or through each State. (This alone is a problem of great magnitude and we doubt that it could be done equitably in view of the versatility of the aircraft and the variables which enter the selection of flight routes.) Our people would then be confronted with deductions of burdensome proportions.

In addition, since income taxes are the responsibility of the individual rather than the employer, it would be necessary to file returns in each of the States in order to assure proper credit for taxes paid to one State as among all the others and so on. If the committee will permit a little speculation, I am confident our members would much rather face the most difficult hazards of their profession than be exposed to the maze of tax problems with which they would be confronted each year. We doubt that any accountant could provide the answers at the present time.

While the situation just described applies to aircrewmen, the same problems exist to a large degree among those employees in other interstate transportation media. Witnesses before this committee will testify with respect to those problems. Consequenly, we will not burden the committee unduly in this regard other than to state our support for this legislation which would ameliorate the burden imposed on other groups as well as our own.

In addition, of course, the problems confronted by the employer who must implement a satisfactory withholding procedure are very costly and burdensome. We support their viewpoint on this matter and urge the committee to give serious consideration to all facets of the problem.

As the committee may be aware, a similar problem was considered by the Congress in a previous session. After due deliberation, a statute, effective September 14, 1959, was enacted which provides relief for merchant seamen. It is our view that the same considerations which prompted previous legislative action are involved in this legislation. Further, action should be taken promptly in order that the various taxing bodies may have some guidelines in preparing their future programs. This will avoid another serious problem which would result in the event it became necessary to correct the problem after State fiscal policies and tax procedures had been more fully developed.

We also wish to emphasize that the proposed legislation does not impair the tax authority of the States and their subdivisions. Nor does it relieve the employee of the liability to pay taxes which are properly due. It merely relieves the employee and employer from collection procedures which create difficulties out of proportion to benefits which the taxing bodies might derive. In fact, as indicated, if the situation is not corrected, the individuals whom we represent will shortly be confronted with a problem of filing tax returns with which the individuals simply cannot cope.

We appreciate this opportunity to appear and present our views on H.R. 10743. We urge adoption of the bill and wish to assure you of our desire to assist in any manner possible to aid the subcommittee in its deliberations on this proposed legislation.

Mr. WILLIAMS. Are there any further questions?

If not, let me say that we have scheduled today Mr. Donald S. Beattie, Mr. Pendleton, and Mr. Walsh representing the National Association of Motor Bus Owners and Mr. John C. White, representing the Private Truck Council of America, Inc. They constitute the remainder of the witnesses scheduled on this legislation.

The committee finds itself in a rather difficult position due to the fact that we have to adjourn in the next 4 or 5 minutes.

The House is called into session. We have an alternative. I will go off the record.

(Discussion off the record.)

Mr. WILLIAMS. If you will give the reporter your statements we will be very happy to include them in the record. We might have some difficulty in setting a date for next week.

As you know, we are down the final stretch of the congressional session and we have to change our plans from day to day.

As you gentlemen have already found out, we will be happy to receive any statements if it is agreeable to you.

STATEMENT OF JOHN C. WHITE, MANAGING DIRECTOR, PRIVATE TRUCK COUNCIL OF AMERICA, INC.

Mr. WHITE. I am John C. White, of the Private Truck Council of America, Inc. I appreciate your problem. I think that we would be perfectly willing to file the statement that we have, hoping that it would be read. I merely call your attention, however, to the fact that we do suggest in our statement that an additional amendment might be necessary, because heretofore all of the testimony that you have heard relates only to the regulated carriers, whereas our people are private truck operators, nonregulated but it has exactly the same burden in interstate commerce.

Mr. WILLIAMS. Your statement will be read and attention will be given to any suggestions for amendments.

(The prepared statement of John C. White follows:)

STATEMENT OF JOHN C. WHITE, MANAGING DIRECTOR, PRIVATE TRUCK COUNCIL OF AMERICA, INC.

My name is John C. White, and I appear as managing director of the Private Truck Council of America, Inc.

This council, incorporated under the laws of the State of New York, with principal offices at 711 14th Street NW., Washington, D.C., is a nonprofit organization composed of private motor truck owners, or "private carriers of property by motor vehicle," and of other organizations of such owners.

Constituting council's nationwide membership are companies of many kinds which operate vehicles as an incidence to other more primary business enterprises. Private truck operations are, for example, conducted by bread, petroleum, chemical, beverage, meatpacking, dairy products, and various other companies. Council's membership also includes trade associations whose members are similarly engaged in operating motor vehicles.

Council's bylaws provide in part that its purposes shall include cooperating with governmental agencies in the public interest and in the interest of safe and economic operation of privately owned motor trucks and presenting to such agencies the views of private motor truck owners.

We appear for the purpose of asking the committee to amend H.R. 10743 (S. 1719) so the proposed new section 226A of the Interstate Commerce Act will be applicable to private truck operators as well as common and contract carriers. As presently worded, it is not applicable to "private carriers," though the burden to interstate commerce created by these State and local taxes is the same whether reference be had to common, contract, or private carriage.

We are not prepared to discuss constitutional questions with respect to the bill, but should the committee decide that the bill is constitutional and should be favorably reported, we ask for correction of what may have been a technical oversight in making it inapplicable to "private carriers of property by motor vehicle."

The bill in its present form is not applicable to such carriers for the following reason:

As concerns employees driving motor vehicles, the amendment of the Interstate Commerce Act would be in the form of a new section 226A of that act. For quick reference, it reads in part:

"No part of the wages or salary paid by any motor carrier subject to the provisions of this part to any employee who performs his regularly assigned duties as such an employee on a motor vehicle in more than one State, shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence, * * *"

The new section would, as presently worded, be applicable only to employees of "any motor carrier." By definition "motor carrier" is restricted to common and contract carriers unless specific reference is made to include "private carriers." The simple amendment which we recommend will cure this omission.

Subsection 203(a) of the act, which includes definitions of "common carrier by motor vehicle," "contract carrier by motor vehicle," and "private carrier of property by motor vehicle," provides in its paragraph (16) that

"The term 'motor carrier' includes both a common carrier by motor vehicle and a contract carrier by motor vehicle."

Subsection 204(a) then goes on to provide, in its paragraph (3), that it shall be the duty of the Interstate Commerce Commission:

"To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. *In the event that such requirements are established, the term 'motor carrier' shall be construed to include private carriers of property by motor vehicle in the administration of sections 204(c); 205; 220; 221; 222(a), (b), (d), (f), and (g); and 224.*" [Emphasis supplied.]

Since such requirements, in conformance with this paragraph, have been established by the Commission (49 C.F.R. pts. 190–197), the term "motor carrier" encompasses "private carrier of property by motor vehicle," but only to the extent enumerated. Therefore, our suggested amendment would merely require the addition of "226A" as one of the sections to be construed as including "private carriers of property by motor vehicle."

Specifically, this amendment could be stated as follows:

Paragraph (3) of subsection (a) of section 204 of the Interstate Commerce Act is amended by striking out "and 224" and inserting in lieu thereof "224; and 226A".

To more clearly understand why we suggest this amendment, it may be interesting and even helpful to quote from a few of the many letters which council members have written about this subject.

An Indiana member says this:

"We are a comparatively small manufacturing operation but we operate our own fleet of trucks and we travel through anywhere from 20 to 30 of the various States in the course of making our deliveries. Since many of these deliveries are rather long hauls and are not made on a specific and repetitive route basis, we would have a fantastically difficult problem of determining how much of each driver's time was spent in each State and how much of his pay might be subject to withholding in various States. The whole idea is so preposterous that one would hardly think it could ever even be considered. If we had this kind of a problem, I can well imagine that with even our small fleet it would take the full time of at least one clerk in order to keep these records. This would not include the time required in making up tax returns and filing such in all of the States and making payment for the taxes and then accounting for it to the individual employees."

An Illinois member says this:

"We operate a fleet of nine trucks and in the course of a year's operations, we travel in approximately 42 States delivering goods of our own manufacture.

"If as few as six or seven States or cities pass laws requiring us to withhold taxes on wages earned in these States, we would be compelled to switch our payroll procedures to a manual operation. With the additional burden of the many tax reports we would have to file, this would probably mean one more person would have to be added to our overhead.

"The extra cost to us would be as much as the Federal taxes on income of all our drivers and would probably be 10 or 12 times the revenue derived by the taxing authorities."

A North Carolina member says this:

"Since we are operating our fleet of vehicles in 22 States we feel that if private truck operators are not exempt there will be no end to the various States levying this income tax on our drivers. This will require us to set up a full bookkeeping system to handle only the payroll withholding taxes levied by the various States and cities.

"In the 17 various branches which we operate, we have drivers which we term 'branch drivers' and, in addition to this, we have our 'long-line drivers' operating out of 4 of these branches. On most part, the branch drivers cross the State lines into the surrounding States and, of course, the long-line drivers are traveling through 22 various States in our scope of operation. Most certainly as this type of tax spreads, if it is allowed to do so, it would be a tremendous cost to us and again still not net a tax revenue to the various States of any sizable amount."

A New York member says this:

"At present we are actually withholding for the cities of Struthers, Ohio, and Hamilton, Ohio. There are others in the Midwest as well as in New England. This is becoming an increasingly grave problem.

"As far as our motor vehicle operations are concerned, each time this occurs our costs are increased accordingly. It would just be a question of time as to when our costs would become prohibitive. The extension of this concept of tax collection is a burden on interstate commerce and should be curtailed."

A Pennsylvania member says this:

"We are a bakery concern with trucks and tractor trailers engaged in interstate commerce. To withhold State taxes from a State other than which the employee resides would impose severe economic hardship on both our company and, undoubtedly, also our affected employees."

A Michigan member says this:

"We would urge the council to do everything possible to have proposed legislation (S. 1917) amended to include the exemption of private carriers along with the for-hire carriers.

"This piece of legislation is very important to us as we operate through and into many States. The cost of administration in such a program would be prohibitive."

A Minnesota member says this:

"We have the same trouble in Minnesota. They have a regulation that states that anybody that earns an excess of $700 in Minnesota, even though he is a resident of North Dakota, we must withhold tax. This means that on our truckdrivers, and several supervisors, we must maintain records and determine how much North Dakota residents have earned in Minnesota up to $700 and then withhold. With truckdrivers switching around, we spend a great deal of time trying to keep track of all of this.

"The State of Oklahoma wants income tax withheld from our employees in Kansas who cross into the Oklahoma territory.

"Montana would like to have us withhold tax on our drivers, who make trips into Montana."

Thus, the committee can readily understand why the exemption should be extended to cover private truck operators just as it does common or contract carriers. Each of the three kinds of truck operations are similarly affected and the burden to interstate commerce will be of equal severity.

STATEMENT OF DONALD S. BEATTIE, EXECUTIVE SECRETARY-TREASURER, RAILWAY LABOR EXECUTIVES' ASSOCIATION

Mr. BEATTIE. I am Donald S. Beattie, executive secretary-treasurer of the Railway Labor Executives' Association. I have a very brief statement. It is in support of the testimony given by Mr. Larsen and by Mr. Watkins, and I would like to file it for the record and to call attention to the second page where I have suggested that an amendment to cover all railroad employees be made.

Mr. WILLIAMS. All right. Thank you very much. Your statement will be made a part of the record.

(The prepared statement of Donald S. Beattie follows:)

STATEMENT OF DONALD S. BEATTIE, EXECUTIVE SECRETARY-TREASURER, RAILWAY LABOR EXECUTIVES' ASSOCIATION

My name is Donald S. Beattie. I am the executive secretary-treasurer of the Railway Labor Executives' Association, which has its offices in the Railway Labor Building, 400 First Street NW., Washington, D.C. My purpose in appear-

ing before you today is to express to you the position of our association in regard to H.R. 10743 and S. 1719.

As you may know, the Railway Labor Executives' Association is an unincorporated association of the chief executive officers of the standard national and international railway labor organizations, representing virtually all railroad employees in this country, pursuant to the provisions of the Railway Labor Act. In speaking of railway employees I refer to the employees of the railroads, the sleeping-car companies, and the Railway Express Agency.

One of the purposes of the Railway Labor Executives' Association, or the RLEA, as it is usually called, is to represent these railway labor organizations in matters of common interest to all the employees they represent. The enactment of H.R. 10743 or S. 1719, amended to provide evenhanded treatment of all railway employees, is a matter not only of common interest but of common concern to all railway employees of this country.

Many States and political subdivisions of States require withholding of taxes at the source of nonresidents as well as residents. To the employees I represent before this committee, such a requirement imposes a severe and unnecessary burden. The money of which they are thereby deprived is necessary to the sustenance of them and their families.

While it is true that overcollection of wages is subject to refunding after the end of the year, there is no just reason why employees should be deprived of the use of this money during the year. Nor is there good reason to burden employees with the maze of accounting and paperwork required to secure the refund of money unjustly withheld. In many instances, the State and local taxing bodies are unjustly enriched at the worker's expense because the amount of refund does not justify the effort involved in supporting claim for recovery.

I might also point out that the trend toward enlargement of tax bases on the part of State and local tax jurisdictions coincides with a trend toward greater mobility of railway employees over larger geographical areas. If therefore seems clear that the tax problems confronting railway employees, as complex as they are today, most likely will become worse unless corrective legislation is enacted.

Mr. Watkins of the Association of American Railroads and the witness for the Railway Express Agency have offered cogent reasons for the passage of H.R. 10743 or S. 1719, properly amended to cover all of the employees of the railroads, the sleeping-car companies, and the Railway Express Agency. The desired result could be obtained by deletion of the following language on page 2 of S. 1719.

On page 2, line 7, strike out "regularly".

On page 2, line 8, strike out "on a locomotive, car, or other track-borne vehicle".

The RLEA urges the enactment of H.R. 10743 or S. 1719 provided the bill is amended to extend equal treatment to all employees in the railroad industry.

Mr. HILL. My name is Fred Hill, and on behalf of Mr. Pendleton and Mr. Walsh, we shall be glad to have their statements made a part of the record at this point.

Mr. WILLIAMS. That may be done.

(The prepared statements of A. E. Pendleton of the Southern Greyhound Lines and of Marvin E. Walsh, Safeway Trails, Inc., follow:)

STATEMENT OF A. E. PENDLETON, SOUTHERN GREYHOUND LINES

My name is A. E. Pendleton and I am assistant comptroller for Southern Greyhound Lines with headquarters in Lexington, Ky. I appear today on behalf of the National Association of Motor Bus Owners which is the national trade association for the intercity bus industry and represents about 1,000 carriers who provide more than three-fourths of the Nation's intercity transportation by bus. The organization by which I am employed is a division of Greyhound Lines, Inc., Chicago, Ill., and is affiliated with the association, commonly known as NAMBO.

The purpose of this statement is to emphasize the urgent need for enactment of a measure to eliminate the increasingly serious confusion resulting from the requirements of certain States for income-tax reporting and withholding of wages paid to employees engaged in interstate transportation. Consequently, we strongly support S. 1719 as passed by the Senate and request early favorable action thereon by the House.

The need for this legislation is very effectively documented in the report on the hearings on S. 1719 before the Senate Committee on Commerce, and I shall

not impose on the time of this subcommittee by repeating the general arguments in support of the measure. It may, however, be helpful to the subcommittee if I describe some of the very specific problems which we face in connection with this matter. I shall base these comments on the operations of Greyhound Lines since I am most familiar with them.

Our company operates approximately 5,000 buses over 100,000 miles of route and serves some 40,000 cities, towns, and villages. We employ about 10,000 drivers, virtually all of whom are in interstate service. We operate in all 48 contiguous States and the District of Columbia.

According to the summary prepared by the Legislative Reference Service of the Library of Congress,[1] there are 31 States in which nonresidents are subject to the income tax. In addition, there are 27 cities with similar requirements of which 26 require withholding for nonresidents.

While not all of these jurisdictions are currently enforcing the withholding requirements on our drivers, a number of them are doing so and this number is increasing.

Currently Greyhound is reporting and withholding on nonresidents in a substantial number of States. It is true that there are reciprocity agreements among a number of States as was pointed out in testimony yesterday. The bus industry has had many years of experience with all sorts of State taxes including those on fuel and levies on gross receipts, bus-miles, passenger-miles, and numberless others. Without in any way controverting yesterday's statements by the gentlemen from Massachusetts and Louisiana, our experience clearly indicates that the approach to these problems on a State-by-State basis is extremely complex, time consuming, and, with some few exceptions most unsatisfactory.

A general problem faced by every employer is the wide variation in the complex tax statutes and regulations of the several jurisdictions coupled with the fact that they are frequently revised. A nationwide employer such as Greyhound is confronted with a monumental task in keeping up with the regulations quite apart from the mountains of paperwork involved in complying with them.

Approximately 75 to 80 percent of our 10,000 drivers operate what are known as regular runs; that is, they cover the same territory on each tour of duty and may traverse anywhere from one to a half dozen or more States each trip.

These drivers are paid on the basis of miles run or hours worked plus certain other remuneration as provided in the union contracts. The payroll record covering their services reflects the specific service performed showing the origin, destination, miles run, and hours worked. But the magnitude of the accounting problem makes it virtually impossible to maintain an accurate record of the miles run by each driver in each taxing jurisdiction. Even if such records were available they would not be a true reflection of earnings for tax purposes because of the so-called fringe payments in addition to basic compensation.

Neither is it practicable to allocate earnings by State on an hourly basis because of the wide variations in schedules such, for example, as the difference between express and local service.

Finally, these drivers often change their regular runs three, four, or more times a year as a result of seasonal variations in service requirements or opportunities to "bid in" a more desirable run. The result, of course, is likely to be several changes annually in the tax jurisdictions through which they operate.

The remaining 20 to 25 percent of our drivers are on the so-called extra board and not assigned to a regular run. Instead, they operate second sections of regular schedules as the demand arises, replace regular drivers who are on vacation or sick leave and operate charter trips which account for more than 10 percent of the industry's vehicle miles.

These drivers pose a tremendously complex problem with respect to tax withholding. A charter trip out of Washington, for example, may be destined to any point in the United States. In the course of a single week, we may well operate several charter trips between Washington and Chicago involving travel in five States and the District of Columbia by an extra board driver who covered six entirely different jurisdictions during the preceding week. I believe the scope of the recordkeeping problems is apparent from the foregoing. Mr. Walsh, who will appear following my statement, will give a specific illustration for an individual driver.

There is one additional point to which insufficient attention has been given. Apart from the burden of paperwork imposed on employers and employees alike

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[1] Senate hearings on S. 1719, pp. 3–5.

is the fact that the earnings of many employees in many jurisdictions would be insufficient to incur tax liability. This is especially important in the case of extra board drivers. The ultimate result in this event is a further burden of unwarranted paperwork on employees and State and local tax officials in filing and processing refund claims for employees who have been deprived of a portion of their earnings for varying periods of time.

I have purposely refrained from covering many other complications in order to keep this statement within reasonable limits.

This opportunity to appear is deeply appreciated, and I shall be glad to attempt the answers to any questions the members of the subcommittee may have.

STATEMENT OF MARVIN E. WALSH, SAFEWAY TRAILS, INC.

My name is Marvin E. Walsh and I am executive vice president and general manager of Safeway Trails, Inc., an intercity common carrier of passengers operating in the general area between Washington and New York. I am also president of Trailways of New England which provides similar services in that area. Both of these companies are affiliated with the National Trailways Bus System and with the National Association of Motor Bus Owners.

As the previous witness has pointed out, the purpose of my appearance in support of S. 1719 is to supplement Mr. Pendleton's statement with specific illustrations of the complications involved in complying with the withholding requirements applicable to employees engaged in interstate transportation.

The illustrations which I offer cover the services of two of our drivers for 7- and 6-day periods, respectively. Both of these drivers are assigned to regular runs; as the previous witness has pointed out, similar illustrations for extra-board drivers would involve far greater complications.

I might add that, in offering these examples, I shall not repeat the general description of the many problems discussed in Mr. Pendleton's testimony, with which I am in complete agreement, but they should be borne in mind in connection with the illustrations.

During the 7-day period which I mentioned, one of our Safeway Trails drivers, who is a resident of Virginia and works out of Washington, drove a bus in five States and the District of Columbia. Assuming that all six jurisdictions required withholding, the distribution of his earnings, computed on the basis of miles operated, would be as follows:

Jurisdiction:	*Percent of earnings*
District of Columbia	2.94
Maryland	36.17
Delaware	7.32
New Jersey	49.45
New York	1.38
Virginia	2.74

In the second example, the driver, a resident of New Jersey working out of Philadelphia on a regular run, also drove in six jurisdictions during a 6-day period. The distribution of his earnings, computed as in the previous example, are as follows:

Jurisdiction:	*Percent of earnings*
Delaware	0.68
New Jersey	38.33
New York	23.78
Pennsylvania	22.15
Connecticut	8.59
Massachusetts	6.47

The previous witness has described the unwarranted burdens imposed on employers, employees, and tax officials in cases in which the earnings of individual drivers in certain jurisdictions are insufficient to incur tax liability. While I have not made the necessary computations, it would appear that such a situation is involved in the foregoing examples with respect to the District of Columbia, Delaware, Massachusetts, Connecticut, and Virginia, all of which show figures below 10 percent of earnings. This includes five of the nine jurisdictions covered by the two examples.

I trust these specific cases will be helpful to the subcommittee and that favorable consideration will be given to early passage of this essential legislation. I appreciate this opportunity to appear and will be glad to clarify any details that the members may wish to discuss.

Mr. WILLIAMS. Let me take this opportunity to express to the witnesses our appreciation for your cooperation and your kindness and consideration for the subcommittee with its many problems.

That concludes the hearings on this legislation.

(The following material was submitted for the record:)

STATE TAX COMMISSION,
Jackson, Miss., July 31, 1964.

Hon. JOHN BELL WILLIAMS,
Washington, D.C.

DEAR JOHN BELL: This letter is in regard to S. 1719 which has passed the Senate and is now in your subcommittee.

Although Mississippi does not have the withholding provision in its income tax law, we do have the provision that requires all companies to furnish information on salary and other income paid employees and this bill would eliminate this requirement for interstate transportation companies. We feel that we need every bit of information to assist us in the collection of taxes, and feel that this law would eliminate this source of information.

Of importance also is the position of the Federal Government taking such a large part in writing State laws. We are confident that our relations with adjoining States are sufficiently cordial that we can solve these interstate problems ourselves. This bill, to me, seems just another step by the Federal Government in preempting our rights and prerogatives.

Your kind consideration of these facts in your committee hearing will be appreciated. Drop by to see me some time when you are in Jackson.

With kindest personal regards, I am

Sincerely yours,

DEXTER BARR, *Chairman.*

STATE OF CALIFORNIA,
FRANCHISE TAX BOARD,
Sacramento, July 3, 1964.

Re S. 1719—House Committee on Interstate and Foreign Commerce.

Hon. JOHN E. MOSS,
House of Representatives,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN MOSS: Mr. Charles Conlon, executive secretary, National Association of Tax Administrators, has just informed me that during and subsequent to the preparation of our position on S. 1719, it was in fact passed on the Consent Calendar [1] without objection unbeknownst to those who have a concern in regard to this proposed legislation.

I understand that Mr. Conlon plans to prepare a statement for presentation to your committee based on the comments of the various State tax administrators.

For your information, our position is summarized below. A detailed statement, which is identified as exhibit A, is attached.

1. Over one-half of the State general withholding tax laws have been enacted within the last 5 years. Therefore, the States should be given a reasonable opportunity to solve the problem, if one exists, before Federal legislation is enacted.

2. Before this narrow area of State income tax law is preempted by Federal law the Advisory Commission on Intergovernmental Relations should be requested to ascertain the facts as to the scope of the problem and consider the feasibility of alternative solutions to whatever problem is found to exist.

3. If the bill is enacted without further study, it is suggested that it be modified as follows:

(*a*) That the provision exempting carriers from filing information returns or other reports for State tax purposes be deleted; and

(*b*) That it be limited to instances where the burden of compliance upon carriers and their employees is clearly disproportionate to the tax liability involved.

Yours very truly,

MARTIN HUFF, *Executive Officer.*

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[1] By the Senate.

SUPPORTING STATEMENT REGARDING S. 1719

1. State withholding was instituted by the State of Oregon in 1947. During the next 11 years 11 additional States enacted withholding tax laws. However, 16 States have required withholding since 1959. Therefore, over one-half of the 28 withholding tax States have put their withholding tax systems into operation within the last 5 years.

Of the States which have a withholding tax at least five exempt nonresident employees of common carriers. With the acceleration of withholding systems undoubtedly States will give more attention to a solution of whatever problems affect carriers and their employees as well as any others of mutual concern. Therefore, we suggest that Federal legislation at this time is premature. For this reason, we request that action on the bill be deferred until the States have had a reasonable opportunity to solve the problem, if one exists. If it is determined that a problem exists and the States fail to reach a satisfactory solution within a reasonable period of time Federal legislation may become necessary.

2. Before Federal legislation is resorted to, it is suggested that the Advisory Commission of Intergovernmental Relations be requested to ascertain the facts as to the scope of the problem and consider the feasibility of alternative solutions to any problem which may exist.

While we have not obtained a copy of the hearing before the Senate Commerce Committee and are not familiar with the testimony, some of the facts which should be developed are:

(*a*) The total number of employees and employers involved.

(*b*) The number of employees subjected to withholding in more than one State.

(*c*) Whether or not employees' addresses as shown on their employment records reflect their current State of residence or domicile.

(*d*) The number of employees which would be affected if, for example, the first $1,000, $2,000, or $3,000 earned by nonresident operating personnel is exempted from withholding or reporting requirements.

(*e*) Whether or not the provisions of the bill should be extended to other employees or employers.

(*f*) Whether or not some alternative might be developed which would enable States to obtain information essential to proper tax enforcement.

3(*a*). One of the tax administrator's most difficult tasks is to collect the tax due from nonresidents. These taxpayers seldom have permanent ties or assets within the State where they have earned their income; therefore, they may not be compelled to discharge voluntarily their tax obligation.

If employers are not required to report information concerning income of their nonresident employees who enter States in the normal discharge of their duties and thereby incur a tax liability, proper tax administration is seriously impaired. Without this vital information nonresidents will either avoid their just tax liability or tax administrators will be forced to adopt more complex and undoubtedly more costly enforcement techniques. For this reason we do not believe that tax administrators should be denied information returns.

3(*b*). Admittedly in many instances the burden of the cost of compliance on employers and employees is disproportionate to the tax involved. This, however, is not true where an operating employee earns substantially all of his income outside of his State of residence, and in particular if his State of residence is not a State which has imposed an income tax.

This State has not imposed a general withholding tax, but withholding is required on amounts paid to nonresidents in excess of the deduction allowed for personal exemptions. A review of our records discloses that none of the motor carriers have withheld tax on amounts paid to their nonresident operating employees and that the total amount withheld annually by rail and air carriers with respect to such employees is $8,000. It is our position that this obligation does not unreasonably burden the instrumentalities of interstate commerce which come within the provisions of the bill. Therefore, if the bill is enacted at this time withholding should be continued and information returns furnished where such requirements do not unduly burden employers and employees.

STATE OF MINNESOTA,
DEPARTMENT OF TAXATION,
St. Paul, Minn., July 21, 1964.

Hon. ANCHER NELSEN,
U.S. Congressman,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN NELSEN: I am writing to you, not as Minnesota Commissioner of Taxation, but as chairman of the Committee on Interstate Income Tax Problems of the National Association of Tax Administrators which is an organization of State taxing officials. This organization is very greatly concerned with Senate bill 1719 which was passed by the Senate on the consent calendar on the evening of June 19, 1964, and has now gone to the House Committee on State and Foreign Commerce, of which you are a member.

As passed by the Senate, the bill applies to employees of all interstate carriers—trucking, railroad, airline, and water—and provides that no part of the wages or the salary paid by any such interstate carrier to an employee shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence; nor shall such interstate carrier file any information return or other report for tax purposes with respect to such salary or wages with any State or subdivision thereof other than such State or subdivision of residence. (The States were not given an opportunity in the Senate committee hearings to adequately express their objection to this bill and we sincerely hope that such an opportunity will be given to us by the House Committee on Interstate and Foreign Commerce.)

It is the general feeling of tax administrators that this bill, if enacted into Federal law, would constitute a serious encroachment upon State taxing power. We believe that such legislation could easily be expanded later to apply to interstate corporations and thus bring about a further restriction upon State taxing powers. I am enclosing copies of the statements which have been prepared by the executive secretary of the National Association of Tax Administrators relative to this bill, and I am sure you can see from these statements why the various States are so greatly concerned about this legislation.

Minnesota's income tax law provides that nonresident employees of interstate carriers be subject to our State income tax withholding, and passage of this bill would reduce Minnesota's revenue under our withholding law by an estimated $500,000 a year.

In a memorandum directed to Governor Karl F. Rolvaag on May 28, I called attention to Senate bill 1719 and asked that the Governor contact Senator Humphrey, Senator McCarthy, and other members of the Minnesota congressional delegation with regard to this pending legislation. I did not receive an acknowledgment of this memorandum and directed another memorandum to the Governor on July 7 in which I called attention to the fact that Senate bill 1719 had passed the Senate without an objection from a single Senator.

Because we are aware of the fact that there is a great deal of pressure upon Congress now to pass legislation which has been held up by the civil rights debate, we are very much concerned with the possibility that this bill, which so seriously restricts the States' taxing powers, might become law. Therefore, we respectfully ask that you, as a member of the House Committee on Interstate and Foreign Commerce, prevail upon the members of your committee to give representatives of the National Association of Tax Administrators and other State officials, who request it, an opportunity to be heard on this bill. I would also appreciate it if you would keep me advised, by telephone if necessary, of the progress of this bill in your committee.

Very truly yours,

ROLLAND F. HATFIELD,
Chairman, Committee on Interstate Income Tax Problems, National Association of Tax Administrators.

VIEWS OF STATE TAX COMMISSIONERS ON S. 1719 [1]

The tax commissioners of the following States have expressed their strong opposition to S. 1719 both on principle and because it would eliminate desirable enforcement features:

Alabama	Louisiana	Oklahoma
Alaska	Maryland	Oregon
California	Massachusetts	South Carolina
Colorado	Minnesota	Vermont
Delaware	Missouri	Virginia
Iowa	New York	
Kansas	North Carolina	

However, all agreed that to the extent that there were demonstrable hardships attributable to the multiplicity of withholding requirements, this condition should be remedied by interstate cooperation through reciprocity agreements on withholding requirements, a number of which are already in effect.

BAD PRECEDENT

The tax administrators of many of these States made the point that this legislation was undesirable in principle and that its enactment would serve as a precedent for special tax treatment of other groups of nonresidents who are employed in income tax States and subject to taxation therein. The amendment of S. 1719 prior to passage by the Senate so as to take in two additional groups of nonresident employees—those engaged in railroad and water carriage—is an example of what might be expected.

"HARDSHIP" NOT DEMONSTRATED

It was pointed out also that there appears to be no need for sweeping legislation of this kind; that the characteristic application of withholding requirements did not automatically constitute a "hardship" situation which warrants congressional action.

Mr. Paul F. Liniger, chairman of the Oregon Tax Commission, said that the Oregon withholding law—the first one enacted by a State—has been in effect since 1947 and that the commission has had no protests with respect to the operation of its withholding provisions that required more than merely an explanation of the law's application and certainly nothing that would indicate that the withholding requirement was such an onerous one as to require the introduction of S. 1719.

UNWARRANTED EXEMPTION

Actually, in some metropolitan border situations the practical consequences of S. 1719 would be to provide wholly unwarranted tax exemptions. This would be so, for example, in a situation where an employee based in a border city in State A derives 95 percent of his income from services performed wholly in neighboring State B on a regular daily trip basis. Under present law, the employer withholds the tax due State B. Under S. 1719 he would not withhold tax and would not even file an information return. Neither of these requirements could possibly be characterized as burdensome in any practical sense let alone being sufficiently serious as to warrant action by Congress. Yet, because of the meat-ax approach embodied in S. 1719 both these necessary requirements are ruled out.

NEED TO FIND FACTS

Several tax commissioners supported the suggestions that before any legislation along these lines were enacted, the Advisory Commission on Intergovernmental Relations should be requested to determine the extent to which there are actual hardship situations in this area and the feasibility of eliminating them through interstate reciprocal arrangements along the lines of many now in effect, for example, in Indiana, Maryland, North Carolina, South Carolina, and West Virginia, among others. This approach is suggested as much more

[1] These comments were made with respect to S. 1719 as originally introduced and prior to its passage in the Senate when it was amended to include two additional groups of nonresident employees.

desirable than that proposed in S. 1719 which in addition to being a bad precedent would also deprive the States of practical enforcement powers through the elimination of both the withholding and information return requirements across the board as far as nonresident employees of transportation companies are concerned.

EFFECT OF BILL ON ENFORCEMENT PROCEDURES

A number of the tax administrators including some who would not oppose the elimination of withholding, said that in any event the bill should impose on the employer the responsibility of maintaining accurate and current records on the actual residence of the employee. They point out that S. 1719 provides that the employee's statement is governing and that if he lists as his residence a State which does not impose an income tax, there will be no withholding and no information return filed in any State. While the bill does not purport to affect the employee's liability for taxes in any States, the practical effect may be that neither the State of his residence nor any other State will have information as to the source of earnings. Therefore, if in such a situation the employee does not voluntarily file a return, there is not much the tax official can do to identify and locate such a taxpayer and collect the tax from him.

The general feeling about the impact of the bill is summed up very well by Mr. Joseph H. Murphy, president of the New York Tax Commission, who said that the proposed elimination of the withholding and information requirements would so hamper the administration of State income tax laws as to constitute an unwarranted impairment of the rights of States to impose taxes within their respective jurisdictions.

WITHHOLDING IS EFFECTIVE

Another point mentioned by the tax commissioners also needs to be considered—the suggestion that the real objection to withholding procedures is not that they are "burdensome" but rather that they are effective—that they make it possible to collect income taxes that previously were evaded by nonresidents. For example, Tax Commissioner Leo Diehl, of Massachusetts reports that the inauguration of withholding in that State in 1959 more than doubled the number of nonresident taxpayers filing returns—from 17,977 to 37,136—and increased the income tax revenue from that source by $500,000. This is characteristic of the experience of most of the other States in respect to the improvement in nonresident tax compliance that was achieved by the introduction of withholding.

OTHER VIEWS

Four of the States where a general withholding law is in effect would not oppose the enactment of S. 1719 insofar as the elimination of the nonresident withholding requirement is concerned. These States are Indiana, Utah, West Virginia, and Wisconsin. However, all except Wisconsin indicate their opposition to the principle of the legislation and suggest that interstate reciprocity action could solve any real compliance problems in this area. Indiana and West Virginia already have reciprocity agreements with other States and legislation authorizing such agreements has been passed by the Wisconsin Legislature and is before the Governor for action. By regulation, the State of Utah provides that withholding is not required on wages paid by licensed common carriers to employees who are bona fide residents and domiciliaries of another State and who engaged in services that originate outside Utah and either terminate in or pass through Utah.

The withholding restriction would have no effect in the District of Columbia because the tax there is imposed solely on the basis of residence. Because of its geographical location, Hawaii would not be affected by the provisions of S. 1719 relating to trucking. As in the case of Utah, an existing regulation dispenses with the withholding requirement on wage and salary payments to ship and aircraft crew members. Mississippi indicates it would not oppose the bill although the withholding provision would have no practical effect on that State because it does not require withholding in any circumstances.

The foregoing comments, it should be noted, were made prior to the passage of S. 1719 by the Senate when two new groups of employees were added to those previously covered by the bill.

SUMMARY

Insofar as remedial action is called for, the comments of most of the responding States might be summarized as follows: On the whole, it would be the best policy to permit the States to work out some de minimis policy or reciprocal policy with respect to withholding and information return requirements in the carrier field so that undue compliance burdens are done away with as they already have been in many States, without at the same time eliminating withholding and information return requirements in situations where the only effect of the legislation would be to make it practically impossible to collect income taxes from some nonresidents. It is worthy of note in this respect that the States have already worked out reciprocal credit arrangements to prevent actual double taxation in situations where both the State of residence and the State of earnings impose an income tax. On the basis of this record, they presumably can work out a remedy to the extent there is one needed in this situation, too.

STATE OF ALABAMA,
DEPARTMENT OF INDUSTRIAL RELATIONS,
Montgomery, July 30, 1964.

Hon. JOHN BELL WILLIAMS,
Member of Congress,
House Office Building, Washington, D.C.

DEAR MR. WILLIAMS: I understand that hearings are scheduled before your committee August 4 and 5 on H.R. 10743, and I would like to make the following statement with reference to this legislation:

The Alabama unemployment compensation law places a tax on the employee wages and makes the employer responsible for withholding this tax. If for any reason the employer fails to withhold the tax, then the employer is liable for this tax. If this bill is interpreted to apply to withholding unemployment compensation tax, I would urge your amendment to exclude this tax.

It is my understanding that sponsors of the legislation were primarily concerned with the States or local governments withholding income tax from workers who were not residents of that State. I do not believe that there is any effort being made to limit the employer from withholding unemplayment compensation tax regardless of whether he is a resident of that State.

Committee's consideration of this will be deeply appreciated.

Sincerely yours,

REX D. ROACH, *Director.*

STATE OF DELAWARE,
STATE TAX DEPARTMENT,
Wilmington, Del., August 4, 1964.

Hon. W. E. WILLIAMSON,
Clerk, House Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D.C.

DEAR MR. WILLIAMSON: We are in receipt of an acknowledgement of our letter of July 23, 1964, addressed to Hon. Harris B. McDowell, Jr., regarding our views on S. 1719. Mr. McDowell suggested in his reply that we submit to you a short summary of our views as part of the hearing record on this bill.

The State of Delaware is definitely opposed to the enactment of such an amendment as proposed in S. 1719.

While the proposition very innocently started out as applicable only to common carriers we understand several other categories have already asked to be covered by the bill.

Passage of such a suggestion would open up a Pandora's box to nonresident taxpayers for tax avoidance, if not evasion, and definitely would be discriminatory to special groups.

30 Del. C., section 1117(7), defines a taxable as every natural person who is a nonresident of the State of Delaware to the extent that such person received income during the taxable year as compensation for personal services rendered in the State of Delaware as an employee in the conduct of the business of an employer and/or to the extent that such person derived net profits from a pro-

fession, vocation, business, trade, or commerce conducted in the State of Delaware.

Several of the Nation's largest industries have their principal offices located within Delaware. Included on the payrolls are executives, chemists, attorneys, accountants, physicians, and other professional personnel. Many of the aforementioned are residents of contiguous States, namely, Pennsylvania, New Jersey, and Maryland.

Delaware has a withholding tax and employers are required to withhold Delaware income tax on resident and nonresident employees. Forms W–2 are submitted by the employers which forms are cross-checked against returns filed by the employees. New Jersey and Pennsylvania do not have an income tax and many of their residents employed in Delaware object to paying the Delaware income tax.

Should S. 1719 be enacted and the employer would no longer be required to withhold Delaware income tax or furnish forms W–2 due to the employee's nonresidence the impact on our entire tax structure is quite evident. In many instances present resident taxpayers would give serious thought to moving to the nontax States to avoid the payment of Delaware taxes. This same situation no doubt would be applicable to other income-taxing States.

Mr. Charles F. Conlon, executive secretary of the National Association of Tax Administrators, has been advised of our position in this matter and no doubt will refer to same in his presentment before your committee.

If we can be of any further assistance, please advise.

Very truly yours,

E. H. DAVIS, *Tax Commissioner.*

OFFICE OF TAX COLLECTOR,
Boise, Idaho, July 24, 1964.

Hon. COMPTON I. WHITE,
House of Representatives,
Washington, D.C.

DEAR MR. WHITE: I am informed that hearings on S. 1719 are scheduled for August 4 and 5 before the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce. I believe that Congressman Williams of Mississippi is chairman of the subcommittee.

This bill was placed on the calendar of the Senate immediately after a committee report and before State tax administrators had a chance to relay their opinions and thoughts on this matter to their respective Senators. This bill would have a tendency, if enacted, to relieve some people from paying any State taxes and would contribute to the inequity of tax application.

For example, I know of an employee of the Camas Prairie Railroad, which is headquartered in Lewiston, Idaho, who lives in Clarkston, Wash., and, under the provisions of this bill, we would receive no withholding tax on this man nor would we receive an information return on his earnings. Therefore, we would have no record to call our attention to the fact that we had a nonresident with tax liability to the State of Idaho. There are many other situations similarly applicable to trucking firms and the soon-to-be completed waterways transportation activity on the Columbia and Snake Rivers to Lewiston.

At the present time, duplication of tax on the same income is avoided since all States with income tax programs allow a deduction of tax paid to another State. It seems to me that S. 1719 is entirely a wrong approach to correction of any problems which might exist, since those problems can be and, in most cases, are already being handled through agreements between States and cooperative effort between State tax departments.

Mr. Charles F. Conlon, executive secretary of the National Association of Tax Administrators, will appear in opposition to this bill, and we join in the statements that he will make, along with tax administrators of a number of other States.

If you see this situation as we do and I hope you do, I trust that you will convey your opinion to Congressman Williams in support of our position.

Wishing you all the best.

Very truly yours,

FLOYD WEST.

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF REVENUE,
Frankfort, August 21, 1964.

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

DEAR CONGRESSMAN WILLIAMS: Your committee is presently studying proposed legislation S. 1719, and the purpose of this letter is to register strong opposition to passage of this bill. Unfortunately, S. 1719 passed the Senate with little attention having been given to it by the States. I hope this situation can be corrected, however, before your committee by presentation on the part of the various States of the many reasons why S. 1719 would be a disservice to taxpayers generally as well as to the States.

This proposal is highly undesirable in principle, as it provides special tax treatment for certain limited groups and would be an exceedingly bad precedent for other special interests seeking special tax treatment. Based upon Kentucky's experience with income tax withholding since July 1, 1954, there is no evidence to support the claim that withholding automatically constitutes a hardship situation warranting congressional action. This view is concurred in by other States having long experience with withholding.

If such legislation should be enacted, it would, under certain conditions, provide completely inequitable tax treatment between taxpayers. To illustrate, consider the case of two Greyhound bus drivers, one living in Cincinnati, Ohio, and driving a daily Cincinnati, Ohio, to Lexington, Ky., round trip and the other living in Lexington, Ky., and driving a daily Lexington, Ky., to Cincinnati, Ohio, round trip. The employer, the Greyhound Corp., of which the southern division is located in Lexington, Ky., would withhold from its driver living in Lexington, Ky., and exempt from withholding its driver living in Cincinnati, Ohio. In case of both drivers, practically the entire mileage driven would be in Kentucky.

In addition to the obviously unfair treatment of the two taxpayers mentioned in the example, Kentucky could have great difficulty in enforcing and collecting its tax from the driver residing in Cincinnati. Furthermore, such a taxpayer might well find it difficult to pay a lump-sum tax liability at the end of the year due by reason of the employer not being required to withhold.

The provision of S. 1719, to the effect that the taxpayer's statement as to his State of residence is governing, would be an open invitation to tax evasion for such persons as would choose to list their State of residence as one that does not impose an income tax. The burden upon the States to police such a loose situation would be intolerable. In effect, the States would be placed in the position of simply accepting voluntarily filed returns and "contributions" from nonresident taxpayers.

It is a matter of record that the various States are vitally concerned with the subject matter involved in S. 1719, and major progress has been made in recent years toward resolving problems involving unnecessary burdens upon taxpayers and multistate employers. To document this point, Kentucky has in effect reciprocal credit arrangements with Indiana, West Virginia, Virginia, and Missouri—the only four of its adjoining neighbor States having income tax laws.

It is sincerely hoped that your committee will give thoughtful consideration to the many objections to S. 1719, and will, if it reports, submit an unfavorable report upon this proposed legislation. The problems inherent in its passage should not be imposed upon taxpayers or the States.

Sincerely,

J. E. LUCKETT, *Commissioner of Revenue.*

STATE OF NEW YORK,
DEPARTMENT OF TAXATION AND FINANCE,
August 11, 1964.

To: The Subcommitee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce of the U.S. House of Representatives.
Re position on S. 1719 and H.R. 10743.

The New York State Department of Taxation and Finance is opposed to both S. 1719 and H.R. 10743. Both bills would amend the Interstate Commerce Act

to prohibit the withholding of State income taxes from wages or salaries paid to certain employees of carriers, S. 1719 covering railroad carriers and water carriers in addition to motor and air carriers covered by H.R. 10743. The bills also would prohibit the filing of information returns or reports with respect to such wages or salaries with any State or subdivision other than the State or subdivision of the employee's residence.

As the employers covered by the bill will remain subject to the withholding and information report filing requirements of the U.S. Internal Revenue Code, it is difficult to see how the rather limited relief with respect to State income taxes offered by S. 1719 and H.R. 10743 can be viewed as a valid regulation of commerce. It seems apparent that the chief beneficiaries of this proposal would be a relatively small class of individual employees who would, for most practical purposes, be exempted from the payment of income taxes legally due on a nonresident basis to States in which they earn their income. The proposed elimination of the withholding and information requirements would so hamper the administration of State income tax laws as to constitute an unwarranted impairment of rights of the States to impose taxes within their respective jurisdictions.

New York's requirements for withholding of taxes from nonresident's wages or salaries are certainly not burdensome to the employee and their flexibility ease the burden upon the employer. With respect to the category of employee included in these bills, New York regulations provide that the employer may withhold in that proportion which total days worked in New York bears to total working days or the employer may withhold on the basis of the previous year's experience. The regulations also provide that no withholding need be made where it appears that the wages for services rendered in New York will not exceed the employees' personal exemptions. In general, it has been our experience that employees prefer exact withholding and sometimes initiate complaints when employers are not withholding or are underwithholding. Thus, assuming that the employees covered by these bills will discharge their obligations to New York, they will receive no benefit from the bill.

It is difficult to assess the burden of withholding and preparation of information returns which the employer is required to shoulder. Certainly, we may assume that multiple State withholding requirements add to the burden of withholding to some degree—but not necessarily to a disproportionate degree. Many employers, especially interstate employers, are making use of advanced payroll processing methods involving the use of high speed electronic data processing equipment. The trend is toward the use of this equipment which eases the burden greatly because the addition of several payroll items produces no strain on the machines in use. In some of the interstate industries, high speed electronic data processing equipment is reducing the number of employees of the industry. It would seem anomalous to pass this bill solely on the basis of reducing the burden on employers at a time when our progressive technology is eliminating much of the burden claimed.

To recapitulate, these bills would inconvenience the honest employee who would continue to discharge his tax obligations; withholding is an acceptable burden upon employers, not demonstrated to be unreasonable in the cases in question; furthermore, the withholding burden on employers is being greatly eased because of advanced payroll techniques. Finally, of course, the revenues of the States would be adversely affected because tax evasion would be encouraged.

THE STATE OF UTAH,
STATE TAX COMMISSION,
Salt Lake City, July 29, 1964.

Mississippi Congressman WILLIAMS,
Chairman, Subcommittee on Transportation and Aeronautics,
U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN WILLIAMS: Reference is made to the forthcoming hearings before your subcommittee in connection with S. 1719 which deals with withholding and information returns to be filed in the various income tax States by interstate commerce carriers.

The State of Utah adopted a general withholding income tax law effective July 1, 1959, and we have had no difficulty in administering our law in connection with withholding and information returns filed by interstate commerce carriers, nor have we had any complaints from representatives in the carrier field.

We have a regulation on this problem which provides as follows:

"Withholding will not be required in the case of wages paid by licensed common carriers, or employers with similar type business operations, to employees who are bona fide residents and domiciled in a State other than Utah and who engage in services that originate outside of Utah and either terminate in or pass through Utah."

In the State of Utah we allow a resident taxpayer credit for taxes paid to other States as a nonresident, and therefore there is no double taxation involved. We are opposed to the passage of S. 1719, and feel that the States should work out their own problems with the carriers on this matter, and should not have any Federal intervention.

On the whole, it appears to us that it would be the best policy to permit the States to work out some method with respect to withholding and information return requirements in the carrier field so that undue compliance burdens are done away with, as they already have been in many States without, at the same time eliminating withholding and information return requirements in situations where the only effect of the legislation would be to make it practically impossible to collect income taxes from some nonresidents. It is worthy of note in this respect that the States have already worked out reciprocal credit arrangements to prevent actual double taxation in situations where both the State of residence and the State of earnings impose an income tax. On the basis of this record, they presumably can work out a remedy to the extent there is one needed for withholding and information returns in the carrier field.

We hope you will convey our views to the entire committee, and that the proposed bill will be defeated.

Respectfully yours,

ALLAN M. LIPMAN, *Commissioner.*

CUYAHOGA FALLS, OHIO, *August 22, 1964.*

Chairman JOHN BELL WILLIAMS,
Transportation Subcommittee, House Interstate Commerce Committee, House of Representatives, Washington, D.C.

GENTLEMEN: It was with a great deal of regret to learn that withholding tax exemption bill S. 1719 must die in committee. Both as a taxpayer and employee of the transportation industry, my personal interest was involved; however, as a firm believer of State rights, this is actually defeating ourselves in the States battle for rights.

The principal reason a request has been made at the Federal level is the very nature of a ridiculous method of attempting to apply multiple State income taxes to citizens involved in interstate traffic. These taxpayers need help and the States attempting to squeeze more taxes through the method in question, won't render relief. The alternative is to look to the national level.

The citizens of this country have accepted withholding taxes because they are easily paid and readily understandable, whether the tax be on income at municipal, State, or Federal level. To add proration of tax on income by State is not only confusing and practically impossible to administer, but cannot be anything more than an estimate.

The burden on the revenue departments of the States, the employer, and the employee certainly warrants the passage of this bill.

It is, of course, preferable that the States involved organize a joint committee, and put an end to this silly effort of proration. If not, the taxpayer has, and will continue to clamor to the Federal Government for relief. You must remember, the objection is not necessarily to the tax dollar, but the confusion and uncertainty of paying and reporting the same tax dollar to two, three, or more revenue departments.

Consider, too, the employer who must administer the proration. The method of deduction, the applicable rate, and the reporting. All are virtually unmanageable even in this day of computers. Nearly all employees of interstate operations are employed by State and Federal controlled entities, such as railroads, trucking, airlines, etc. Must these industries request rate relief to defray the additional costs involved? Do not belittle the administrative costs as they are of no small consequence.

I do hope reconsideration be given to bill S. 1719. Help is needed by the employee, and the employer. Eliminate the need for cry of assistance by all to

the Federal level. Confusion at the State level, brought on by the States, leads the citizens on the road to Washington.

Yours,

GENE W. WINTERS.

WALLACE METAL PRODUCTS, INC.,
Richmond, Ind., August 18, 1964.

Hon. JOHN BELL WILLIAMS,
U.S. House of Representatives,
Washington, D.C.

SIR: This letter is in regard to the House Interstate and Foreign Commerce Committee on H.R. 10743 and S. 1719 bill already passed by Senate.

We are manufacturers of metal casket shells, and have our own trucks for the purpose of hauling the finished product over the entire United States of America. We travel from coast to coast and from Florida to Canada. This, of course, makes us a private carrier.

In our operation we must go through most of the States at one time or another. The way bills S. 1719 and H.R. 10743 are explained to us, they certainly would create a hardship on operations such as ours. This would entail an enormous amount of additional recordkeeping. We now are compelled to keep records and pay tax on fuel used in crossing a large number of the States that we travel through.

If these bills are put into effect it isn't hard to conceive of every State government passing a withholding law forcing us to withhold an additional State income tax from any driver based on the amount of his income earned while he was in any one of these States. This would not only force our company to keep additional records, but we also would be forced to deduct this tax from the driver's pay and then send it to the treasurer of said State. We believe, too, that this would be discriminating against another group of citizens.

In view of the additional cost to any company in this type of operation (labor in additional records) postage, and any unforeseen expenses, we are urging that this bill be amended so that private truck operators will also be exempt.

Sincerely yours,

FRED RADKE.

AUGUST 7, 1964.

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

DEAR MR. WILLIAMS: The United States Wholesale Grocers' Association, in behalf of its member firms who operate trucks in the course of their business, respectfully urges your committee to amend H.R. 10743 (S. 1719) so the proposed new section 226A of the Interstate Commerce Act will be applicable to private truck operators as well as to common and contract carriers.

We wish to endorse the statements presented before your committee this week by the National Association of Wholesalers and the Private Truck Council of America, Inc. We have taken this means of making our views known to you in order to conserve the committee's time and to avoid needless repetition.

May we ask that this letter be made a part of the official record of hearings before your Subcommittee on Transportation and Aeronautics.

Sincerely yours,

HAROLD O. SMITH, Jr.,
Executive Vice President.

LAKE CARRIERS' ASSOCIATION,
Cleveland, Ohio, August 7, 1964.

Re S. 1719, a bill to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salaries of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence.

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

DEAR CHAIRMAN HARRIS: It is understood that the Committee on Interstate and Foreign Commerce now has pending before it the Senate passed bill, S. 1719.

section 3 of the bill seeks to prohibit, in certain instances, withholding for State tax purposes from wages paid any employee by a water carrier subject to part III of the Interstate Commerce Act. In so doing, however, section 3 seems to recognize such withholding as valid with respect to the State or subdivision of the employee's residence. This is in conflict with Public Law 86–263 (46 U.S.C.A. 601) which provides that no part of the wages due or accruing to a master, officer, or any other seaman who is a members of the crew on any vessel engaged in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade shall be withheld pursuant to the provisions of the tax laws of any State, territory, possession, or commonwealth or a subdivision of any of them.

The legislative history of Public Law 86–263 (S. Rept. No. 433, June 25, 1959) demonstrates that it is the consensus of the Congress that the costly and complex bookkeeping imposed on seamen and shipowners by multiple State withholding laws is all out of proportion to the benefit to the States in the case of seamen. Restricting withholding to the State of residence does not relieve shipowners of this burden.

Member companies of Lake Carriers' Association operate a total of 234 American-flag vessels in Great Lakes trade and commerce. In all, the American-flag Great Lakes fleet is crewed by some 9,000 seamen. These seamen hail from at least 48 out of the 50 States. Moreover, Great Lakes seamen are not signed on before shipping commissioners and do not collect the major portion of their wages at the conclusion of the voyage. Instead, most payrolls are made up aboard the vessel and the wages paid to the man directly by the master. To withhold for tax purposes according to the laws of the particular State of a seaman's residence under these conditions, even for carriers subject to part III of the Interstate Commerce Act, would be an impossible task.

The Senate Report on S. 1719 (S. Rept. No. 1076, June 12, 1964) shows that 37 States now impose income taxes on individuals of which 30 require withholding at the source. Due to the makeup of Great Lakes vessel crews, it is conceivable that, in making up the payroll for a single vessel, it could be necessary to comply with the withholding requirements of all 30 States. This does not even consider the withholding requirements of the 26 cities stated in the Senate report which impose income taxes and require withholding.

It is not the purpose of this association to thwart the taxing authority of the several States and it is not asked that seamen be relieved from their obligation to pay taxes in their State of residence. It is, however, urged that section 3 of S. 1719 be stricken from the bill because of the administrative burden it would place on an already overburdened industry. Public Law 86–263, when enacted, was vitally needed legislation. The effectiveness of that legislation should not now be impaired by enactment of section 3 of S. 1719.

It is requested that this letter be made a part of the record on S. 1719.

Very truly yours,

J. A. HIRSHFIELD,
Vice Admiral, USCG (Ret.), President.

PRIVATE TRUCK COUNCIL OF AMERICA, INC.,
Washington, D.C.

Re S. 1719, withholding tax exemption—Regulated interstate carriers.

HON. OREN HARRIS,
Chairman, House Interstate and Foreign Commerce Committee,
New House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: The Private Truck Council of America, Inc., is of the opinion that, basically, the theory and purpose of S. 1719 has considerable merit and justification.

If the purpose of the bill, however, is, as stated in Senate Report No. 1076, "to remove the substantial burden to interstate commerce which the imposition of withholding taxes on nonresident employees of those carriers by States and local subdivisions has caused," there is an apparent omission which your committee may desire to cure by a simple amendment.

The omission relates to a failure to include an exemption for "private carriers of property by motor vehicle." The "burden to interstate commerce" is precisely the same whether reference be had to "motor carrier" as defined in section 203(b)(16) or to "private carrier of property by motor vehicle" as defined in section 203(b)(17), part II, Interstate Commerce Act.

The council therefore respectfully requests that this bill be set for hearing in order that opportunity may be had to appear in general support of it and to suggest an amendment which will correct the omission heretofore mentioned.

The council is a nonprofit association of members of industry who operate trucks in the course of their producing, manufacturing, servicing, or distributive businesses, and of affiliated associations of such members.

Respectfully submitted.

JOHN C. WHITE, *Managing Director.*

AFL–CIO MARITIME COMMITTEE,
Washington, D.C., August 11, 1964.

Re S. 1719 and H.R. 10743.

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

DEAR MR. WILLIAMS: Our attention has been directed to S. 1719, which passed the Senate on June 19, 1964, and is now pending before your subcommittee along with H.R. 10743, its companion bill in the House, on which we understand hearings are presently being held.

S. 1719 as it passed the Senate proposed to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt the wages and salaries of employees of railroads, motor carriers, water carriers, and air carriers engaged in interstate commerce, from withholding and reporting for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence.

We are in accord with the general purposes of this legislation, so far as it applies to modes of interstate transportation other than water carriers. Railroads, motor carriers, and air carriers are presently required by certain State and municipal tax laws to withhold and report for tax purposes the wages and salaries of their employees if the wage or salary is payable to the employee while located in that particular State or municipality. As a result, railroads, motor carriers, and air carriers have been heavily burdened with multiple State and municipal withholding and reporting requirements and it is the purpose of this act to remove this multiple burden. Sections 1, 2, and 4 of the proposed legislation respectively will permit rail, motor carriers, and air carriers to continue to withhold and report wages and salaries solely to the State or subdivision of residence.

However, the present situation is entirely different with regard to water carriers engaged in interstate commerce. They are not permitted by Federal law to withhold from wages or salaries of any of their employees who is a member of the crew of one of their vessels engaged in interstate or foreign commerce.

Public Law 86–263, approved September 14, 1959, amended section 12 of the act of March 4, 1915 (46 U.S.C. 601) by adding thereto the following clause:

"*And provided further*, That no part of the wages due or accruing to a master, officer, or any other seaman who is a member of the crew on a vessel engaged in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade shall be withheld pursuant to the provisions of the tax laws of any State, Territory, possession, or Commonwealth, or a subdivision of any of them."

This language exempts the wages of all seamen from withholding pursuant to the tax laws of any State, including the State of employee's residence. However, section 3 of S. 1719 would permit the withholding by water carriers of taxes due the State of residence of seamen on vessels of water carriers engaged in interstate commerce and subject to part III of the Interstate Commerce Act.

So far as water carriers are concerned, section 3, instead of relieving them of the burden of withholding and reporting under State or municipal tax laws, would actually increase their burden and make them withhold from the wages of their seamen employed on a vessel engaged in interstate commerce and report to the State of residence of such seamen if said State of residence had such tax requirements.

It is our contention that section 3 of S. 1719 is inconsistent with the language and purpose of this 1959 statute. As stated in Senate Report 433 on S. 1948, 86th Congress, which became Public Law 86–203, the very purpose of the enactment of this 1959 statute was to "clarify the apparent conflict between section

601, title 46, United States Code, which protects seamen's wages from attachment, encumbrance, or arrestment and the recently enacted provisions of State law which require withholding of local taxes from the wages of seamen," and also to relieve the seamen and the steamship companies of the accounting burden imposed by various State and municipal tax laws.

It will be seen from the above that S. 1719 not only is in direct conflict with the 1959 statute which received thorough consideration by the Congress with hearings on both sides prior to its enactment, but also in making seamen employed in interstate commerce, presently exempt from any withholding of taxes under State laws, subject to taxes due their State of residence, is at cross purposes with the stated objectives of Public Law 86–263.

For these reasons, the AFL–CIO Maritime Committee, representing major seagoing and shipyard unions, is opposed to the provisions of section 3 of S. 1719, as passed by the Senate, and respectfully asks that said section 3 be deleted from the bill because it is in conflict with present law. We would like to have this letter made a part of the record of the hearings on the pending bills.

Respectfully,

HOYT S. HADDOCK,
Executive Secretary.

AMERICAN MERCHANT MARINE INSTITUTE, INC.,
Washington, D.C., August 4, 1964.

Re S. 1719, H.R. 10743.

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

DEAR MR. WILLIAMS: The American Merchant Marine Institute and the Pacific American Steamship Association, which joins in this letter, are trade associations representing the overwhelming majority of the owners and operators of American-flag ships in the domestic and foreign trade of the United States. On behalf of our member companies we wish to register our opposition to the enactment of section 3 of S. 1719, in the form in which it passed the Senate. This is a bill to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under laws of States or subdivisions thereof other than the State or subdivision of the employee's residence. Section 3 of S. 1719, which would amend title III of the Interstate Commerce Act relating to water carriers, did not appear in the bill in the form in which it was originally introduced but was added prior to Senate passage.

We recognize the apparent worthy objective of S. 1719, which is to "remove the substantial burden to interstate commerce which the imposition of withholding taxes on the nonresident employees of these carriers by State and local subdivisions has caused" and we do not question its desirability for other industries. Each industry has its own problems in this area which may well require different solutions. However, section 3 of S. 1719 would appear to be unnecessary and in conflict with the provisions of Public Law 86–263, which was enacted in 1959 and which prohibits State and local governments from withholding for tax purposes on the wages of seamen on vessels engaged in foreign, coastwise, intercoastal, interstate, or noncontiguous trade, at least to the extent that this section of the bill would permit withholding on wages of employees on vessels of water carriers subject to the provisions of part III of the Interstate Commerce Act.

Public Law 86–263, approved on September 14, 1959, amended section 12 of the act of March 4, 1915 (46 U.S.C. 601), by adding thereto the following clause:

"*And provided further*, That no part of the wages due or accruing to a master, officer, or any other seaman who is a member of the crew on a vessel engaged in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade shall be withheld pursuant to the provisions of the tax laws of any State, Territory, possession, or Commonwealth, or a subdivision of any of them."

This language exempts the wages of all seamen, including those on vessels engaged in interstate commerce, from withholding pursuant to the tax laws of any State, including the State of the employee's residence. On the other hand

section 3 of S. 1719 would permit withholding by the State of residence of seamen on vessels of water carriers subject to part III of the Interstate Commerce Act. Thus, instead of relieving the burdens on interstate commerce, section 3 would actually create new problems for the maritime industry by making employees presently exempt subject to withholding under State law. In this connection, it should be borne in mind that the enactment of Public Law 86–263 in 1959 was actually instigated by the action of the important maritime States of New York and Maryland in enacting withholding provisions in their income tax laws that affected seamen's wages, in particular those of seamen residents of those States.

As was stated in Senate Report No. 433, dated June 25, 1959, the purpose of Public Law 86–263 was twofold, first, to "clarify the apparent conflict between section 601, title 46, United States Code, which protects seamen's wages from attachment, encumberance, or arrestment and the (then) recently enacted provisions of State law which require withholding of local taxes from wages of seamen" and, second, to "relieve the seamen and the steamship companies of the accounting burden" imposed by State and local taxation. Section 3 of S. 1719 would be at cross purposes with both these objectives.

As appears from both Senate Report No. 433, which accompanied the 1959 legislation, and Senate Report No. 1076, which accompanied S. 1719, this type legislation does not impair the general taxing authority of State and local governments, nor will it relieve the affected employees of their liability to pay taxes properly due.

Hence, concern for the taxing power of the States would furnish no warrant for restoring such withholding authority to the State of the employee's residence in the limited case of seamen employed by water carriers subject to part III of the Interstate Commerce Act as covered by section 3 of this bill.

For the foregoing reasons we respectfully urge that section 3 of S. 1719, as it passed the Senate, be deleted from the bill. We ask that this letter be made a part of the written record on these bills.

Sincerely,

ALVIN SHAPIRO.

STATEMENT OF LESTER J. DORR, EXECUTIVE SECRETARY, THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

My name is Lester J. Dorr. I am executive secretary of the National Industrial Traffic League. This statement is presented in the interest of the members of that league with respect to S. 1719 and H.R. 10743.

The National Industrial Traffic League is a nationwide organization of shippers; its membership also includes chambers of commerce, boards of trade, and similar commercial organizations whose members likewise have a substantial interest in transportation matters. The league has no carriers in its membership. It represents and expresses the interest of those who actually ship and receive freight, the payers of transportation charges. Its membership is drawn from all parts of the United States and includes practically every line of industrial and commercial activity.

Many members of the league operate motor vehicles in the furtherance of their primary business activities, and come within the definition of "private carrier or property by motor vehicle" as set out in section 203(a) of the Motor Carrier Act. They are subject to regulation by the Interstate Commerce Commission to the extent provided in section 204(a)(3) of that act. In conducting such operations, employees on motor vehicles commonly operate in more than one State, often in many States, in the course of a single trip or during a single day or week.

S. 1719 would amend various parts of the Interstate Commerce Act with respect to the employees on vehicles of various types of carriers. The league is concerned with the amendment to part II relating to motor carriers. Section 2 of the bill establishing a new section 226A of the Interstate Commerce Act now is applicable to any motor carrier. By definition that phrase covers only for-hire motor carriers, common or contract, and does not cover a private motor carrier. This may be only an oversight, but the league asks that if the bill be enacted into law the coverage of section 226A be extended to private as well as for-hire motor carriers. The withholding and reporting provisions of the

tax statutes of the various States and subdivisions are just as burdensome to interstate commerce, to the carrier, and to the affected employee, without regard to whether that motor carrier be for-hire or private.

The report of the Senate committee on S. 1719 shows 37 States now imposing income taxes on individuals with 30 requiring withholding at the source; 27 cities impose the tax and 26 require withholding. Strict enforcement of all of these statutes would create an impossible situation and the league does not believe that the problem is cured by the fact that such strict enforcement does not now exist. Even assuming a uniform basis of allocation among the various States concerned (mileage, hours, and tonnage are among the factors consideration of which might be required) the bookkeeping burden upon the motor carrier, for-hire or private, would be all out of proportion to the tax revenue which could accrue to any State. Perhaps of more importance is the burden upon the employee, generally a truckdriver, who would be faced with multiple deductions to the extent that his take-home pay could be seriously depleted, and faced with a maze of redtape as a requirement for obtaining refunds, as to almost insure that most of such refunds would never be made.

As I have stated above, the situation is exactly the same whether the motor carrier under part II of the Interstate Commerce Act be a common carrier, a contract carrier, or a private carrier. The league urges the committee to recognize this fact and in the handling of the bill make whatever relief is granted apply equally to all.

(Whereupon, at 12 noon the subcommittee adjourned.)