TAX ASSESSMENTS ON COMMON CARRIER PROPERTY

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 4972

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

(And Identical Bills)

MARCH 1 AND 2, 1966

Serial No. 89-30

Printed for the use of the
Committee on Interstate and Foreign Commerce

U.S. GOVERNMENT PRINTING OFFICE
60-661 WASHINGTON : 1966

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, West Virginia, *Chairman*

WALTER ROGERS, Texas
SAMUEL N. FRIEDEL, Maryland
TORBERT H. MACDONALD, Massachusetts
JOHN JARMAN, Oklahoma
LEO W. O'BRIEN, New York
JOHN E. MOSS, California
JOHN D. DINGELL, Michigan
PAUL G. ROGERS, Florida
HORACE R. KORNEGAY, North Carolina
LIONEL VAN DEERLIN, California
J. J. PICKLE, Texas
FRED D. ROONEY, Pennsylvania
JOHN M. MURPHY, New York
DAVID E. SATTERFIELD III, Virginia
DANIEL J. RONAN, Illinois
J. OLIVA HUOT, New Hampshire
JAMES A. MACKAY, Georgia
JOHN J. GILLIGAN, Ohio
CHARLES P. FARNSLEY, Kentucky
JOHN BELL WILLIAMS, Mississippi
BROCK ADAMS, Washington

WILLIAM L. SPRINGER, Illinois
J. ARTHUR YOUNGER, California
SAMUEL L. DEVINE, Ohio
ANCHER NELSEN, Minnesota
HASTINGS KEITH, Massachusetts
WILLARD S. CURTIN, Pennsylvania
GLENN CUNNINGHAM, Nebraska
JAMES T. BROYHILL, North Carolina
JAMES HARVEY, Michigan
ALBERT W. WATSON, South Carolina
TIM LEE CARTER, Kentucky

W. E. WILLIAMSON, *Clerk*
KENNETH J. PAINTER, *Assistant Clerk*

Professional Staff

ANDREW STEVENSON
KURT BORCHARDT
JAMES M. MENGER, Jr.
WILLIAM J. DIXON

CONTENTS

	Page
Hearings held on—	
March 1, 1966	1
March 2, 1966	47
Text of H.R. 4972	1
Report of—	
Advisory Commission on Intergovernmental Relations	5
Bureau of the Budget	4
Commerce, Department of	2
Interstate Commerce Commission	3
Justice, Department of	3
Statement of—	
Conlon, Charles F., executive secretary, National Association of Tax Administrators	78
McDowell, Robert O., attorney for the Property Valuation Department, State of Kansas	116
Ogden, James N., representing the Association of American Railroads	10, 72
Peters, William E., State tax attorney, Lincoln, Nebr	121
Roncalio, Hon. Teno, a Representative in Congress from the State of Wyoming	57
Sanders, Paul H., professor of law, Vanderbilt University School of Law	47
Travis, Broley E., consulting valuation engineer, Sacramento, Calif	59
Waggonner, Hon. Joe D., Jr., a Representative in Congress from the State of Louisiana	7
Additional material submitted for the record by—	
American Trucking Associations, Inc., letter from W. A. Bresnahan, managing director	146
Arkansas Public Service Commission, statement of Earl Berry, director, tax division	91
Association of American Railroads:	
Appendix A—List of 20 States wherein excessive ad valorem taxes are levied (table)	24
Exhibit No. 1—Letter from, and background material on, James W. Martin	24
Exhibit No. 2—Background material on Dr. Harold M. Groves	26
Exhibit No. 3—Letter from, and biographical sketch on, Maj. Gen. John P. Doyle	27
States wherein tax cases were settled with decisions adverse to railroads, not affording material relief, or litigation is still pending	110
Avery, Gov. William H., of Kansas, letter from	118
California State Controller's Office, letter from Alan Cranston	142
Dworak, George J., Nebraska State tax commissioner, statement of	122
Groves, Dr. Harold M., statement of	44
Iowa State Tax Commission, statement of Lynn Potter, chairman	125
National Association of Tax Administrators, list of States wherein there has been recent litigation involving ad valorem tax assessments	101
North Dakota State Board of Equalization, Lloyd Omdahl, secretary, statement of	141
Oregon State Tax Commission, letter from C. H. Mack, chairman	144
Peters, William E., State tax attorney, Lincoln, Nebr., supplemental statement of	123
South Dakota State Department of Revenue, statement of	139
Speer, John B., New Mexico State Tax Commission attorney, letter from	143

Additional material submitted for the record by—Continued
Springer, Hon. William L., a Representative in Congress from the State of Illinois:
Public notice from the Illinois State Journal and Register, listing 1963 fair cash valuation of railroad property (table) ..... Page 34
Public notice from the Southern Illinoisan listing 1964 fair cash valuation of railroad property (table) 36
Section 561, chapter 120, Revenue Code, 1965 Illinois Revised Statutes 37
Tennessee Public Service Commission, statement of, presented by Eugene W. Ward, general counsel 140
Transportation Association of America, letter from Harold F. Hammond, president 146
Washington State Tax Commission:
Letter from George Kinnear, chairman 145
Ratio comparison, 1960 through 1965 (chart) 145
Wyoming State Board of Equalization:
Exhibit I—Chapter 11-A—Ad valorem tax assessments by the board 123
Exhibit II—Excerpts from minutes with reference to Chicago, Burlington & Quincy assessments since 1924 123
Exhibit III—Chicago, Burlington & Quincy Railroad tonnage handled each year, 1933-63 (table) 131
Exhibit IV—Comparison of railroad assessments in Wyoming, 1955-65 (table) 132
Exhibit V—Assessed valuations of class I railroads in Wyoming since 1930 (table) 133
Exhibit VI—Percentage changes in ad valorem assessed valuation of various types of property in Wyoming, 1962-65 (table) 133
Exhibit VII—Chicago, Burlington & Quincy Railroad betterments and/or additions (table) 133
Exhibit VIII—General Order No. 2, 1962—Buildings and/or structures 134
Exhibit IX—General Order No. 2, 1966—Inventories 134
Exhibit X—General Order No. 3, 1966—Used motor vehicle and farm machinery inventories 135
Exhibit XI—General Order No. 4, 1966—Personal property 136
Exhibit XII—Assessed valuations of four major railroads in Wyoming in percentages of 1930 assessments (chart) 137
Exhibit XIII—Assessed valuations of four major railroads in Wyoming since 1930 (chart) 138
Statement of 126

TAX ASSESSMENTS ON COMMON CARRIER PROPERTY

TUESDAY, MARCH 1, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

The committee this morning is opening hearings on 13 identical bills, starting with H.R. 4972, introduced by our colleague, Mr. Rogers of Texas.

(The identical bills are: H.R. 5074, H.R. 5310, H.R. 5375, H.R. 5425, H.R. 5656, H.R. 7183, H.R. 7313, H.R. 7589, H.R. 7917, H.R. 8238, H.R. 8763, and H.R. 9450.)

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

(The bill referred to, and departmental reports thereon, follow:)

[H.R. 4972, 89th Cong., 1st sess.]

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

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

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

"(2) Notwithstanding the provisions of section 1341, title 28, United States Code, or of the constitution or laws of any State, the district of the United States shall have jurisdiction, upon complaint and after hearing to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain any State, or subdivision or agency thereof, or any person from

doing anything or performing any act declared by paragraph (1) hereof to be unlawful: *Provided, however,* That such jurisdiction shall not be exclusive of that which any Federal or State court may otherwise have."

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., March 4, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in further reply to your request for the views of this Department concerning H.R. 4972, a bill to amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes.

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

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

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

The Department of Commerce agrees in principle that common carrier property should not face discrimination in property tax assessments. Such discriminations have been a concern of the transportation industry for many years. The scope of this problem was outlined in part VII, chapter 1, pages 465–66, of the report of the Senate Committee on Commerce on national transportation policy (87th Cong., 1st sess., Rept. 445, June 26, 1961), otherwise known as the Doyle report.

The Department, however, recognizes that there are difficulties of a tax administration and lack of experience with Federal legislation of this kind. For this reason it does not seem advisable to enact Federal legislation until other alternatives are tested with respect to this problem. It is also possible that other property, such as industrial plants and utility facilities, may face the same situation as railroads and pipelines.

Efforts by the Advisory Commission on Intergovernmental Relations resulted in the submittal of draft legislation for State enactment applying to uniform and equitable property taxation. While this approach has not resulted in rapid progress toward the solution of the problem presented by H.R. 4972, the effort should nevertheless be continued. While the Department of Commerce would not recommend the enactment of the bill, we would urge the Congress through public hearings and formal study to encourage States to accelerate reform in those aspects of property tax administration which affect interstate commerce.

For the foregoing reasons the Department would not recommend favorable action on H.R. 4972.

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,

ROBERT E. GILES, *General Counsel.*

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., February 28, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN STAGGERS: This is in response to your request for the Commission's comments on H.R. 4972, introduced by Congressman Rogers, to amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes. I am authorized to submit the following comments:

H.R. 4972 would add a new section 25a to the Interstate Commerce Act. This new section 25a would make unlawful the collection of any tax, levied by any taxing district, on property owned or used by any common carrier subject to the act, when the assessment for the tax bears a higher ratio to the true market value than the assessed value of all other property in the taxing district subject to the same propery tax levy bears to the true market value of all such other property. As we understand it, "true market value" is not a term that is used in all States, but is intended to have the same meaning as "fair market value" or "market value."

It appears that H.R. 4972 is intended to shift the final determination of "true market value" of carrier property, as well as that of other property in a taxing district, from State courts to U.S. district courts. The U.S. district courts' determination of true market value might very well be questioned in numerous taxing districts, such as city, county, and State, with the result that the determination of "true market value" might add substantially to the already heavy dockets in many of our U.S. district courts. If, on the other hand, the question of "true market value" were finally determined in a State or local court, then, of course, the question of whether an injunction should issue might more appropriately come before a Federal court. We point this out for the committee's information without suggesting which court should make such a determination.

We suggest that H.R. 4972 be amended to prevent a possible 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 * * *." This possible conflict could be resolved by inserting "notwithstanding the provisions of section 202(b)" at the beginning of proposed section 25a.

In the Commission's report on "Railroad Passenger Train Deficit," 306 I.C.C. 417, we recommended inter alia, that State and local governments should take such steps as may be required to effect a greater degree of equity with respect to the tax burden imposed on railway properties as compared to that borne by taxpayers generally. Since then, there has been an increased awareness of the problems of the railroad industry which has been evidenced by the enactment by a number of States of legislation granting a measure of tax relief to railroads. It is hoped that more States will take the necessary remedial action to help to preserve and maintain adequate commuter and other passenger train service as well as freight service for local industries.

The Interstate Commerce Commission is strongly in favor of any sound proposal to strengthen the national transportation system by eliminating inequitable tax burdens on common carriers. Accordingly, we endorse the objective sought by H.R. 4972.

Incidentally, on page 2, line 16, of the bill, it is suggested that the word "court" be inserted after "district" to appropriately identify the tribunal upon which jurisdiction is to be conferred.

Sincerely,

JOHN W. BUSH, *Chairman.*

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., March 1, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 4972, a bill to amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust dis-

crimination against and undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes.

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

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

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

If the Congress declares the entire assessment unlawful and prohibits the collection of any part of such assessment, there would be no legal problem with regard to this issue. On the other hand, if the Congress decides to make only the discriminatory portion of the tax unlawful and uncollectible, consideration must be given to the holding in *Moses Lake Homes, Inc., et al.* v. *Grant County*, 365 U.S. 744 (1961), at page 752 in which the Court stated:

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

This opinion leaves unresolved the question of whether the Congress may constitutionally enact such a statute. Therefore, such an enactment could be expected to give rise to litigation to resolve this question.

It is noted that the word "courts" should be inserted on line 16 of page 2 after the word "district".

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

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., February 28, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to the committee's request for the views the Bureau of the Budget on H.R. 4972, a bill to amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes.

Although the objective of this bill is laudable, it is doubtful that the proposal offers a workable solution to the problem of determining equitable tax valuations for common carrier property. The bill would declare unlawful any assessment of carrier property which resulted in a ratio of assessed to actual value (assessment ratio) higher than the comparable ratio for other property in a taxing district. A determination of unlawfulness would therefore require knowledge of (*a*) a carrier's system valuation, (*b*) the pro rata share of that valuation assignable to carrier property located in a particular taxing district, and (*c*) the average assessment ratio of all other property in the district. All three items require complex technical determinations. Such determinations are better suited to administrative than judicial remedies. Moreover, to lodge responsibility for making such judgments with the Federal judiciary would place a heavy burden on the court system.

Aside from these difficulties, the Department of Commerce points out in its report to your committee that the problems inherent in this kind of legislation make it advisable to test other alternatives first. In addition, the Advisory Commission on Intergovernmental Relations, in views to this Office, has expressed doubt that H.R. 4972 represents the best approach to equalization. The Commission has proposed State legislation to deal with assessment inequities. Finally, the Department of Justice, in its report to your committee, notes technical inconsistencies in the bill and questions its constitutionality.

In view of the above considerations, the Bureau of the Budget recommends against enactment of H.R. 4972.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS,
Washington, D.C., March 4, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, House Committee on Interstate and Foreign Commerce, Rayburn Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: We are pleased to respond to your request for the views of this Commission on H.R. 4972, a bill to amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes.

The Advisory Commission has devoted substantial resources to exploring ways and means to improve property tax administration. The Commission's interest in this matter arises out of the major role played by the property tax in financing local government needs and the critical importance of the adequate financing of the needs to the strength of our federal system. This one tax alone accounts for over 85 percent of local tax revenue and in many jurisdictions common carrier property represents a significant proportion of the revenue base.

H.R. 4972 would forbid and declare unlawful the discriminatory assessment for State and local tax purposes of the property of common carriers and would give Federal courts jurisdiction over litigation pertaining to such assessments.

The subject matter of the proposed legislation is a longstanding problem involving in part State-local relations. While virtually all States have now relinquished the property tax as a major revenue source, most have retained responsibility for the assessement of some types of property that typically cross local taxing district and State lines, chiefly railroads and utilities. In surrendering their direct revenue stake in this tax, the States appear to have lost also some of their motivation to supervise and coordinate local assessment administration. The lack of State interest, in turn, may have contributed to the spread of inconsistent valuation practices between States, among taxing districts within States, and among properties within taxing districts. A contributing factor has been the outmoded but deeply rooted tradition that every taxing district ought to be free to handle its fiscal problems in its own way. There is as yet little recognition of the fact that in today's economically interdependent America property taxation affects competitive business relationships and requires the uniform application of consistent valuation principles in fixing assessment values.

The Advisory Commission's recommendations for reforming the assessment of properties for tax purposes are embodied in a two-volume report on The Role of the States in Strengthening the Property Tax,[1] and in suggested State legislation that has been drafted to facilitate the implementation of the Commission recommendations. These have been widely disseminated and are receiving active consideration by legislative and other groups, including the railroad industry, in a substantial number of States. The Commission's program seeks to conform property taxation to today's requirements by urging the States to assume responsibility for inaugurating professional standards and supervising, assisting, and coordinating local assessment practices. The overall objective of this program is uniform assessments within a jurisdiction and desirably within a State, on the basis of generally accepted professional valuation principles.

---

[1] The document referred to will be found in the committee files.

It should be emphasized that the focus of this program as of the bill before your committee is the termination of discriminatory assessment practices. The Commission does not question the rights of States in the exercise of their sovereign taxing powers to differentiate in the rates of taxation on defined classes of property or to prescribe differential rates of assessment explicitly for the purpose of giving effect to differential tax burdens. The Commission's concern is directed to the lack of conformity between assessment law and administrative practice and to the unlawful differentiation in tax burdens that result from it. In short, it is in accord with the objectve of H.R. 4972.

The Commission's studies have produced ample evidence that present assessment practices discriminate against some railroad properties in some taxing jurisdictions. The practice, however, is by no means universal. A few States have taken steps to equalize centrally assessed railroad property with locally assessed property. Oregon, for example, is reported to have brought the level of State and locally assessed property to a common level by a gradual process extending over several years. California and Kentucky are reported to be carrying out similar programs currently.

It bears emphasis that in consequence of State leadership, significantly accelerated in the last few years, the professional quality and uniformity of assessments is improving in many places. Moreover, in the last few years the State courts have been contributing effectively to this development. Florida and Kentucky courts have handed down decisions which, in effect, require local assessments to be raised to the legal standard thereby wiping out the possibility of discrimination between assessments determined locally and centrally. The courts in at least eight other States have recognized the right of the property owner to relief from discriminatory assessment even though his assessment is not in fact in excess of the legal standard. Several of these cases involved the assessment of railroad property.

Last month a further avenue for relief from discriminatory assessment practices may have been opened by the decision of a Federal court invalidating discriminatory railroad assessments in Tennessee on the grounds that the taxpayer was entitled to equal protection of the laws. A similar suit is reported to have been filed this week in a Federal court in Louisiana.

Although the need for eliminating discriminatory assessments on railroad property persists, as these court decisions would indicate, the immediate need for Federal legislation is less evident. State courts have traditionally handled the issue. In the process they have developed some of the expertise required for the adjudication of suits involving alleged assessment discrimination. Recognizing the complexities involved in adjudicating assessment disputes, the Advisory Commission is recommending the establishment of specialized State tax courts on the basis of the successful experience with such courts in Oregon, Massachusetts, and the District of Columbia. If enacted, H.R. 4972 would be a move in the opposite direction in that it would channel technical tax issues to Federal courts of general jurisdiction.

In our view, property assessment reform is proceeding at an accelerating pace. If the momentum achieved in recent years can be maintained, relief will be forthcoming in an increasing number of States. In view of their past successes, railroads, utilities, and other businesses can be expected to continue pressing for redress and contribute thereby to the reform movement.

A significant obstacle to rapid compliance with the uniformity requirement continues to be the potentially disruptive effect of such action on the finances of some local governments. The problem is particularly difficult in those local jurisdictions where railroad assessments constitute a significant portion of the tax base and where the disparity between railroad and other property assessments is large. Where these jurisdictions are limited to their local tax resources, disruption of local governmental services can be minimized only by spreading the process of reform gradually over a number of years. The States, to be sure, can help to effectuate a smooth transition by sharing with their local governments some of the revenue burden and they are urged to do so, if only because they have been a party to the development of the present assessment situation.

There is evidence that increasingly more States, some on their own initiative, some as the result of litigation, are recognizing their responsibility in this field. This development has improved the railroads' and other similarly situated property owners' prospects for effective relief from inconsistent valuation practices. In our view, the approach to remedy represented by these developments accords with the basic principles of this Federal system and if it holds a reasonable prospect for providing the required relief over the next few years, as we believe

it does, is very much to be preferred to the remedy contemplated by the proposed legislation. For this reason, we would not support the enactment of H.R. 4972 at this time.

In the time available for responding to your request, it has not been possible to bring this matter to the specific attention of the members of the Commission. In a strict sense, therefore, this report reflects only the staff's interpretation of the Commission's thinking embodied in its report on property tax reform.

Sincerely yours,

WM. G. COLMAN,
Executive Director.

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

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

While much has been done, I assume that the fact that we have the legislation before us is evidence that there is much yet which the carriers feel should be done. On the other hand, I can well appreciate that we have involved here an important problem involving the relative jurisdictions of the local and Federal Governments to tax.

Our first witness this morning will be our colleague from Louisiana, Congressman Joe Waggonner.

Will you take the stand, please?

It is good to have you with us. You may proceed.

STATEMENT OF HON. JOE D. WAGGONNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. WAGGONNER. Thank you, Mr. Chairman and members of the committee.

Let me express my appreciation for the opportunity to appear before your distinguished committee this morning to state very briefly my case with regard to these 13 proposals, one of which is mine, having to do with taxation of common carrier property.

Being from Louisiana, I perhaps realize today, a little bit better than some do, some of the problems involved in tax equalization, because the question of tax equalization is perhaps closer at hand in Louisiana today than in any other State.

Mr. Chairman and members of the committee, I introduced H.R. 7183, one of the measures presently before you, and I would like to make a few brief comments urging your favorable consideration of the measure.

There is located in Louisiana 3,899 miles of railroad track owned in large part by 12 class I roads. These railroads provide a substantial part of Louisiana's transportation needs and have played a major role in the development of New Orleans as the major port of the South. The railroads serving Louisiana literally crisscross this Nation and, in fact, their tracks extend into 30 States. Through a system of con-

nections, these major railroad companies reach every part of North America and Mexico served by railroad.

The measure presently before you is not radical in nature. In effect, it would give a common carrier subject to the Interstate Commerce Act a cause of action to recover that portion of its property taxes deemed excessive and discriminatory.

It would give a remedial cause of action to correct a practice that sorely needs correction and, for which, as a practical matter, there is none today. It is common knowledge that quite frequently railroad property and other carrier property is assessed at a higher proportion of its true value than is the property of an ordinary taxpayer. Over a period of years, this excessive tax has been passed on by the railroads to their shippers and, indeed, affects interstate and foreign commerce.

My bill is, I believe, simple and direct in its intent. It is to prohibit any taxing district from taxing the property of a common carrier at a higher ratio to the true market value of such property than any other industry.

I would like specifically for the record to show that I do not advocate the destruction of local taxing authority, but I do not believe that it is fair, reasonable, or just for a common carrier to be taxed at a discriminatory rate and my bill will correct this discrepancy where it exists. We do have a responsibility in matters involving interstate commerce.

As a practical matter, I believe the redress which my bill proposes can be had only in this manner and I urge your careful consideration of it.

Again, realizing that you have a number of others to testify today, gentlemen, I want to thank you for your time. I have made my remarks brief because I am aware of the fact that there are many others who wish to testify and I do not want, needlessly, to take up the committee's time.

The CHAIRMAN. Thank you, Congressman Waggonner. We appreciate the fact that you have taken the time to come to the hearings and give us the benefit of your views on your bill and the other bills before the committee.

Do you have any questions, Mr. Friedel?

Mr. FRIEDEL. I just want to compliment my colleague for his wonderful statement. You express my own sentiments word for word, so I want to thank you for coming.

Mr. WAGGONNER. Thank you, Mr. Friedel.

Mr. SPRINGER. I have no questions, Mr. Waggonner. It is an excellent job, I want to say, Mr. Chairman, in presenting this matter.

Mr. JARMAN. I have no questions.

Mr. NELSEN. Mr. Chairman and Mr. Waggonner, I have introduced a similar bill to the one that you have now testified in support of. It has come to my attention that in many States great discrimination does exist in many areas in methods of tax assessments on railroad property.

With the same idea in mind that you have expressed in your very precise and exact statement here, I felt it necessary to introduce a similar bill to the one that you have introduced, with the hope that we could figure out some method of equalization that would bring into

fairplay at least taxing of property that we find hard to hang onto in the best of circumstances.

I thank the gentleman for his statement. It is a very excellent one.

Mr. MURPHY. I would like to compliment my colleague on an outstanding statement and ask him just one question.

Does the State of Louisiana have a State equalization board on taxes?

Mr. WAGGONNER. If you had asked me that question 10 days ago, I could have said "Yes." Perhaps you refer to what we call the State tax commission. For over a year, there was, under the present Governor, a special committee studying equalization of taxes. They completed their study and made their recommendation to the Governor.

With some definite reservations, the Governor endorsed the report and the study and said that he would proceed to try to accomplish it with the hope that he could get the necessary cooperation of other public officials in Louisiana and the community of Louisiana as a whole.

He found that he did not have the support of the Louisiana Legislature. He polled the legislature, and he told me this himself, and he found that two-thirds of the State legislature was completely opposed to any tax equalization. He has, at least for the time being, called a halt to it.

I think he has made a statement that tax equalization has not been forgotten in Louisiana, and it will probably remain for the courts to do what they had set out to do, but it is a controversial question in Louisiana now.

Mr. MURPHY. These roads probably run into the same situation in other States they serve?

Mr. WAGGONNER. Yes. A number of other States, I think, Kentucky and Florida have had prior experience in this field. They have had some dealings with the courts and they have, I believe, had to enact all too hasty legislation in an effort to comply with the court orders. As a result, they have made a good many mistakes in a good many areas in equalizing taxes.

Mr. MURPHY. So, in effect, the common carrier almost has a state of chaos in taxes when they serve multiple States with different taxing problems.

Mr. WAGGONNER. Yes, and I think it is common knowledge that probably the railroads have been more discriminated against as common carriers than have some of the other areas, for example, through the years.

Mr. MURPHY. It could work to their advantage in some cases?

Mr. WAGGONNER. Yes, it could, there is no question about that, and in some areas of each of the States I feel that probably it does work to their advantage.

Mr. MURPHY. Thank you very much.

Mr. WAGGONNER. But we have a responsibility in interstate commerce and that is my reason for this legislation.

The CHAIRMAN. I notice one of our colleagues, Mr. Rogers here, and I thought he might want to make some comment. Mr. Rogers, do you have any question of Mr. Waggonner of Louisiana?

Mr. ROGERS of Texas. I want to compliment Mr. Waggonner on realizing the problems that are facing a lot of these businesses and taking steps to try to correct them.

The CHAIRMAN. Thank you very much for coming and giving us the benefit of your views.

At this time I would like to have inserted in the record at its appropriate place a letter from the Governor of the State of Kansas.

(The letter referred to appears on p. 118.)

The CHAIRMAN. Our next witness will be a representative of the Association of American Railroads, Mr. James Ogden.

Mr. Ogden, you are vice president and general counsel of the Gulf, Mobile & Ohio Railroad. You may proceed, and if you will identify the gentleman who is with you, and his capacity, we would appreciate that for the record.

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

Mr. OGDEN. The gentleman who is with me, Mr. Chairman, is Mr. William Kimbrough, from our office in Mobile. He is here to help me or hand me a paper if it is something in his file that I don't have, in case I am asked a question where it would be needed.

The CHAIRMAN. You may proceed. We can put your prepared statement in the record or you can give a summary. If you wish to read it, you may do so.

Mr. OGDEN. I would like my prepared statement put in the record and to read parts of my statement if I may, Mr. Chairman.

The CHAIRMAN. You may do so.

Mr. OGDEN. Mr. Chairman and gentlemen, as the chairman has stated, my name is James N. Ogden. I am vice president and general counsel of the Gulf, Mobile & Ohio Railroad Co. with headquarters in Mobile, Ala.

I appear here on behalf of the Association of American Railroads. Those railroads operate 95 percent of all the railroad mileage in the United States and employ 92 percent of all railroad workers, and haul 99 percent of this country's railroad line-haul freight and passenger traffic.

It is my purpose to state the views of our industry on H.R. 4972 and the 12 identical bills before you for consideration.

Of course, the railroad industry heartily endorses and supports these bills. Since they are identical except for number and authorship, I will for convenience refer only to H.R. 4972 in the remainder of my statement.

But I wish to express the warm appreciation of our entire industry to each congressional author for his encouragement in the struggle to defend and preserve our common carrier system of transportation.

As stated by the chairman, the principal purposes of this bill are to declare that a portion of certain tax assessments of common carrier property shall be unlawful as constituting an unreasonable and unjust discrimination against and an undue burden on interstate commerce,

and to provide a remedy in the Federal courts for such carriers against the collection of any tax based on such unlawful assessment.

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

I emphasize that because at the previous hearing before the subcommittee at which Mr. Friedel presided so finely, there had been introduced a letter from the Department of Justice calling attention to the possibility that it should be made clear whether the bill was directed at all of the tax or only the claimed excessive portion.

I want to make it very clear to the committee that this measure as we see it is aimed only at the claimed unlawful or discriminatory portion of the tax. The remainder of the tax would remain undisturbed.

It is not an attack on the entire tax assessment or the entire tax bill, if employed by any railroad. I wanted to make that very clear at the beginning, because there seemed to be some, maybe, fuzziness about it.

The bill deals with all common carriers of persons and property subject to the Interstate Commerce Act, but I will confine my remarks mainly to the railroad industry because I am appearing in behalf of that industry and because I believe it suffers most from the burdens which this bill seeks to remove.

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

At the close of 1964 the railroads in the United States had a total investment before depreciation of over $35.8 billion extending over and along 213,800 miles of line. This enormous property investment qualifies railroads as prime targets for the tax assessor.

Their property is easily identified and located. Cities, schools, counties, and other political subdivisions invariably attempt to include within their boundaries as much railroad property as possible and thus insure a steady income from property taxes.

For the 5 years 1960–64 the total taxpayments by all class I railroads in the United States for all State and local purposes ranged from $396 million in 1960 to $344 million in 1964.

The fact that over 80 percent of those payments went to satisfy ad valorem tax liens clearly identifies ad valorem taxes as the most important and the most burdensome of all railroad State and local taxes.

The vulnerability of our industry and the desire of State and local governments for revenue have combined to create a great many tax problems. Among the more pressing and persistent of these problems are those that relate to railroad assessments.

There the problem is how to persuade the tax assessors in the several States to equalize the railroad's assessment with that of other property in the same taxing district.

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

Railroad assessments are not equalized fairly and reasonably in numerous instances. Many tax assessors simply cannot or will not equalize railroad assessments with the assessments of other property even though both kinds of property are subject to the same tax levy. This is a well-known and widely publicized fact.

As early as 1944, the existence of discrimination as one of the problems of the railroads in the tax field, was recognized in Government. In House Document No. 160, dated September 19, 1944, in "Letter From Board of Investigation and Research Transmitting a Report on Carrier Taxation," on pages 124, 125, it was said:

> The officials of approximately half the States readily concede that railroads are being overtaxed because of inadequate equalization. * * * If we accept the standards of equity set forth in present tax laws, this failure to equalize State and local assessments is probably the most significant of the railroad tax grievances.

In the Doyle report it was shown that railroads paid ad valorem taxes in 1957 in 31 States by an amount that was excessive, when compared with the taxes on locally assessed property, to the extent of $141 million, or approximately 54 percent of the total railroad ad valorem tax bill in those States. During the 87th Congress, a bill similar to those now under consideration was introduced but could not be reached for action.

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

A third study was made for 1962, and reproduced as appendix A to my statement to the Subcommittee on Transportation and Aeronautics of this committee, 88th Congress, during a hearing July 28, 1964, on H.R. 736 and H.R. 10169, bills identical to those here under consideration.

For convenience this hearing is hereinafter sometimes referred to as the subcommittee hearing.

This third statement showed excessive ad valorem taxes paid in 24 States amounting to $111 million or slightly more than 58 percent of the total railroad ad valorem tax bill in those States.

A fourth study—that is the study that we offer with this statement—and at this point I think that I ought to point out that these studies basically are confined to the 37 States that have so-called central assessments. That is merely for convenience because it can be more readily determined what the basis of assessments are, because they make one assessment in one place, and it is not an assessment made of property by a number of people.

In this fourth study, which is appended to my prepared statement made for 1964, and reproduced as appendix A, shows excessive ad valorem taxes paid in 20 States amounting to $75 million or 51 percent of the total ad valorem tax bill in those States.

So you see we have reached this point. We had, beginning in 1944, with recognition by the House Committee on Interstate and Foreign Commerce in its taxation report, that the failure to equalize railroad property for taxing purposes was perhaps the most pressing tax grievance of the railroad industry.

That took shape in the form of these studies through the Doyle report, which, of course, emanated out of the Senate Committee on Commerce, and then these latest studies brought forward and presented to a subcommittee of this committee.

There are four studies in all, each showing substantial discrimination and substantial overpayment of taxes.

At this point I think I ought to emphasize, and I wish to emphasize here that the purpose of these studies is neither to single out nor criticize any particular State or States. Nor is it our purpose to commend, by omission, States not listed or to suggest the absence of tax discrimination in any State not listed. Rather, our purpose was and is to show a pattern or practice of discriminatory action, sufficient in scope and extent to warrant the attention of the Congress, and directed toward a subject—interstate commerce—over which Congress has full control and responsibility.

As for the figures contained in these studies, we have tried to be conservative. The actual extent of discrimination, regardless of degree, is active discrimination directed at railroads and as such should be declared unlawful. It is an unpardonable practice for which there can be no valid excuse.

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

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

It seems almost self-evident that excessive property taxes resulting from discriminatory equalization of railroad assessments would unduly burden interstate commerce. Railroads are responsible for moving the largest share of our intercity tonnage carried by any one mode of transportation—43.51 percent in 1964.

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

The added tax burden on account of discriminatory assessments is substantial to the point of being oppressive. During the 6 years that this legislation has been before the Congress, railroads have been overtaxed more than an estimated three-fourths of a billion dollars as a direct result of discriminatory assessments.

That is a sum which, on today's market of about $10,000 a boxcar, would enable us to purchase outright and pay for 75,000 cars. If we wanted to buy the cars on time and pay 20 percent down, which is the way we usually do it, the industry could buy 375,000 boxcars with the money that represents an overtax in those years.

There is no telling how large this figure would be if consideration were given to the effect of this indefensible practice in prior years extending for decades.

The current showing as to discriminatory assessments represents 43.3 percent of all railroad State and local taxes of every kind and description in the 20 States listed in appendix A hereto, and it represents 20.6 percent of all such State and local taxes for the entire railroad industry in 48 States, Hawaii and Alaska excluded.

They are excluded because they don't have any railroads.

While appendix A lists only 20 of the 48 States, the tax discrimination which they are shown to practice actually has a much broader reach on the railroad industry. To illustrate, in 1964 the average road-mileage operated in transportation service of all class I line-haul railroads in the 48 States was 217,181 miles, and those same carriers employed 665,017 persons and generated 659,327 million revenue-ton-miles. The total mileage operated by all of the class I line-haul railroads having property in any 1 or more of the 20 States listed in appendix A was 199,656—91.9 percent of the total. The number of employees of those same carriers was 586,496—88.2 percent of the total—and the revenue-ton-miles generated by those same carriers everywhere was 602,318,513,000—91.4 percent of the total.

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

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

H.R. 4972 follows the language of section 13(4) of the Interstate Commerce Act in declaring that the proscribed action by any State or subdivision or agency—in taxing common carrier property on a basis higher than that at which other property in the same taxing district is taxes—

is hereby declared to constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce and is hereby forbidden and declared to be unlawful.

That language is practically the same.

The fact that section 13(4) deals with one type of discrimination or burden and H.R. 4972 with another is immaterial, because they are both concerned with "unreasonable and unjust discrimination against and an undue burden upon interstate commerce." In the former, the prohibition is against a State's requiring a carrier to charge intrastate rates so low as to be unfair to or discriminate against, or to place an undue burden upon, interstate commerce—that is, so low as not to contribute their fair share to the revenues required by the carrier properly to perform its interstate operations.

In H.R. 4972, the prohibition—simply stated—is against the action of a State or its subdivisions in assessing and collecting taxes on carrier property at a higher rate or ratio than on other property in the same taxing district.

In each case the act forbidden is unjust discrimination against interstate commerce; that is, against common carriers which are engaged in interstate operations and are subject to the Interstate Commerce

Act. In each case the prohibition is against a type of discrimination or burden which would deprive a carrier of revenues needed in the performance of its services in interstate commerce.

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

The question has been asked and asked repeatedly at the last hearing, can Congress constitutionally enact a measure such as this? At the 1964 hearings several members of the subcommittee expressed concern over this issue as did the Department of Justice in a letter addressed to the then chairman of this committee.

In an effort to put this issue at rest, we have obtained an in-depth opinion from two recognized authorities in the fields of constitutional law and State taxation. The authors of this opinion are Mr. Paul J. Hartman and Mr. Paul H. Sanders, both of Vanderbilt University School of Law.

Mr. Hartman is a professor of law at that institution, specializing in State and local taxation law. He is the author of "State Taxation of Interstate Commerce" and has written numerous law review articles on the subject.

Mr. Sanders is also a professor of law at Vanderbilt, teaching courses in constitutional law and labor law. He is the author of various articles and publications in the constitutional and public law fields.

Mr. Sanders is here today and will discuss more fully the constitutionality of the measure at which time he will introduce their written opinion and supporting memorandum. Comprehensive biographical data on both these gentleman may be found at the end of their printed memorandum.

At the time that we requested an opinion of these men, we made available to them a copy of the proposed measure and a copy of the hearing before the Subcommittee on Transportation and Aeronautics on H.R. 736 and H.R. 10169 held July 28, 1964.

It was in the light of the background information there elicited that Mr. Hartman and Mr. Sanders approached the constitutional issue.

These gentlemen have concluded that the Congress does have power under the commerce clause and other principles enunciated in their opinion to enact the measure presently before you.

We feel that both of these men are eminently qualified authorities in the fields of constitutional and State taxation law and we assure you that this measure, if enacted in its present form, will successfully withstand attack as to its constitutionality.

We have also sought and obtained the views of four noted and qualified authorities in the fields of taxation, economics, and transportation, as to the appropriateness, adequacy, desirability, and need for this legislation.

These experts are Mr. James W. Martin of Kentucky, Dr. Harold M. Groves of Wisconsin, Gen. John P. Doyle of Texas, and Mr. Broley E. Travis of California.

Each man was supplied with copies of H.R. 4972, the report of the subcommittee hearing, and the Hartman-Sanders opinion relating to the constitutionality of the measure.

Mr. Martin, who is generally conceded to be the dean of the tax fraternity, is a professor emeritus at the University of Kentucky. He is highly regarded in the field of valuation of railroad and public utility properties, having served as valuation consultant both for railroads and the States of Kentucky, Virginia, Arizona, and Georgia, as well as the cities in those States. He is a past president of a number of organizations, including the Tax Foundation, Tax Institute of America, Associated Bureaus of Business and Economic Research, and the National Tax Association. I could expand on his biographical material but it all appears at the conclusion of his letter, which is appended as an exhibit to my prepared statement.

Dr. Groves, no less an authority taxwise, also brings to bear on the issue a comprehensive knowledge of economics and public finance. He is a professor of economics at the University of Wisconsin, has served government in both appointive and elective capacities, has written extensively of finance and taxation, and served a term as president of the National Tax Association.

Dr. Groves' statement has been submitted to the committee, the clerk has a copy of it and I request that it be considered as part of the record of this hearing. Appended to my remarks is quite an extended biographical sketch on Dr. Groves.

(Dr. Groves' statement appears on p. 44.)

Major General Doyle, who prior to his retirement served as Director of Transportation of the U.S. Air Force, occupies the McDonald Chair of Transportation at Texas A. & M., and served as Director of a Special Study Group on Transportation Policies in the United States for the Interstate and Foreign Commerce Committee of the Senate, which reported on the subject in January of 1961.

Full biographical information appears immediately after his letter which is attached to my prepared statement, as exhibit 3. General Doyle's statement is quite short and it is so to the point that I would like to read it if I may, Mr. Chairman.

General Doyle writes thus:

> After going over H.R. 4972, your testimony in 1964, and the Hartman-Sanders paper, I find nothing that I can add to our report of 1961 in national transportation policy.
>
> Since that was written nothing has been developed which would cause me to doubt the accuracy of our conclusion that there is ample evidence that railroad operating property has been and still is subject to discriminatory assessment for tax purposes in a number of localities. We all know that progress has been made in some States. It is not enough.
>
> Mr. Rogers' bill seems adequate for the purpose and is probably the most that could be achieved at this time. I am still of the belief that a real case in equitable treatment could be made for exempting private way from all ad valorem taxation. I don't think this very likely execpt as a subsidy to deficit commuter service.
>
> Discriminatory taxation of corporate enterprise has no place in a competitive economy. H.R. 4972 is a step in the right direction. I sincerely hope you can get this constructive bill enacted into law. It is too bad the several States couldn't do it on their own without Federal intervention.

The CHAIRMAN. Is this the complete statement of Major General Doyle?

Mr. OGDEN. Yes, sir. I wanted to especially emphasize it.

Mr. Travis is presently a consulting valuation engineer in Sacramento, Calif. He is a former chief valuation engineer for the Cali-

fornia State Board of Equalization. In addition, he has assisted the States of Oregon, Colorado, New York, Utah, and Idaho in their railroad assessment work. He has been employed as an expert by railroads in the preparation of valuation and equalization cases in Missouri, Illinois, South Dakota, and Iowa, since his retirement from his position with the State of California in 1962. More detailed biographical data appears as a part of Mr. Travis' statement.

Though unable to have Mr. Martin, Dr. Groves, or General Doyle present to appear before you, we were fortunate in being able to present Mr. Travis who is here and will appear later.

The National Association of Tax Administrators by executive committee action on January 18, 1961, accorded formal recognition to the discriminatory tax practices directed against railroads in the matter of their property assessments at State and local level. This committee recommended that the president of the association appoint a committee to "deal with all aspects of the problem, including the several proposals to restrict the taxing jurisdiction of the States as to property used in interstate commerce by railroads."

The executive committee also expressed the hope that the States found to be guilty of the offensive practice of discriminating against railroads would see the error of their ways and mend them in a gradual and, presumably, painless fashion.

The president of the National Association of Tax Administrators acted on the recommendation of his executive committee and appointed the committee. However, the committee had made no report by 1963 and so far as I have been advised has never made a public report.

As a practical matter the whole approach of this organization amounts to a confession of error coupled with a request for a postponement of judgment.

In 1964 and when measures identical to those now pending were before this committee, Government agencies having a possible interest were invited to express their views. The results are quite revealing:

First. No agency denied that railroads were in fact the victims of discriminatory action of the type claimed.

Second. No agency opposed the equalization objective.

The laws of practically all the States, if carefully adhered to, would rarely, if ever, produce a discriminatory assessment. In contrast to State assessment laws, State provisions for testing assessments in courts or obtaining relief from the taxes that result from these assessments are not nearly as free from criticism. For the most part, these procedural relief statutes are vague and confusing and have little to commend them in the way of uniformity of either design or application. In this area, it seems clear that the proposed measure, offering as it does, a clear, direct, and simple remedy designed for uniform application by the Federal courts is highly desirable.

It should be kept in mind at all times that the measure here under consideration addresses itself only to supplying a procedure by which discriminatory taxes may be corrected. It is only available to the taxpayer capable of bringing himself within its terms. It is not self-operative and neither imposes any duty nor confers any right on the Federal Government to administer State taxes. The offensive taxes must be proven to be such by competent evidence and in a court of law.

Absent such a proceeding and proof by a complaining taxpayer, the

bill here proposed would have no effect whatever on any act of any State regarding any tax at any time.

I think without unduly lengthening the presentation, in my prepared statement I have asked that the proceedings, and parts of the previous proceedings before the committee be brought forward and by reference considered as a part of this record, only by reference, because we did undertake at that time to cover a great deal in this area.

It would unduly lengthen this record for us to have it repeated but I would hope that the chairman would bring these other parts of the hearing by reference forward as I have requested here.

The CHAIRMAN. You have made that request in your statement, have you?

Mr. OGDEN. Yes, sir.

The CHAIRMAN. Those parts that you have requested will be made a part of the record.

Mr. MOSS. Reserving the right to object and not having had an opportunity to examine the material which will be thereby included in the record, I will reserve an objection until I have the opportunity.

I would have no objection to receiving them for the files of this hearing, but to have them incorporated in the record I would want the opportunity to look at them.

The CHAIRMAN. The gentleman has that right, it is true. It is a matter of record before previous Congresses, and that is the reason that I have said that the gentleman has that reservation.

You may proceed.

Mr. OGDEN. Well, Mr. Chairman, this basically concludes my statement.

I sincerely appreciate the opportunity to appear before you. I would be happy to try to answer any questions now or later, if the Chair should see fit to direct any to us. I wish to leave with you, in closing, that we very sincerely submit and remind you that it is the duty of Congress to protect interstate commerce from undue burdens of discriminatory taxes and by so acting to preserve our transporation system in furtherance of the national transportation policy.

We think that that is quite clear and quite compelling. I thank the chairman and the members of the committee for this very fine opportunity to be heard.

(Mr. Ogden's prepared statement and exhibits follow:)

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

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

I wish to state the views of the railroad industry with respect to H.R. 4972 and the 12 identical bills now before you for consideration.

The railroad industry strongly endorses and wholeheartedly supports these bills. Since they are identical except for number and authorship, I will, for convenience, refer only to H.R. 4972 in the remainder of my statement. But I wish to express the warm appreciation of our entire industry to each congressional author for his help and encouragement in the struggle to defend and preserve our common carrier system of transportation.

The principal purposes of the bill are to declare that a portion of certain tax assessments of common carrier property shall be unlawful as constituting an unreasonable and unjust discrimination against and an undue burden on interstate commerce, and to provide a remedy in the Federal courts for such carriers against the collection of any tax based on such unlawful assessment. This unlawful proportion exists only when, and to the extent that, common carrier property is assessed at a greater proportion of its true market value than the proportion at which all other property in the taxing district subject to the same levy is assessed.[1]

The bill deals with all common carriers of persons and property subject to the Interstate Commerce Act,[2] but I will confine my remarks mainly to the railroad industry because I am appearing in behalf of that industry and because I believe it suffers most from the burdens which this bill seeks to remove.

Railroads require a great deal of property in order to do business. Right-of-way and rails; locomotives, cars, and other equipment that operate on those rails; and stations, buildings, shops, and so forth, all are needed to conduct railroad operations. At the close of 1964 the railroads in the United States had a total investment before depreciation of over $35.8 billion extending over and along 213,800 miles of line. This enormous property investment qualifies railroads as prime targets for the tax assessor. Their property is easily identified and located. Cities, schools, counties, and other political subdivisions invariably attempt to include within their boundaries as much railroad property as possible and thus insure a steady income from property taxes.

For the 5 years 1960–64 the total tax payments by all class I railroads in the United States for all State and local purposes ranged from $396 million in 1960 to $344 million in 1964. The fact that over 80 percent of those payments went to satisfy ad valorem tax liens clearly identifies ad valorem taxes as the most important and the most burdensome of all railroad State and local taxes.

The vulnerability of our industry and the desire of State and local governments for revenue have combined to create a great many tax problems. Among the more pressing and persistent of these problems are those that relate to railroad assessments.

In the area of assessments, the most critical problem is to determine how much of the valuation that has been found should be assessed, which, in turn, depends upon how much of the valuation of other property is assessed. In other words, the problem is how to persuade the tax assessors in the several States to equalize the railroads' assessment with that of other property in the same taxing district.

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

Railroad assessments are not equalized fairly and reasonably in numerous instances. Many tax assessors simply cannot or will not equalize railroad assessments with the assessments of other property even though both kind of property are subject to the same tax levy. This is a well-known and widely publicized fact.

As early as 1944, the existence of discrimination as one of the problems of the railroads was recognized in government. In House Document No. 160, dated September 19, 1944, in "Letter from Board of Investigation and Research Transmitting a Report on Carrier Taxation," on pages 124, 125, it was said: "The officials of approximately half the States readily concede that railroads are being overtaxed because of inadequate equalization. * * * If we except the standards of equity set forth in present tax laws, this failure to equalize State and local assessments is probably the most significant of the railroad tax grievances."

In the Doyle report[3] it was shown that railroads paid ad valorem taxes in 1957 in 31 States by an amount that was excessive, when compared with the taxes on locally assessed property, to the extent of $141 million, or approximately

---

[1] It is intended that only the excessive portion of the assessment and resulting tax shall be unlawful and thus subject to attack. See letter 7, Deputy Attorney General, dated July 24, 1964, reproduced at pp. 3 and 4 of hearing on H.R. 736, H.R. 10169, 88th Cong., 2d sess.

[2] Railroads (sec. 1(a)); oil pipelines (sec. 1(b)); motorbus and truck operators (sec. 202(a)); water carriers of persons or property (sec. 302(d)); and freight forwarders (sec. 402(5)).

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

54 percent of the total railroad ad valorem tax bill in those States. During the 87th Congress, a bill similar to those now under consideration was introduced but could not be reached for action.

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

A third study was made for 1962, and reproduced as appendix A to my statement to the Subcommittee on Transportation and Aeronautics of this committee, 88th Congress, during a hearing July 28, 1964, on H.R. 736 and H.R. 10169, bills identical to those here under consideration. (For convenience this hearing is hereinafter sometimes referred to as the subcommittee hearing.) This third statement showed excessive ad valorem taxes paid in 24 States amounting to $111 million or slightly more than 58 percent of the total railroad ad valorem tax bill in those States.

A fourth study [4] made for 1964 and reproduced as appendix A, shows excessive ad valorem taxes paid in 20 States amounting to $75 million or 51 percent of the total ad valorem tax bill in those States.

I wish to empasize here that the purpose of these studies is neither to single out nor criticize any particular State or States. Nor is it our purpose to commend by omission States not listed or to suggest the absence of tax discrimination in any States not listed. Rather, our purpose was and is to show a pattern or practice of discriminatory action, sufficent in scope and extent to warrant the attention of the Congress, and directed toward a subject (interstate commerce) over which Congress has full control and responsibility.

As for figures contained in these studies, we have used only the most conservative at our command. The actual extent of discrimination may be much greater. Regardless of degree, the result is active discrimination directed at railroads and as such should be declared unlawful. It is an unpardonable practice for which there can be no valid excuse.

In describing the 1957 study, the Doyle report was careful to state that the information had been furnished by the Association of American Railroads, and it added the following significant statement beneath the detailed information for each of the States referred to: [5]

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

It seems almost self-evident that excessive property taxes resulting from discriminatory equalization of railroad assessments would unduly burden interstate commerce. Railroads are responsible for moving the largest share of our intercity tonnage carried by any mode of transportation (43.51 percent in 1964). Any substantial addition to the railroads' cost of doing business obviously burdens interstate commerce, and where such added cost is a direct result of discriminatory action aimed at the railroad industry, then the burden is clearly an undue burden and interstate commerce should be protected against it.

The added tax burden on account of discriminatory assessments is substantial to the point of being oppressive. During the 6 years that this legislation has been before the Congress, railroads have been overtaxed more than an estimated three-quarters of a billion dollars as a direct result of discriminatory assessments. There is no telling how large this figure would be if consideration were given to the effect of this indefensible practice in prior years extending for decades.

The current showing as to discriminatory assessments represents 43.3 percent of all railroad State and local taxes of every kind and description in the 20 States listed in appendix A hereto, and it represents 20.6 percent of all such State and local taxes for the entire railroad industry in 48 States, Hawaii, and Alaska excluded.

---

[4] In this as in the preceding studies only the 37 States that centrally assess railroads were considered.

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

While appendix A lists only 20 of the 48 States, the tax discrimination which they are shown to practice actually has a much broader reach on the railroad industry. To illustrate, in 1964 the average road mileage operated in transportation service of all class I line-haul railroads in the 48 States was 217,181 miles, and those same carriers employed 665,017 persons and generated 659,327 million revenue ton-miles. The total mileage operated by all of the class I line-haul railroads having property in any 1 or more of the 20 States listed in appendix A was 199,656 (91.9 percent of the total). The number of employees of those same carriers was 586,496 (88.2 percent of the total); and the revenue ton-miles generated by those same carriers everywhere was 602,318,513,000 (91.4 percent of the total).

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

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

H.R. 4972 follows the language of section 13(4) of the Interstate Commerce Act in declaring that the proscribed action by any State or subdivision or agency (in taxing common carrier property on a basis higher than that at which other property in the same taxing district is taxed) "is hereby declared to constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce and is hereby forbidden and declared to be unlawful."

The fact that section 13(4) deals with one type of discrimination or burden and H.R. 4972 with another is immaterial, because they are both concerned with "unreasonable and unjust discrimination against and an undue burden upon interstate commerce." In the former, the prohibition is against a State's requiring a carrier to charge intrastate rates so low as to be unfair to or discriminate against, or to place an undue burden upon, interstate commerce; that is, so low as not to contribute their fair share to the revenues required by the carrier properly to perform its interstate operations. In H.R. 4972, the prohibition (simply stated) is against the action of a State or its subdivision in assessing and collecting taxes on carrier property at a higher rate or ratio than on other property in the same taxing district. In each case the act forbidden is unjust discrimination against interstate commerce; that is, against common carriers which are engaged in interstate operations and are subject to the Interstate Commerce Act. In each case the prohibition is against a type of discrimination or burden which would deprive a carrier of revenues needed in the performance of its services in interstate commerce.

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

The question has been asked, Can Congress constitutionally enact a measure such as this? At the 1964 hearings several members of the subcommittee expressed concern over this issue as did the Department of Justice in a letter addressed to the then chairman of this committee.

In an effort to put this issue at rest, we have obtained an in-depth opinion from two recognized authorities in the fields of constitutional law and State taxation. The authors of this opinion are Mr. Paul J. Hartman and Mr. Paul H. Sanders, both of Vanderbilt University School of Law.

Mr. Hartman is a professor of law at that institution specializing in State and local taxation law. He is the author of "State Taxation of Interstate Commerce" [6] and has written numerous law review articles on the subject.

Mr. Sanders is also a professor of law at Vanderbilt, teaching courses in constitutional law and labor law. He is the author of various articles and publications in the constitutional and public law fields. Mr. Sanders is here today and will discuss more fully the constitutionality of the measure at which time he will introduce their written opinion and supporting memorandum. Compherensive biographical data on both these gentlemen may be found at the end of their printed memorandum.

At the time that we requested an opinion of these men, we made available to them a copy of the proposed measure and a copy of the hearing before the Subcommittee on Transportation and Aeronautics on H.R. 736 and H.R. 10169 held July 28, 1964.

---

[6] Hartman, "State Taxation of Interstate Commerce," Dennis & Co., Inc. (1953).

It was in the light of the background information there elicited that Mr. Hartman and Mr. Sanders approached the constitutional issue.

These gentleman have concluded that the Congress does have power under the commerce clause and other principles enunciated in their opinion to enact the measure presently before you. We feel that both of these men are eminently qualified authorities in the fields of constitutional and State taxation law and we assure you that this measure, if enacted in its present form, will successfully withstand attack as to its constitutionality.

We have also sought and obtained the views of four noted and qualified authorities in the fields of taxation, economics, and transportation as to the appropriateness, adequacy, desirability, and need for this legislation.

These experts are Mr. James W. Martin of Kentucky, Dr. Harold M. Groves of Wisconsin, General John P. Doyle of Texas, and Mr. Broley E. Travis of California.

Each man was supplied with copies of H.R. 4972, the report of the subcommittee hearing, and the Hartman-Sanders opinion relating to the constitutionality of the measure.

Mr. Martin, who is generally conceded to be the dean of the tax fraternity is a professor emeritus at the University of Kentucky. He is highly regarded in the field of valuation of railroad and public utility properties, having served as valuation consultant both for railroads and the States of Kentucky, Virginia, Arizona, and Georgia as well as cities in those States. He is a past president of a number of organizations, including the Tax Foundation, Tax Institute of America, Associated Bureaus of Business and Economic Research, and the National Tax Association. More expended biographical data appears at the conclusion of the letter opinion appended hereto.

Dr. Groves, no less an authority taxwise, also brings to bear on the issue a comprehensive knowledge of economics and public finance. He is a professor of economics at the University of Wisconsin, has served Government in both appointive and elective capacities, has written extensively of finance and taxation, and served a term as president of the National Tax Association. Extended biographical data is attached.

Major General Doyle, who prior to his retirement served as Director of Transportation of the U.S. Air Force, occupies the McDonald Chair of Transportation at Texas A. & M. and served as Director of a Special Study Group on Transportation Policies in the United States for the Interstate and Foreign Commerce Committee of the Senate, which reported on the subject in January of 1961. Full biographical information appears immediately after his letter which is attached hereto, as exhibit 3.

Mr. Travis is presently a consulting valuation engineer in Sacramento, Calif. He is a former chief valuation engineer for the California State Board of Equalization. In addition, he has assisted the States of Oregon, Colorado, New York, Utah, and Idaho in their railroad assessment work. He has been employed as an expert by railroads in the preparation of valuation and equalization cases in Missouri, Illinois, South Dakota, and Iowa, since his retirement from his position with the State of California in 1962. More detailed biographical data appears as a part of Mr. Travis' statement.

Though unable to have Mr. Martin, Dr. Groves, or General Doyle present to appear before you, we were fortunate in being able to present Mr. Travis who is here and will appear later.

The National Association of Tax Administrators by executive committee action on January 18, 1961, accorded formal recognition to the discriminatory tax practices directed against railroads in the matter of their property assessments at State and local level. This committee recommended that the president of the association appoint a committee to "deal with all aspects of the problem, including the several proposals to restrict the taxing jurisdiction of the States as to property used in interstate commerce by railroads."

The executive committee also expressed the hope that the States found to be guilty of the offenseive practice of discriminating against railroads would see the error of their ways and mend them in a gradual and (presumably) painless fashion.

The president of the National Association of Tax Administrators acted on the recommendation of his executive committee and appointed the committee. How-

ever, the committee had made no report by 1963 and so far as I have been advised has never made a public report.

As a practical matter the whole approach of this organization amounts to a confession of error coupled with a request for a postponement of judgment.

In 1964 and when measures identical to those now pending were before this committee, Government agencies having a possible interest were invited to express their views. The results are quite revealing:

First: No agency denied that railroads were in fact the victims of discriminatory action of the type claimed.

Second: No agency opposed the equalization objective.

The laws of practically all the States, if carefully adhered to, would rarely, if ever, produce a discriminatory assessment. In contrast to State assessment laws, the State provisions for testing assessments in courts or obtaining relief from the taxes that result from these assessments are not nearly as free from criticism. For the most part, these procedural relief statutes are vague and confusing and have little to commend them in the way of uniformity of either design or application. In this area, it seems clear that the proposed measure, offering as it does, a clear, direct and simple remedy designed for uniform, application by the Federal courts is highly desirable.

It should be kept in mind at all times that the measure here under consideration addresses itself only to supplying a procedure by which discriminatory taxes may be corrected. It is only available to the taxpayer capable of bringing himself within its terms. It is not self-operative and neither imposes any duty nor confers any right on the Federal Government to administer State taxes. The offensive taxes must be proven to be such by competent evidence and in a court of law. Absent such a proceeding and proof by a complaining taxpayer, the bill here proposed would have no effect whatever on any act of any State regarding any tax at any time.

To avoid unduly lengthening this statement and at the same time make readily available full information concerning this measure and certain questions that might be asked regarding it, I suggest that the committee by reference include as a part of the record of this hearing, my statement, my answers to questions propounded by the chairman of the subcommittee all in connection with the subcommittee hearing on July 28, 1964, and the documents listed below and submitted at that time:

(1) The Doyle Report: that is, "National Transportation Policy," a report prepared by the Special Study Group of Transportation Policies in the United States for the Senate Committee on Interstate and Foreign Commerce, 87th Congress, 1st session (preliminary draft, 1961).

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

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

(4) Report of the Advisory Commission on Intergovernmental Relations on "The Role of the States in Strengthening the Property Tax," volumes 1 and 2, June 1963.

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

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

The following exhibits are appended and asked to be made a part of this statement:

Exhibit 1. Letter of Mr. Joseph W. Martin of January 10, 1966. (Also background material on education and experience.)

Exhibit 2. Biographical material of Dr. Harold M. Groves.

Exhibit 3. Letter of Maj. Gen. John P. Doyle of February 7, 1966. (Also background material.)

APPENDIX A

State	1964 railroad ad valorem taxes (1)	All other 1964 State and local railroad taxes (2)	Percent of value at which railroad property assessed in 1964 (3)	Percent of value at which property of others assessed (4)	Estimated reduction in railroad ad valorem taxes if railroad assessments had been made at the same percent of value as were the assessments of property of others (5)	Percent of tax excessive
Alabama	$3,200,440	$2,317,560	40	20	$1,600,220	50
Arizona	8,381,673	319,327	76	20	6,705,338	80
California	24,732,616	5,008,384	42	22	11,624,330	47
Idaho	4,512,592	281,408	40	16	2,707,555	60
Iowa	6,841,562	96,438	60	25	3,968,106	58
Kansas	12,599,613	621,387	50	20	7,559,768	60
Louisiana	4,165,341	1,620,659	40	20	2,082,671	50
Mississippi	2,822,748	611,252	30	14	1,496,056	53
Missouri	9,352,081	888,919	50	30	3,740,832	40
Montana	6,026,541	149,459	50	25	3,013,271	50
New Mexico	2,453,818	330,182	70	20	1,742,211	71
North Dakota	4,930,106	125,894	45	27	1,972,042	40
Ohio	24,459,469	2,681,531	100	55	11,006,761	45
Oklahoma	5,933,042	357,958	40	20	2,966,521	50
South Carolina	2,468,585	1,100,415	42	10	1,876,125	76
South Dakota	1,051,379	30,621	60	45	262,845	25
Tennessee	7,630,907	2,260,093	95	30	5,189,017	68
Utah	4,564,202	422,798	28	16	1,916,965	42
Virginia	7,522,320	6,943,680	40	33	1,278,794	17
Wyoming	3,550,477	43,523	60	20	2,343,315	66
Total	147,199,512	26,211,488			75,052,743	51

NOTE.—Since 1964 certain of the States listed above (notably North Dakota and Montana) have taken action to bring the level of railroad assessments closer to the level of assessments of other property. However, the reverse is true in other States.

EXHIBIT No. 1

LEXINGTON, KY., *January 10, 1966.*

MR. JAMES N. OGDEN,
Vice President and General Counsel,
Gulf, Mobile & Ohio Railroad Co.,
Mobile, Ala.

DEAR MR. OGDEN: H.R. 4972, 89th Congress, 1st session, and identical measures in this and earlier Congresses, are designed, among other things, to accord the Federal district courts jurisdiction to provide judicial review within carefully defined limitations of cases involving carriers in interstate commerce who allege discriminatory property tax assessment. To secure the review the taxpayer would no longer have to show that he lacks a legal remedy under State law.

There are States as to which no such legislation is needed because (*a*) the State does not apply the ad valorem property tax to some or all such carriers, (*b*) the assessing officers avoid the discriminatory practices, or (*c*) the State courts under appropriate legal procedures protect taxpayers who would otherwise become victims of discrimination. However, there are certain States in which the statutes ostensibly provide timely and comprehensive judicial review but in which experience demonstrates that practically there is no prompt or adequate legal remedy for grossly inequitable and unconstitutional discrimination. (It has been my lot to be involved as a consultant or witness in some such States—sometimes with the State government, sometimes with taxpayers—and, hence to know the facts firsthand as well as through usual professional channels.) The States in which the legislation is not needed would, of course, be unaffected by the legislation.

In brief, there is a clear need for legislation such as that contemplated in the cited bills if interstate carriers are to have the due process and equal protection of the laws which the 14th amendment to the U.S. Constitution seeks to provide and which must be available if gravely unreasonable differential burdens on interstate commerce are to be removed.

The proposed legislation carefully avoids any impingement on the character of American federalism. It would not—as would some proposals to attain related objectives—impose on State administration of property tax assessment particular decisions made under congressional authority by the Internal Revenue Service or by some other Federal agency. Indeed, it would neither restrict the scope of State legislation nor interfere in any way whatever with the legal operation of any State administrative agency. Nor would it delay—as do Federal or State injunction proceedings at present—collection of the parts of State and local taxes which are clearly legal. Its only application would judicially implement a Federal constitutional provision about 100 years old but never yet fully applied in a number of States to interstate transportation property tax assessment cases. The proposed legislation is, thus, peculiarly appropriate to the task of applying the Constitution of the United States to the comparatively small number of cases to which there is now no practically adequate means of application—and doing so without any possible offense on rational grounds to persons who wish to maintain the legally established operating atonomy of each State.

In this sense the proposed legislation is wise in what it does do if one merely assumes that it makes sense to apply the equal-protection doctrine to interstate carriers as well as to other taxpayers who otherwise become the victims of grossly inequitable discrimination; and it is equally wise in what it avoids doing, that is, altering the ground rules for the respective areas of adminstrative responsibility of State and of Federal Government. In the latter relationship the builtin restriction in the scope of the proposed bill would assure that the measure will aid, rather than impede, the drives now in process in a number of States toward better property tax administration.

There is one comment which rests on a different footing. The pleas of the persons who would avoid enactment of the proposed legislation until other "alternatives" are tried ignore the history of property taxation in relation to the 14th amendment. For about 90 years (the Supreme Court decided famous *State Railroad* cases in 1875) the problem has been attacked repeatedly, variously, and insistently. And, except for technical advances made in the light of research, the nonrevolutionary "alternatives" now proposed have been before the States in some form for more than 50 years. For reasons already made clear in the initial paragraphs of this letter, the legislation now proposed cannot logically be expected to interfere with or even slow the application of any proposed "alternatives." Moreover, if one may except the drastic remedies which would replace State with Federal tax assessment administration to some degree, this legislation would deal with a weakness which the publicized "alternatives" do not even purport to attack.

It seems clear that the Congress, in the interest of the reasonable protection of interstate commerce from grossly inadequate property tax discrimination and to assure an American fair deal, should enact legislation to guarantee the application of the constitutional prohibition against grossly discriminatory tax assessments which victimize carriers that transport goods or persons among the States. Only by such positive action can that commerce have the full protection of the laws which the commerce clause of the Constitution charges the national lawmakers with protecting.

Sincerely yours,

JAMES W. MARTIN.

NOTES ON EDUCATION AND EXPERIENCE OF JAMES W. MARTIN TO JANUARY 1, 1966

Education: College, East Texas State Teachers', June 1920. Graduate, Peabody-Vanderbilt, June 1920–June 1921; Chicago, June 1922–June 1924; summer 1928.

Experience: Alabama Technical Institute and College for Women, 1921–22; University of Chicago and Northwestern University (part time), 1922–24; Peabody College, summer 1924; Emory University, 1924–28; University of Kentucky, professor, 1928–48, distinguished professor, 1948–64, emeritus, 1964 to date; director, bureau of business research, 1928–64. Meantime, simultaneously or while on partial or complete leave, assistant to chairman, National Tax Association Committee on Highway Finance, 1921–22; chairman, Committee on Motor Vehicle and Related Taxes, National Tax Association, 1929–34; director of tax study for Georgia Chamber of Commerce, 1923–24; research director, Interstate Commission on Conflicting Taxation (Council of State Governments),

1934–35; member of President's Committee on Relation of District of Columbia to United States, 1935; chief of staff of Governor's Reorganization Commission (Kentucky), 1935–36; commissioner of revenue and chairman, Tax Commission, Kentucky, 1936–39; consultant during World War II period to Treasury Department, Civil Aeronautics Board, and Division of Governments, U.S. Bureau of the Census; later consultant or lecturer (also staff director), Virginia Public Service Tax Study Committee on Railroad and Other Public Utility Taxation; Turkish Ministry of Finance on Administration of the Ministry; city of Louisville, and numerous other cities of Georgia, Kentucky, Tennessee, and Virginia; various agencies of Commonwealth of Kentucky, and of 12 or 15 other States; Southern Regional Education Board, 18 or 20 American universities and 1 foreign university; and served as Kentucky commissioner of finance (1955–57) and of highways (1937–38). Aside from 3 times valuing railroads and other Kentucky public service property as an official, Martin devoted special attention to this subject in (*a*) preparation of valuation testimony as to 5 valuation cases—mostly railroads—involving assessment or condemnation in which testimony was not submitted because of settlement or other reason and 15 cases in which in 9 States testimony was submitted before a State valuation agency or a State or Federal court; (*b*) consultant to railroad associations of 3 States involving counsel as to valuation of all railroads in 2 cases and testimony before a legislative interim committee in the third, preparation for Kentucky Department of Revenue of a general study of methods of valuation of operating public utility (including statistical derivation of capitalization rates) in early 1950's and as to railroads again in the late 1950's (a third study involving all public service enterprises is now in process); (*c*) revalution of all Kentucky public service corporations for department of revenue, 1964–65; (*d*) current consultation with Arizona, Georgia, and Kentucky as to public service valuation; and (*e*) contribution of a dozen or 15 monographs and technical journal articles to scholarly literature (along with 3 unpublished reports aggregating monographic proportions to tax officials in Arizona and Kentucky). In all, Martin has prepared for publication about 400 monographs and articles (the latter includin papers in American and foreign government, legal, and economics journals). He was awarded an honorary LL.D. by the University of Kentucky in 1965. Martin is past president of the Kentucky Academy of Social Sciences, Southern Economic Association, Tax Foundation, Tax Institute of America, Associated Bureaus of Business & Economic Research, and National Tax Association. He is now an honorary member of the last and of the National Association of State Budget Officers.

EXHIBIT No. 2

Dr. Harold M. Groves is a native of Wisconsin. He is a graduate of the University of Wisconsin where he received his bachelor of philosophy degree in 1919, his master's in 1921, and his doctor of philosophy degree in 1927, and had a year of law at Harvard Law School. A professor of public finance, he was appointed to the University of Wisconsin staff in 1937 where he has remained except for an occasional mission in public affairs. During the early thirties he was successively State assemblyman, State tax commissioner, and State senator. In 1940 he served as chief of staff for the U.S. Treasury's study of intergovernmental fiscal relations. In 1944–46, he was on the staff of the Committee for Economic Development which published his study entitled "Postwar Taxation and Economic Progress." In 1948–50, he was chairman of the National Tax Association Committee on Corporate Income Taxation.

He has been on the board of directors of the National Bureau of Economic Research since the midthirties and was chairman of the board from 1961 to 1963. He was vice president of the American Economic Association for a term in the late forties and has been president of the Mid-West Economic Association. One of his many books, "Financing Government," is now in its sixth edition. He served as president of the National Tax Association in 1963–64.

EXHIBIT No. 3

TEXAS A. & M. UNIVERSITY,
College Station, Tex., February 7, 1966.

MR. JAMES N. OGDEN,
Vice President and General Counsel,
Gulf, Mobile & Ohio Railroad Co.,
Mobile, Ala.

DEAR MR. OGDEN: After going over H.R. 4972, your testimony in 1964 and the Hartman-Sanders paper, I find nothing that I can add to our report of 1961 on national transportation policy. Since that was written, nothing has been developed which would cause me to doubt the accuracy of our conclusion that there is ample evidence that railroad operating property has been and still is subject to discriminatory assessment for tax purposes in a number of localities. We all know that progress has been made in some States. It is not enough.

Mr. Rogers' bill seems adequate for the purpose and is probably the most that could be achieved at this time. I am still of the belief that a real case in equitable treatment could be made for exempting private way from all ad valorem taxation. I don't think this very likely except as a subsidy to deficit commuter service.

Discriminatory taxation of corporate enterprise has no place in a competitive economy. H.R. 4972 is a step in the right direction. I sincerely hope you can get this constructive bill enacted into law. It is too bad the several States couldn't do it on their own without Federal intervention.

Sincerely,

JOHN P. DOYLE.

BIOGRAPHICAL SKETCH OF MAJ. GEN. JOHN P. DOYLE

Maj. Gen. John P. Doyle, U.S. Air Force (retired), currently occupying the MacDonald Chair of Transportation at Texas A. & M. University, is a graduate of the U.S. Military Academy and the advanced management course from the Harvard School of Business. Prior to his retirement in 1956, he was Director of Transportation for the Air Force. Subsequent thereto he was a consulting engineer in transportation and a member of the board of directors of Transportation Consultants, Inc., of Washington, D.C. He was recalled to active duty in 1959 to serve as director of a study of national transportation policy for the Interstate and Foreign Commerce Committee of the U.S. Senate (as it was then known). The report (S. Rept. 445, 87th Cong., 1st sess.) was completed in December 1960, after which he reverted to retired status and resumed his work with Transportation Consultants, Inc., until accepting his present position in September 1962. He is the author of a number of technical papers dealing primarily with transportation.

The CHAIRMAN. Thank you.

Mr. Rogers, do you have any questions?

Mr. ROGERS of Texas. Mr. Ogden, let me compliment you on your statement. It is very thorough, and I think to the point.

I think really that on page 13, where you state that the laws of practically all of the States, if adhered to, would rarely, if ever, produce a discriminatory assessment, and the language following that, points up the basic problem here. It was the problem that caused me to become interested in this matter and to introduce this legislation.

Do we have access to the opinions that you referred to in here, by Mr. Hartman?

Mr. OGDEN. Yes, sir. It is quite a substantial document and consists of over 90 pages. It has been given to the clerk and we have a number of copies here. Mr. Sanders is here to state his opinion and to answer any questions or discuss any facet of it with you.

(The document referred to will be found in the committee files.)

Mr. ROGERS of Texas. Do you recall, Mr. Ogden, what their conclusion was with regard to the objection of Deputy Attorney General Katzenbach, as expressed in their letter in 1964, in which he referred to the decision—I forget the name of it——

Mr. OGDEN. That is the *Moses Lake* decision.

Mr. ROGERS of Texas (continuing). In which it was stated that the court reversed the case and, of course, remanded it and the lower court had no right or jurisdiction to assess any taxes.

Mr. OGDEN. Mr. Rogers, Mr. Hartman and Mr. Sanders' opinion and memorandum have fully covered the *Moses Lake* proposition. That is in pages 92, 93, 94, and 95 of the memorandum. I would hesitate to undertake to explain Mr. Sanders' opinion when he is here, but it does cover it and it was gone into, and I think very ably and very clearly.

Mr. ROGERS of Texas. But they did conclude in their opinion, I would gather from your statement, that there would be no necessity to amend the bill as it is presently drawn because this matter would be taken care of.

Mr. OGDEN. That is correct.

Mr. ROGERS of Texas. Thank you very much. That is all, Mr. Chairman.

Mr. YOUNGER. Thank you, Mr. Ogden, for a very thorough discussion of this problem. Do you recall the hearings that we had in connection with the guarantee of railroad loans by the ICC?

Mr. OGDEN. Mr. Younger, I recall only that there were hearings. I was not present and had no participation in them whatever.

Mr. YOUNGER. As I recall, there were discussions in regard to the New Haven Railroad and one of the reasons given for the financial position that the New Haven found itself in was the discriminatory tax by the various towns through which the New Haven road ran, especially in the local communities, and the tremendous tax that was placed even on their small depots and buildings, which was in addition to their right-of-way.

I think that was rather clearly brought out in those hearings; that one of the greatest difficulties, and as I recall there was some talk at the time of the ICC stepping in and trying to get some relief from this excess taxation in order to make the New Haven partially sound. Of course, since that time we have had something like $50 million in guaranteed loans to the New Haven.

Mr. OGDEN. Yes, sir.

Mr. YOUNGER. But I think it was rather thoroughly covered in the hearings at that time.

Mr. OGDEN. I do recall, Mr. Younger, just from the presentation, that the matter of heavy tax burden was alluded to as one of their problems. That is true.

Mr. YOUNGER. Thank you very much.

Mr. JARMAN. Mr. Ogden, I think you have made an excellent statement and I compliment you on it. On page 13, where you refer to Government agencies having a possible interest being invited to express their views—were those agencies State or local in nature?

Mr. OGDEN. I meant the Federal Government, sir. I assume that it was confined to Federal Government agencies because no State

agency expressed any view. I really, perhaps, should have made the statement in that fashion, that I understand when a bill is up for consideration, that is the practice of the committee, or the chairman, to ask various Government agencies, Federal agencies, if they think they have any interest, to express a view. That is what I meant to imply, that if, following the customary procedure in those matters, it was followed and the views were expressed.

Mr. JARMAN. I understand.

Now, at the local and State levels, there are legal provisions for contesting an assessment, are there not?

Mr. OGDEN. Yes, sir.

Mr. JARMAN. And, of course, I am assuming a testing effort has been made many times at the State and local levels to contest assessments that were felt to be discriminatory. What kind of reaction and results have been forthcoming, in actions of that sort?

Mr. OGDEN. On the whole, Mr. Jarman, very, very negligible, relatively, and very, very discouraging. To give you just a few instances, and this is related to the commuter problem and the taxes. New Jersey has helped railroads to some extent in connection with actually forgiving some taxes to help in the related commuter problem, but at the same time, New Jersey perhaps has procedures for testing, as you ask, an assessment or raising the question regarding taxes that are considered to be discriminatory or wrong for any reason, but those procedures are just terrible.

I am advised that tax cases that were begun in New Jersey in 1952, after 13 or 14 years, are still muddling along and no closer to conclusion. One railroad estimates that it feels that at the rate they are going, they will not conclude its 1953 objections until about 1970.

So while there are procedures, to say that they are adequate, they just are not. It is very cumbersome in a number of other States. Many States require the type of procedure where they go into each county. For example, in the State of Illinois we have had litigation for years. It finally resulted in legislation that requires equality of assessment, but to bring that about more than 2,000 cases were filed in that State in the various counties. Eight cases went to the Supreme Court and we are still trying some of the cases.

We have won all that we have tried, but there were over 2,000 cases in about 8 years in one State. That is a great deal of litigation, even though we win it. It is expensive and time consuming, and it puts the emphasis, Mr. Jahman, where it shouldn't be.

The emphasis, for instance, in Tennessee, to use an illustration that is very much in the news at the moment, is on whether or not an extraordinary remedy may be employed. It is pretty well taken for granted that if they can just get into court, possibly the relief would be granted. Well, the emphasis should not be, in a case of this kind, can I get into court. The emphasis ought to be, can I prove my case, or do I have any just reason to want to be in court?

The purpose of this measure would be to provide a simple, direct, usable, understandable, equally applied method of raising these important issues and place the emphasis where it ought to be, to put the

burden where it should be; that is, on the taxpayer to prove what he claims, and not spend all of his time and fritter away all of his energies and carry on all of this extraordinary litigation in order to find a way to get into court.

Mr. JARMAN. And your conclusion is that the only really practicable solution to this problem will be through Federal legislation such as we have before us.

Mr. OGDEN. Yes, sir; because it would apply, then, equally and evenly. As I emphasize again, it is only a remedy. It places no affirmative duty on any Federal agency to come out and police anybody. There is nothing for the Federal courts to do unless a taxpayer calls on the court and proves his case.

But it does remove from the realm of litigation the proposition of whether or not a remedy is available. That today is the big issue. Do we have a remedy? That is the issue. The remedy in Tennessee so far stands on the very thin ground that a district court has reversed an old rule of the Supreme Court of the United States. That doesn't happen too frequently. I wouldn't put too much dependence on it.

Mr. ROGERS of Texas. Mr. Ogden, isn't it a fact that if this bill is passed, the availability of the Federal forum will tend to reduce the number of lawsuits because your State agencies and your municipal corporations of lesser size within that State will tend to follow these equalization practices and get away from the discriminatory practices?

Mr. OGDEN. I would answer that strongly in the affirmative. It has been the history over the years of this problem that, when brought up to stark reality and faced with known methods of reaching the thing, then some relief is brought about.

For instance, in Kentucky, they are in pretty good shape right now, but they were faced with a decision last year, a mandamus to every public official in the State, where they were told that on January 1, 1966, they would have to equalize all of the assessments. Their failure to do it would be considered a deliberate violation of the court's order.

I will say this for the benefit of Kentucky: That they have been working toward that for some time. They just hadn't quite gotten there, and it came as neither a surprise nor a disappointment, as far as the Kentucky officials were concerned. But nonetheless, that typifies the point that is reached in this type of situation.

I think what Mr. Waggonner said, as far as Louisiana is concerned, in expressing the local view there, they made it quite clear that there just would be no equalization until they were faced with a court requirement.

Mr. JARMAN. I have no further questions, but thank you, Mr. Ogden.

Mr. Moss. Mr. Ogden, what property is to be covered? Is it all property owned by the railroad company?

Mr. OGDEN. Yes, sir.

Mr. Moss. In my State that could entail the many thousands of agricultural acres that are owned by the railroads.

Mr. OGDEN. Well, I see what you mean. No, sir; I don't mean that. We are speaking now of railroad operating properties, and they di-

versify to some extent now. Some railroads have oil-producing lands.

Mr. Moss. Isn't the language in the bills as presented here intended to cover all railroad property? That is as I read it.

Mr. OGDEN. Well, yes, sir.

Mr. Moss. That is property owned or used, that is the language on line 6 of page 2 of the proposed legislation. It would cover all property, wouldn't it?

Mr. OGDEN. Well, the language certainly would; yes, sir. I should think that if there were any problems, it was intended, or at least my recommendation would be that if need be, it would seem to me it could be confined to that property of the carrier on which the carrier does business and on which is carried the success or failure of its carrier operations.

Mr. Moss. It would be very difficult to define it, would it not?

Mr. OGDEN. Well, this other property would hardly get into the ratemaking base, for instance.

Mr. Moss. Now, it would also place the railroad carrier in a preferred position as a taxpayer; would it not?

Mr. OGDEN. Sir, what is that?

Mr. Moss. It would place the railroad taxpayer in a preferred position, would it not, and give an additional remedy?

Mr. OGDEN. No, sir.

Mr. Moss. In my State of California, we assess all utility property under the same procedures. I went through this back in my State legislature almost 20 years ago. I have no doubt as I recall the testimony of the Pacific Gas & Electric Co., and the Pacific Telephone & Telegraph Co., that they felt that they were suffering the same discrimination which was alleged by the railroads. Through the enactment of this, we would be giving an additional remedy to the one, but not to the others; isn't that true?

Mr. OGDEN. Well, yes and no. In a sense it really isn't. Actually, today, Mr. Moss, there is a much more drastic remedy open to anybody with diversity of citizenship in the Federal court. The only reason that it is difficult to get into the Federal court is the requirement that you prove, first, that there are no adequate State remedies. Sometimes that is quite hard to prove.

Mr. Moss. Wouldn't the Pacific Gas & Electric Co. be faced with the same problems in doing that as the Southern Pacific Co.?

Mr. OGDEN. I am not familiar with the Pacific Gas & Electric, but my point is simply this: that under the law as it is today, and assuming that there is no adequate State remedy, any taxpayer, be he the Pacific Gas & Electric or Southern Pacific, or Tom Jones, if he has a diversity of citizenship or other ground for Federal jurisdiction, he can obtain an injunction against the entire assessment.

Mr. Moss. Are you saying, then, that the remedy for the other utilities is adequate, but not for railroads?

Mr. OGDEN. Frankly, I am worried with the railroads right now.

Mr. Moss. That isn't the question I asked you. I think I have asked you a fair question. I think I am entitled to a fair answer.

Mr. OGDEN. I am not trying to sidestep it at all, Mr. Moss. Would you mind repeating it?

Mr. Moss. I asked, first, if this was not providing an additional remedy for the railroads.

Mr. Ogden. My answer to that is "Yes."

Mr. Moss. And one not available to other utilities?

Mr. Ogden. My answer to that would be precisely "Yes."

Mr. Moss. Of course, it would. Do you think that we are justified in only tackling part of this problem? If we are going to marshal the power of the Federal Government to achieve tax equality, why not marshal it for all firms affected by these actions, firms engaged in interstate commerce?

Before coming here, I was a practicing real estate broker and I know in some of these industrial parks I have heard my clients allege that they suffered highly discriminatory treatment. I don't know whether they did, but if they did, shouldn't they also, if engaged in interstate commerce, have this additional remedy available to them?

Mr. Ogden. Yes, sir. It covers all common carriers subject to the Interstate Commerce Act.

Mr. Moss. It covers the common carriers subject to it, doesn't it?

Mr. Ogden. Well, pipelines are common carriers.

Mr. Moss. Let us talk about Safeway Stores. They are in interstate commerce, and they are not a carrier. They have large warehouses in many industrial parks across this Nation. If they alleged discriminatory treatment, would this be available to them?

Mr. Ogden. If they were common carriers; yes.

Mr. Moss. Well, they are not.

Mr. Ogden. I can't help it if they are not common carriers, Mr. Moss.

Mr. Moss. I just wanted to get on the record here the fact that this would be an additional remedy available only to one class of citizen and not to others who might have a very similar or an identical problem.

That is all.

Mr. Rogers of Texas. Would the gentleman yield?

The point is, I don't think that it ought to be confined to a railroad, but this is a common carrier bill. It has to do with all common carriers. One of the reasons for it is that it was in this general area where discrimination was quite obvious. As a matter of fact, if you go back not too many years ago, you will find the general saying was that the railroads stood for it because it was a good tax source and they were also a good defendant in lawsuits.

Mr. Moss. My other point is that there are other utilities who allege the same sort of discriminatory treatment. I recall full well, during the hearings in the California Legislature in 1949 on legislation proposed by then Assemblyman Kirkwood, that we had the same allegations made, as I recall, by Pacific Gas & Electric Co., by Pacific Telephone & Telegraph Co., and other important business members of our State community.

Mr. Ogden. Mr. Moss, I would have no objection to them being included at all.

Mr. Moss. I just wanted to point out that we are going to open this Pandora's box and if we are going to do that we should know full well the dimensions. If we are going to provide this additional relief,

where do we stop? If the test is the effect upon interstate commerce, and the burden upon interstate commerce, then we have a long way further to go than is included in the bill before us. I don't personally want us to start down that road at this time.

Mr. ROGERS of Texas. Would the gentleman yield further?

I don't get the point of the gentleman's argument. Now, my attention has not been called to discrimination with regard to Safeway, but it is my feeling that in whatever field there is discrimination it ought to be corrected, and if it is not corrected at the State level, it ought to be corrected at the Federal level.

One of the basic premises of our Constitution is equality of taxation. I don't care whether it is a railroad or a truck of Safeway or who it is, if there is discrimination it ought to be corrected.

Mr. Moss. Why limit this additional remedy to common carriers? Why not open it up to everybody?

Mr. ROGERS of Texas. If the gentleman will yield further, if the gentleman will furnish me with the evidence as to other people engaged in interstate commerce, which would give us jurisdiction to act in this field, I will be most happy to study the evidence and introduce legislation to correct tax discrimination.

Mr. Moss. I have no doubt that I could get many firms engaged in interstate commerce to come before this committee and make the statement that they suffered discriminatory treatment.

Mr. ROGERS of Texas. If they can establish this, and prove it, they ought to be entitled to relief unless we are just doing lip service to equality in tax matters.

Mr. Moss. I think if we are going to provide relief, we should provide it for all taxpayers who can make a case of discriminatory treatment, whether they are common carrier or individuals.

The CHAIRMAN. Mr. Springer, do you have any questions?

Mr. SPRINGER. Mr. Ogden, when you were before the committee, do you recall some questions I asked you at that time with reference to the constitutionality?

Mr. OGDEN. Yes, sir.

Mr. SPRINGER. Now, you are satisfied that this legislation, the Waggonner bill which has been introduced, or the Rogers bill, that this is constitutional even in the face of State laws which apply for equalization of assessments?

Mr. OGDEN. I do.

Mr. SPRINGER. Even though there may be such in the States?

Mr. OGDEN. Yes, sir.

Mr. SPRINGER. Now, I think since you were before the committee, you have had some decisions, and I noticed, for instance, in Illinois that there was a suit brought by the Burlington, and your line, the C.N. & W., which came up in 1961, and the C.N. & W. case in May of 1963.

Now, you have a case pending of the Chicago, Burlington and Quincy, as of last November, which was continued to April 27th of this year that is pending in the circuit court of Cook County. Are you familiar with that case?

Mr. OGDEN. In a general way; yes, sir.

Mr. SPRINGER. Now, what they are seeking there is a return of taxes based on overassessment; isn't that correct?

Mr. OGDEN. That is a little oversimplification of it, but it is basically correct.

Mr. SPRINGER. That is about right, in layman's language, so all of the committee can understand it.

Mr. OGDEN. Yes, sir.

Mr. SPRINGER. Now, in Illinois, in 1963, we remedied this situation so there could be no doubt. The Illinois State Legislature passed, and the Governor signed, what was called this section 561 of chapter 120 of Illinois State Code, section 561, a method of determining fair cash value and equalizing assessed value.

I won't go into the whole of that, which contains some four long paragraphs, but I would like to read the last paragraph to give this committee some idea of how the State of Illinois corrected this thing.

The department shall determine the equalized assessed value of the property of every railroad company, other than noncarrier real estate

this gets into Mr. Moss' point, and we took care of that, and we didn't include that—

by applying to its determination of the fair cash value of such property of every railroad company an equalization factor, which factor shall be the statewide average ratio of the equalized assessed value of locally assessed property to the full, fair cash value of such locally assessed property.

Now, in essence, this is what you are talking about in this bill, the Waggonner bill, is it not?

Mr. OGDEN. Yes, sir.

Mr. SPRINGER. Now, pursuant to that, and to give the committee an example of what is required under the law, here are two legals which, Mr. Chairman, I would like to, if I might, insert in the record at this point, if it is in order.

The CHAIRMAN. Without objection, that will be inserted.

Mr. SPRINGER. And also section 561 of chapter 120 of the Revenue Code which gives the makeup of this evaluation.

(The documents referred to follow:)

[From the Illinois State Journal and Register, Dec. 24, 1963]

PUBLIC NOTICE

Notice is hereby given that the Department of Revenue of the State of Illinois has determined the 1963 fair cash valuation of railroad property subject to its assessment jurisdiction, under authority of the Revenue Act of 1939, as amended. Original assessments have been made on the basis of fair cash valuation to which has been applied a statewide equalization factor of 50 percent. Fair cash valuation and original assessments by companies are set forth below:

Railroad company	1963 fair cash valuation	1963 original assessment
Alton & Southern RR. Co.	$12,038,000	$6,020,000
Atchison Topeka & Santa Fe Ry. Co.	75,399,000	37,700,000
Aurora Elgin & Fox River Electric Co.	16,000	8,000
Baltimore & Ohio RR. Co.	32,090,000	16,045,000
Baltimore & Ohio Chicago Terminal RR.	27,220,000	13,610,000
Belt Railway Co. of Chicago	27,200,000	13,600,000
Calumet Western Ry.	400,000	200,000
Chesapeake & Ohio Ry. Co.	2,550,000	1,275,000
Chicago & Eastern Illinois RR. Co.	38,440,000	19,220,000
Chicago & Illinois Midland Ry. Co.	18,835,000	9,420,000
Chicago & Illinois Western RR.	2,000,000	1,000,000
Chicago & North Western Ry. Co.	114,494,000	57,250,000
Chicago & Western Indiana RR. Co.	28,341,000	14,170,000
Chicago Burlington & Quincy RR. Co.	182,964,000	91,490,000
Chicago Great Western Ry. Co.	12,717,000	6,360,000
Chicago Heights Terminal Transfer RR.	5,190,000	2,595,000
Chicago Milwaukee St. Paul & Pacific RR.	63,800,000	31,900,000
Chicago North Shore & Milwaukee Ry.	4,184,000	2,092,000
Chicago Peoria & Western Ry. Co.	40,000	20,000
Chicago Produce Terminal Co.	5,290,000	2,645,000
Chicago River & Indiana RR. Co.	18,317,000	9,160,000
Chicago Rock Island & Pacific RR. Co.	68,890,000	34,445,000
Chicago Short Line Railway Co.	1,840,000	920,000
Chicago South Shore & South Bend RR.	530,000	265,000
Chicago Union Station Co.	28,363,000	14,185,000
Chicago West Pullman & Southern RR. Co.	1,060,000	530,000
Davenport Rock Island & North Western Ry. Co.	1,300,000	650,000
Depue & Northern RR. Co.	30,000	15,000
East St. Louis Junction RR. Co.	1,160,000	580,000
Elgin Joliet & Eastern Ry. Co.	30,720,000	15,360,000
Erie-Lackawanna RR. Co.	1,050,000	525,000
Grand Trunk Western RR. Co.	8,280,000	4,140,000
Gulf Mobile & Ohio RR. Co.	59,470,000	29,735,000
Illinois Central RR. Co.	101,932,000	50,970,000
Illinois Northern Ry.	1,578,000	790,000
Illinois Terminal RR. Co.	13,950,000	6,975,000
Indiana Harbor Belt RR. Co.	15,400,000	7,700,000
Jefferson Southwestern RR. Co.	60,000	30,000
Jerseyville & Eastern RR. Co.	10,000	5,000
Joliet Union Depot Co.	450,000	225,000
LaSalle & Bureau County RR. Co.	1,000,000	500,000
Lee County Central Electric Ry. Co.	14,000	7,000
Louisville & Nashville RR. Co.	15,650,000	7,825,000
Manufacturers' Junction Ry. Co.	590,000	295,000
Manufacturers' Ry Co.	50,000	25,000
Soo Line RR. Co.	5,970,000	2,985,000
Missouri & Illinois Bridge & Belt RR. Co.	700,000	350,000
Missouri-Illinois RR. Co.	7,100,000	3,550,000
Missouri Pacific RR. Co.	30,000,000	15,000,000
Monon Railroad	500,000	250,000
New York Central RR. Co.	70,200,000	35,100,000
New York Chicago & St. Louis RR. Co.	46,020,000	23,010,000
Paducah & Illinois RR. Co.	700,000	350,000
Pennsylvania RR. Co.	64,730,000	32,365,000
Peoria & Pekin Union Ry. Co.	7,140,000	3,570,000
Peoria Terminal Co.	1,270,000	635,000
St. Louis & O'Fallon Ry.	260,000	130,000
St. Louis Southwestern Ry. Co.	4,700,000	2,350,000
Southern Illinois & Missouri Bridge Co.	2,100,000	1,050,000
Southern Ry. Co.	14,730,000	7,365,000
Terminal Railroad Association of St. Louis	19,900,000	9,950,000
Toledo Peoria & Western RR. Co.	12,260,000	6,130,000
Wabash RR. Co.	64,140,000	32,070,000

Application for review of the foregoing will be received by the Department within 10 days of this date. Such application must be in writing and shall be filed with the Department of Revenue (Railroad Property Tax Division) at its Chicago Office, 160 North La Salle Street, Chicago, Ill. Provisions of the statute and the rules of practice and procedure adopted by the Department of Revenue shall govern the preparation and filing of such applications.

STATE OF ILLINOIS, DEPARTMENT OF REVENUE,
HARRY L. HULMAN, *Director of Revenue.*

CHICAGO, ILL., *December 24, 1963.*

[From the Southern Illinoisan, Dec. 28, 1964]

PUBLIC NOTICE

Notice is hereby given that the Department of Revenue of the State of Illinois has determined the 1964 fair cash valuation of railroad property subject to its assessment jurisdiction, under authority of the Revenue Act of 1939, as amended. Original assessments have been made on the basis of fair cash valuation to which has been applied a statewide equalization factor of 50 percent. Fair cash valuation and original assessments by companies are set forth below:

Railroad company	1964 fair cash valuation	1964 original assessment
Alton & Southern RR. Co	$13,400,000	$5,200,000
Atchison Topeka & Santa Fe Ry. Co	73,700,000	36,850,000
Aurora Elgin & Fox River Electric Co	14,000	7,000
Baltimore & Ohio RR. Co	28,930,000	14,465,000
Baltimore & Ohio Chicago Terminal RR	27,220,000	13,610,000
Belt Railway Co. of Chicago	25,080,000	12,540,000
Calumet Western Railway	360,000	180,000
Chesapeake & Ohio Ry. Co	2,320,000	1,160,000
Chicago & Eastern Illinois RR. Co	35,400,000	17,700,000
Chicago & Illinois Midland Ry. Co	17,900,000	8,950,000
Chicago & Illinois Western RR	1,600,000	800,000
Chicago & North Western Ry. Co	85,610,000	42,805,000
Chicago & Western Indiana RR. Co	23,280,000	12,640,000
Chicago Burlington & Quincy RR. Co	163,000,000	81,500,000
Chicago Great Western Ry. Co	11,690,000	5,845,000
Chicago Heights Terminal Transfer RR	4,620,000	2,310,000
Chicago Milwaukee St. Paul & Pacific RR	59,950,000	29,975,000
Chicago Peoria & Western Ry. Co	40,000	20,000
Chicago Produce Terminal Co	4,760,000	2,380,000
Chicago River & Indiana RR. Co	15,500,000	7,750,000
Chicago Rock Island & Pacific RR. Co	58,040,000	29,020,000
Chicago Short Line Railway Co	1,480,000	740,000
Chicago South Shore & South Bend RR. Co	500,000	250,000
Chicago Union Station Co	28,370,000	14,183,000
Chicago West Pullman & So. RR. Co	1,020,000	510,000
Davenport Rock Island & N. W. Ry. Co	1,100,000	530,000
East St. Louis Junction RR. Co	1,160,000	580,000
Elgin Joliet & Eastern Ry. Co	29,540,000	14,770,000
Erie-Lackawanna RR. Co	1,000,000	500,000
Grand Trunk Western RR. Co	8,280,000	4,140,000
Gulf Mobile & Ohio RR. Co	46,450,000	23,225,000
Illinois Central RR. Co	96,670,000	48,333,000
Illinois Northern Railway	1,460,000	730,000
Illinois Terminal RR. Co	13,460,000	6,730,000
Indiana Harbor Belt RR. Co	13,530,000	6,765,000
Jefferson Southwestern RR. Co	60,000	30,000
Jerseyville & Eastern RR. Co	8,000	4,000
Joliet Union Depot Co	370,000	185,000
LaSalle & Bureau County RR. Co	900,000	450,000
Lee County Central Electric Ry. Co	14,000	7,000
Louisville & Nashville RR. Co	14,000,000	7,045,000
Manufacturers' Junction Ry. Co	540,000	270,000
Manufacturers' Railway Co	40,000	20,000
Soo Line RR. Co	5,540,000	2,770,000
Missouri & Illinois Bridge & Belt RR. Co	600,000	300,000
Missouri-Illinois RR. Co	8,600,000	3,300,000
Missouri Pacific RR. Co	27,500,000	13,750,000
Monon Railroad	500,000	250,000
New York Central RR. Co	65,990,000	32,993,000
New York Chicago & St. Louis RR. Co	43,990,000	21,993,000
Paducah & Illinois RR. Co	600,000	300,000
Pennsylvania RR. Co	61,490,000	30,745,000
Peoria & Peking Union Ry. Co	6,640,000	3,320,000
Peoria Terminal Co	1,000,000	500,000
St. Louis & O'Fallon Ry	160,000	80,000
St. Louis Southwestern Ry. Co	3,970,000	1,385,000
Southern Illinois & Missouri Bridge Co	1,800,000	900,000
Southern Ry. Co	14,500,000	7,250,000
Terminal Railroad Association of St. Louis	18,920,000	9,460,000
Toledo Peoria & Western RR. Co	11,610,000	5,805,000
Wabash RR. Co	44,950,000	22,475,000

Application for review of the foregoing will be received by the department within 10 days of this date. Such appliaction must be in writing and shall be filed with the department of revenue (railroad property tax division) at its Chicago Office, 160 North La Salle Street, Chicago, Ill. Provisions of the statute and the rules of practice and procedure adopted by the department of revenue shall govern the preparation and filing of such applications.

STATE OF ILLINOIS DEPARTMENT OF REVENUE.
HARRY L. HULMAN, *Director of Revenue.*

CHICAGO, ILL., *December 28, 1964.*

[From 1965 Illinois Revised Statutes]

CHAPTER 120—REVENUE

* * * * * * *

561. Method of determining fair cash value and eqalized assessed value.] § 80. The Department shall assess all property owned or used by railroad companies operating within this State, as of April first annually, except property found by the Department to be non-carrier real estate as hereinbefore defined.

In assessing the property of any railroad company, the Department shall first determine the fair cash value of such property.

The Department shall, in determining the fair cash value of the property assessed by it, value all the property of any railroad company as a unit, but shall make due allowance for any non-carrier real estate.

For the purpose of determining the fair cash value of the property of any railroad company the Department shall take into consideration the actual or market value of the shares of stock outstanding, the actual or market value of all bonds outstanding and all other indebtedness as shall be applicable, for operating the road, provided, in determining the market value of any such stock or indebtedness the Department shall consider quotations for the next preceding five years; the net earnings of the company during the five calendar years preceding the assessment date; and such other information as the Department may consider as bearing on the fair cash value of the property: Provided that the facts hereinbefore named shall not be conclusive upon the Department in determining the fair cash value of the property of a railroad company. The assessment by the Department shall include capital stock and all other property of railroad companies except such property as is found by the Department to be non-carrier real estate af hereinbefore defined: Provided that only so much of the intangible personality of foreign corporations as has a business situs in Illinois shall be included and so much of the intangible personalty of domestic corporations as has a business situs in other states shall not be included.

The Department shall determine the equalized assessed value of the property of every railroad company, other than non-carrier real estate, by applying to its determination of the fair cash value of such property of every railroad company an equalization factor, which factor shall be the statewide average ratio of the equalized assessed value of locally assessed property to the full, fair cash value of such locally assessed property. As amended by act approved Aug. 26, 1963. L. 1963, p. 3422.

Mr. SPRINGER. Now, these legals which cover every single railroad in the State of Illinois, and I guess there are some 30 or 40, sets up the fair cash valuation and the original assessment. That has to be published, so that any objector, any taxing body that objects to it, has notice that this has been equalized.

Mr. OGDEN. Yes, sir.

Mr. SPRINGER. Now, I take it that you don't want this without notice in due form, do you; that is, to any possible objector?

Mr. OGDEN. No, sir. We would like to know. We have no objection to any degree of publication about any facet of our assessment in anything.

Mr. SPRINGER. So that if there is a tax objection, they do have a notification of that.

Mr. OGDEN. That is all right with us.

Mr. SPRINGER. Now, I think the point that you were trying to get over, as I understood it, to Mr. Moss a moment ago, is that at the present time under these recent decisions since the *Browning* case, you do have a remedy. The remedy is to go into the Federal court; that is true, isn't it? That is what you said a moment ago?

Mr. OGDEN. That is right.

Mr. SPRINGER. But that remedy is based on the fact that you first have to prove that there is no remedy in the State court in which you bring this action?

Mr. OGDEN. That is right.

Mr. SPRINGER. So what you are seeking here is a shortcut method of coming immediately to the Federal court to register your objection?

Mr. OGDEN. That is right.

Mr. SPRINGER. And to seek relief?

Mr. OGDEN. Yes, sir.

Mr. SPRINGER. In effect you are not getting additional relief. What you are in effect getting is getting your relief directly in the Federal court in the first instance, based on this set of facts?

Mr. OGDEN. If we felt we have a case; yes.

Mr. SPRINGER. Actually, you wouldn't get any different result finally, would you, by going to the Federal court and going through all of this meandering that you have in the background to get into Federal court—you couldn't possibly get any different result than you do under this law, could you, in the end?

Mr. OGDEN. Yes, sir; there would be a little different result. This law is directed only at the claimed excess. Under current Federal procedure, if we could get into Federal court, we would at least have to have some agreement or else attack the entire assessment. That is the *Moses Lake* case.

Mr. SPRINGER. I was not going into that. I used to sit as a judge on these cases 6 weeks in the spring, and every railroad came in and made their objections and we had to hear this thing every year. What you are trying to do is to be able to wind up in one proceeding in the Federal court, isn't that right?

Mr. OGDEN. Yes; if we needed it.

Mr. SPRINGER. I don't want this committee to get an idea that somewhere along the line you are going to get a better deal under this law than you do at the present time.

An equalized assessment could be any different if decided in the Federal court and decide under this method.

Mr. OGDEN. That is quite true.

Mr. SPRINGER. Thank you.

The CHAIRMAN. Mr. Kornegay, do you have any questions?

Mr. KORNEGAY. Thank you, Mr. Chairman.

Mr. Ogden, I am sorry I was not here to hear your initial statement. I want to say that I am very proud to see that my State of North Carolina does not participate in this alleged discrimination practice. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Broyhill, do you have a question?

Mr. BROYHILL. I want to second what my colleague from North Carolina has said.

The CHAIRMAN. Mr. Van Deerlin.

Mr. VAN DEERLIN. I wonder whether this is an exclusive list of States, or whether you just chose the worst examples?

Mr. OGDEN. Mr. Van Deerlin, we really didn't intend to be exclusive at all. Actually, we tried to explain that rather carefully, both from the standpoint of pointing out the nonexclusiveness, and also in trying to explain that we really don't intend this as a blacklist at all, if you want to call it that.

It is not intended and that is not the purpose of this list. The purpose of it is to come to the Congress and to you gentlemen with something of substance. We are not here to talk idly about what might happen, but we bring forward this only as a showing of general—as I used the expression—pattern or practice, to go back over the years and bring it forward and show that this is not peculiar today.

It was brought to public attention by this very committee in 1944 in the report on carrier taxation. It was only brought forward in terms of lists such as we have now when we had the benefit of the Bureau of the Census reports on the level of assessments.

That was in 1957, based on 1956. It was the first time in the United States that there was a reliable or uniform yardstick against which to compare assessments.

It was a very fine work that was done by the Bureau. I understand their purpose is to repeat this every 5 years. They made one study I think for the year 1956, and the next one was for 1961, and I presume that there will be another for 1966 and so on.

It is a wonderful service for all taxpayers, and tax collectors, because I have found when States and tax administrators calm their emotions in this area and look at it objectively, they realize that tax equalization is a fine thing for their own economy and it is a good thing to try and encourage business to come into your State if you have a sound fiscal program and everybody is treated equally.

It is just a good healthy atmosphere in which to work. When emotions are left to one side and looked at realistically, it is a good thing. In that connection, the Bureau of the Census ought to receive the commendation that it deserves.

Mr. NELSEN. Mr. Chairman, I just wish to thank Mr. Ogden for the fine statement. I would, however, like to say that perhaps with the appearance of some disagreement with my colleague from California, I would expect Mr. Ogden to appear here presenting the problems of the industry he represents, and if Safeway has a problem, they in turn could present their case.

However, in concurrence with what Mr. Rogers of Texas has stated, if there is discrimination in any other part of our economy, we would be glad to listen to it.

Thank you for your statement.

The CHAIRMAN. Mr. Pickle, do you have a question?

Mr. PICKLE. Mr. Ogden, I want to make reference to appendix A which is included in your report. Can you tell me if the railroad properties are assessed in the same ratio as the other public utilities of the various States?

Mr. OGDEN. Generally speaking, yes, sir; so far as I know. I do not have precise information on that, of course, but I would think generally, yes.

Mr. PICKLE. Specifically, what I am trying to drive at is the percentage of other taxation as against the railroads. Is it roughly the same as it would be against other common carriers such as trucklines and that type of problem?

Mr. OGDEN. As to trucklines, they have very little fixed property. As far as I know, I have not heard or been advised of any problem of theirs in this regard. Their rolling stock is assessed on a sort of a bluebook basis, and I don't believe they have any real problem.

Mr. PICKLE. What would be a better example, a comparative example of tax levied against a railroad, as against other common carriers? If trucking would not be a proper comparison, what would be?

Mr. OGDEN. I think pipelines would be as good as any, and they are, of course, covered by the bill.

Mr. PICKLE. On appendix A, you show in column 3 a percentage of the value of the railroad property, assessed in 1964, and then you follow that in column 5 with the percentage of which all others are assessed.

Now, when you list "all others," do you include in that all other common carriers as well as general property such as farms and ranches and homesteads?

Mr. OGDEN. Mr. Pickle, it is intended by the "all other" column, column 4, to include only locally assessed property as distinguished from State centrally assessed property.

Mr. PICKLE. In column 4, then, you have lifted out taxes of other common carriers?

Mr. OGDEN. That is right.

Mr. PICKLE. And it is just property taxes that individuals primarily pay; that is, stores and so on?

Mr. OGDEN. That is right.

Mr. PICKLE. Now, as to the percentage of difference, your chart in column 4 does not show it, but I figure it would be about 24 percent, and your last column is 51 percent. In other words, you are saying then that taxes levied against railroads is at least twice what it is against all others?

Mr. OGDEN. That is correct, in this list.

Mr. PICKLE. Are you saying then that you think railroads or pipelines or any other common carriers should be assessed on the same basis as a man's homestead, or a farmer's farm?

Mr. OGDEN. When they are subject to the same taxes; yes, sir.

Mr. PICKLE. You mean the same ad valorem taxes?

Mr. OGDEN. Yes; the same ad valorem tax rates, if they would be applied against railroad property and against the farm that is on the side of the railroad track, then I think that the proportion of value at which each is assessed should be the same.

Mr. PICKLE. Then you make no distinction between that which is commercial property and that which would be farmland?

Mr. OGDEN. No, sir; because I relate it all to value, Mr. Pickle. Whether it is a commercial property or whether it is farmland, it has a value. Whatever its value is, a certain portion of it is assessed, say half of it, or say 50 percent.

If it is worth $10,000, it is assessed at $5,000. That is half of the value. If half of the value of a farm is going to be assessed, then half

of the value of the railroad ought to be assessed, if they are both subject to the same taxes.

Mr. PICKLE. I think you have a good point in the argument that you have presented. Traditionally, we have local communities or States which have just simply taxed those entities which are of interstate character or commercial character or public utility character.

We have a big overall problem of leveling this off and finding equalization. I hope we can find such a level, and I appreciate your testimony. Let me ask you one other question that is for information purposes.

When you read Major General Doyle's statement, did I understand you to say that he felt that in time all right-of-way properties would be leveled at the same ratios as all other property? Was your phrase "right-of-way"?

Mr. OGDEN. The only time that he said "time" I believe was when he said Mr. Rogers' bill seems adequate for the purpose and is probably the most that could be achieved at this time.

He did allude to one of two recommendations that were made in his report to the Senate Committee on Commerce, the so-called Doyle report.

In that report, he made a double-barreled recommendation. One was that certain carrier property be entirely exempt, and in the alternative he suggested this very bill. He said this would be a way to get at it.

In his letter now he says he thinks that this bill is perhaps the most we could do at this time.

Mr. PICKLE. I can read that in the report, and I thank you for that additional statement.

That is all, Mr. Chairman.

Mr. ROGERS of Texas (presiding). Dr. Carter, do you have a statement?

Mr. CARTER. I just want to welcome the members of the railroad industry from Kentucky here, and it seems to me that it should be an entirely reasonable bill and I see nothing wrong with it.

Mr. FARNSLEY. Thank you, Mr. Chairman.

Mr. Ogden, as you know, I introduced one of these bills and I am for you. I want the record to show that from the time I left the Kentucky Legislature until I was mayor, I was counsel for the Kentucky Railroad Association and I received $25 a month. I was very proud and grateful.

I couldn't ride on the commuter lines on the Central or the Panama Limited or the Broadway Limited or things like that, but I was well paid.

However, I wasn't well enough paid to tell them how to run the railroad.

Now today I am well paid by the Government to tell you how to run your railroad. The railroad and the Government are in the same fix. Everybody tells us how to run the Government and everybody tells you how to run the railroad.

Your objectives are too limited and you're thinking in 19th-century middle-class terms. As you realize, the middle class pays the taxes.

Of course, very properly we try to help the poor people but you

all are insisting on paying taxes. I am well paid to tell you this but you are not going to do it. And you are going to say it is creeping socialism, and that the Government gets into everything.

Industry constantly creeps up on the Government. It is a two-way street.

We just got through taking over the toll roads and now people are building toll roads again to compete with our nice free highways. Of course, you pay the gasoline tax on the toll roads, too.

Private enterprise will compete with the Government, and I am not joking.

You ought to look at the situation that your competitors have—the truckers, and the people who run their own cars—and maybe you would want to be under the Bureau of Public Roads. It could be changed into the Bureau of Public Roads and Railroads.

Then you could sell your right-of-way to those people. You will find it is a great help, and you won't have these problems about equality of taxation.

Everybody would pay the same amount per gallon of gas or so much a wheel.

But I am glad you are looking into the situation on the rivers. Get under the Corps of Engineers if you possibly can. Then we can all help you. It is hard enough to get reelected but you have to have projects to take care of your district.

You might think I am joking, but I am not. The railroads are important to the United States and important to us. This is true in war and in peace.

You have quit having steam trains and have diesel but you are still, in your economics and sociology, in the 19th century and in the middle class.

Now, you should get under this rivers and harbor thing, "Rivers, Harbors, and Railroads," and study the possibilities there. Some of the finest people in the world are in our Corps of Engineers.

You could join the Army and you wouldn't be hurt and you wouldn't have these problems.

I am dead serious. I think it is your patriotic duty to explore these matters. You don't need justice, you need parity. I have talked too long but I never did tell you how to do it when you paid me $25 a month.

Now that the Government is paying me well, I feel free to tell you how to run your railroad.

Thank you.

Mr. ROGERS of Texas. Mr. Ogden, you will be allowed a response, if you care to.

Mr. OGDEN. I don't believe I could make one, except to say I like my job, and I don't believe I want to get in the Army.

Mr. ROGERS of Texas. Mr. Friedel, do you have any questions?

Mr. FRIEDEL. Mr. Ogden, you made a very fine statement. You spoke of unreasonable and unjust discrimination and undue burdens upon interstate commerce in certain property tax assessments.

Could you give one or two examples showing why they are burdensome or why there is this discrimination?

Mr. OGDEN. Well, of course, as to the burdensome feature, I thought appendix A pretty well lists 20 current examples, which amounts, of course, just on that list to some $75 million.

That list, as we explained before, is not considered to be an exclusive list. It has never been our purpose to criticize anybody about it, or to try to put anything on the list that would cause controversy.

Mr. FRIEDEL. Well, I don't want to ask you to name a specific State, but could you illustrate as an example, a big building you have, and a building alongside of you, and how they are assessed?

Could you state whether they are comparable or not, and give some examples of where the discrimination comes about?

Mr. OGDEN. Mr. Friedel, the examples that we have in hand actually apply to the whole operating property. Railroads are assessed as units and then the value is spread primarily along the miles of railroad because that is where the business is done.

That is its business, the track, basically. Maybe a grocery store has a big store on the corner. We don't have a store on the corner, we have a track running down the road. Those tracks are assessed on the basis of miles and the yardstick of comparison, as I explained before, is value.

We have undertaken to show that a larger part of our value is consistently taxed right alongside of a much smaller portion of value of owners of farms, stores, or what have you. Because of the nature of it, I am afraid that the only common ground between the two is value.

Mr. FRIEDEL. I was hoping you could give us a specific example to show why there is undue tax discrimination.

You made the statements regarding the ad valorem tax, and could you tell me in comparison where it is different? Could you give us an example of how different they are, what they charge the railroads, and what they charge the others?

Mr. OGDEN. Well, the tax rate is always the same, and this bill would only apply in situations where the taxes that were being exacted were the same.

The vice of the situation that we hope to cure is the requirement that railroads pay 50 mills, on a $1,000 unit of their property, and the man right next door to us pays 50 mills on what is the equivalent of a $1,000 unit of his property, but only on $500 and not on $1,000.

There is the difference. The railroad at once has paid twice as much relatively as the man right next to it.

Mr. ROGERS of Texas. Mr. Ogden, looking at your table in your appendix, let us take Alabama, for instance. This reflects that the railroad property in 1964 was assessed on the basis of 40 percent of its value.

Now other property in the State was assessed at 20 percent of its value. I think what Mr. Friedel is driving at is what evidence do you have to establish these conclusions?

Mr. OGDEN. I would be happy to tell you that. The 20 percent is the basis which is an admitted basis. The tax authorities of Alabama will admit that. It is borne out by the latest Bureau of the Census figures, and it is borne out, also, by studies that the department of revenue in Alabama itself has made, and it is borne out, also, by studies that the industry has made. Everybody agrees on that. The 40 per-

cent is also agreed upon. The head of the department of revenue will tell you that he assesses railroads at 40 percent. He admits that.

Mr. FRIEDEL. And Arizona; what is the percentage there?

Mr. OGDEN. In Arizona, again the 20 percent there comes from these various types of studies. The basic comparison for the percents in paragraph 4 all are largely related to the census studies or any later studies that are made either by State authorities or by a university.

Frequently the railroads employ university departments of research to make these studies. That is where these column 4 percents come from. The column 3 percents in many instances are admitted percents on the part of State authorities.

Where they are not admitted, they are percents derived from the experience of railroad people themselves. That is their own considered opinion as to what the level is. It is based on their year-to-year experience.

Mr. FRIEDEL. I notice one State has 100 percent. Let us assume a railroad went through five or six different States. Would they tax you in one State for all of your equipment that goes through the other four or five States?

Mr. OGDEN. No; that means that in that one State that much of the railroad that is found to be in that State would be taxed at 100 percent of the value of that part of the property in that State.

They divide it up just like a pie, and then just cut slices and divide it all up.

Mr. ROGERS of Texas. We only have about 10 minutes left, and I suspect that it would be better if we adjourn until 10 in the morning, and our first witness at that time will be Mr. Sanders.

Mr. OGDEN. Thank you so much.

(The statement of Dr. Harold Groves follows:)

STATEMENT OF DR. HAROLD M. GROVES, PROFESSOR OF ECONOMICS, UNIVERSITY OF WISCONSIN

Mr. Chairman and gentlemen, my name is Harold M. Groves and I am professor of economics at the University of Wisconsin. I am offering this statement on my own account and at the invitation of the Association of American Railroads which association has made available to me a copy of H.R. 4972 together with a copy of the proceedings involving identical bills in the 88th Congress entitled "Tax Assessments on Common Carrier Property"—hearing before the Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce, House of Representatives, 88th Congress, 2d session, on H.R. 736, H.R. 10169 (July 28, 1964).

I am interested in this proposed legislation among other reasons because it would be of benefit to the citizens of Wisconsin of which I am one. Our State has applied an ad valorem tax to railroads since 1903. It was argued at that time that the railroads were not paying their fair share of taxes under a gross receipts tax. The railroads answered that they would inevitably be victimized under the ad valorem system with the application of an average State rate to their assessment. They would be assessed in full by a State tax commission and other property would continue to be assessed by a multitude of amateur local assessors under varying competitive pressures at various fractional values. The railroads were assured that the State could and would develop methods of evaluating all taxable property in the State and develop an average State rate independent of local assessments. They were assured that the program was only asking the railroads to pay their fair share, not more than their fair share.

The State has made good on this assurance. It at once started to develop the method of State assessment by sampling and used recently sold property as a test of the level of local assessments. This testing came in time to be trusted ex-

clusively to a civil service staff decentralized in regional offices throughout the State. The sampling process went through a long period of refinement; equalizers learned to "field the sales" in discarding nontypical transactions; to supplement sales by spot appraisals; and to classify samples by types of property. Today market-value figures are developed for every town, village, and city in the State. They are widely accepted as adequate by county boards, the courts, the railroads, and the public.

I cite this experience not only as evidence that objective and reasonable State evaluation of general property is feasible: States that are reconciled to fair taxation of railroads have a stake in the fair taxation of railroads generally. Since the incidence of railway taxation is on the users and rate charges offer no territorial discrimination, it is apparent that Wisconsin businessmen and consumers share the burden of discrimination anywhere.

The principle of neutrality in taxation calls for an evenhanded application of property taxes to business properties so as to intervene as little as necessary in the process of competition and the allocation of resources according to consumers' preferences. Railroads are by their nature especially vulnerable to the property tax even without discrimination. The effect of this on the balance of competition is described by Dick Netzer in his recent book "The Economics of the Property Tax" (Brookings: p. 73) as follows:

"Railroads are inherently real property intensive and thus subject to heavier property taxation than air, water, and road competitors. In 1957, for example, property taxes absorbed nearly 3.5 percent of all rail operating revenues, but only 0.4 percent for motor carriers and 0.2 percent for air carriers. Rising property taxes in postwar years imposed costs on railroads far in excess of any parallel general tax confronting their competitors, and contributed to increases in railroad rates, hardly a good competitive strategy for a hard-pressed industry."

Thus discrimination against interstate carriers may have the effect of discrimination among interstate carriers. Property tax discrimination can matter very little to competitors who are not particularly vulnerable to the property tax but it is quite crucial for railroads.

I believe is our Federal system and subscribe to the view that generally the States should remain free to enact, design, and administer their own laws and determine their own tax policies. But an acceptable case can be made for a Federal limitation on the application of State property taxes to railroads. Not only do railroads at the present time present a national problem of special significance; railroads are especially vulnerable to State discrimination. Interstate manufacturing and mercantile firms are protected by their relative freedom to locate and do business elsewhere. Railroad property is uniquely captive and it constitutes an open invitation to be milked by a particular State at the expense of other States and of transportation in general.

It is true that court protection against arbitrary and incompetent assessment is generally weak. The development of adequate sales-ratio studies by districts would help taxpayers generally to make effective appeals. The proposed legislation would promote such development.

It may be said that the proposed legislation affords no protection against excessive gross income taxes and would afford an invitation to the States to shift from ad valorem to alternative forms of railroad taxation. Some of the discrimination against railroads is deliberate but I believe much of it is de facto growing out of imperfections in the equalization features of property tax laws. The proposed legislation may not be broad enough to eliminate all discrimination but it would make a good start in eliminating that part of it which is procedural. This much control at least commands disinterested support in terms of improvement in State property tax administration.

The point is made that the proposed legislation would shackle the power and right of the States to classify property. Not many States classify property for assessment; most of them strive somewhat half-heartedly toward the uniformity that is required by their constitutions and/or statutes. There is nothing in this proposed legislation that prohibits classification; it only prohibits adverse classification of interstate carriers and only as to the assessment (valuation) of property. There are other means of classification such as deliberate rate discrimination and the application of special taxes that would still be available if a State genuinely wishes to discriminate in its business tax system. But at least the back-door discrimination by administrative subterfuges would be barred.

The existence of widespread and substantial discrimination is common knowledge and in addition has been well documented. I shall not elaborate here on adequate testimony from other sources. The only reasonable support for the no-need argument is that adequate remedy is available in State courts. The opposing view is supported by the testimony of James N. Ogden and others as to frustrating experiences in dealing with the courts of some States. I do not question the integrity of State courts but it is human nature to accommodate in some degree the revenue needs of one's own State. Coming from Wisconsin, I recall that our courts have recently enjoined the Milwaukee Braves to stay in Wisconsin. Georgia courts apparently would apply the law quite differently.

I appreciate the opportunity to submit this statement to the committee.

Mr. ROGERS of Texas. Without objection, the committee will stand in recess until 10 o'clock in the morning.

(Whereupon, at 11:50 a.m., the committee was recessed to reconvene at 10 a.m., Wednesday, March 2.)

TAX ASSESSMENTS ON COMMON CARRIER PROPERTY

WEDNESDAY, MARCH 2, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to recess, in room 2123, Rayburn House Office Building, Hon. Harley O. Staggers (chairman) presiding.

The CHAIRMAN. The committee will come to order.

On yesterday when the committee adjourned, we were hearing witnesses on H.R. 4972, and related bills to amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and undue burden upon interstate commerce, certain property tax assessments of common carrier property, and for other purposes.

Our first witness this morning will be Mr. Paul H. Sanders, professor of law at Vanderbilt University School of Law.

Mr. Sanders, would you take the stand?

Professor, we are glad to have you with us and to have the benefit of your views on this important legislation. Do you have a prepared statement?

STATEMENT OF PAUL H. SANDERS, PROFESSOR OF LAW, VANDERBILT UNIVERSITY SCHOOL OF LAW

Mr. SANDERS. Yes, I do.

The CHAIRMAN. If you care to, you may put it in the record and proceed to summarize it or you may give it in full.

Mr. SANDERS. We are offering a rather full statement which I assume will be made a part of the record. I want to read merely a portion of that for purposes of this hearing.

The CHAIRMAN. You may do that.

Mr. SANDERS. As the chairman has stated, my name is Paul H. Sanders. I am professor of constitutional law at Vanderbilt University at Nashville, Tenn.

The opinion and memorandum [1] which has been filed is the joint product of Prof. Paul J. Hartman of Vanderbilt and myself. We were approached by Mr. Ogden's committee and asked if we had an opinion with regard to the constitutionality of the proposed legislation and we indicated in our opinion that it was within the power of Congress to pass such a bill and then we proceeded to do a more thorough research of the subject and it continued to be our opinion, and we prepared a memorandum accordingly.

[1] The document referred to will be found in the committee files.

I might add that Professor Hartman, the coauthor of this opinion, teaches State and local taxation, and he is the author of a text on the subject of "State Taxation of Interstate Commerce."

While there is general support for the principle that interstate common carriers should not be discriminated against in State and local property tax assessments, it has been suggested that the constitutional authority of Congress to afford relief against such practices is subject to question.

Considering the constitutionality of legislation such as is proposed, the following questions are presented:

1. Does Congress have the power to prohibit discrimination in the assessment of property of interstate carriers in comparison with other property in the same taxing district subject to the same tax?

2. Does Congress have the power to prohibit the collection of any tax on the assessments so declared to be unlawful?

3. Does Congress have the power to confer jurisdiction on the Federal district courts to restrain the officials of a State or subdivision or agency thereof from the performance of the prohibited acts of assessment and tax collection?

It is our opinion that provisions of the bill are within the powers granted to Congress by the Constitution of the United States. Specifically, it is our opinion that the above questions should be answered "yes," that the substantive regulations set forth in the bill are within the power of Congress under the commerce clause, and that provision for filing suit in Federal court to enforce the substantive rights granted in the bill is valid and not in conflict with the 11th amendment.

We note that the proposal is concerned only with State assessment for tax purposes of the property of those common carriers who are subject to the regulatory powers of the Interstate Commerce Commission. In other words, the substantive regulation set forth in the bill is limited in its application to the property of interstate common carriers whose practices and economic affairs are already regulated extensively and intensively under Federal statutes. The apparent purpose of the proposal is to require that the property of such interstate common carriers be assessed for State ad valorem tax purposes on the same basis (i.e., on the same proportion of true market value) as other property owners within a particular taxing district subject to the same tax.

The proposal thus provides that these interstate common carriers not be discriminated against within a particular State in terms of property tax assessment practices or in terms of proportion of value utilized for ad valorem tax purposes, but that such interstate carriers should be placed in a position of equality or parity with other property owners within a particular taxing district subject to the same tax.

For purposes of this opinion, it is assumed to be a well-known fact (a fact which can be established by objective evidence) that in many States railroads do have their property assessed at a different and higher percentage of value for ad valorem tax purposes than is true of the great bulk of property owners subject to the same tax. The scope of the problem was outlined in what is known as the Doyle report (report to the Senate Committee on Commerce on "National

Transportation Policy"—87th Cong., 1st sess., Rept. 445, June 26, 1961, pp. 465–466).

Material submitted at the 1964 hearing on H.R. 736 (app. A, p. 22) indicates that in Arizona, for example, railroad property was assessed at 89 percent of value in 1961, while the comparable percentage for property owners generally was approximately 14 percent.

In Kentucky in 1961 railroad property was assessed for ad valorem taxes at 60 percent of value, while the general basis was approximately 27 percent. This same appendix A carries an estimate of the annual amount of discriminatory tax burden borne by railroads in selected States which exceeds $100 million. For purposes of this opinion it is assumed that, if Congress passes the bill, it would be acting on the basis of evidence brought to its attention which would indicate that interstate common carriers are frequently subjected to a disparate and disadvantageous assessment practice in connection with percentage of value used for State and local property taxes and that from the national standpoint the total burden so resulting is substantial.

I might just say in passing that in a casebook in constitutional law, which I happened to be using at the time this was prepared, there was a statement by the authors of the book which said that such disparate tax practices were usually the case, and that is a quote from the book, "usually the case," that there is such discriminatory tax assessment practices followed.

This opinion is not concerned with Federal constitutional limitations upon the power of a State to engage in such disparate assessment practices in the absence of a Federal statute such as is proposed.

It might be noted in passing that the case of *Nashville, Chattanooga & St. Louis Railway* v. *Browning*, decided in 1940, stated that a separate mode of assessment of railroad property at a higher percentage of value did not violate the equal-protection clause of the 14th amendment.

Our opinion is not concerned furthermore with whether disparate assessment practices would be in violation of the constitutions or statutes of particular States; nor with whether such practices by a State or some lower level of government within a State would be subject to some already existing statute or regulation, or could be reached and corrected under existing Federal statutory authority other than the proposed enactment.

This opinion thus deals solely with the powers of Congress under the Constitution of the United States to enact the substantive and procedural aspects of the bill.

In enacting such a bill Congress would be prescribing a rule with regard to property of interstate common carriers which are already subject to an extensive body of regulatory legislation enacted under the commerce clause of the Constitution of the United States. Congress would be acting to relieve such carriers of State tax assessment practices deemed by Congress to be burdensome, unreasonable, and discriminatory.

If Congress concludes from evidence presented to it that the practices in question are detrimental to the maintenance of a strong interstate transportation system, there is no likelihood that the courts would treat this judgment as arbitrary. An act of Congress is presumed to be constitutional and the courts do not consider it appropri-

ate to reexamine the congressional judgment embodied in such legislation. Congress would, undoubtedly, be regarded as having a reasonable basis for exercising its power to require the elimination of such discriminatory practices and to provide a Federal court remedy for the rights thus created in the interstate common carriers.

The power of Congress over interstate commerce is plenary (i.e., full and complete). This power extends to taking action to limit, displace, or override State-imposed regulation or taxation which might be constitutionally permissible in the absence of affirmative action by Congress.

The limitations placed by the commerce clause of the Constitution of the United States, and I might say the limitations placed by any other clause of the Constitution of the United States, on State regulation or taxing power when Congress has not spoken are not indicative of the scope of the regulatory power of Congress when it acts affirmatively under the commerce clause.

Thus, there are permissible areas of State action affecting interstate commerce to some degree which are entirely valid until Congress enacts a regulation which either expressly or by necessary implication overrrides the State law which then becomes invalid. It should also be borne in mind when considering the scope of congressional power that the necessary and proper clause of the Constitution is always a supplementary source of power to any other enumerated power in the Constitution.

The power of Congress over interstate commerce includes the power to promote, protect, and foster the agencies and instrumentalities of interstate commerce, as well as the power to restrain and control such instrumentalities. The power of Congress to protect and foster the agencies of interstate commerce includes the power of removing or relieving against particular practices within a State which are thought to burden or impede the maintenance of a strong interstate transportation system.

Thus the power of Congress under the commerce clause extends not only to that which is itself interstate commerce, but to those local matters and practices where regulation is appropriate because of the effect upon interstate commerce or upon the instrumentalities of interstate commerce.

Outstanding examples of this power by Congress have been presented under various sections of the Transportation Act of 1920. It has been held that Congress may validly require the raising of intrastate rates and that Congress may validly impose the elimination of intrastate service in pursuance of a national program of fostering or protecting a strong interstate railroad operation, despite contravening requirements or orders under State law.

Congress could reasonably conclude that equality in property assessment for ad valorem tax purposes was required to protect and promote interstate transportation in the national interest and in the Federal Government's own interest as a user of services.

The regulatory power of Congress under the commerce clause can operate upon State taxing power in the same manner that it operates upon any other type of State governmental power. There can be no question but that the State practices referred to in this bill affect the interstate carrier and affect interstate transportation.

If Congress acts specifically in the manner set forth in this bill, State constitutions, laws, regulations, or practices in conflict therewith are rendered invalid under the supremacy clause of the Constitution.

I might interject at this point a brief comment about the question of including all possible ramifications of the problem of discrimination at one time.

Chief Justice Hughes, in the *Jones & Laughlin* case, which upheld the power of Congress to regulate an employer's labor relations treated this aspect as follows: We are dealing with the power of Congress and not with a particular policy of or the extent to which the policy should go.

We have frequently said that the legislative authority exerted within its proper field need not embrace all of the evils within its reach. The Constitution does not forbid cautious advance step by step in dealing with evils which are exhibited in activities within the range of legislative power.

Mr. Moss. I might just say that I raised the question yesterday not because I doubted the power of the Congress, but I was concerned over a policy. You have not resolved my concern at all on that policy.

Mr. SANDERS. I am merely bringing it in terms of its possible relation to the question of constitutional power.

The power of Congress referred to above is in no way controlled by the provisions of the 10th amendment. Whenever State action is rendered invalid under the supremacy clause because of conflict with congresisonal action pursuant to the powers granted by the commerce clause, supplemented by the necessary and proper clause, it cannot otherwise be supported by power that has been reserved to the States by reason of the 10th amendment. If the Federal regulation is within the scope of powers granted to Congress, the reservation of powers provided in the 10th amendment cannot have any effect. Decisions suggesting the contrary have been overruled or explained away.

Action by Congress requiring nondiscriminatory assessment practices affecting the property of interstate common carriers could not be regarded as imposing an unreasonable or arbitrary requirement upon State and local taxing officials so as to run afoul of the due process clause of the fifth amendment. The statute is sufficiently precise in stating what it is that is forbidden. Problems of statutory interpretation would not appear to be any more difficult than usual. Under established principles the statute should be construed so as to avoid questions of constitutionality. The percentage of value utilized for assessment and tax collection purposes is either known or ascertainable in particular taxing districts.

The requirement is informative with regard to those who would need to comply with it and is as precise as the subject matter permits in light of its nationwide scope. In any event, the remedy afforded is civil rather than criminal and carriers would have to prove their entitlement to the protection the statute provides.

The 11th amendment is not a barrier to the provision in the bill for suit in Federal court to enforce the substantive rights created by the bill. If a State official acts contrary to the regulation prescribed in the bill with regard to assessment and tax collection, his action would be unconstitutional, as well as contrary to the statute.

Under these circumstances, for purposes of the 11th amendment, his action is not that of the State, and the individual occupying a particular office may be sued in Federal court without regard to the 11th amendment.

Moreover, the statute should not be construed as imposing any nonjudicial function upon the Federal court in fashioning a remedy for the substantive rights created by the statute.

I might say that on that latter point, about which some question was raised, we have a detailed treatment of the problem that comes in in connection with the *Moses Lake Homes* case, that appears on page 93 of this memorandum which is being presented here, Mr. Chairman.

If there was particular interest in my going into that, I think that I might read that portion which relates to the question of the *Moses Lake* case, which was raised, I believe, by Attorney General Katzenbach at a previous hearing.

The CHAIRMAN. You may proceed.

Mr. SANDERS. If you would like me to go into that, I will read that portion that is concerned with that problem.

The CHAIRMAN. What is your question again, please?

Mr. SANDERS. Since the problem was raised, and I believe Mr. Springer raised it yesterday about the subject of this *Moses Lake* case, which presented some problem in terms of the power of a Federal court to carry out the procedures set out in this bill, we deal with that extensively at pages 92 to 95 of this memorandum which is being presented.

I think that I might just read a little bit of that because it was apparently a serious question by Mr. Springer and some others.

The CHAIRMAN. You may proceed.

Mr. SANDERS. The statement reads:

E. The Federal court remedy provided in the proposed legislation does not impose any invalid or nonjudicial function upon the court in the enforcement of the rights created by the statute.

In enacting the proposed legislation Congress would be prohibiting discrimination in the assessment of the property of interstate common carriers in relation to other property subject to the same tax and would be providing a remedy tailored to relieve against such discrimination and no more.

The power of State and local officials to assess and tax the property of such carriers in a nondiscriminatory fashion is in no way affected by the proposal. The language of the proposal makes this limited purpose clear by providing a remedy only against that portion of an assessment which is in violation of the standard established by the statute and only against the portions of a tax levy that are based on assessment practices forbidden by the statute.

It seems clear that Congress is under no obligation under these circumstances to declare invalid, expressly in the statute, the entire assessment and the entire amount of a tax based on a prohibited assessment.

As Chief Justice Hughes said in the *Jones & Laughlin* case, the Constitution does not forbid "cautious advance, step by step" in dealing with practices deemed detrimental. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.* (301 U.S. 11, 46 (1937)).

In *Moses Lake Homes* v. *Grant County* (365 U.S. 744 (1961)), the Supreme Court held that a county's discriminatory assessment and taxation of Federal leaseholds (Wherry Act leaseholds) resulted in the purported assessment and tax being completely void in their entirety.

The Supreme Court held that the court of appeals had erred in remanding the case to the district court for purpose of reducing the tax to what it would have been if the assessment and tax had not been discriminatory. The Supreme Court stated that the effect of the remand was to direct the district court to decree a valid tax for the invalid one which the local taxing authorities had attempted to exact and that: "Federal courts may not assess or levy taxes" (365 U.S. at 752). The Supreme Court then proceeded to hold void the taxes "presently assessed and levied."

The *Moses Lake* case, on proper analysis, should not be taken as invalidating the remedy provided in the proposed legislation for the following reasons: (1) In the first place section 511 of the Housing Act of 1956 (42 U.S.C. 1594), upon the basis of which the lessees in that case resisted the local claims, does not include as precise a statement of what is forbidden, nor does the statute make the specific provision for a remedy that is contained in the proposed legislation to which these comments are addressed.

(2) In the next place, there is nothing at all in the *Moses Lake* case to suggest that Federal courts would be unable to fashion adequate measures in the nature of equitable relief to protect a substantive right which Congress has established against discriminatory assessment. The *Moses Lake* decision did not need to and, in fact, did not address itself to this problem.

(3) The proposed statute does not require or direct that the Federal judge perform the tax assessment or tax levying function. *Moses Lake* is eminently correct, of course, in saying that Federal courts do not assess or levy State taxes as such.

This does not indicate, however, that Federal courts cannot exercise their normal judicial function in protecting valid Federal rights, no matter how narrowly those rights may be defined.

The proposed statute provides injunctive relief against discrimination and unquestionably such a remedy should be "fashioned in the light of well-known principles of equity."

Baker v. *Carr* (369 U.S. 186, 250 (1962) (concurring opinion of Justice Douglas)). Federal courts cannot perform the legislative function of apportioning State legislatures either; but, in judicially enforcing the Federal rights involved, it is clear that Federal courts can fashion appropriate orders needed to give relief and otherwise apply in a flexible manner the powers they have traditionally possessed.

This has included, where deemed required, the entering of a judicial order apportioning on an interim basis. See *Reynolds* v. *Sims* (377 U.S. 533 (1964)).

(4) In the last place, the *Moses Lake* decision does not indicate any constitutional infirmity in the provisions for remedy in the proposed statute because it is obvious that this statute can and should be construed so as to avoid any charge that a nonjudicial function is required to be performed.

Under principles of construction, now uniformly followed, a statute passed by Congress is presumed to be valid in all of its provisions. Furthermore, if one reading of the statute would raise doubts as to its constitutionality and another interpretation of the statute would eliminate those doubts, it is agreed that the latter interpretation should be utilized so as to give effect to every part of the statute rather than destroy it or make any part of it ineffective. *United States* v. *Brandenburg* (144 F. 2d 656, 661 (3d Cir. 1944)).

It would be unreasonable to assume that the authoritative construction of the provision for equitable remedy in the proposed legislation would result in an interpretation to the effect that a Federal court was required to perform an improper, nonjudicial function.

It is an essential function of the Federal judiciary to protect rights given under Federal law. There is nothing in the proposed statute that requires going beyond that essential function.

I might just add in conclusion there, as stated at the bottom of page 95, that on the basis of Professor Hartman's and my examination of the materials, we concluded that there was little room for question that the proposed bill was constitutional, and it could be stated flatly there was no authority that lends any substantial support to the proposition that Congress would lack power to enact the proposed bill.

Mr. Moss. I found your opinion very interesting, when I read it yesterday.

Do you make any distinction at all between property utilized for carrier purposes and property not utilized for carrier purposes; that is, coal mines, and hotels, and farmlands.

Would the procedure on assessment apply or the proposal here apply to those properties or would they be treated as other taxpayers within a State?

Mr. SANDERS. I would make no distinction in terms of the constitutional power. I recognize there is some question as to the precise interpretation and scope of the statute, but assuming that it were given the broadest scope, Mr. Moss, I don't believe it would be beyond the constitutional power of Congress to enact the legislation in question.

The reason is that assuming in the one case it is discrimination in the assessment with regard to solely that property used in the transportation function. In the other case, the broader meaning, it is discrimination with regard to the property of the carrier used but not that which is used immediately in transportation functions.

I think as far as the power of Congress is concerned, and its concern over the interstate carrier and all charges being made against the interstate carrier, it would be entirely from a constitutional standpoint which interpretation might be given.

Mr. Moss. I agree it would be immaterial from a constitutional standpoint. The statute as proposed, the language now before this committee, would be difficult to construe in any manner other than including all property owned by a railroad regardless of the use of the property; is that not correct?

Mr. SANDERS. I did not draw the statute nor am I attempting fully to give it a construction.

It says, I believe, "property owned or used by any common carrier subject to the act."

I would simply say from the standpoint of my limited competence which is with regard to the constitutionality, even if it is given the broadest meaning I would still assert that it is within the constitutional power of Congress in light of the long history which is upheld, we will say, congressional controls over charges against the interstate carrier, even when those charges relate to very local matters.

Of course, in this case, there is an additional aspect, that unless there is discrimination in assessment, the act has no application anyway.

The CHAIRMAN. Mr. Younger, do you have any questions?

Mr. YOUNGER. Mr. Sanders, not being a lawyer, I am interested in your decision about what you think the present Supreme Court would do. You talk about the constitutionality of this bill, but do you think that the Supreme Court as it is now constituted and following the past decisions of this Supreme Court, they would ever approve the right of Congress to so legislate?

Mr. SANDERS. Well, Mr. Younger, we tried, if you read our full memorandum, to range all of the way from Chief Justice John Marshall up to the decision of the Supreme Court of the United States last year in the *Heart of Atlanta Motel* case, each one of which was talking about the scope of the commerce power.

I must say that I have seen nothing to indicate in any recent survey that there is any indication of a lessening of the scope of the commerce power in the interpretation being given to it by the present Court.

Mr. YOUNGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Dingell, do you have any questions?

Mr. DINGELL. I have no questions.

Mr. KORNEGAY. Mr. Sanders, I would like to comment simply that I see you have an LL.B. degree received at Duke University, which is in my district, and I want to welcome you to this committee.

I want to say also from the portions of the brief you have read, and those I have had time to read, are very well done. I look forward to studying the entire brief.

The bill says, the first section of it, the second line of page 2 of your brief—

> which bears a higher ratio to the true market value of such property than the assessed value of all other property in the taxing district subject to the same property tax levy * * *

Does this bill envision the situation where you have all property other than railroad property or common carrier property assessed at a certain value and railroad property and other common carrier property assessed at a higher rate of value?

Mr. SANDERS. As I understand it, Mr. Kornegay, that is the basic problem that this bill is seeking to deal with. It is a claim that the railroad property is assessed at a higher percentage of value than is true, or this occurs in many situations, than other kinds of property in the same taxing district subject to the same tax.

Mr. KORNEGAY. The point I am trying to get at is this: Where would we be in a State or a county or taxing subdivision of a State, where you may have various ratios depending on various categories of property? Suppose you had more than two. Suppose you had a certain percentage for industrial property, and residences, and various other

categories of property and still a higher rate than railroad property or property owned by common carriers, that is interstate common carriers?

Mr. SANDERS. Well, of course under this act, the carrier in order to be entitled to relief, would have to show that it was being assessed at a higher percentage of value than is true for other property in the taxing district subject to the same tax.

Now we keep repeating in the same taxing district subject to the same tax. I might add there that the normal situation is a situation where this other property is at a certain percentage. This is, I know, true, for instance, in Tennessee.

A percentage there might range from 7 percent to 10 percent or 30 percent, or something like that. Then the carrier property comes in at perhaps supposedly 100 percent or something less, but substantially above this other generality.

Now, however, if you have several different admitted arrangements in the law, this would have to show discrimination. It is all other property in the taxing district, in contrast with all other property.

I am not prepared to say just how that might be interpreted in connection with your problem.

Mr. KORNEGAY. In the bill, it says the assessed value of all other property. Then do you take this case of a railroad, where you have railroad property or the common carriers and all of the interstate common carrier property, and weigh that against the average assessed value of all of the other property in the county?

Mr. SANDERS. I would assume again that it is weighing it against the normal or average percentage in the rest of the taxing district, subject to the same tax.

I keep repeating those words. That would be my assumption. But again, I am limiting myself to an opinion of constitutional power. I don't think that that gets into that immediate sort of a situation. He has to prove discrimination, of course.

Mr. KORNEGAY. I will admit I am talking about the mechanics, but I can see the problem. It would indicate that the bill envisions a situation where you have all property other than common carrier property assessed at a certain percentage. Then the common carrier property is assessed at a higher percentage.

It is certainly possible to have a multitude of variations, perhaps some may be higher than common carrier property.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Sanders, we appreciate your coming and giving us the benefit of your testimony.

Mr. SANDERS. I am glad I had a chance to be here and to submit this to you.

Thank you.

The CHAIRMAN. I see in the audience one of our colleagues, a Member of Congress who has one of the bills in on this subject, and at this time we would hear from Mr. Roncalio.

STATEMENT OF HON. TENO RONCALIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

The CHAIRMAN. Would you give us the benefit of your views and we are glad to have you with us.

Mr. RONCALIO. Thank you for your thoughtfulness in recognizing me, and hearing me unscheduled, I appreciate it very much. But I left the Interior full committee meeting in order to do this.

Mr. Chairman and colleagues, and members of the committee, I want to thank you for this opportunity to appear before your committee in the consideration of H.R. 4972 and its companion bills, one of which I am pleased to introduce.

The principal purpose of these bills is to declare that a portion of certain tax assessments on common carrier property, and I presume this will mean all common carrier property, whether it is a section of land taken under the common land grants of railroads, which received every other section of land through public domains, and whether it means ties, and rails and whether it means minerals, oil, gas, and resources, shall be unlawful because they constitute unreasonable and unjust discrimination against and an undue burden on interstate commerce.

The bill provides a remedy in the Federal courts for such carriers against the collection of any tax based on such unequal assessments.

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

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

It has been alleged before this committee that railroad assessments are not equalized fairly or reasonably in numerous instances. It has been further alleged that many tax assessors simply cannot or will not equalize railroad assessments with the assessments of other properties even though both kinds of property are subject to the same tax levy.

If this committee finds this to be true, Mr. Chairman, then clearly there is a need for such legislation because the present system is creating an undue burden on interstate commerce, if these allegations are true.

The main purpose of this bill is to provide recourse to the Federal courts where the carrier will have the burden of proving, under the normal rules of procedure, the unjust or unreasonable discrimination in order to sustain their allegations of their petitions for relief in Federal court.

It seems to me, Mr. Chairman, that this is not an unjust or unreasonable request. I want to express my gratitude to you and to the committee for meeting to resolve this highly complicated and difficult matter.

Thank you, Mr. Chairman.

The CHAIRMAN. You say if we find that they are unjust and discriminatory. Do you think we ought to ask the different proponents of the bill to show us where there is discrimination and in what States they exist?

Mr. RONCALIO. This, I think, is squarely within the very proper inquiry of this committee. I believe that if there are carriers who maintain that an injustice is taking place, they should be prepared to prove it to this committee or to one of its subcommittees upon request. I think my answer to your question is "Yes."

The CHAIRMAN. You say "if we find," and I took it from that that we ought to go into it and find out what States are doing this. Thank you.

Mr. Moss, do you have any questions of our colleague?

Mr. Moss. I have no questions at the moment, Mr. Chairman.

Mr. YOUNGER. I have just one question.

I don't follow you to the point of saying that this committee ought to go into the assessments made to find that they are discriminatory. All we are saying in the bill is that if there are discriminatory levies, then there is relief. I don't see why we should investigate to see whether or not there are discriminatory levies being made, because our bill doesn't specifically say that. It is a broad piece of legislation. If they do exist anywhere, then the carrier does have a system of relief in the Federal courts.

Mr. RONCALIO. I concur with your reasoning. It is not inconsistent with that of the chairman or my own in that regard.

The CHAIRMAN. Are there any other questions?

Mr. WATSON. I might say one thing. In following the line of reasoning of Mr. Younger, I am sure that you were certainly thinking of this when you introduced your bill, that by the mere passage of this bill it is not my interpretation that we are immediately concluding that there is discrimination.

I think as a practical matter we can agree that there is, but this bill will not be saying that. It will be providing a vehicle that gives the carrier the opportunity to come in and prove discrimination. Then he can get relief under it. But I think this is a rather innocuous piece of legislation and I commend you for introducing it, and I am sure that we are not saying that there is discrimination by the mere passage of this bill. Do you agree with that?

Mr. RONCALIO. Yes, sir; I can agree with that assertion.

If I may say, Mr. Chairman, in my State we have two or three predominant rail carriers. One of them has long maintained, one of the smallest ones, that they are assessed at a 100 percent value of their property. This raises quite a problem.

How do you put a fair market value on a strip of iron running in the State? How do you put a fair market value on a depot out in the prairie in Wyoming? That is quite a problem. Certainly I agree with you.

The CHAIRMAN. Thank you very much.

Mr. Travis, are you here? Will you take the stand, please, and give us the benefit of your views?

I understand that you have a prepared statement. If you care to insert the statement in the record and summarize it that is all right, or if you care to read it.

STATEMENT OF BROLEY E. TRAVIS, CONSULTING VALUATION ENGINEER, SACRAMENTO, CALIF.

Mr. TRAVIS. Thank you, Mr. Chairman. I would like to read my statement.

Mr. Chairman and members of the committee, my name is Broley E. Travis, and I reside in Sacramento, Calif. Shortly after graduation from college with a degree of engineering in 1924, I commenced my professional career with the State of California, as a valuation engineer, or assistant valuation engineer with a regulatory commission, the public utilities commission, which I held for a period of about 9 years.

At that time, I transferred to the board of equalization which has the duty of assessing all of the utilities and railroads in the State of California, as senior valuation engineer.

I stayed with them, progressing through the positions of assistant chief of the division and chief of the division until 1962, at which time I retired.

I was chief of the valuation division having responsibility of assessing all of the railroads and other utilities in California for the last 12 years, 1950 to 1962, at which time I retired from the State service.

I have spent approximately 42 years in the profession of valuation of utilities and railroads.

The California State Board of Equalization, which was given the duty of administration of the new law, formed a valuation division to assist it in this duty. I was offered and accepted a position with this new department as a senior valuation engineer.

I continued with this department for the next 29 years, advancing successively to the positions of assistant chief of the division and chief of the division, which latter position I retained for 12 years, until my retirement in 1962.

As chief of the valuation division I was in responsible charge of a staff of about 60 people, gathering and processing information leading to the valuation and equalization of the assessments of all the utilities and railroads in California.

During my service with the board of equalization the assessment roll of State-assessed property grew from about $800 million to over $4 billion. In 1962, this assessment roll included 36 railroads with a total assessment of $345 million.

While in State service I was loaned to the States of Oregon, Colorado, and New York to aid and advise them in their railroad assessment work. Many other States asked for our advice in their railroad and utility assessment work.

Since my retirement from State service I have assisted the States of Utah and Idaho in their work in connection with the valuation and equalization of railroads and utilities. In addition, I have participated in valuation and equalization cases for railroads in Missouri, Illinois, South Dakota, and Iowa.

At the present time, I am engaged or participating in a valuation and equalization case in the State of Iowa.

I have also advised State-assessed taxpayers in regard to their assessments in Nevada, Arizona, Washington, and Oregon.

I am very well aware of the tax discrimination against railroads due to the practice of assessing railroad property at percentages of full

value much higher than most other property that is subject to the same tax rates.

I have observed this type discrimination at one time or other in the States with which I have had personal dealings, and based on conversations with both railroad representatives and State tax administrators I am convinced that the discrimination is widespread.

This belief is supported by a mass of data in many reports and studies on the subject. Ratio studies made by taxpayer groups and also by administrative and research organizations have all confirmed the claim of the railroads that they are being subjected to gross discrimination in the field of ad valorem taxation.

One of the first authoritative reports that confirmed what the railroad industry has been contending for many years was the report on carrier taxation, made by the Board of Investigation and Research and published in 1945 as House Document No. 160 of the 79th Congress.

This very complete report on carrier taxation stated, in commenting on the lack of equalization in assessments of railroad property—

> * * * the officials of approximately half the States readily concede that railroads are being overtaxed because of inadequate equalization.

The discrimination in the assessment of railroad property has been more readily identifiable since the adoption of central assessment of such property. This discrimination has become more pronounced in recent years, due in a large degree to the rapid increase in the value of property locally assessed, where the local assessor has not kept up with such increases in his assessments; whereas the property of railroads has, on the whole, decreased in value due to economic reasons and the central assessing agency has kept railroad values high while failing to recognize the decrease in the assessment ratio of locally assessed property.

The Bureau of Census reports of 1957 and 1962 gave the first factual data as to the level of assessments in a great many States. These data confirmed the fact that the assessment ratios in nearly all States had been gradually getting lower each year. This fact had been found to be true in previous years in studies made in a relatively few States by legislative committees and taxpayer organizations.

The Doyle report, so called after Maj. Gen. John P. Doyle, director of the Special Study Group on Transportation Policies in the United States, created by Senate Resolutions 29, 151, and 244 of the 86th Congress, in 1960 found that State and local assessment procedures discriminated against railroads.

In fact, the report said so in very strong language—

> * * * that there is a studied and deliberate practice of assessing railroad property at a proportion of full value substantially higher than other property subject to the same tax rates.

In June 1963, there was published a report of the Advisory Commission on Intergovernmental Relations on "The Role of the States in Strengthening the Property Tax." This report confirmed the findings of previous groups which had studied the problem, to the effect that the railroads were being discriminated against in the matter of ad valorem assessments.

If a person were to be guided by a reading of State constitutional and statutory provisions, he would not expect to find such a degree of discrimination in railroad assessments. Railroad property is usually assessed by a State assessing agency, as is the property of nontransportation utilities, while all other property is generally assessed by county assessors. Property of both kinds is subject to local property taxes at the same tax rate.

In most States the constitutional and statutory provisions require that property taxation shall be uniform and equal, that State-assessed property assessments shall be equalized with local property assessments by the State assessing agency, and that both types of assessments shall be at full market value.

The record shows that there has been a disregard of these obviously fair requirements by many State assessing agencies. Although in most States today property is not assessed at full market value, the property of railroads is assessed at a much higher percent of market value than other property which is assessed by local assessors.

Why, then, is there this unfair discrimination against the railroads? The discrimination stems from several factors, but the most important one is the political pressure on the State-assessing agency to maintain the status quo in the face of ever-increasing governmental costs and tax needs.

The railroads have for many years attempted to obtain relief at the administrative level, but the results have been very disappointing, for the reason stated above—that the State officials are reluctant to change their procedures because to do so would be politically inexpedient.

During the past decade, the administrators have been made aware, through their own organizations, such as the National Association of Tax Administrators, of the fact that they should get their houses in order and attempt to make their assessments with more regard to equity for the railroads both as to valuation and to equalized assessments.

The National Association of Tax Administrators had a competent committee work for several years developing standards for the finding of full value of properties of railroads and utilities. Their report entitled "Appraisal of Railroad and Other Public Utility Property for Ad Valorem Tax Purposes" is recognized as an authoritative guide for tax administrators.

Committees of the National Tax Association and National Association of Tax Administrators have recommended methods to be used to determine the assessment level of locally assessed property. By the use of the valuation report and the methods recommended for determination of assessment ratios the State administrators have tools by which they could make large strides toward ending the discrimination in railroad assessements. Unfortunately, too few States have seen fit to attempt any changes in their procedures that would result in a reduction of railroad assessments.

Although some measure of relief has been obtained by the taxpaying railroads in the State courts, the results of such action have been very discouraging. Dockets in the State courts are congested, and the courts are slow to move. In addition, the State courts are very reluctant to overturn the action of the assessing body, and they exert every effort to sustain the tax administrators.

In most cases there is not a full trial before the State court, but only a review of the record made before the administrative body. As it is the hope of the complaining railroad that the relief desired may be obtained from the State-assessing body the record made before that agency is usually quite sketchy; this is so because if the taxpayer should indicate that an appeal was likely by making a complete record, the assessing agency would not be in a mood to grant any relief.

Also, in many States the railroads do not have recourse to the courts to the extent that the assessing body is made a party to the proceeding, but instead must bring suit against the tax collecting body, such as the county, protesting the excessive taxes as a result of the discrimination in the assessment of the railroad property.

This means that suit must be brought in every county of the State in which the railroad has property, which is a very time-consuming and expensive procedure.

I believe the evidence is irrefutable that there exists in a great many States clear evidence of discrimination against the railroads in the way their property is assessed. The movement toward granting the railroads relief against such tax discrimination has been very slow, and in many States the movement has been so slight that it is practically imperceptible.

As the State administrative bodies refuse to fulfill their duties as public servants, and they are supported in this action by the State courts, it becomes evident that the only way the railroads can be freed of this tax discrimination is by having recourse to the Federal courts, as set out in H.R. 4972.

The Advisory Commission on Governmental Affairs in its report of June 1963, recognizing need for improvement in the assessing procedures in the various States, made a number of recommendations for State action to strengthen property tax administration. Subsequently, the committee drafted suggested property tax legislation for enactment in the various States. If the recommendations of the committee were carried out by the various States, it could well be that the tax discrimination problem would be substantially solved. It would be a very naive person, however, who would believe that final consideration of the Commission's recommendations could be obtained in less than a couple of decades.

The fear has been expressed by some State administrators that this proposed law (H.R. 4972) would take away from the individual States the right to administer their own tax laws. Such a danger would exist only if the administrator should be negligent in performing his duty. Certainly, if the State-assessing agency assesses railroad property at the same level as all other property, the railroad would not have a cause of action in the Federal court under this proposed law.

The State administrators may also say—"we are improving our valuation and equalization procedures, just give us time to finish the job." Although it is true that some of the States have shown a measure of improvement over the last 30 years, there are many States that have made no real effort to do an efficient job in the assessment of railroad property. It would be very difficult to predict accurately how many years it might be before those States would achieve any measure of equality.

That finishes my statement, Mr. Chairman, I would be very happy to try to answer any questions you may have.

Mr. Moss. Mr. Travis, I know from your statement that you are one of my constitutents and I welcome you to Washington.

We are talking about something that we are both familiar with. Is assessment in Sacramento County uniform and equal on the basis of highest and best use?

Mr. TRAVIS. The local assessment, sir, you are talking about?

Mr. Moss. Yes.

Mr. TRAVIS. I think it is very close to it, sir, and within recent years there has been a tremendous improvement in the assessment and I will cover all of the counties of California in that.

Mr. Moss. And that effort at greater equalization has been as a result of prodding by the State, to achieve equalization between tax-assessing districts; is that right?

Mr. TRAVIS. That is, sir, through prodding by the State and legislation with regard to school aid has helped very much.

Mr. Moss. We have a very large amount of the total budgets of local school districts, particularly, which are met through subventions from sales tax sources, so that the State of California, going back to the time when I served in the legislature, initiated efforts to improve equalization. It took quite a while to improve our own county to the point where it is today, did it not?

Mr. TRAVIS. It did, sir.

Mr. Moss. And just about 3 years ago, we had trouble in the county because there were some new assessments which took quite a number of years, on a block-by-block basis to reevaluate property, did it not?

Mr. TRAVIS. That is right, sir.

Mr. Moss. Is there equalization between the various tax assessment districts?

Mr. TRAVIS. I will say "Yes." That is a general statement. You cannot get perfect, and you can't say it is all 22.1 percent or something but it is a range of reasonableness or ability of the person to do the job, because of the fact that as you point out, it takes time for an assessor to get around. He can't change every year. It is impossible, physically impossible to do that.

So there are some small discrepancies within the county. Intra-county assessments are not perfect, but I feel it is very good and very close.

Mr. Moss. You say within a county?

Mr. TRAVIS. Yes, sir.

Mr. Moss. Is it between counties?

Mr. TRAVIS. The variation from the statewide average as found by the State board of equalizations within about 3 percentage points, I believe, at the present time, so that is very close.

Mr. Moss. Within that percentage you can get extremes from both ends?

Mr. TRAVIS. You can get from 9 to 20 percent.

Mr. Moss. Or much higher?

Mr. TRAVIS. There might be a point, but they don't last very long, sir, because if they publish the ratio of Sacramento County as being 23 percent and a man is higher than 23 percent, he will immediately see the assessor and see that he is reduced to 23 percent.

Of course the man that is at 19 percent doesn't come in. That is why it is a continual decrease in the assessment ratio.

Mr. Moss. In our State, the board of equalization is responsible for all utility property assessments; is it not?

Mr. TRAVIS. That is right.

Mr. Moss. It tells the county the amount of property on the rolls in that county for purposes of tax; is that correct?

Mr. TRAVIS. You are talking about utility property; is that right?

Mr. Moss. Yes.

Mr. TRAVIS. That is right.

Mr. Moss. In your statement on page 2, you said:

> I am very well aware of the tax discrimination against railroads due to the practice of assessing railroad property at percentages of full value much higher than most other property that is subject to the same tax rates.

Would that statement be true as between a railroad and an electric utility?

Mr. TRAVIS. The same thing would apply to both of them, sir.

Mr. Moss. Or a gas utility?

Mr. TRAVIS. That is right, in California. You are limiting this to California.

Mr. Moss. In other words, the practice of assessing property in California is uniform between utilities, that is all utility property?

Mr. TRAVIS. I don't want to quibble, sir. The answer to your question is "Yes" if I may amplify to this extent, that there are certain properties assessed by the State board of equalization, and I am talking about pipelines that are at a lower assessment.

Mr. Moss. I recognize that there are some utility properties that are not assessed by the State board of equalization, but the significant majority of the properties are assessed by the State board of equalization.

Mr. TRAVIS. That is right.

Mr. Moss. And between utilities there is uniformity then to the extent that the State has jurisdiction?

Mr. TRAVIS. Generally, that is right, sir.

Mr. Moss. As a matter of equity, if we are going to provide this relief, shouldn't we provide it for all utilities?

Mr. TRAVIS. I can't disagree with the fact that there should be relief for the other types of utilities. Of course, they are not interstate commerce so they are not covered by this bill.

Mr. Moss. Well, aren't they?

Mr. TRAVIS. No.

Mr. Moss. Now, I understood that Pacific Gas & Electric Co. was interstate commerce.

Mr. TRAVIS. I am not a lawyer, you see.

Mr. Moss. They are clearly interstate commerce.

Mr. TRAVIS. Well, everything is interstate commerce, I suppose.

Mr. Moss. Would you apply it to all utilities engaged in interstate commerce?

Mr. TRAVIS. I believe that there should be equality in assessment between all types of property.

Mr. Moss. I do, too. If we actually had that, fully equal, then as a taxpayer my taxes would probably go down, and not up, as they have been.

Mr. TRAVIS. That is right.

Mr. MOSS. Because I have seen this block method of assessment whereby they take 10 years to go over a political subdivision, and achieve equality. By that time you have a 10-year lag between the last one and the first. So it becomes sort of a difficult circle to achieve this equality we all seek.

Mr. TRAVIS. It takes time, although they are trying to do it in 4 years.

Mr. MOSS. Now, if we are going to be concerned over the impact upon interstate commerce as the test, why stop only with utilities? Have you seen in your experience in the State some of the newly developed industrial parks allege that they have been socked by the assessor?

Mr. TRAVIS. Yes, sir.

Mr. MOSS. You have?

Mr. TRAVIS. Yes, sir.

Mr. MOSS. So have I. Many times those tenants are clearly engaged in interstate commerce; aren't they? That impact might be upon the budget of a citizen, that discriminatory assessment or tax treatment.

Where do you envision we should stop or should we prescribe a uniform Federal standard for achieving full equality in the levying of taxes?

Mr. TRAVIS. Of course, the industrial park has a very quick way of getting relief, because he is in one taxing district, or one taxing jurisdiction, let us call it. He can go to the county assessor and get relief from the county assessor or the county board of equalization.

Mr. MOSS. You can go to the county supervisors. You know, I have done that on a number of occasions, and I have been treated with great courtesy, and perseverance and futility.

Mr. TRAVIS. Well, that is the same experience of the railroads, of course.

Mr. MOSS. I would like to go into Federal court perhaps and get a quick answer and tie them up.

Mr. TRAVIS. You can go to the superior court with it.

Mr. MOSS. Going to the superior court might match my resources a little better than going to the Federal court. I do thank you for your testimony, and as I said, I am pleased to welcome you here.

Mr. TRAVIS. Thank you, and I hope to see you in Sacramento again soon.

The CHAIRMAN. Are there any questions?

Mr. DINGELL. I have been very impressed with your testimony, sir, and I think it has been very good. There are, however several questions I would like to ask you about some of the comments you made this morning. It would be fair to say, would it not, that each State has a provision for contest of its taxes and levies, the rate at which those taxes are assessed, and indeed all other questions involving the fairness and the amount of the taxes, would it not?

Mr. TRAVIS. I believe that is true, sir, that there is a recourse in the State courts at the present time.

Mr. DINGELL. The Constitution would require it, and the failure to include that would make the law subject to a constitutional review.

Mr. TRAVIS. Right.

Mr. DINGELL. These provisions are fairly similar, am I correct, in that in each instance there is a provision for, first of all, the equalization of taxes across the State from one area in the State to the other. Am I correct about that?

Mr. TRAVIS. Well, the taxpayer has to go——

Mr. DINGELL. That is a fairly simple question.

Mr. TRAVIS. There is a forum except it is not as simple in that you can go into one State court.

Mr. DINGELL. I am talking in terms of general theories, and I intend to specialize as much as I can, but I am afflicted by a shortage of time.

Now each State has such provision for equalizing the taxes across the confines of its boundaries, am I correct?

Mr. TRAVIS. That is right.

Mr. DINGELL. Now, each State also has provisions within its tax laws for assuring that taxes are levied fairly across the different kinds of industries and land uses against which ad valorem taxes are levied.

Mr. TRAVIS. There is a uniformity clause in all States, I think.

Mr. DINGELL. Now, you indicate that under the present practice, it will be necessary for railroads or other industries afflicted by unfair taxes within the borders of a State, in many instances, to initiate a suit in one way or another against each of the taxing authorities, which would require probably a county-by-county attack upon the taxes but also which would require a taxation or, rather, an attack upon the taxes probably more broadly, since you have county taxes and you have city taxes, and you have school board taxes, and you have all manner of taxing authorities.

In Michigan we have community hospitals, and you have community schools that are entitled to levy certain percentages of taxes. So you would be afflicted under present law with the necessity of attacking these taxes. In the case of Michigan, I think there are 83 counties and I suspect there are about 1,000 school boards, and you would be afflicted with a situation of having to attack these taxes in the courts of every county in the State and probably in a number of instances, am I correct?

Mr. TRAVIS. The bill doesn't call for attack on the taxes, it is an attack on the assessment. It is the county as the assessing agency, which makes the assessment for all of the multitude of taxing jurisdictions, in practically all States, and there are some exceptions.

Mr. DINGELL. It would essentially require separate action.

Mr. TRAVIS. It would require a very large number of separate actions, I would say that.

Mr. DINGELL. That is the fairly major complaint in your statement, is it not?

Mr. TRAVIS. It is one of the complaints, that is right.

Mr. DINGELL. Well it was one of the main points that you raised, was it not? I know the bill, H.R. 4972 says that:

> The following action by any State, or subdivision or agency thereof, whether such action be taken pursuant to a constitutional provision, statute, or administrative order or practice, or otherwise, is hereby declared to constitute an unreasonable and unjust discrimination against an undue burden upon interstate commerce and is hereby forbidden and declared to be unlawful.

Now, following on from that is language which would require railroads afflicted by this situation about which they complain, to enter

and contest the assessment in each State, in each county, and in each taxing authority within the confines of the State whose taxes they complain about.

My question is simply this: How is H.R. 4972 or any other similar legislation pending before this committee going to help you about the problem of which you complain?

Mr. TRAVIS. Well, perhaps I am not competent to answer you. I am an engineer and not a lawyer.

Mr. DINGELL. You have expressed great experience in equalization, and you appear here on taxes and tax assessments. You express a long background and experience in this area. I am sure you must have some idea of how this bill is going to affect the major problem of this industry.

Mr. TRAVIS. I just want to qualify myself to that extent.

Mr. DINGELL. How is this bill going to help you with the very wide jurisdictional problem that you stress to the committee?

Mr. TRAVIS. Because the attack can be brought in the Federal court against the assessment of the central assessing agency. The assessment is made by the State.

Mr. DINGELL. Assuming there is no central assessing agency in the State, what then?

Mr. TRAVIS. I presume then the same thing would apply, although those are very far and few between.

Mr. DINGELL. Let us assume in Michigan we have a State board of equalization, similar to your experience in California. Their function is to see to it that the taxes are fair and in equal proportions of ad valorem taxes throughout the State. How are you going to attack those? Their function is to go into the question of taxes to see to it that the properties are valued properly. How are you going to attack them if they assess fairly, if the principals of the State equalization law are applied, where you allege some other ground of unfairness, such as the fact that they are fixing the value of the property too high?

Mr. TRAVIS. In Michigan the railroads are assessed by a central agency. They would be the ones which the action would be brought against, if there was inequality of assessment.

Mr. DINGELL. In Michigan the State board of equalization simply sees to it that properties are valued equally and fairly across the State.

Mr. TRAVIS. But they have the primary duty—I have not worked in Michigan—of finding the assessment of railroads in Michigan.

Mr. DINGELL. Within this framework, as long as the community doesn't exceed the assessed valuation, or does not fall below it, and actually the main function is to see that you don't fall below it—and so long as the communities act within the maximum limit fixed by the State board of equalization, they can tax at any level they want, as long as they behave properly according to the vote of the county or the other agencies. How is this going to be helped? In Michigan you are still going to have to go into every single county and every single taxing district in the State of Michigan.

Mr. TRAVIS. It is my understanding that this bill covers the discriminatory assessment procedure of equalization.

Now, if there is discrimination in the special laws for tax rates, I don't think it is covered by this. If they levy a special tax against railroads that would be true.

Mr. DINGELL. It says that this is the stated equalized tax for property within your area.

Mr. TRAVIS. It is an equalized assessement. It is the assessment we are talking about and the assessment in Michigan is made by the central agency and that assessment.

Mr. DINGELL. I think your understanding of this and mine are a little different.

To go on to another point, this legislation would force the railroads to bring into Federal court every school district and every county and every city and every community hospital association in the State of Michigan.

Am I correct that that is to litigate the problem of taxes by the railroads within the confines of their taxing area?

Mr. TRAVIS. I can answer your question. It is my understanding it brings the assessing agency in.

Mr. DINGELL. Is there any requirement that the railroads under this legislation should first exhaust the remedies within State law before they proceed into Federal courts.

Mr. TRAVIS. I don't believe so.

Mr. DINGELL. Don't you think as a matter of principle that would be something for this committee to consider in the interest of fairness, that State law should be interpreted by State courts before it is interpreted by Federal courts?

Mr. TRAVIS. Of course the delay in getting action in the State courts is one of the reasons for having this bill.

Mr. DINGELL. What you are seeking then is quick justice, as opposed to equal justice?

Mr. TRAVIS. I wouldn't say that. It is quicker justice than delayed justice.

Mr. Moss. Just for the purpose of clarification here, because it seems to me that there is a confusion and I think the confusion should be cleared up, on page 2 of the bill beginning on line 4, following (a), it says:

the assessment, for purposes of a property tax levied by any taxing district, of property owned or used by any common carrier subject to this Act engaged in transportation of persons or property in interstate commerce at a value which bears a higher ratio to the true market value of such property than the assessed value of all other property in the taxing district * * *

Now, in your response to Congressman Dingell, you have indicated that you felt the action would be against the State board of equalization, which is not a taxing district under our laws, is it?

Mr. TRAVIS. That is right.

Mr. Moss. The taxing district would be the fire district or the school district or the reclamation district, or any of the many thousands of taxing entities we have in the State of California, would it not?

Mr. TRAVIS. That is right, sir, but it says that the—

unjust discrimination against an undue burden upon interstate commerce is forbidden and declared to be unlawful: (a) the assessment, for purposes of a property tax levied by any taxing district * * *

It is the undue burden due to the assessment.

Mr. Moss. Is the board of equalization a taxing district? It is an assessing agency which gives its valuation to a taxing district.

Mr. TRAVIS. That is right.

Mr. Moss. But the taxing district then levies upon the assessment in order to achieve equalization.

Mr. TRAVIS. That is right, but this bill is against the assessment for purposes of the property tax. This bill goes to the assessment.

Mr. Moss. It is the taxing district, and my point is this: If you had to try to arrive at a uniform rate of tax in relation to market value for all of the properties taxed in California by the multiplicity of districts, there were dozens of them when I left the legislature.

Now I understand we have multiple-purpose districts, so that we have almost no end to the type of special assessment districts that can be established in our State, isn't that correct?

Mr. TRAVIS. That is right.

Mr. Moss. Well, those districts are the ones which levy the taxes.

Mr. TRAVIS. That is right, upon the assessment made by the State board of equalization.

Mr. Moss. Would you then tax the utility property on an average for all of those districts? That debt has to be paid within each taxing entity.

Mr. TRAVIS. It is each assessment area on which a tax rate is made. The tax rate is within that assessment area.

Mr. Moss. I wanted to get your views out here on the record, because what we do here in the way of a history is of some significance if this legislation is enacted, but I think that it must be made very clear before anything happens here, that the State board of equalization is not a taxing district.

Mr. TRAVIS. That is right.

Mr. Moss. We would have to test in each taxing district the relationship of utility property to other property assessed within that district.

Mr. TRAVIS. It could be, sir; I don't know.

Mr. Moss. We are providing a tremendous job in this. If you are going to have a statewide average, many of the counties of the State might have no railroad property, and in fact there are a number of them having no railroad property, but you throw them all in the same basket and come up with an average, which could create some real windfalls.

I would certainly want to see us, whatever we do, avoid that. I think that we might compound our problem rather than solve it.

Mr. TRAVIS. Of course in all of your equalization laws in all States now, you would have the same problem under the present laws, because the assessment of property should be at average taxes.

Mr. Moss. They are supposed to be levied equally, but here we are seeking a special relief in a different form. So to that extent at least we are placing the railroad utility as a citizen in a different category from some of his other friends.

Mr. WATSON. Would the gentleman yield on that?

Mr. Moss. But the gentleman from Michigan yielded to me.

Mr. WATSON. It appears in section 25(b), the first paragraph of that section, the action would lie against your board of equalization,

and it isn't necessary that it be a tax district, because it says, "The following action by any State or subdivision or agency thereof."

Perhaps Mr. Sanders who is a renowned lawyer, could shed a little more light than the gentleman here. I know nothing about engineering and probably little more about law, but perhaps Mr. Sanders could extricate us from this discussion of where it would lie.

Mr. Moss. If the gentleman from Michigan would yield further, I would direct my friend's attention to the language on page 2 of the bill, beginning on line 4, after the small "a" in parentheses: "The assessment for purposes of a property tax levied by any taxing district."

My State board of equalization is not a taxing district; it is an assessment agency.

Mr. WATSON. Well, then, of course, I am reading from the brief that was presented here earlier, and I assumed that it was the same as we have under consideration.

Mr. Moss. I always want to work from the proposed language pending, because that is what we must deal with.

Mr. WATSON. The bill itself does contain this section 25(a).

Mr. DINGELL. I would like to query the witness on this:

The following action by any State or subdivision or agency thereof, whether such action be taken.

Now those are the actions which become subject to judicial review in the Federal court, am I correct, sir?

Mr. TRAVIS. That is the way I would read it; yes, sir. It is the assessment.

Mr. DINGELL. We can review any action taken by any of these agencies. First of all you can take into court any action by a State agency which would be the public utilities commission or it could be any of the State executive agencies regardless of how they might be denominated and it would mean that you could take in any county, because counties happen to be subdivisions of the State, within the State of Michigan. You could take in municipal governments since they get their power from the State under the State constitution in Michigan, and I am sure every other State, and it could be a county agency which might have authority to levy taxes. You would have the water district or any school agency within the State which would have taxing authority under the State. It would derive its power from the State and so would be subject to having its actions reviewed in Federal court.

In addition to this, I think that you would have, as my good friend from California points out, a multiplicity of other agencies within the State which happen to have taxing authority which derive their power from the State government and in the State constitution.

Wouldn't all of these be subject to review under this?

Mr. TRAVIS. Not under my interpretation of it, sir, which is limited to that qualification, but to me it is the interpretation of the State agency regarding the assessment upon which the tax is levied.

Mr. DINGELL. The language here is very celar, and it savs, "The following action by any State or subdivision or agency thereof."

Were any of the agencies I mentioned not agencies of the State or subdivisions of the State and excluded from the language of this bill? I don't want to nitpick but I want some answers on this legislation.

Mr. TRAVIS. They are agencies of the State, but they have nothing to do with the assessment. That is what they are talking about.

Mr. DINGELL. Every one of those agencies takes action in assessing taxes. It is subject to review in the Federal court?

Mr. TRAVIS. If they are assessing agencies.

Mr. DINGELL. That is not what it says. It says:

> The following action by any State or subdivision or agency thereof, whether such action be taken pursuant to a constitutional provision, statute, or administrative order or practice, or otherwise, is hereby declared to constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce and is hereby forbidden and declared to be unlawful * * *.

Then there is the provision that authorizes action to prevent collection of taxes, and it authorizes actions to enter courts, and certainly necessarily a State agency of the type I have mentioned would have to have standing in court to appear and defend its action.

I am not talking about the State board of equalization or whatever you might have, but I am talking about every county and hospital association, every school district, every irrigation district, and every power district that would have authority to levy taxes under the State constitution and State laws.

I yield to my friend from California.

Mr. WATSON. The gentleman from Michigan has raised a very important point. I am not going to defend the gentleman who is on the stand right now testifying, but I don't think that he can properly respond to it. I think it is a legal question and the committee has a right to know the answers to the query propounded by the gentleman from Michigan.

I believe if he would defer we could probably have a clearer answer from Mr. Sanders, who is the constitutional and legal witness.

The CHAIRMAN. Just one moment. I believe, Mr. Watson, that that is the prerogative of the man asking the questions, to ask any man who appeared before this committee and wants to make a statement. If he can't answer it, I believe it is right to say he can't answer it.

Mr. DINGELL. I would be happy to have Mr. Sanders' views, if he can answer this particular question, but I did not place the gentleman on the stand here. He comes before us with impressive credentials and background which I would construe as being adequate for him to answer a simple question, even though it is legal, but it is in an area in which he has worked for 29 or 30 years.

Mr. TRAVIS. Forty-two years, sir.

Mr. DINGELL. In 42 years you ought to be able to construe that statute.

Mr. TRAVIS. I have read it, sir, and I have in my own mind made an interpretation of it. I have interpreted the actions to be against the body, the subdivision or agency which makes the assessment which is subject to these taxes.

Mr. DINGELL. Thank you very much.

The CHAIRMAN. All right, Mr. Watson, do you have any questions?

Mr. WATSON. Mr. Chairman, I would like to hear from Mr. Sanders, if the witness would defer to him, so that we might shed a little light on the question that has been propounded by my colleague.

The CHAIRMAN. Mr. Sanders, are you present? Would you care to take the stand at the request of Mr. Watson to answer this question?

Mr. SANDERS. I have an opinion about it, but it doesn't go to my particular point. I think Mr. Ogden could answer the question.

Mr. OGDEN. With the Chair's indulgence, Mr. Sanders, of course, was asked to look at this from a constitutional standpoint. I think that I can answer the gentleman's question.

The CHAIRMAN. Would you prefer that?

Mr. WATSON. I want to hear from anyone who can shed some light on the question.

The CHAIRMAN. It is only for this question, Mr. Ogden.

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

Mr. WATSON. What is your name, please?

Mr. OGDEN. James Ogden.

Mr. WATSON. And you are a lawyer?

Mr. OGDEN. Yes, sir; I am vice president and general counsel of the Gulf, Mobile & Ohio Railroad and I made a statement yesterday.

Mr. WATSON. I am sorry, I was not here. You heard the questions propounded by Congressman Dingell with reference to the possibility that this legislation would require a multiplicity of suits against every taxing district within a State.

Could you give us your interpretation as to whether or not this legislation would require that, and against what political subdivision or agency would an action lie?

Mr. OGDEN. Mr. Watson, the bill as I read it is designed to reduce the amount of litigation in certain areas. The primary purpose of the bill is to reach the assessing agency and to prohibit assessments at a higher level than other assessments of other properties subject to the same tax.

Specifically, many of the problems, it seems to me, that Mr. Dingell so ably raised would be problems that would go to how to frame a complaint, if they could ever frame one. But if Michigan has a central assessment of railroads, obviously the action would be against the central assessing authority on a showing that the assessment was at a level higher than the railroad was able to show to be the level of the assessments of other property in various taxing districts where the railroad had property.

If that was a difficult problem, it would be the problem of the complainant and not the problem of the State.

Mr. WATSON. And in a sense of fairness, then, I yield only for this line of questioning to the gentleman from Michigan, who brought it up first.

Mr. DINGELL. I want to be clear. I am not unsympathetic to the problem of seeing that the railroads are taxed fairly, but I want to be sure the action taken by this committee is wise.

Now, as I read the language at the bottom of page 1 and the top of page 2, you come to a situation here where it says—

The following action by any State, subdivision, or agency thereof * * *.

Now subdivisions or agencies thereof of a State would be counties, would be school districts, and irrigation districts, or might be districts dedicated to the creation of hospitals or any other valid purposes for which a State or municipality has granted taxing authority.

Now, under this, every one of those actions of every one of those agencies is subject to review in a Federal court. Am I correct?

Mr. OGDEN. No, sir.

Mr. DINGELL. Initially the railroad has its option under this bill of going into the State agency if it chooses and failing that, or if it so chooses, it has the option of going forward against every one of those counties or any one of those counties in the State which it may so choose to do.

Mr. OGDEN. Mr. Dingell, if it is the assessment agency, the subject of the whole paragraph is "the assessment."

Mr. DINGELL. Now in Michigan we have a State board of equalization. It does not assess. It simply sees to it that taxation in all of the counties of the State on real property is levied on a fair and equal basis.

Mr. OGDEN. Well, somebody assesses the railroads. I don't know who it is. But whoever it is, that would be the one.

Mr. DINGELL. In Michigan it is the county, and in Michigan it is the school district and in Michigan it is the people's community hospitals associations. We do not have, as I understand Michigan law, an agency on the State level which assesses. It equalizes, but it does not assess. I would much rather see it on a State level, but this is not my understanding of how it works.

Mr. OGDEN. Let me put it to you this way, Mr. Dingell: Perhaps this bill would make no difference in Michigan, but let me point this out, that this bill really only changes existing law in two ways: One is it enables the complainant to go into Federal court without proving the adequacy of a State remedy, which is the inhibition imposed upon us by section 1314. That prohibition is removed.

The second thing is that it declares the difference to be an undue burden on interstate commerce and limits the cause of action to the difference. Under present law, Mr. Dingell, it is entirely possible to go into any State and contest the entire assessment and all of the tax in a Federal court.

Mr. DINGELL. You see, my good friend has yielded to me for treatment of a very limited question. You are going well beyond that, and I didn't want to do that on his time. I just wanted to stay with the question I have.

Are you willing to make a flat statement to this committee that every State in this Union has an assessing agency which would be the principal and primary defendant under this legislation?

Mr. OGDEN. If they have an assessing agency, or whoever does the assessing.

Mr. DINGELL. You said each State has one.

Mr. OGDEN. Well, it could be made the defendant.

Mr. DINGELL. I am asking you, are you willing to make that flat statement at this time, that each State has a State agency?

Mr. OGDEN. No, sir, I know they don't.

Mr. DINGELL. Now, if each State does not have a State assessing agency, then you will be able to proceed against each of the adminis-

trative subdivisions of State government which do have assessing powers; am I correct?

Mr. OGDEN. Just like you can do today.

Mr. DINGELL. Now, if they do not have a State assessing agency, you would then be able to proceed against each subdivision; is that correct?

Mr. OGDEN. Whoever makes the assessment.

Mr. DINGELL. Now, you also have the option of proceeding if you so choose against administrative units of government, subdivisions of government, by counties and so forth, or against the State assessing agency if you so choose under H.R. 4972?

Mr. OGDEN. No, sir.

Mr. DINGELL. You would not?

Mr. OGDEN. There wouldn't be but one assessing agency.

Mr. DINGELL. What in this bill would deny you that power?

Mr. OGDEN. Because the bill is directed only to the assessment. It is whatever the assessment is. I don't know who the assessment agencies are.

Mr. DINGELL. Just one minute. The bill says:

> The following action by any State or subdivision or agency thereof—

And then it goes on to say regardless of how such action be taken—

> pursuant to a constitutional provision, statute, or administrative order or practice, or otherwise, is hereby declared to constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce and is hereby forbidden and declared to be unlawful.

Now, this permits you to proceed against the action of any county, of any people's community hospital association, of any school district, or of any other similar subdivisions of State government, if you so choose, and allows you ab initio without resort first to action against the State agency.

Now you tell me where you are prohibited from doing that?

Mr. OGDEN. Mr. Dingell, you stopped at the colon and you haven't gone on and read the two words, "the assessment."

Mr. DINGELL. What two words do I fail to read?

Mr. OGDEN. The two little words you didn't read, the two words "the assessment." If your hospital association assesses railroads, the answer is "yes," and I don't guess your hospital association does assess railroads, though.

Mr. DINGELL. In our State these assessments are made by the counties and by similar institutions of the State government.

Mr. OGDEN. Then they would be the ones.

Mr. MOSS. Would the gentleman yield to me now?

Mr. WATSON. Yes.

Mr. MOSS. Looking again at the language of the proposed statute, it says that discrimination would constitute undue burden upon interstate commerce and it is declared to be unlawful and it is forbidden. The test here is whether the assessment is for purposes of a tax levy, isn't it?

Mr. OGDEN. Yes, sir.

Mr. MOSS. Where do you test it? You test that assessment, if it bears a higher ratio to true market value than other property subject

to the same levy, where? It is in the tax district. Isn't that the clear language of the statute?

Mr. OGDEN. Yes, sir.

Mr. Moss. You have to then compare the valuation, whoever makes it, against the valuation applicable in the tax district.

Now, in my State, the assessment agency is not the tax district, is it? I am reading you the language of the proposal you submitted to us. It means something or it means nothing. It says on page 2, beginning on line 8:

at a value which bears a higher ratio to the true market value of such property than the assessed value of all other property in the taxing district subject to the same property tax levy bears to the true market value of all such property in the taxing district.

Where else would you test?

Mr. OGDEN. You read it exactly correctly, and I still say that the contest is still over the assessment and not of all of the other property, but of the assessment of the taxpayer that is complaining. The complaining railroad would not be complaining of anybody else's taxes. They would be complaining of their own assessment.

Mr. Moss. Mr. Ogden, the assessment is for the purpose of a tax levy.

Mr. OGDEN. Well, all assessments are for the purpose of a tax levy.

Mr. Moss. By a taxing district, and it has to be a levy made by a taxing district.

Mr. OGDEN. But it has to be an assessment made by the State.

Mr. Moss. The assessment is not going to be in contest unless it is held at a higher ratio than other property, and in other words, it is discriminatory to the disadvantage of the taxpayer, in this case the railroad. But where do you test that point? You test according to the language on line 10, "of all property in the taxing district."

Mr. OGDEN. Mr. Moss, that is merely an element of proof in the contest over the railroads' assessment. That would be a burden that the complaining taxpayer would have to bear. If it couldn't make the proof, why, then there would be no judgment in its favor.

Mr. Moss. You address yourself to everything but the language of the proposed document before us.

Mr. OGDEN. Let us turn around the other way, then. The contest is going to have to be one place or the other. It doesn't seem to me to make any sense to contest the railroads' assessments, which is the subject of the contest, in the several taxing districts where nobody else's assessment is in contest at ll. The assessment of other property to which the railroad assessment is sought to be compared is important only for the purpose of comparison, and not for purpose of change.

Mr. Moss. I am interested in what the language of the proposal before us says.

Mr. OGDEN. Well, I think it says the other, and you obviously don't.

Mr. Moss. I want to thank my friend for yielding to me.

Mr. WATSON. Thank you very much, and I am sure that we have gotten this thing rather complicated. I only hope we didn't contribute too much to the complexity of it.

Mr. Ogden, notwithstanding the procedural difficulties which may arise as a result of this legislation, as to venue and as to burden of proof and so forth, you still believe that this is an equitable piece of

legislation and you think it would serve to the advantage of eliminating discrimination, if there be any, against the common carriers?

Mr. OGDEN. I certainly do.

Mr. WATSON. Further, it is your interpretation of this legislation that the contest would arise at the point of assessment rather than at the point of levy, that you can go into Federal court at the time of assessment rather than waiting for the district to actually levy the taxes against the carriers?

Mr. OGDEN. Yes, sir.

Mr. WATSON. And in the court, the determination would be in comparing the assessment of the carrier with the assessment of the other properties in that tax district, rather than waiting until the actual levy as apparently the gentlemen from Michigan and California are referring to?

Mr. OGDEN. Yes, sir.

Mr. WATSON. Thank you very much. I don't have any questions of Mr. Travis.

Mr. ROGERS of Florida. Just in listening to some of the colloquy here, I didn't understand your answers.

The CHAIRMAN. Are you addressing yourself to Mr. Ogden?

Mr. ROGERS of Florida. Yes, to Mr. Ogden. I didn't understand your reply to two of my colleagues here and I wanted to get it clear. It is my understanding from a reading of the bill, that you are concerned with the assessment. If you want to question the assessment in attacking districts, you would proceed against the body that levied the assessment, whether it be a local taxing district—listen to this—a local taxing district, a county taxing district, or a State assessment body. You would proceed under this proposed legislation against whichever body assessed the property that you wanted to question.

Mr. OGDEN. Yes, sir, that is correct.

Mr. ROGERS of Florida. If it is a local area that you are questioning or if it is the State assessing agency you would go against State assessing agency, isn't that true?

Mr. OGDEN. That is my understanding.

Mr. MOSS. Would you yield at that point? My State does not assess the taxes for local taxes. It arrives at an evaluation and the assessment is levied according to our constitution by our county assessor.

Mr. OGDEN. Mr. Moss, there is a great difference between valuation and assessment. They are not the same thing. Levy is something else, but I think perhaps you are confusing levy and assessment.

Mr. MOSS. I am not confusing levy and assessment.

Mr. DINGELL. Would you yield to me?

Mr. ROGERS of Florida. I will yield.

Mr. DINGELL. The language of this bill refers in line 4, page 2, under (a) to the assessment. This is the point you have been making. Now this is precisely the point the gentleman from California and I have been making, that assessment in Michigan, and an assessment in California is done by the local subdivision of government, and that evaluation is done on a State basis. Under this you are not going to be benefited because you are going to have to go into the subdivisions of the State.

Mr. OGDEN. Mr. Dingell, of course California is our largest State now and Michigan is a tremendously important State. We love them

all because we try to handle lots of business back and forth from them. But they are not the only States and we have property in a lot of States that do have central assessment agencies, and to which we could reach in this fashion which States do assess our railroads at a substantially higher proportion than other properties are assessed.

Mr. DINGELL. I am sympathetic with your problem but I want to be sure you have the right device.

Mr. ROGERS of Florida. Under the State of Michigan, would you proceed against the local assessing body?

Mr. OGDEN. If it were warranted, yes. It is whatever body assessed the railroad property.

Mr. ROGERS of Florida. Whoever is assessing is the man you would proceed against, if it is in question. Certainly that was my understanding of it and I thought it was very clear.

Thank you, Mr. Chairman.

Mr. ROGERS of Texas (presiding). Are there any other questions of Mr. Ogden?

I have just one thing before we close, with regard to this assessment situation. What this bill actually does is to bring into one forum, the Federal court, the power to proceed against a situation where the railroads are assessed on a 75-percent basis, and another group, corporate group or individual group, is assessed on a 40- or 50-percent basis.

Now, Mr. Ogden, if you turn this thing around and you simply said that everybody is assessed on a 50-percent basis but they are going to charge you a higher rate than they do somebody else, it would be actually unconstitutional, would it not?

Mr. OGDEN. I would think that it would, but you could certainly get the same results.

Mr. ROGERS of Texas. Your action will be against in some instances, I would presume, levying authority?

Mr. OGDEN. No, sir; it would only be against the assessing authority. The common denominator is the assessment of property, comparing assessments of property where the tax rates are the same.

Mr. ROGERS of Texas. But where the levying authority was undertaking to collect taxes on a false assessment, it might be necessary for you to seek relief to prevent this until your determination of your other suit could be reached?

Mr. OGDEN. That is correct.

Mr. ROGERS of Texas. In other words, as you say, the common denominator is the assessment, and if it is any of these agencies, it makes no difference who the assessing agency is. The question is whether or not they have the basic authority to make an assessment.

Mr. OGDEN. That is correct.

Mr. ROGERS of Texas. Once they make the assessment, you can proceed if your assessment under this bill is based upon a percentage higher than the assessment that is made against property other than common carrier property.

Mr. OGDEN. That is right.

Mr. ROGERS of Texas. I think the committee will come back at 2 o'clock and I think the first witness scheduled at that time is Mr. Charles Conlon, of the National Association of Tax Administrators.

The subcommittee will stand in recess until 2 p.m.

60-661—66——6

(Whereupon, at 12 o'clock noon, the committee was recessed, to be reconvened at 2 p.m. the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order. We have been having hearings on H.R. 4972 and related bills. The witness this afternoon will be Mr. Charles Conlon, National Association of Tax Administrators, of Chicago, Ill.

Mr. Conlon, will you come to the witness stand. You have a prepared statement. If you wish to have it inserted in the record, in will be inserted in total and you may summarize it, or you may read it.

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

Mr. CONLON. Thank you, Mr. Chairman. I would like to refer to a number of parts of it, if I may.

(The prepared statement of Mr. Conlon follows:)

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

I am Charles F. Conlon, Chicago, executive secretary of the National Association of Tax Administrators, and I present this statement in opposition to H.R. 4972 and 12 identical bills on behalf of the tax departments of the States of:

Arkansas	Illinois	Michigan
California	Iowa	Mississippi
Georgia	Kansas	Nebraska
Idaho	Kentucky	

The tax departments of these States oppose the bills first, because they would put any property owned by a common carrier subject to the Interstate Commerce Act in a special category for purposes of State and local property taxes; and second, because these bills would establish a special injunctive procedure in the Federal courts to review assessments of property owned by ICC carriers and thus bypass existing administrative and judicial remedies by which other property taxpayers are bound.

PREFERRED STATUS FOR CARRIER PROPERTY

Paragraph 1 of the bills would have the effect of prohibiting the inclusion of any property owned by an ICC common carrier in any regularly authorized classification system except presumably at the lowest assessment ratio provided for any class.

This is a most important point because the classification of property for property tax purposes is already authorized by the constitution or statutes of several States and is under consideration in others. The rapid increase in the burden of property taxes since World War II has renewed interest in the possibility of wider acceptance of a classified rather than a uniform property tax system. One possible basis of classification that might be considered is that of the owner-occupied residence versus business, commercial, or rental property. This is supported on the ground that the owner-occupier of a residence must bear the brunt of property tax increases whereas the owner of business or commercial property can pass them along the same as any other cost.

Where classification is legally permissible and adopted, the property of ICC regulated carriers should be treated in the same manner as the property of others in the same classification. Under these bills, however, carrier property would be frozen into a preferred status. Whether property should be classified, and how, is a matter of State policy and so long as the classifications are reasonable, there is no warrant for Federal intervention in this field.

In passing, it should be noted that these bills include any property owned or used by a common carrier of persons or property subject to ICC regulation. They would apply to office buildings, hotels, resort property, oil and mineral interests, and other kinds of property coming under the general category of nonoperating property. Accordingly, if property is presently, or were by constitutional amendment or statute to be classified by type or use, such a classification would not apply to similar property owned by or used by a carrier. To the extent that nonoperating property owned or used by a carrier would be given a special tax status under these bills, contrary to a general applicable State law, they are probably objectionable on constitutional grounds.

THE SPECIAL INJUNCTIVE PROCEDURE

The proposal to substitute a special injunctive procedure in the Federal courts for the administrative and review procedures now provided by State law raises two questions. The first one is whether there is really any necessity for establishing a new Federal procedure. The second concerns the extent to which the alleged discrimination against carrier property exists compared to assessments of all other property.

REMEDIAL PROCEDURES IN STATE COURTS

Boiled down to its essentials, the request for a special remedy in the Federal courts is based on the assumption that there is no speedy, effective remedy in the State courts to deal with cases of alleged discrimination in property tax assessments. Twenty years ago, this might have been said with some justification but it is not true today. Where the issue has been presented, the courts of the several States have now practically without exception recognized the necessity of giving predominant consideration to the element of uniformity of assessment rather than to compliance with the legal standard. Consequently, specific relief is now granted by the courts in cases involving discriminatory assessments—where the taxpayer proves that his property is assessed at a higher ratio of its true value than the property of other taxpayers—even though the contested assessment is concededly less than the constitution or the statute calls for. In the following States, among others, there have been court decisions where this principle of relief has been applied either directly or indirectly by the sanction given to assessment equalization programs: Alabama, Arizona, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, Ohio, Oregon, South Dakota, and pending in Tennessee (favorable lower court decision).

DISCRIMINATION IN RAILROAD ASSESSMENTS

No one who is familiar with property tax assessment practices would deny that in many States assessments are not uniform over the whole range of properties taxed. This is a general problem and one by no means limited to common carrier property. Insofar as there is criticism based on the allegation that business property is unfairly assessed compared to residential property, it should be noted that railroad property constitutes a relatively small proportion of all business property. Locally assessed commercial and industrial real property amounted to $75 billion in 1961; State-assessed public utility property other than railroad property amounted to $18.7 billion in the same year while State-assessed railroad property was $5.9 billion. Of the total of $100 billion represented in these three property classes, about 6 percent was railroad property and this proportion would be even less if locally assessed personal property used in business were included in the total of the commercial and industrial property assessment figures. The special remedy proposed in the bills would thus apply only to a small proportion of the property involved in this general problem of unequal property tax assessments.

The major premise of the argument for H.R. 4972 and similar bills is that railroad property is assessed in a discriminatory basis compared to other property. The existence of this discrimination is sought to be demonstrated by a comparison of the assessed values of railroad property, generally at assumed legal standards, with the U.S. Bureau of the Census sales-asessment ratios of transferred properties by States in 1961.[1]

---

[1] Hearings, H.R. 736, before the Subcommittee on Transportation and Aeronautics, Committee on Interstate and Foreign Commerce, July 28, 1964.

It is difficult, though, to accept this demonstration as proof of either the existence of or the extent of the discrimination alleged. First of all there is no evidence which shows how railroad property assessments compare with those of other businesses. Second, in the case of locally assessed property, the average level of assessment may be determined within acceptable limits by sales comparison methods because some types of property involved usually change hands frequently and sales prices and tax assessments can be compared. (Most of these sales, incidentally, involve residential property.) The property of carriers and other public utilities is not subject to such a sales comparison test because public utility companies are very infrequently sold as going concerns. Thus while the assessment ratios applicable to property generally are based on objective standards derived from Bureau of the Census data, the assessment ratios attributed to the carrier properties are subjective. At the very least, they are not subject to the acid test of the market as are the ratios with which they are compared. Moreover, it should be pointed out that the Bureau of the Census sales-assessment ratios, and any other State or local assessment ratio studies which are based exclusively on sales of properties, are bound to have only a relatively small number of commercial and industrial properties in the sales sample. Actually, the sales-assessment ratio studies in the 1962 Census of Governments report show only 6 States where basic sales information was obtained for 25 or more sample industrial properties. Also, it should be understood that the census survey was limited to locally assessed property and that no attempt was made to measure the relationship between locally assessed and State assessed property. This is explicitly stated in the census report:

"The survey was limited to sales of real estate listed on local property tax rolls. No study of the relation between assessed value and market worth has been attempted for State-assessed property or for locally assessed personal property.[2]

What this all suggests is that if the estimates of the ratios of railroad assessments to assessments on other property are to have any probative value, they must be tested preferably in some sort of adversary procedure, as to two fundamental points: (1) the basic full value appraisal of the property, and (2) the percentage of that full value which actually is put on the assessment roll.

A final point in this connection is the trend in property tax assessments on railroad property compared with public utility property other than railroad and with all locally assessed property.

The Census of Governments property tax studies indicate that between 1956 and 1961 State assessed railroad property valuations declined moderately while all other assessments rose substantially:[3]

[In millions of dollars]

	1956	1961	Percent change
State assessed railroad property	$6,546	$5,939	−9.3
State assessed property of other public utilities	13,354	18,754	+40.4
All locally assessed property	249,986	327,783	+31.1

Much of the increase in asessed valuations of nonrailroad utility property and locally assessed property is the result of new investment. However, the railroads also made substantial investments in new plant and equipment—in the 5 years from 1956 to 1960 inclusive, these amounted to $5.3 billion.[4] It is significant, therefore, that in a period of improving economic activity featured by generally rising prices, the assessments of railroad property by State agencies showed not only a relative but an absolute decline.

Incidentally, between 1961–62 and 1963–64 the annual percentage increase in expenditure for plant and equipment by the railroad industry was higher than for any other industry and about three times the average annual increase for all industries combined.[5]

[2] Census of Governments, 1962, "Taxable Property Values," p. 9.
[3] Census of Governments, 1957, "Taxable Property Values," table 2; same, 1962, table 2.
[4] Survey of Current Business, July 1959, p. 30, table V–7; September 1961, p. 6, table 1.
[5] Survey of Current Business, March 1965, table 1, p. 1.

ADMINISTRATIVE ACTIONS TO PROMOTE UNIFORMITY

The tax departments of the several States are aware of the need to make all property tax assessments conform to the standards of uniformity required by the constitutions and statutes of the States and have done much to forward such a program. For example, working through the National Association of Tax Administrators, the tax departments of the several States have formulated standard procedures for the conduct of sales-assessment ratio studies and these are now widely used.[6] This is a most-important activity and one that has done much to improve the degree of uniformity achieved in the assessment process generally. Actually, the effectiveness of the judicial remedy in discrimination cases stems directly from the use of assessment ratio studies because the courts accept these findings.

In the more specialized public utility assessment field, a committee of this association has formulated extensive procedures for the valuation of public utility property including railroad property;[7] it has also recommended standards to be followed in allocating an appropriate portion of the taxpayer's property to each State in which the enterprise operates.[8]

The figures shown earlier comparing the trends in railroad and other public utility assessments for property tax purposes between 1956 and 1961 demonstrate that these programs have had wide acceptance and that they have been effective.

IMPACT OF THE BILLS ON PROPERTY TAX ADMINISTRATION

In appraising H.R. 4972 in the light of these developments, some consideration must be given to its potential impact on the whole process of property tax administration. As a practical matter, progress toward an acceptable standard of uniformity has to be gradual. The predominant position of the property tax in the State-local revenue system (it accounts for almost half of all State and local taxes) is such that to attempt to remedy all inequities overnight, so to speak, would be disastrous to local government finance. This is something, it should be emphasized, which involves not only public utility property but all types of propery: Business and nonbusiness; real and personal; tangible and intangible; residential, farm, vacant lots, commercial and industrial; inventories, work in progress, stock in trade, and such other classifications and types.

If property under one type of ownership or use is singled out for special treatment under a Federal statute, there is no reason to deny similar treatment in the long run to any owner of property that is used in or becomes the subject of trade in interstate commerce. Such a policy would be tantamount to Federal supervision of the local property tax through Federal judicial procedures, a function for which the Federal judiciary has no particular qualifications and, judging from the statements appearing now and then in U.S. Supreme Court opinions, no desire to undertake. On the other hand, the States and local governments have achieved a good deal of improvement in this field in recent years and the prospects are that they can do a great deal more if the responsibility and means for dealing with the problem are left in their hands.

SOME SPECIFIC OBJECTIONS TO THE BILLS

There are several points about the bills which should be singled out for mention. One has been suggested already, that they apply to all property owned or used by a carrier whether or not that property is operating property used in the regulated business and not merely investment property.

Second, in those instances where relief is sought directly against the State agency making the property tax assessment, these bills raise a constitutional question because under the typical State statute authorizing suits for refunds and reviews, the consent to sue the State is limited to proceedings in State courts. This difficulty, however, would not arise in connection with suits against local governments.

---

[6] "Guide for Assessment-Sales Ratio Studies," report of the Committee on Sales Ratio Data of the National Association of Tax Administrators.

[7] "Appraisal of Railroad and Other Public Utility Property for Ad Valorem Tax Purposes," report of the Committee on Unit Valuation, National Association of Tax Administrators.

[8] "Report of the Committee on Railroad Allocation," National Association of Tax Administrators.

The third, and, from a practical standpoint the most important point about this proposal, is that what it really does is to clothe the Federal courts with a veto power over State property tax assssment procedures with consequent adverse effects on local budgets. This follows because the remedy provided is an injunction against the collection of any tax adjudged to be invalid on the basis of the criteria laid down in the bill. If tax collection were enjoined, it would mean that substantial amounts of revenue anticipated in local budgets would not be available for expenditure during the tax year as expected. Such a situation could be extremely serious for small- and medium-sized units of local government, including school districts, and particularly those operating under tax rate and debt limits. This is in contrast to the procedure ordinarily involved in the States which requires the payment of the tax on the due date under protest. If it is subsequently determined that the assessment should be revised, the difference in the tax is refunded to the taxpayer. In the meantime, though, the operations of local governments are not jeopardized by the withholding of the entire amount of the tax.

It is, of course, possible that once the Federal court takes jurisdiction of a case on the basis authorized in these bills, it will proceed to revise the assessment itself and fix the amount of tax due in each local jurisdiction where the carrier property is situated. Whether such an intrusion by the Federal courts into the ordinary property tax assessments and review procedures historically reserved to the States and localities is within the general jurisdictional powers of Federal courts is not clear. At any rate, it certainly does not appear desirable. Aside from this point, there is the further objection that the whole review process would then be channeled through the Federal system—to the circuit courts of appeal and the U.S. Supreme Court—rather than through the administrative review agencies and courts of the States. The valuation and assessment of utility properties is a specialized field and the main function of the courts is to see that procedures are reasonably directed to obtaining a fair appraisal and assessment.

ULTIMATE EFFECTS OF THE BILLS

If there is an effective remedy in the State courts to deal with cases of alleged discrimination, and we think it is quite clear that this remedy does exist in fact, what purpose do these bills serve? For one thing, they might serve as a sort of bargaining lever in the assessment process, the ever-present implication being that if the assessment is not satisfactory, it will be taken before a Federal tribunal for review under the injunctive process. Under the bills, the taxpayer has that option. This is not conducive to the continuance of a sound and equitable tax assessment process and it would not be good public policy to afford one group of taxpayers special remedies above and beyond those afforded to other taxpayers.

Even if the special remedial provisions in the bills were not utilized, they would have another and possibly more far-reaching effect; namely, the freezing of the status of carrier-owned or used property so as to render it immune to any system of classification now on the books or which might be adopted in the future by a State. It would likewise not be good public policy for Congress in effect to enact an insurance policy against changes in State property tax policy that the changing times might render desirable.

State tax agencies joining in this statement: Tax Division of Public Service Commission, State of Arkansas; State Board of Equalization, State of California; Department of Revenue, State of Georgia; State Tax Commission, State of Idaho; Department of Revenue, State of Illinois; State Tax Commission, State of Iowa; Department of Property Valuation, State of Kansas; Department of Revenue, Commonwealth of Kentucky; State Tax Commission, State of Michigan; State Tax Commission, State of Mississippi; Office of the Tax Commissioner, State of Nebraska.

Mr. CONLON. My name is Charles Conlon. I am executive secretary of the National Association of Tax Administrators, from Chicago.

The National Association of Tax Administrators is an organization maintained by the tax revenue departments of several States on a cooperative basis to cooperate in the handling of various technical, legal, administrative, and other problems in the research in the revenue field, and the like. It is strictly an association maintained by the revenue departments.

I present this statement on 4972 and identical bills on behalf of the tax departments of the States of Arkansas, California, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Michigan, Mississippi, and Nebraska. The tax departments of these States oppose the bills; first, because they think they would put any property owned by a common carrier subject to the Interstate Commerce Act in a special category for purposes of State and local property taxes; and, secondly, because the bills would establish a special injunctive procedure in the Federal courts to review assessments of property owned by ICC carriers and thus bypass existing administrative and judicial remedies that are already provided in the States and by which remedial procedures other types of property-tax payers are now bound.

As to the first point, I think paragraph 1 of the bills would have the effect of prohibiting the inclusion of any property owned by an ICC common carrier in any type of classified property tax system except, presumably, if it were included at the lowest assessment ratio that was set up under that system.

Now concededly this is a matter of some question, the way the bill is framed, because it does refer to all other property; and it is not clear whether that means the average ratio of all other property or the average ratio of the most common class of property, or the highest ratio of any type of business property. There are a number of choices that can be made in interpreting the bill in this respect.

Now, I think this point about classification is a rather important one, because property classification is already authorized by the constitution or statutes of a number of the States and it is under consideration in others. I think the reason it is under consideration in other States is that property taxes have gone up a great deal since World War II. The renewed interest in this possibility of the acceptance of a classified rather than a uniform property tax system arises because it affords the possibility of making a classification, for example, between the owner-occupied residence on the one hand, and various types of business, commercial or rental property on the other.

The reason for this appeal is that the owner-occupier of a residence must bear the total increase of any property tax increases, whereas the owner of a business or commercial property does have the opportunity of passing these tax increases along in the same way he can pass along any other type of cost. This is not true so far as the homeowner is concerned. I think this particular point has probably prompted some of the special exemption legislation that we see being enacted in the States now; for example, special property tax treatment for those people over 65, subject to some sort of means test.

The general position of these States is that, where classification is legally permissible and is adopted by statute, the property of an ICC railroad or carrier ought to be treated about the same way as the property of any other person, corporation or business in that same general classification. However, as we understand the bill, carrier property would actually be frozen into some sort of preferred status. The State's view is that, whether property should be classified and how it should be classified is a matter of State policy subject to the one proviso; namely, that these classifications be reasonable. If these classifications are reasonable, it is our position there is no warrant for Federal intervention to prevent any of the States from adopting a

property classification system that seems appropriate to the needs of that State.

In passing, I would like to comment on a point that was raised this morning; namely, that these bills would apply to any property owned or used by a common carrier subject to ICC regulation. It does not make any difference whether this property is an office building, hotel, or resort property, or oil or mineral property, for example. Any type of these nonoperating properties would be subject to whatever relief is provided by the bill.

Now if property is properly subject to classification, or if by constitutional amendment or statute in the State it were made subject to classification, this type of classification simply would not apply to similar property owned or used by a carrier. "Owned or used" is the term in the bill. To the extent that nonoperating property owned by a carrier or used by a carrier would be given a special type of tax status under these bills contrary to the provisions of the generally applicable State law, I should say they are probably objectionable on constitutional grounds.

I would suggest a difference of opinion there with Dr. Sanders, in that it seems to me that Congress has no warrant constitutionally in treating the property of a railroad as an investor differently from any other type of investor so far as this so-called nonoperating property is concerned.

Now as to this special injunctive procedure that is provided in the bill, I think it raises two points: One is, whether there is any need to set up this new Federal procedure; and the second is—and I think this is quite important—the extent to which this alleged discrimination exists as to common carrier property. At first glance, it seems to me that the request for a special remedy in the Federal court proceeded from the assumption that there wasn't any speedy effective remedy at law in the State courts to deal with cases of alleged discrimination. But I apprehend from the testimony that has been previously given in respect to the bill that this fact of the presence or absence of a speedy or adequate remedy is immaterial in this connection.

The proposal here is that the Federal remedy be provided by Congress, whether or not there is an adequate remedy through the administrative or judicial processes of a State. I think if you had said 20 years ago that there was not an adequate remedy in these assessment discrimination cases in the State court, this could be said with some justification. But where this kind of issue has been presented in recent years, and I should say since World War II, the courts of the States where this issue has come up have almost without exception recognized the necessity of giving predominant consideration to the element of uniformity of assessment rather than to compliance with the legal standard, whatever that may happen to be, whether that is market value, 60 percent of market value or what have you.

Consequently, when the court recognizes the predominant element of uniformity, it will give special relief in those cases where the taxpayer proves that his property is assessed at a higher ratio of its true value than the property of other taxpayers, even though the assessment about which the taxpayer complains is concededly less than the constitution or statutes of the State call for.

There have been a number of States—and I have listed them here—in which this principle of the predominant uniformity has been recognized and relief has been granted. In that connection, I would remind the committee that in those cases where there is no effective, adequate remedy in State courts or through State administrative procedures, that the Federal courts are now open to an adjudication of these questions in the absence of any new legislation whatsoever.

Now for a point or two on this matter of discrimination. Certainly no one who is familiar with property tax assessment practices will deny that in many States assessments simply are not uniform over the whole range of properties taxed. But I would like to emphasize this is a general problem, and it is one that is by no means limited to common carrier property. Railroad common carrier property is a species of business property. Insofar as you hear criticism about the fact that in some cases business property is unfairly assessed compared, for example, to residential property, I think we should be aware of just what the proportions involved here are.

Locally assessed commercial and industrial real property amounted to $75 billion in 1961, which is the latest year for which official nationwide census figures are available. State-assessed public utility property other than railroad property in the same year amounted to $18.7 billion. State-assessed railroad property amounted to $5.9 billion. Now the total of those three figures that I have given you is about a hundred billion dollars. So we are talking about 6 percent of the business property assessed locally and at the State level, and I think this proportion would probably be even less if you were able to count in the local personal property—locally assessed personal property that is used in business. There are no adequate nationwide figures on that particular point.

So, my point here is that the special remedy that is provided in the bill actually would deal with only a very small proportion of all the property of a business type that is involved in this general problem of unequal property tax assessment. Now it seems to us that the major premise underlying the proposal in H.R. 4972 is that railroad property, as such, is assessed on a discriminatory basis compared to all other types of property. It is sought to show this by comparing the assessed values of railroad property which are generally assumed to be at the legal standard provided by the statute with the Bureau of the Census sales assessment ratios of transferred property by States in 1961.

I take it from the testimony that has been presented here that these later figures have been brought up to date to cover the year 1964, but in general this is the procedure used here. Now I think it is rather difficult to accept this demonstration of proof of either the extent or the fact of the discrimination. First of all, may I call to your attention that there is not really any evidence in the picture which shows how railroad property tax assessments compare with property tax assessments on other types of business. Secondly, in the case of locally assessed property, the average level of assessment may be determined within fairly acceptable limits by sales comparison methods, simply because the types of property that are mostly involved here change hands frequently, so that you can compare the sales price figures with the figures on assessment rolls. So far as those types of property are

concerned, it is possible without a great deal of difficulty to obtain a fairly reasonable figure of the relationship between the assessment and the value of the property.

But here the property of carriers and other types of public utilities are not subject to this kind of salesman comparison test for the simple reason they are very, very infrequently sold as going concerns. Thus, while the assessment ratios that are applicable to property generally in the census figures are based on objective standards derived from the census data and from carefully prescribed procedures, the assessment ratios that are attributed by the proponents of the bill to the carrier properties, I think, may fairly be said to be somewhat subjective. Certainly at the very least you can say of them that they have not been subjected to the acid test of the market process, as are the ratios with which they are compared.

I think it ought to be pointed out also that the sales assessment ratios that are produced by the Bureau of the Census and those produced by State and local studies—and these are conducted rather broadly now as a common feature of property tax administration—are based exclusively on sales of property; you don't get into the assessment ratio computation unless the property happens to be sold. So, by virtue of this fact, these official assessment ratio studies are bound to have only a small number of commercial or industrial properties in the sample. Actually, if you look at the census of governments report, you will find that there were only 6 States in the 1962 census where basic sales data was obtained for even 25 sample industrial properties that were used for the purpose of putting up these ratios.

This is a very natural thing. These are types of property that don't sell frequently. They don't sell nearly as frequently as houses and acreage. I think it also ought to be understood that this survey of assessment ratios was limited to locally assessed properties, and that no attempt was made by the census to measure the relationship between locally assessed and State-assessed properties. This is explicitly stated in the census report.

If I may, I will read exactly what it says about it:

> The survey was limited to sales of real estate listed on local property tax rolls. No study of the relation between assessed value and market worth has been attempted for State-assessed property or for locally assessed personal property.

Now what all this suggests, I think, is that if the estimates of the ratios of railroad assessments to assessments on other property are to have any really probative value, you must test, preferably in some kind of adversary procedure, at least two points: No. 1, What is the basic full value appraisal of that property; and, No. 2, What is the percentage of that basic full value which is actually put on the assessment roll. This is the key to the whole thing. If you do not have those two facts determined on a convincing basis, then the relationship to other property locally assessed simply does not hold for comparative purposes.

Now I think a final point along this line that I might call to your attention is the trend of railroad property tax assessments compared with assessments on public utility property other than railroads, and also with all locally assessed property. Now here again you can look

at official figures. The census of governments property tax studies for 1957 and 1962 dealing with assessments in the previous year in each instance, show that between 1956 and 1961 State-assessed railroad property values declined moderately, while all other assessments rose substantially. I have the figures in my statement here.

In 1956 State-assessed railroad property amounted to $6.5 billion; in 1961 it amounted to $5.9 billion. Thus in those 5 years it went down slightly more than 9 percent—the assessed value of railroad property State assessed went down 9 percent. State-assessed property of other public utilities rose from $13.3 bililon to $18.7 billion, or 40 percent. And all locally assessed property went up 31 percent.

It is true that much of this increase in the assessed valuation of the nonrailroad utilities and the locally assessed property is the result of new investment. However, it is also clear that in this period the railroads made substantial investments. In the 5 years inclusive, 1956 to 1960, these new investments by railroads in plant and equpiment amounted to $5.3 billion. Therefore, you have here a period when you had improving economic activity; you had generally rising prices, and you will find that the assessment of railroad property by State agencies showed not only a relative, but an absolute, decline. You can point that up a little bit more by looking at the 1956 State railroad property assessment, $6.5 billion, the addition in the next 5 years of $5.3 billion of new investment, and you end up in 1961 with a lower figure than you started with; as a matter of fact, a figure not greatly more than the total amount of new investment in that 5-year period.

Incidentally, between 1961–62 and 1963–64 the annual percentage increase in expenditure for plant and equipment by the railroad industry was higher than for any other industry. I think this all goes to show that the problems of the lack of uniformity in property tax assessments is recognized, certainly it has been recognized in the case of the railroads.

The tax departments of the several States are aware of the situation and they know that work needs to be done to make all property tax assessments conform to the standard of uniformity that is required by the constitution or statutes of the States, and they have done much to forward such a program.

For example, working through this association the tax departments of the several States have formulated standard procedures for the conduct of sale assessment ratio studies, and these are now widely used. As a matter of fact, these standards that were formulated by the tax departments of the several States were actually used by the Census Bureau, so I think that gives you some warrant of the fact that this is satisfactory.

This is a very important thing. It has done much to improve the degree of uniformity that has been achieved in the assessment process generally, because it is by means of these assessment ratio studies—on the basis of these property tax assessment ratio studies—that the judicial remedy in discrimination cases has been made available.

This improvement stems directly from the fact that we now have the means and we are using it effectively to tell whether and to what extent assessment of property that are subject to that process are not uniform.

Now in the more specialized public utility assessment field, a committee of this association has formulated extensive procedures for the valuation of public utility property. Mr. Travis referred to those this morning. Also, it recommended standards to be followed in allocating an appropriate portion of the taxpayer's property among the taxing districts in each State in which the enterprise operates.

As an indication that these types of activities have been effective, I refer you again to those figures on trends in railroads and other public utilities assessments that I mentioned a moment ago.

The point that is of concern to the State tax officials about 4972 and the identical bills before the committee is, that in considering these you must give some thought to the potential impact of specialized treatment for a particular type of property on the whole process of property tax administration. As a practical matter, progress toward an acceptable standard of uniformity simply has to be gradual. The predominant position of the property tax in the whole State-local revenue system—by the way, property tax accounts for one-half of all the tax revenue in the combined State-local tax system, this is speaking nationally, the proportions will vary from State to State—speaking nationally, this in an indication of just how formidable a property tax is is as a component of the combined State-local revenue system.

It is so important, if you were to attempt to remedy all the inequities that exist, to do so overnight, the result might be disastrous to local government finances. Now this is something, I think we should emphasize, that involves not only public utility property but it involes all types of property subject to ad valorem taxes—both business and nonbusiness property; real and personal property; tangible and intangible; residential, farm, vacant lot, commercial, and industrial inventories; work in progress; stock in trade, and other classsifications of types of property—they are all mixed up in this particular picture.

If property under one type of ownership or one type of use is singled out for special treatment under a Federal statute, as I think was suggested by a committee member this morning, there probably would not be any reason for denying similar treatment in the long run to any owner of property that is used in or becomes subject to trade in interstate commerce. If you get moving in that direction, this is tantamount to Federal supervision of the local property tax system through Federal judicial procedure. I think this is a function over which the Federal judiciary has certainly no unique qualifications.

Judging from the statements that appear in the courts now and then, it is something that they are not particularly desirous to undertake. On the other hand, working through the procedures and remedies and with the tools that have been utilized in the procedures that have been established in the past years, I think the States and local governments have achieved a good deal of improvement already, and the prospects are that they can continue to do so and do a good deal more, if the responsibility and means for dealing with the whole problem remain in their hands. The possibilities are not so good if they deal with part of the property and the Federal Government deals with some other part.

Now I would like to mention a couple of points about the bills themselves, from the technical standpoint. One, suggested already, is that the bills apply to all property used by a carrier, whether it is operating properly or not. Secondly, I think that, despite what has been said, in those instances where relief is sought directly against the State agency that makes the property tax assessment, that these bills raise a constitutional question where you are dealing with taxpayers who are not organized in the State where the remedial action is begun. This is because of the 11th amendment—the judicial facilities of the United States are not available in suits against States unless they consent to be sued, and none of the States do, as you know, consent to be sued in the Federal courts with respect to property tax assessments. This is an ordinary feature of the remedial provisions provided. Where you pay your tax and you pay it under protest and you challenge the assessment, then that challenge or request for refund, or whatever it may be, must be made in a State court.

Under these bills, that remedy would be in the Federal court.

The third, and from a practical standpoint really the most important point about the bill, is that what it really does is clothe the Federal courts with a sort of veto power over the State property tax assessment. These could have some adverse effects on the local budget. I think this follows, because the remedy provided is an injunction. It is an injunction against the collection of any tax that is adjudged to be invalid on the basis of the criteria laid down in the bill.

Now if tax collection is enjoined, it means that the money anticipated in local budgets in that year would not be available for expenditure during that tax year. Such a situation would be an extremely important one for a very small, medium size unit of government, including local school districts and rural school districts, particularly those which operate under tax rate and tax debt limits. In many jurisdictions the localities are right up against the tax rate limitations now.

This remedy is quite different from the procedure that is ordinarily involved in contesting a tax assessment where the common rule is that you pay the tax and pay it under protest and in the meanwhile the local jurisdiction has the money. If it is subsequently found you are correct, then you get the money back. But in the meantime, in contrast to what these bills provide, the operations of local governments are not jeopardized by the withholding of either all or part of the tax.

Now I agree, and I think my colleagues will, that it is quite possible that if a Federal court takes jurisdiction of one of these cases, under the procedure set up in the bill, it will proceed to revise the assessment and to fix the amount of tax due with each local jurisdiction where the carrier property is situated. Now this raises a dilemma. I think Professor Sanders touched on it this morning in his reference to the *Moses Lake* case where the U.S. Supreme Court said it was not the function of the Federal court to assess the property in place of State agencies or local agencies.

I am not going to argue the point whether this intrusion by the Federal courts into the tax assessment process—or the tax review process, which is one that is historically reserved to the States or localities—is within the general jurisdictional powers of the Federal court. At any rate, I would make the point it does not seem desirable to do so. I do not see how in one of the proceedings contemplated by

H.R. 4972 a Federal court could refrain from finding out what the value of that property was, at what proportion of its true value it was put on the tax rolls, and at what proportion of its true value other property in the jurisdiction was taxed, because, without doing that, there is no way by which the Federal district court could determine the amount of the illegal assessment; in other words, that part of the assessment which is attributed to the type of discrimination that is described by the proponents of the bill.

Therefore, you do not avoid this process of finding out what the value of the property is and what the assessment ratio is, and what the assessment of other properties are by transferring the review procedure over to the Federal court. The Federal court would have to do the very things that have to be done now in State administrative agencies or State courts in order to make this kind of determination. It is a factual determination. I think there is no way to shortcut the determination of the facts.

Furthermore, if you are in the Federal courts, if you don't like the decision of the Federal courts, your appeal is going to be channeled through an entirely different review process from that now followed where you go from the district or county court to an intermediate appellate court and the State supreme court, and then, if there are any Federal questions, to the U.S. Supreme Court. When you start in the U.S. district courts, you will go from the district court to the courts of appeal, and then to the U.S. Supreme Court, and bypass whatever administrative or judicial machinery is provided by the State.

If you concede—and I think the proponents of the bill do concede—that there is an effective remedy, at least in many States, for this type of situation, what real purpose is served by the bill? I think certainly the enactment of the legislation serves as a sort of bargaining lever in the assessment process; because, if the taxpayer can go into either the State court or State administrative agency, or the Federal court, I think that the implication is going to be that if they don't like the assessment here they will take it before a Federal tribunal for review under the injunctive process.

Under the bill, the taxpayer would have that option. He could go to the Federal court or State court. He can exhaust administrative remedies or choose not to do so. He has that kind of option. I think this is not conducive to the continuation of sound, equitable tax assessment procedure, and I think that it would not be good public policy to give one group to taxpayers a special remedy above and beyond those accorded to other taxpayers who have the same type of property—namely, business taxpayers generally.

Also I would suggest that even if the remedial provisions in these bills were not utilized, even if you found it was unnecessary to go into the Federal courts and you obtained whatever relief you thought you were entitled to administratively or in the State courts, you still would have this prohibition against classification which would, in effect, freeze the status of carrier-owned property so as to render it immune to any type of classification system that is now on the books or which might be adopted by any State in the future.

I think it would not be good public policy for Congress in effect to sort of provide an insurance policy against changes in State property

tax policy that one aspect or another of the changing times might render desirable to the legislature.

I have listed on the back of this statement, Mr. Chairman, the agencies of the States, the official name of the property tax assessment agencies that join in this statement. I thank you for the privilege of presenting these comments on their behalf. And, if I may, I would like to also file with the committee for the record an additional statement submitted by Mr. Earl Berry, director of the tax division of the Arkansas Public Service Commission. If I may.

The CHAIRMAN. Without objection, it may be included in the record.

Mr. CONLON. Thank you, sir.

(Mr. Berry's statement follows:)

STATEMENT OF EARL BERRY, DIRECTOR, TAX DIVISION, ARKANSAS PUBLIC SERVICE COMMISSION

The Tax Division of the Arkansas Public Service Commission is charged with the responsibility of assessing for ad valorem tax purposes all carriers engaged in interstate commerce operating for hire within, into, from, or through the State of Arkansas. The tax division wishes to express opposition to the legislation proposed in H.R. 4972 and other identical bills dealing with discriminatory property tax assessment against common carriers.

We would call attention first to article 16, section 5, constitution of Arkansas, 1874, which provides: "All property subject to taxation shall be taxed according to its value, that to be ascertained in such manner as the general assembly shall direct, making the same equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value * * *."

Section 84-103, Arkansas Statutes, 1947, annotated, as amended, provides that the public service commission shall determine and fix the ratio of assessed value to full market or actual value, and that all utility and carrier property assessed by the tax division shall be assessed at the per centum fixed by the public service commission. It further directs the public service commission to direct the county assessor, the county equalization board, and the county courts of the various counties to assess all property locally assessed at the same per centum of full market or actual value as that property assessed by the tax division.

The Arkansas Public Service Commission has since 1951 ordered and directed that all property assessed by the tax division shall be assessed at 20 percent of its full market or actual value. It has also directed the assessor, the county equalization board, and the county courts to assess local property at 20 percent.

In 1955, the General Assembly of Arkansas, by Act 153 of the 1955 legislature, provided for a complete reappraisal and reassessment of all property in Arkansas. This act has been amended by subsequent legislation which requires all local property to be assessed at 20 percent of its full market or actual value on penalty of losing a pro rata part of State revenues going to the various taxing units of the State if such taxing units fail to reach the required 20 percent.

This legislation also requires the Assessment Coordination Division of the Arkansas Public Service Commission to conduct annually a survey to determine at what per centum property is assessed in the various taxing units. It requires a 3 percent sample of the various categories of property, both real and personal, in each taxing unit of the State to ascertain whether or not such property is assessed at 20 percent of its full market or actual value. A very few taxing units in the State of Arkansas have failed to comply, and these have been penalized by withholding of State funds.

It is the considered judgment of the tax division that there exists little discrimination against common carriers engaged in interstate commerce in Arkansas. It is further the judgment of the tax division that such discrimination, if such there be, could be eliminated through proper administrative procedures if used, and if not used, by court action in the State courts of Arkansas.

Under provisions of (A) section 25-A, the expression that a value which bears a higher ratio to the true market value of such property than the assessed value of all other property in the taxing district subject to the same property tax levy bears to the true market value of all such property raises the question as to

whether or not such discrimination could be charged and penalty invoked if it could be determined that any one species of property in the given taxing district were assessed at as high or higher ratio than the carrier property.

The tax division opposes this legislation because there is no clear-cut procedure set out in the legislation to say who is to determine and what method is to be used to determine whether or not such discrimination exists. We oppose this legislation because various States define fair market or actual market value in different ways, and it is not clear the basis that the Federal court will use in determining the fair market value.

It is our firm conviction that the property tax is a matter delegated to the States by the Constitution of the United States, and, as such, should be reserved to the States without Federal interference, unless such taxation can be clearly shown to violate the Interstate Commerce Act, and by such violation, place an undue and unreasonable burden on interstate commerce. Such legislation offers serious challenges to State and local governments in financing State and local governments. It appears, further, that such legislation would clothe the Federal courts with the responsibility of evaluating, appraising, and assessing property which is not, in our opinion, a function of the Federal judiciary.

In conclusion, in view of the potential dangers to Federal-State relationship we strongly recommend that H.R. 4972 and other identical bills be given an unfavorable recommendation by the Committee on Interstate and Foreign Commerce of the United States House of Representatives.

The CHAIRMAN. Thank you very kindly for coming here and giving us your views, Mr. Conlon.

The bells have rung. I assume it is for record vote in the House. We have a vote coming up, an automatic vote. So we will have to adjourn at this time. We will recess and come back at 3:15.

I don't know if we are going to be able to finish with the witnesses this afternoon or not. We may be able to come back. It is our intention now to return at 3:15. If there is some other business of the House that precludes our coming back, we will have the clerk notify us. you.

With that understanding the committee will adjourn until 3:15. At that time, if you will, return for questioning.

Mr. CONLON. Yes, sir.

(Whereupon, the committee recessed to reconvene at 3:15 p.m. of the same day.)

The CHAIRMAN. The committee will come to order.

As we recessed Mr. Conlon was the witness. Mr. Rogers, do you have any questions of Mr. Conlon?

Mr. ROGERS of Texas. Yes, sir, Mr .Chairman.

Mr. Conlon, I note that you say you are executive secretary of the National Association of Tax Administrators.

Now, do you appear here as spokesman for the association?

Mr. CONLON. No, sir. I am appearing at the request of these States whose tax departments I have enumerated to present this statement of their views, not for the National Association of Tax Administrators. The association has had no occasion to take any policy view on this kind of proposal.

Mr. ROGERS of Texas. Then, are you employed by these several States that you listed here?

Mr. CONLON. Indirectly; yes, sir.

Mr. ROGERS of Texas. You say indirectly?

Mr. CONLON. I am employed by the National Association of Tax Administrators which itself is maintained by the revenue and tax departments of the several States.

Mr. ROGERS of Texas. If you are not appearing here to pronounce their policy, I am at a loss to understand why you identify yours as being the executive secretary of that. What difference does that make if you are not presenting their views?

Mr. CONLON. It does not make any difference.

Mr. ROGERS of Texas. Then it is not your intention to lead the committee to believe that because you are executive secretary of the National Association of Tax Administrators that they agree with your pronouncement here?

Mr. CONLON. No, sir. If it will make this point any clearer to you, I suggest that we just excise that identification.

Mr. ROGERS of Texas. Now, you are paid to appear here by these different States?

Mr. CONLON. Not specifically for the purpose of coming down here today and appearing; no.

Mr. ROGERS of Texas. You are not running around the country free of charge. You are collecting a fee for working for these people, aren't you?

Mr. CONLON. I work for the National Association of Tax Administrators.

Mr. ROGERS of Texas. Are they the ones who are paying you for appearing here today?

Mr. CONLON. Yes, the National Association of Tax Administrators. This is a part of the activity that is conducted on behalf and for the interest of the revenue departments of the several States and here are a substantial number who have asked that a statement representing their views be presented and I am doing so.

Mr. ROGERS of Texas. How many people are members of that association?

Mr. CONLON. It is not people, sir——

Mr. ROGERS of Texas. I know, but how many groups?

Mr. CONLON. It is the revenue departments of the 50 States.

Mr. ROGERS of Texas. The revenue departments?

Mr. CONLON. Yes, sir.

Mr. ROGERS of Texas. Is that a State group? Is each State represented or do you have a number of different members in some of the States?

Mr. CONLON. It is an agency arrangement. For example, in Illinois it is the department of revenue. In your State it is the comptroller's office. The comptroller handles the major tax administration function there.

Mr. ROGERS of Texas. You do not have members such as a school district or irrigation district or water improvement district?

Mr. CONLON. No, sir.

Mr. ROGERS of Texas. These are just States?

Mr. CONLON. That is right.

Mr. ROGERS of Texas. Have you ever submitted the propositions expressed in the legislation under consideration; have you ever submitted this to a vote of your group, the membership of the National Tax Administrators group?

Mr. CONLON. You mean to the revenue departments? No, I have had no occasion to.

Mr. ROGERS of Texas. But your statement is on National Association of Tax Administrators stationery.

Mr. CONLON. That is right.

Mr. ROGERS of Texas. That would lead people generally to believe that the National Association of Tax Administrators has taken some position on this bill?

Mr. CONLON. If there is any question about that, I say "No," they haven't. They have no occasion to. The National Association of Tax Administrators has a meeting once a year at which tax problems and the like are discussed.

If there is any business on matters of tax policy that they would like to express their opinion it is brought up. They have had no occasion to consider this specific bill.

Mr. ROGERS of Texas. Haven't they discussed this basic problem several times, Mr. Conlon?

Mr. CONLON. Proposal for Federal legislation? I don't recall, no, sir.

Mr. ROGERS of Texas. Haven't they discussed the problem though that the railroads have been discriminated against or let us say the common carriers have been discriminated against on tax policy?

Mr. CONLON. They have discussed the problem of discrimination on tax assessment, yes, sir.

Mr. ROGERS of Texas. Have they said it should be fully investigated?

Mr. CONLON. Yes, sir. They have done a good deal of it. Not only a good deal of investigation but I think I recited in my statement they have conducted programs that have been very effective in dealing with this situation.

Mr. ROGERS of Texas. In 1961 did you not have some kind of meeting and the President was instructed to appoint a committee to go into this?

Mr. CONLON. Yes, sir.

Mr. ROGERS of Texas. Was that committee ever appointed?

Mr. CONLON. Yes, sir.

Mr. ROGERS of Texas. Has it filed its findings?

Mr. CONLON. Yes, sir.

Mr. ROGERS of Texas. What were those findings?

Mr. CONLON. Well, it wasn't a series of findings as such. It was a report outlining the practices of the States or the opinions of the persons in the revenue departments of the States with respect to a series of questions involving property tax administration.

These have been summarized and tabulated and reported back to the association.

Mr. ROGERS of Texas. Wasn't it concluded from that investigation that there was discrimination?

Mr. CONLON. If you will pardon me, I will have to refresh my memory here. If I may read, this is a letter of transmittal by the chairman of the committee to the president of the association making the report.

I am attaching a tabulation which summarizes the responsibilities to the questionnaire received from 44 jurisdictions. These tabulations include (*a*), a quantitative summary of items that require great response and appendix of items requiring longer response. We are attaching copy of questionnaire mailed to all jurisdictions and to account for other jurisdictions not included in the tabulation mentioned above, we had one jurisdiction that did not respond, four do not tax public utilities——

Mr. ROGERS of Texas. If you will excuse me, that information is not pertinent, what you are reading there is not what I am after at all.

Did you say 44 jurisdictions? Why did you confine this questionnaire to 44 jurisdictions?

Mr. CONLON. The chairman's report is that he had responses from 44 States.

Mr. ROGERS of Texas. Who is the chairman?

Mr. CONLON. The chairman was Mr. James Dixey.

Mr. ROGERS of Texas. Did they file any findings at all?

Mr. CONLON. Yes, this is the report.

Mr. ROGERS of Texas. I don't want a lengthy report that will consume a lot of time. You are the executive secretary of this. It would seem to me that you could say whether there was any definite conclusion reached.

Mr. CONLON. There are no findings as such.

Mr. ROGERS of Texas. Then there has been no definite conclusion by your organization?

Mr. CONLON. On what point?

Mr. ROGERS of Texas. On the question of whether or not there has been discrimination and something other to be done about it——

Mr. CONLON. No, there is no finding on discrimination. There was a direction to this committee to check into the situation and make a report. Here is the report on the check into that situation.

Mr. ROGERS of Texas. Now, in 1961 wasn't there a decision made that the president of the association appoint a committee to deal with all aspects of this problem including the several proposals to restrict taxing jurisdiction of the States as to the property used in interstate commerce by railroads? Now that was in 1961.

Mr. CONLON. Exactly what was proposed, I will have to check the record, sir, to tell you. But as far as the direction to make a study is concerned, this is the report made in response to that direction to the committee appointed by the President.

Mr. ROGERS of Texas. Now this is 1966.

Mr. CONLON. Yes, sir.

Mr. ROGERS of Texas. This is 5 years later at least.

Mr. CONLON. Right.

Mr. ROGERS of Texas. As I understand it, there has been no definite conclusion made by the National Association of Tax Administrators?

Mr. CONLON. In 1963 that assignment was completed by the filing of this report. We have made no specific finding, if this is your question, that discrimination does exist in the railroad field measured by this test or by that test, in this State of that State.

Mr. ROGERS of Texas. Now, you are here presenting a statement on the stationery of that organization. Is that a corporation or is it a legal entity?

Mr. CONLON. It is an ad hoc entity of the tax departments of the several States. It is not an incorporated entity.

Mr. ROGERS of Texas. Are you an entity that could be sued in courts?

Mr. CONLON. I suppose so.

Mr. ROGERS of Texas. Or do you have a charter?

Mr. CONLON. No. We have a constitution and bylaws.

Mr. ROGERS of Texas. Do you have to file those with the secretary of state of Illinois or anyone?

Mr. CONLON. No, sir.

Mr. ROGERS of Texas. Now you say you had 50 States. Do you include the District of Columbia, too?

Mr. CONLON. Fifty States and the District of Columbia.

Mr. ROGERS of Texas. What about the Virgin Islands and Puerto Rico?

Mr. CONLON. We happen not to have any close administrative relationships with those jurisdictions.

Mr. ROGERS of Texas. You represent 11 of those States here?

Mr. CONLON. Yes, sir.

Mr. ROGERS of Texas. Now, what is the position of the other States?

Mr. CONLON. I don't know.

I was going to ask the chairman, if I might, if there are other States that would like to join in this statement that they be given permission to do so, but these are the States which I heard from after I received notice of the hearings from the committee and these have asked that their views be presented in this respect.

There may be others. But as to those who are not listed here I can't answer your question.

Mr. ROGERS of Texas. Then you are representing in this situation not the national association as such but only 11 States who have written to you and asked you to testify?

Mr. CONLON. Yes, sir.

Mr. ROGERS of Texas. Now, Mr. Conlon, are they paying you a separate fee for this service?

Mr. CONLON. No, sir.

Mr. ROGERS of Texas. You are not collecting any kind of expense whatever from any of these States?

Mr. CONLON. No, sir.

Mr. ROGERS of Texas. Are these States discriminating in their tax procedures with regard to common carriers, railroads, pipelines?

Mr. CONLON. I could not answer that question. I could say that if there is any discrimination of the type complained of in Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Michigan, and Nebraska, certainly there are remedies in the State courts because those States have had cases that involve this issue of discrimination among different types of property and the courts there have granted relief in those cases even though the assessment compained of was lower than the statutory standard would require.

Mr. ROGERS of Texas. Then you take the position that because these States want you to do this—this is a substantial minority of your organization and they want you to do this—then you don't think any relief ought to be afforded even if the common carriers show that they have been discriminated against and it is a continuing discrimination?

Mr. CONLON. I think the point of my statement was, Mr. Rogers, that there are procedures and remedies in the State to deal with this discrimination now. I think this is conceded by the proponents of the bill.

And that it is not solely because there are no remedies that H.R. 4972 should be proposed.

Mr. ROGERS of Texas. You say there are remedies in States that deal with discrimination?

Mr. CONLON. Yes.

Mr. ROGERS of Texas. The fact is, Mr. Conlon, I might point out that of the 11 you are representing, members representing 4 of those States have introduced a similar bill to this in the Congress of the United States.

The point is this: Isn't it a fact that in these States that in a number of instances that it is openly admitted that they are using a different ratio with regard to market value in the assessing of taxes on property owned by common carriers than the are other people?

Mr. CONLON. No, I could not make that admission, sir.

Considering the States listed in the testimony presented by Mr. Ogden, the first one here, Arkansas, is not listed in this tabulation. California is listed.

As I recall it there have been on at least two occasions proceedings started by taxpayers in California to test whether there has been any discrimination but they were discontinued.

There is a statement to that effect that has been submitted separately to your committee by the Board of Equilization of California.

Now Georgia is not listed in the group of States in the proponents testimony but Georgia is a jurisdiction where the courts have said that if there is a discrimination shown, then relief must be granted.

There is at present in the State of Georgia an extremely broad program to equalize all types of property according to the uniform statutory standard. This is, railroads and utilities, and residential property, and everything else.

Now the State of Idaho is listed in the proponent's testimony. It is my understanding that the courts of Idaho have given relief in discrimination cases.

The next State I have, Illinois, is not listed here. There is no complaint about them. Iowa is listed. There have been cases decided recently in Iowa involving railroad companies where the courts have granted relief.

I think there are witnesses from the Iowa Tax Commission who will be testifying here in person. The same is true in Kansas.

The next State I have is Kentucky, where there is a massive reappraisal program underway and that is not one of the States against which a complaint has been made. Neither has a complaint been made with respect to Michigan.

Mississippi is included in here. I frankly cannot say whether under existing law, since the question has not been decided there, whether relief of this type would be granted in Mississippi or not.

In Nebraska, which is the last of the States I have mentioned, they are not listed in the States complained of for having discrimination in these railroad assessments.

Mr. ROGERS of Texas. Mr. Conlon, do you think that the States or any taxing subdivision in them ought to be allowed to discriminate with regard to railroads or anyone else so far as taxation is concerned?

Mr. CONLON. No, sir. I think they should comply with the statutory standards.

Mr. ROGERS of Texas. Now, did I understand you to say in your statement that you believe in the different classifications of property; that is, if a property is owned by a railroad company or by a restaurant or something like that, the State ought to have the constitutional power to say that all restaurants will be taxed so far as property tax,

ad valorem tax is concerned, on the basis of 75 percent of the market value and everyone else will be taxed based on 50 percent of the market value?

Mr. CONLON. Let me put it this way. I think I said that if the constitution of the State permits the classification of property and the legislature in its wisdom does classify property into types for tax purposes, I think this is perfectly within their lawful powers and that if the legislature believes this is a good exercise in the public policy and those classifications are reasonable, are not arbitrary——

Mr. ROGERS of Texas. Do you mean classification of property or classification of ownership of property?

Mr. CONLON. No; classification of property.

Mr. ROGERS of Texas. In other words, everybody who owns an oil derrick would be taxed on 75 percent of the value of that. Everybody who owns an automobile could be taxed on 50 percent of the market value?

Mr. CONLON. Yes, sir.

Mr. ROGERS of Texas. Do you feel that that would be in compliance with your basic proposition of equality in taxation?

Mr. CONLON. I think it would be in compliance with the canon of equality of taxation. It would not be in compliance with the rule which has been followed in many States requiring absolute uniformity of taxation.

Mr. ROGERS of Texas. Suppose a man owns five oil derricks but did not own any automobiles. The fellow who owns five automobiles would have a distinction so far as taxation is concerned.

Mr. CONLON. It depends on what the ratio of assessment is.

Mr. ROGERS of Texas. Seventy-five percent of the market value on derricks and 50 percent on automobiles.

Mr. CONLON. If the legislature in its wisdom thinks this is a fair classification I think it would be entitled to a great deal of weight.

The types of classifications that I think are receiving more attention are the classifications of real estate that is owner occupied on the one hand and real estate used for business purposes on the other.

Many people feel that the property taxes are too high. The owner-occupied person has to bear this increase whereas the business owner can pass it on. It seems to me that if it is permissible under the constitution and the legislature thinks it is appropriate, it is all right to have a rule of taxation of 75 percent of market value for business property and 50 percent of market value for owner-occupied property.

Mr. ROGERS of Texas. Is that your personal observation or that of the National Association of Tax Administrators now?

Mr. CONLON. I am not advocating classification. I am saying merely that this is a policy that has been adopted by some legislatures and is under consideration in other legislatures.

Mr. ROGERS of Texas. I thought you said this would be acceptable, this would be fair?

Mr. CONLON. I think that it is the legislature's prerogative in this matter, within reasonable bounds, to decide something like that. I am not suggesting that we ought to have classification of property. I do not address myself to that point.

Mr. ROGERS of Texas. Don't you think in your own mind with everything else aside that there is definite discrimination insofar as

the matter under consideration is concerned here and that this can be established and proven and has been on many occasions?

Mr. CONLON. Mr. Rogers, I said in my statement that no one who is familiar with property tax administration would deny that there is a lot of discrimination all through the property tax system and this is a very difficult thing to bring under control but that steps have been taken and I think it is being brought more under control.

Mr. ROGERS of Texas. Don't you think it ought to be corrected?

Mr. CONLON. Well, sure. I have outlined a number of programs by which State supervisory officials have taken steps to aim toward the correction of this.

Mr. ROGERS of Texas. Why do you oppose this type of legislation if it is corrective legislation to correct an admitted discrimination?

Mr. CONLON. Because I have suggested that we have remedies in the administrative and judicial agencies of the States to do this, that it is preferable to do it at the States level and that it would not be, it seems to me and this is the general view here, a desirable thing to single out one type of property owners for remedial provisions that are not available to others.

Mr. ROGERS of Texas. I know, Mr. Conlon. Now the point is this, that the people who have been discriminated against are the ones who are petitioning their Government and have come in and laid out their case.

Now if other people are being discriminated against don't you think it ought to be up to them to come in and file their own petition and make their own request for relief?

Mr. CONLON. I think that this is reasonable.

Mr. ROGERS of Texas. You would not take the position that because one fellow came in and proved he was being discriminated against, but there were a lot of other fellows who were discriminated against but who were not complaining, that because they are not complaining they are not entitled to relief?

Mr. CONLON. What you really do though is to transfer the supervision of the administration of assessment laws to the Federal courts instead of the State courts.

Mr. ROGERS of Texas. What is wrong with that?

Mr. CONLON. I don't think it is the most appropriate place to do it. The Federal courts have huge dockets. If they are going to deal with the same type of problems that State agencies have to deal with now they will do it in the same way. They will not save any time. There is no shortcut in this thing at all.

Mr. ROGERS of Texas. You are not against Federal courts as such?

Mr. CONLON. Of course not.

Mr. ROGERS of Texas. The fact of the matter is that there are many State matters that get into Federal courts every day.

Mr. CONLON. Not as to the general administration of State laws—I don't think I would agree with you there. There are many matters that involve citizens of different States that are in Federal courts, of course.

But the ordinary judicial and administrative appeal channels with respect to the conduct of State and local business are by and large through the administrative and judicial agencies of States or local governments.

Mr. ROGERS of Texas. Don't you think that a man who has a wrong being done to him ought to have someplace to go to seek redress and to have his case heard?

Mr. CONLON. I suggest that in those jurisdictions that I mention here he does have that redress already.

Mr. ROGERS of Texas. Of course, that is a difference of opinion. Lots of times you may have the forum to go to but if the forum does not give you any relief and you know in advance they are not going to give you any relief you are wasting your time.

Mr. CONLON. I concede there is logic in what you say but until, say, 20 years ago if you went into a State court and the statutory standard of assessment was full value and you were assessed at 75, and your neighbor was assessed at 50, you probably would not get any relief because the court would say, "What we should do here is to take steps to move everybody up to the statutory standard. Therefore, since you are not taxed at the statutory standard we are not going to give you any relief."

But this is all changed now. One of the reasons it has changed is because of the activities of groups of tax administrators and with the full cooperation of industry groups, among them the proponents here who have done a great deal of work in this regard, very constructively, who have worked out these procedures for the measurement of assessment levels of different types of property.

They have done this so that you are able to come before a court and say, "This is the assessment ratio on my property and this, according to an official finding, is the general level that prevails with respect to other types of residential property and what have you and I am assessed unfairly and I should have relief."

The courts have changed their mind. In case after case in every jurisdiction I know in which this has come up in the last 15 years the court has said, "Even though you are not assessed at statutory standard you are entitled to relief because you should not be assessed at an average higher than that of other property."

There are even two courts that in the last 5 or 6 years have reversed themself on this.

The thrust of my statement is that since there is recognition of the problem of discrimination, if it is demonstrated, relief will be granted.

Mr. ROGERS of Texas. That is a violent assumption because if you don't do something to provide the relief and effective relief or effective forum to which you can go you can have 50, 75 different decisions and different conclusions within one division of one district of a Federal court. It is very easy.

Mr. CONLON. I don't follow you there, sir.

Mr. ROGERS of Texas. What is that?

Mr. CONLON. I don't follow you on that.

Mr. ROGERS of Texas. If you confine them to the different State courts in the different areas of a division of a Federal district, of the different assessment agencies or assessment authorizations, it seems to me that that would be very obvious.

As a matter of fact, I think it has happened quite often.

I won't take any more time, Mr. Chairman.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

I have only one question.

It seems to me, Mr. Conlon, that your position is not logical from this standpoint. You say that the States are gradually bringing their legislation and their assessment operation to a point where there is less difference with the carrier. They are doing that gradually, and they can continue to do that.

All that this bill provides is that if a person, or a railroad or a carrier feels it has been wrongly assessed they can go into Federal court.

To start with they have to prove discrimination. They only ask for the excess over and above what they thought they should be assessed. So we are not hampering the assessing authorities and carriers from getting together.

As a matter of fact, I think if this bill were passed it would drive the States to taking a more active role in seeing that discrimination did not exist because after they went into Federal court a couple of times and got bounced back and the court said you were discriminating then it would be corrected.

Because all the carrier can do is to go in and plead his case; he can't do anything else. If he gets licked, why he is licked. It does not at all interfere with the States perfecting their organization as to bettering their assessment process.

Mr. CONLON. I concede that the enactment of this bill would not of itself have any effect on the work the States are doing to correct the situation in this field. My point is that they have exactly what you described now, a remedial procedure in State courts or before State administrative agencies.

Mr. YOUNGER. They don't have it. You can't establish that because there are just too many jurisdictions and they have all tried it. The carriers have tried right along and it has not worked out.

Mr. CONLON. The carriers, sir, have filed a number of suits in a number of States. It seems to me that by and large they have prevailed. Thy have prevailed by using the very techniques that I have described as having been developed and forwarded officially by State revenue departments, namely these assessment-ratio studies.

Mr. YOUNGER. Can you furnish the committee with a list of the carriers that have gone into State courts and been relieved?

Mr. CONLON. I will be glad to.

Mr. YOUNGER. Will you furnish that for the hearings?

Mr. CONLON. Yes, sir.

Mr. ROGERS of Texas. I think it would be in order to also show the cases where they have not been relieved.

Mr. YOUNGER. I will get that from the other side.

Mr. CONLON. I think that would be a fair division of labor. I will be glad to undertake that. Yes, sir.

(The information requested follows:)

RECENT LITIGATION INVOLVING AD VALOREM TAX ASSESSMENTS ON RAILROADS, SUPPLIED BY CHARLES F. CONLON, EXECUTIVE SECRETARY, NATIONAL ASSOCIATION OF TAX ADMINISTRATORS

ALABAMA

Appeals of 1964 assessments involving alleged discrimination now awaiting trial on the merits: *L. & N. R. Co.* v. *State*, Circuit court, Montgomery.

ARIZONA

Relief from discriminatory assessment granted but only prospectively: *Southern Pacific Co.* v. *Cochise County*, Arizona Supreme Court, 377 P. 2d 770 (1963).

ARKANSAS

Assessments upheld in the following cases: *St. Louis San Francisco R. Co.* v. *Arkansas Public Service Commission*, Arkansas Supreme Court, 304 S.W. 2d 297 (1957); *Kansas City Southern R. Co.* v. *Arkansas Public Service Commission*, Arkansas Supreme Court, 323 S.W. 2d 123, cert. den., 361 U.S. 825 (1959); *Kansas City Southern R. Co.* v. *Arkansas Commerce Commission*, Arkansas Supreme Court, 326 S.W. 2d 805 (1960).

(NOTE.—Arkansas is not in the list of States where discrimination is alleged to exist with respect to 1964 assessments (appendix A, statement of the Association of American Railroads, p. 24, hereafter referred to as "app. A").)

CALIFORNIA

No reported litigation. Suits filed in 1959 by four major railroads but subsequently withdrawn (see letter of Alan Cranston, State controller, California, to Hon. Harley O. Staggers, chairman, Committee on Interstate and Foreign Commerce, dated Feb. 24, 1966, p. 142).

FLORIDA

Railroad entitled to judicial relief if allegation of overvaluation established: *Green* v. *Florida E.C. R. Co.*, district court of appeal, 141 So. 2d 326 (1962). Assessment upheld; use of judgment factor in raising or lowering assessments on other railroads not of itself discriminatory: *Florida E.C. R. Co.* v. *Railroad Assessment Board*, district court of appeal, 178 So. 2d 355 (1965).

(NOTE.—Florida is not in the group of States listed in app. A.)

ILLINOIS

Railroad tax refunds have been granted in a number of cases among which the following are cited as characteristic: *People ex rel Hillison* v. *C.B.Q. R. Co.*, Illinois Supreme Court, 174 N.E. 2d 182 (1961); *People ex rel Enrietta* v. *G.M.O. R. Co.*, 29 Ill. 2d 605 (1964); *People ex rel Musso* v. *C.B.Q. R. et al.*, Illinois Supreme Court, 210 N.E. 2d 196 (1965).

(NOTE.—Illinois is not in the group of States listed in app. A.)

IOWA

Discrimination among railroads recognized: *C.N.W. R. Co.*, v. *State Tax Commission*, 137 N.W. 2d 246 (1965), case remanded for further proceedings which are still pending. Issue of variation from common level of assessment open to proof.

KANSAS

If petitioner establishes assessment at higher ratio than other property, it is entitled to relief: *Kansas City Southern R. Co.* v. *Board*, Kansas Supreme Court, 331 P. 2d 899 (1958).

MICHIGAN

Case now pending in U.S. district court (*C.N.W. R. Co.*)

MONTANA

(Pipeline) Discrimination alleged; court held that a taxpayer is entitled to be assessed uniformly only with respect to other property in the same class; assessment upheld: *Yellowstone Pipeline Co.* v. *State Board of Equalization*, Montana Supreme Court, 358 P. 2d 55 (1960).

NEBRASKA

Railroads are entitled to relief from discriminatory assessments where this fact is established: *C.B.Q. R. Co.* v. *State Board of Equalization*, 101 N.W. 2d 856; *C.N.W. R. Co.* v. *same*, 101 N.W. 2d 873; *U.P. R. Co.* v. *same*, 101 N.W. 2d 892 (1960).

(NOTE.—Nebraska is not in the group of States listed in app. A.)

NEW JERSEY

Railroad entitled to relief from discrimination if fact is established: *D.L.W. R. Co.* v. *Neeld*, New Jersey Supreme Court, 130 A. 2d 6 (1957). Relief denied in U.S. district court because of availability of remedy in State courts: *D.L.W. R. Co.* v. *Kingsley*, 189 F. Supp. 39 (D.N.J. 1960).

OREGON

Equalization ratio on railroad property cannot be set at higher level than that of locally assessed property. *Union Pacific R. Co.* v. *State Tax Commission*, Oregon Supreme Court, 376 P. 2d 80 (1962).

(NOTE.—Oregon is not in the group of States listed in app. A.)

SOUTH DAKOTA

Assessment reduced to statutory standard: *C.M. St. P.P. R. Co.* v. *Gillis*, South Dakota Supreme Court, 118 N.W. 2d 313 (1962). No relief on facts: *C.N.W. R. Co.* v. *Gillis*, South Dakota Supreme Court, 118 N.W. 2d 316 (1962); *C.N.W. R.* v. *Gillis*, 129 N.W. 2d 532 (1964)—another proceeding involving same assessment year; court held the issue was already decided in the earlier case. Valuation case pendings: *C.N.W. R. Co.* v. *Gillis*.

TENNESSEE

Jurisdiction in U.S. district court assumed for want of remedy in State courts; allegation of discrimination sustained; injunction without prejudice to right of State board of equalization to reconsider assessment. *L. & N. R. Co.* v. *Public Service Commission, et al.* (U.S.D.C.M.D. Tennessee, Feb. 1, 1966.)

In a separate proceeding in the chancery court of Davidson County, the chancellor has directed the State board of equalization to equalize property values, pursuant to the statutory mandate, at actual value. *Southern R. Co.* v. *State Board of Equalization*, February 15, 1966.

WEST VIRGINIA

Discrimination not established where only showing is that different methods of arriving at actual value are used for different types of property. *Western M. R. Co.* v. *The Board of Public Works*, West Virginia Supreme Court, 90 S.E. 2d 438 (1955).

(NOTE.—West Virginia is not in the group of States listed in app. A.)

WISCONSIN

Petitioner failed to establish that the railroad's operating property was assessed at a greater proportion of its value than other railroad operating property or all property within the State: *C.N.W. R. Co.* v. *Department of Taxation*, Board of Tax Appeals, December 1960. Trial do novo granted, circuit court, Dane County, May 18, 1962. Proceedings subsequently dismissed.

WYOMING

Valuation of railroad upheld; controversy primarily on valuation procedure, particularly the fact that the assessing agency did not use the unitary approach: *C.B.Q. R. Co.* v. *Bruch, et al.*, Wyoming Supreme Court, 400 p. 2d 494 (1965).

Mr. YOUNGER. That is all.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr. Conlon, let me say I think you have made an excellent statement. I am particularly concerned with the second paragraph on page 8 and with the fears expressed in the second paragraph on page 10.

I think that the enactment of this legislation could lead—you used the term "leverage"—I think it could constitute a peculiarly effective form of harassment of many small tax levying districts across this

Nation. I am much concerned with the impact it will have on those tax levying districts, particularly in my own State where we have many problems of growth.

I also concur with your observation that it is a matter of discrimination. Anyone at all familiar with the levying of taxes would recognize that it does exist. It exists on business property not held by utilities just as it does on business property held by utilities.

But it has improved. I know, as a former member of the California Legislature of the efforts made by my State government to insure greater equalization between the tax assessing, tax levying entities in the State.

I think substantial progress has been made. This would not achieve equality of treatment, however, would it, the proposed legislation that we have before us here today?

Mr. CONLON. No. For one group of taxpayers it is remedial legislation. As a matter of tax policy this would tend to detract from the general performance or in the alternative it would cause the other to seek the same type of tax relief.

I think the Federal courts are not best suited to carry out this type of program.

Mr. MOSS. We just voted to create some additional Federal judgeships about an hour ago on the floor. The case made for those additional judgeships was the heavy overload in the Federal courts.

I know that is the complaint I get from my Federal courts out home all the time. They find it very difficult to schedule the business under existing law. This would impose a substantial additional burden.

However, I don't think we should deny justice because it might overburden the courts. I think the remedy there is to increase the number of judges. If we are going to grant justice we should grant it equally to all and this does not even do that. It does not even take care of all of the utilities or all of the commerce burden because of whatever inequality might exist in the assessing or levying of taxes by local government does it?

Mr. CONLON. No, sir.

Mr. ROGERS of Texas. I just want to point out we just passed a bill creating a lot more judges.

Mr. MOSS. Yes, I just observed we have. We got four of them out in California. That takes care of about 2 million additional population. So they are still going to be overburdened. We don't create new judgeships fast enough to take care of the growth in population.

Again, I want to express my agreement with your statement and I commend you for it.

Mr. CONLON. Thank you, sir.

The CHAIRMAN. Mr. Nelson.

The CHAIRMAN. Mr. Nelsen.

Mr. NELSEN. Thank you, Mr. Chairman.

I understand from your statement that you agree that in the instance where there is discrimination that recourse should be provided and that it is your feeling that recourse is now provided under the existing court procedure; is that not true?

Mr. CONLON. Yes, sir.

Mr. NELSEN. There is also evidence, as I think you would agree, that there is discrimination as to assessment levels in various parts of the

country. I think the record will clearly show that there is discrimination. I think it is also clear at this time that many of the States are aware of the fact that they have exercised discrimination and are also aware of the fact that these practices are being exposed and some of them now are seeking to secure their position by legislative action. For example, at the present time I think there is a movement underway in one of the States to get a constitutional amendment to permit discrimination.

So, in this case recourse would never be available then to the railroads in these particular States or any other property if the State by constitutional amendment secures their malpractice of taxation. So this would be the only method then they could go to the Congress of the United States. Isn't that true?

Mr. CONLON. I don't know that I agree with your premise, Mr. Nelsen. You say that the States seek to justify their malpractice by constitutional amendment. We have a constitutional amendment pending in Illinois. One of its provisions is to permit the levy of an income tax with a rate ceiling, to permit classification of tangible and other property, to permit the classification of real estate and several other things.

I do not have any idea that the amendment to permit the classification of real estate or tangible versus intangible property is intended to justify any illegalities. This is a proposal which the members of the legislature think has some appeal and they are putting it before the people on that basis.

I have no idea what will happen to that amendment but I believe under our rules two-thirds of each house must concur before an amendment is put on the ballot to amend the constitution, so apparently two-thirds of those members think that some kind of classification within limits might have some appeal and be a desirable thing but I believe so far as I know this is to be considered on its merits.

Mr. NELSEN. The State you mentioned is not the one I had in mind but I might point out that in our State of Minnesota we have vast iron ore deposits and our high-grade ore has been mined and we have low-grade ore.

We had a different method of taxation against properties in this case. So in our State a constitutional amendment was passed that would provide that the mining deposits would be taxed on the same basis as other investments.

The reason the amendment was passed is because obviously discrimination had existed and a higher level of taxation had prevailed. As a result this amendment has given tremendous impetus to the expansion of northern Minnesota where capital has come in to invest in the development of our low-grade ore.

Now the State I had in mind was Tennessee, and I think at the present time they are suggesting a constitutional amendment that will permit a different level of assessment against railroad property than other property. In my judgment this would secure the position of a practice which has existed which obviously must be considered even by yourself to be discriminatory.

I am wondering if the practice of the different levels of assessment has not been a deterring factor. Many of us find in our rural communities where there is a petition for abandonment of the railroad,

immediately we are flooded with letters to hang on and at the same time there may be some reasons for it and it could also be taxation.

I just make this observation not with the idea that you will solve a problem so far as I am concerned but only to point out that what we are trying to do is to get some reasonable level and continue to have these systems that we believe have been in the public interest.

I have no more questions.

Mr. CONLON. That is perfectly reasonable. I recall a study by a State legislature a few years ago that recommended that the legislature propose an amendment to provide for the assessment of public utility property generally at 50 percent of its market value and railroad property at 25 percent of its market value.

This was the proposal of a committee of legislators that had studied the subject at some length and presumably they thought that here was an instance where classification was justifiable. I do not think you can question their motives in making this sort of classification. This is simply what they thought was appropriate.

I give this example only to illustrate the differences of opinion that exist in this field and to point out that there are many people who think that property tax administration and property tax, itself, might be made a more viable institution in these days if there were differences in classification recognized for tax purposes because things now, so far as types of ownership is concerned, are very much different from what they were a hundred years ago when these uniformity clauses really had their beginning.

Mr. NELSEN. I have no more questions, Mr. Chairman.

The CHAIRMAN. Mr. Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. CONLON. I would like to ask you, if I may, a little bit about remedies under State statute.

Am I fairly inferring that all the States who belong to the organization you represent have a device for judicial review of their tax assessments?

Mr. CONLON. Yes, that is true.

Mr. DINGELL. Isn't it a fact that all States have a judicial review of tax assessment?

Mr. CONLON. I know of no instance where administrative review is final in tax assessment cases although I think it is within the power of the legislature to so provide.

Mr. DINGELL. Now, with regard to these assessments, generally you would have the appeal route through the administrative function within the State; am I correct?

First of all, in most instances assessment of taxes is done by the community, by the county, by the particular taxing authority, am I correct?

Mr. CONLON. Speaking of volume, yes. But if you are dealing with certain types of large business properties such as electric power companies that operate in more than one jurisdiction or railroads or airlines that operate in more than one State, it is not uncommon to have some State agency given the responsibility for deciding the value of that property in the first instance because it must be valued as a unit covering all the——

Mr. DINGELL. The value of the entity is decided by the State?

Mr. CONLON. Right.

Mr. DINGELL. But the assessment is made at the local level; is that right?

Mr. CONLON. That is right. Well, there are a couple of exceptions but in general that is what happens.

Part of the assessment that is logically applicable to the local government is put on the local rolls. Whatever rates that the local governments apply are applied against that value; yes sir.

Mr. DINGELL. As I read this bill it would have nothing to do with the State agency which would determine the value of the property for the whole State. Am I correct on this? The language of the bill has nothing to do with the determination of the value of the whole property across the State. It simply deals with the assessment.

Mr. CONLON. In general what you are saying is correct.

Mr. DINGELL. I am referring to page 2 of the bill.

Mr. CONLON. It is possible that in a couple of States, the valuation which is made by the State agency is the value against which the tax rate is applied on a statewide average basis. This is an exception.

Mr. DINGELL. I am saying this bill in instances where the State draws the value of property across all the States, that there would be no relief from the valuation of the property by the State agency under this bill. Am I correct?

Mr. CONLON. I think there are a few States where because of the——

Mr. DINGELL. I am just asking you a particularly pointed question, Mr. Conlon. I want you to give me a brief answer.

What I am saying to you is that there would be no relief to a utility particularly a railroad that was complaining about the valuation of the property within the whole borders of State, if it was to assert a complaint against the State agency which happened to have fixed that value. Am I correct?

Mr. CONLON. There are instances where it could assert that kind of complaint but very few. In general what you say is true.

Mr. DINGELL. Very good.

Now further, what would be a representative form of judicial and administrative review of the assessment by the community of taxes on a particular railroad's property within the confines of that community's border?

Mr. CONLON. The proceeding could be in the nature of, let us say, a tax rate objection.

Mr. DINGELL. How would they do that?

Mr. CONLON. It seems to me what is involved in one of these proceedings is the necessity on the part of the person who complains to show, No. 1, what the full value of this railroad was and what percentage of it was put on the rolls in order to make the kind of comparison with the average ratio of other property that is needed to get the relief in the bill.

Mr. DINGELL. I am not asking you about under the bill. I am asking about under existing practices. Under existing practice what would happen? You would have the assessment of the tax?

Mr. CONLON. Yes.

Mr. DINGELL. Would it be easily appealed to the court or would there be some intervening administrative agency which would review that assessment?

Mr. CONLON. In some States there are provisions for appeal to an administrative agency. In general, what you do when you are assessed is pay the tax under protest or you have an opportunity to protest within a certain period of time; or you might institute an action in the circuit court or district court for recovery of so much money on the ground that that much was illegally assessed against you.

Mr. DINGELL. So there is judicial review within the State?

Mr. CONLON. Yes.

Mr. DINGELL. In that you can proceed for review through the whole structure of State judicial system right up to the supreme court of the State?

Mr. CONLON. Yes, sir.

Mr. DINGELL. On both questions of fairness, policy, and so forth, am I correct?

Mr. CONLON. That is right.

Mr. DINGELL. Then at the conclusion of this if you feel that there has been a denial of a Federal constitutional right, it then becomes the right of the litigant to assert that right and to appeal to the Federal judiciary?

Mr. CONLON. Yes.

Mr. DINGELL. Over a question of the denial of a Federal constitutional right. Am I correct?

Mr. CONLON. Yes, sir.

Mr. DINGELL. Then you have a full and a fair review within the structure of the Federal courts, am I correct?

Mr. CONLON. Well, no.

Mr. DINGELL. To ascertain whether there was denial of a Federal right there?

Mr. CONLON. The only appeal you have from the State court decision would be to the United States Supreme Court.

Mr. DINGELL. That is right, but you would have at this point an opportunity for a review——

Mr. CONLON. That is right.

Mr. DINGELL (continuing). Of the Federal constitutional question within the Federal judiciary?

Mr. CONLON. Yes.

Mr. DINGELL. On the conclusion of that action it would be appropriate action by the Supreme Court to ratify the State court's action and, of course, the action of the administrative agency or remand to the State courts or State agency for action in accordance with whatever ruling the court might make. Am I correct?

Mr. CONLON. That is right.

Mr. DINGELL. Thank you very much.

The CHAIRMAN. Mr. Harvey.

Mr. HARVEY. Mr. Conlon, these remedies that Mr. Dingell has referred to have existed, I take it, almost from time immemorial, I think for a good long time. Is that not correct?

Mr. CONLON. No, sir; in theory they may have but I would not put it quite the way you did because, let us say, prior to World War II, it was a fairly common thing that, if you went before a court and you had not been assessed at the statutory level, the court would not give you any relief even though you had been assessed higher than somebody else, as long as you were not assessed as high as the statu-

tory standard provided for assessment. But it is this which has changed.

Mr. HARVEY. That has changed since when?

Mr. CONLON. I think there has been great change since 1946 in this respect.

Mr. HARVEY. That is 20 years ago.

Mr. CONLON. Yes, sir.

Mr. HARVEY. Yet you are telling us today that the discrimination does still exist?

Mr. CONLON. There is discrimination in property taxes; yes.

Mr. HARVEY. I served as a city councilman, mayor, and county supervisor in Michigan. I would challenge anyone who would say that discrimination did not exist because I think it does, not particularly against railroads but I think against business generally.

Mr. CONLON. In some places it is against business; in some places it is in favor of business. We have jurisdictions in Illinois where business firms and commercial property are assessed at a lower rate than residential property.

Mr. HARVEY. What I fail to see though is why this bill would hurt the municipalities or cities or jurisdictions which would have to appear in Federal court.

Why would they be afraid of appearing in Federal court?

Mr. CONLON. I don't know that they are afraid to appear in Federal court but I think the ordinary remedy for dealing with municipal and county and local affairs is in the State courts.

Mr. HARVEY. You have admitted after 20 years the discrimination is still there. It seems to me it is time we ought to start looking for another remedy.

Mr. CONLON. I don't agree it has failed at all. I feel there have been tremendous strides made.

Michigan is one of the States where you can see a great deal of difference between 1946 and 1966.

Mr. HARVEY. That is true but discrimination still exists in other States.

Mr. CONLON. I am sure there is some but the area is being narrowed all the time. I don't think you are going to change this overnight by going into the Federal courts.

Mr. HARVEY. I can't believe the world would come to an end. I can't believe it would be as bad as you have portrayed it. I can't believe that it would harass the taxing authorities. I think it is a question of who is going to be harassed.

We are talking now not only about my State but across the country. Is it the business or railroads that will be harassed or the tax authorities that will be held accountable in other courts? It seems to me that is a decision that this committee has to make.

I have a feeling there is great resentment among the taxing authorities to get into this problem at all in that they have felt, "Well, let leave things as they are; it is a hot problem."

Mr. CONLON. It is an awful hot problem but so far as I know I must say that I know of no question of any feeling of resentment in this matter in any way whatsoever.

Mr. HARVEY. You are getting very close to local politics. If you have ever worked on the local level, there is strong resentment no mat-

ter what taxing authority you are talking about, about getting into this question of assessments and values.

Mr. CONLON. There is a strong political difficulty here because if you try to do these things all in one fell swoop you may have a substantical transfer of tax burdens and this could make the life of political figures unbearable.

I think this change has to be made over a period of time. I recall a State where they tried to do it overnight and the roof almost blew off the statehouse.

Mr. HARVEY. I think you have made a very fine statement and I thank you for it.

I have no further questions.

The CHAIRMAN. Mr. Conlon, thank you very kindly. You have been very patient. We appreciate your coming here.

Mr. CONLON. Thank you.

The CHAIRMAN. I defer now to Mr. Younger.

Mr. YOUNGER. I would like to have Mr. Ogden furnish the other side of the picture that we have asked for, the cases where you have not received relief from the State court.

Mr. OGDEN. I will be most happy to, sir.

(The information referred to follows:)

GULF, MOBILE & OHIO RAILROAD CO.,
Mobile, Ala., March 25, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: Toward the close of the committee's March 2 hearing proponents of the measure were invited to furnish information regarding unsuccessful railroad tax litigation.

I am pleased to respond by forwarding herewith a partial list of pertinent cases. For the most part the decisions listed were adverse to the railroad or the ultimate result did not afford material relief or the litigation is still pending.

A few cases which did not involve railroads have been included because of their immediate or potential effect on railroad assessments.

The list is not offered as being all inclusive. It is mainly confined to the more recent cases. Many States are omitted either because they do not assess railroads for ad valorem taxes or due to peculiarities in their assessment procedures.

This material also points up an alarming trend to legalize the discriminatory taxation of railroads. Montana, Kansas, Idaho, Kentucky, and Tennessee furnish examples of what has been done or threatened in this area.

Sincerely,

JAMES N. OGDEN.

ALABAMA

Appealed from a refusal by the State department of revenue to equalize 1964 assessments and pending in the Circuit Court of Montgomery County, Ala., are the following cases, all of which are still pending:

1. *Louisville and Nashville R. Co.* v. *State of Alabama.*
2. *Illinois Central R. Co.* v. *State of Alabama.*
3. *Seaboard Air Line R. Co.* v. *State of Alabama.*
4. *Gulf, Mobile and Ohio R. Co.* v. *State of Alabama.*
5. *Atlantic Coast Line R. Co.* v. *State of Alabama.*

Appealed from a refusal by the State department of revenue to equalize 1965 assessments and pending in the Circuit Court of Montgomery County, Ala., are the following cases, all of which are still pending:

1. *Louisville and Nashville R. Co.* v. *State of Alabama.*
2. *Illinois Central R. Co.* v. *State of Alabama.*
3. *Seaboard Air Line R. Co.* v. *State of Alabama.*
4. *Gulf, Mobile and Ohio R. Co.* v. *State of Alabama.*

5. *Atlantic Coast Line R. Co.* v. *State of Alabama.*
6. *Colonial Pipe Line* v. *State of Alabama.*
7. *Birmingham Southern R. Co.* v. *State of Alabama.*
8. *Federal Barge Lines* v. *State of Alabama.*
9. *Southern Ry. Co.* v. *State of Alabama.*
10. *Alabama Great Southern R. Co.* v. *State of Alabama.*
11. *Central of Georgia Ry. Co.* v. *State of Alabama.*
12. *Birmingham Terminal Co.* v. *State of Alabama.*
13. *Woodstock & Blocton Ry. Co.* v. *State of Alabama.*
14. *Plantation Pipe Line* v. *State of Alabama.*
15. *A.T. & N. R. Co.* v. *State of Alabama.*
16. *Birmingham Belt R.* v. *State of Alabama.*
17. *St. Louis and San Francisco Ry. Co.* v. *State of Alabama.*

ARIZONA

1. *Southern Pacific* v. *Cochise County*, 92 Ariz., 395, 377 P. 2d 770 (1963). Arizona Supreme Court held that the Southern Pacific had proved discrimination in the 1959 assessment of its property by officials of Arizona, that this discrimination violated the Arizona constitution and statutes, but refused to authorize recovery of taxes illegally imposed. Rather, the court held that the railroad would be entitled to injunctive relief in the future upon proof of discriminatory assessing practices and that only after first obtaining an injunction could the railroad recover illegal taxes already paid. Following this decision the legislature in 1964 amended the Arizona Code effectively nullifying the decision.

ARKANSAS

1. *St. Louis-San Francisco Ry. Co.* v. *Ark. Public Service Commission*, 304 S.W. 2d 297 (1957). Following the 1965 assessment of Frisco property in Arkansas by the public service commission of that State, the railroad appealed to the circuit court where an order was entered denying relief to the Frisco. On appeal to the supreme court it was held that the Judiciary does not sit as an assessing body and, in the absence of proof that the assessment of property for tax purposes is manifestly excessive, fraudulent or oppressive, courts will not disturb the findings of an assessing body.

2. *Kansas City Ry. Co.* v. *Ark. Commerce Commission*, 323 S.W. 2d 193 (1959). Case dealt with the proper 1957 evaluation of property of the Kansas City Southern Railway Co. No significant tax relief obtained by railroad and the court did not deal with the equalization problem.

3. *Kansas City Southern Ry. Co.* v. *Ark. Commerce Commission*, 326 S.W. 2d 805 (1959). Following the tax assessment of plaintiff railroad's property for the years 1955 and 1956 by the Tax Division of the Arkansas Public Service Commission, the railroad protested and appealed to circuit court. The orders of the public service commission were affirmed and the railroad appealed to the Supreme Court of Arkansas but its appeals were dismissed on motion by the defendant on the ground that the record of the cases below had not been filed with the clerk of the Supreme Court within 60 days after entry of order in the circuit court, even though the court below had formally extended the time for filing the record in the supreme court.

CALIFORNIA

1. Forty-eight separate suits challenging the level of assessment of railroad property for the tax year 1958 were filed in 48 separate California Superior Courts by Southern Pacific Co. and its rail affiliates against 48 counties and various cites in California, pointing up the cumbersome and inadequate appeal procedure prevailing in the State. The railroad voluntarily dismissed these suits without prejudice on July 1, 1959, on an agreement by the California State Board of Equalization to equalize railroad assessments at the rate of 2½ percent per year. However, the California State Board of Equalization has not equalized the railroad assessments as agreed to, according only a fraction of the relief promised. Seven years later the raliroad assessments in California remain twice as high as others.

FLORIDA

1. *Seaboard Air Line R. Co.* v. *Gay*, 74 So. 2d 569 (1954) Circuit Court, Leon County, Fla. (tax year 1953 relief denied).

2. *Green* v. *Florida E. Coast Ry.*, 141 So. 2d 326 (1962) pleadings held to state cause of action for tax year 1961; *Florida E. Coast Ry.* v. *Green*, 178 So. 2d 355 (1965) the court of appeals affirmed the court below in denying the railroad relief for the tax years 1961 and 1962, the latter having been brought in by amended complaint. We understand this case is now being appealed to the Supreme Court of Florida.

GEORGIA

1. After a court decision approved by the supreme court in 1965 requiring that all property in every county be assessed at the same percentage of value, the State's revenue commissioner directed all counties to levy taxes on a 40 percent assessment ratio. In 1966, the legislature passed a bill placing a 1-year moratorium on the equalization order.

IDAHO

1. *Union Pacific R. Co.* v. *State Tax Commission*, citation (1960).
2. Now pending in State of Idaho, Third Judicial District Court, Ida County, *Various Railroads and Utilities* v. *State of Idaho* tests constitutionality of 20–20–40 Classification Act of 1965 and is set for argument May 1966. This act was apparently for the purpose of legalizing and perpetuating the existing discrimination between the assessment of railroad and other property.

ILLINOIS

1. *Chicago & North Western Ry. Co.* v. *Illinois Department of Revenue*, 6 Ill. 2d 278, 128 N.E. 2d 722, cert. den. 351 U.S. 950, 76 S. Ct. 844, 100 L. ed. 1474, reh. den. 352 U.S. 857, 77 S. Ct. 22, 1 L. ed. 2d 69 (1955). Relief denied.
2. *Chicago, Burlington & Quincy R. Co.* v. *The Ill. Dept. of Revenue*, 17 Ill. 2d 376, 161 N.E. 2d 838 (1959). Relief denied.
3. *People ex rel.* v. *Chicago, Burlington & Quincy R. Co. et al.*, 33 Ill. 2d 88, 210 N.E. 2d 196 (1965). The Supreme Court of Illinois held for the railroad in this case involving 6 years of claims by 12 railroads (46 individual lawsuits) dealing with the same general issues previously resolved in favor of the railroads by the Supreme Court of Illinois in earlier appeals. The decision is now on appeal to the U.S. Supreme Court.
4. *People ex rel. C&NW Ry. Co.* v. *Hulman*, 201 N.E. 2d 103 (1964). Relief denied.

INDIANA

1. *State Board of Tax Commissioners* v. *C.M. St. P. & P. R. Co.*, 96 N.E. 2d 279 (1951). Lower court granted railroad substantial relief, Appellate Court of Indiana reversed.

IOWA

1. *Chicago & North Western Ry. Co.* v. *Iowa State Tax Comm. et al.*, 137 N.W. 2d 246 (1965). Still pending after reassessment under "show cause" citation for alleged contempt. (Current hearings began January 1966 and have not been concluded.)
2. *Chicago & North Western Ry. Co.* v. *X. T. Prentis et al.* Still pending after consolidation with 1965 assessment appeal. Several railroads have filed similar appeals.
3. *Chicago & North Western Ry. Co.* v. *Lynn Potter et al.* District Court, Polk County, Iowa (tax year 1965). Still pending after consolidation with 1964 assessment appeal.

KANSAS

1. *Kansas City Southern Ry. Co.* v. *Board of County Commissioners*, 183 Kan. 675, 331 P. 2d 899 (1958). This case held that the protest filed by the railroad in the lower court stated a cause of action and should not have been dismissed on demurrer.

Justice Fatzer in his concurring opinion on page 905 makes the following observations of assessment practices over a period of 20 years in the State of Kansas:

> "In the instant case the protest alleged that for more than 20 years, as a result of the commission's own assessment ratio studies, it was advised

that the average rate of assessment of property to its true or market value in Cherokee County, which was not assessed by the commission, was 21 percent. Thus, for a period of years the commission was advised by its own studies that the statutes of the State were being flagrantly disregarded by the local assessment officials in Cherokee County, but it failed to take corrective measures to require that the assessments be made at the true or market value of the property assessed; consequently, such failure, over such period of years, can justify no other conclusion than that of an adopted policy or practice of constructive fraud and discrimination against the plaintiffs and their property * * *."

Before trial on merits, cases dismissed under threat of classification by legislature.

2. *Union Pac. R. Co.* v. *Sloan*, 188 Kan. 231, 361 P. 2d 889 (1961). Held that absent statutory right of appeal, fraudulent and oppressive official conduct can be judicially challenged only through appropriate extraordinary legal remedies, such as injunction, mandamus or quo warranto.

Russman et al v. *Luckett, et al.*, 391 S.W. 2d 694, decided June 8, 1965, by the Kentucky Court of Appeals (State court of last resort). By this decision all property must be assessed at its fair cash value, starting January 1, 1966, as provided by the Kentucky constitution. The court warned all assessing officers would be held strictly accountable. It was understood this would produce equalization through the assessment of all property, including railroads, at the same level.

Shortly after this decision, the Governor called the general assembly into special session commencing August 23, 1965, and the needed legislation to implement the court decision was promptly enacted.

Subsequently, in the concluding minutes of the regular session of the Kentucky General Assembly (near midnight, March 18, 1966), there was enacted a bill for 1966 and 1967 that will require the use of ad valorem tax rates against railroad and other public service companies different from those to be applied to property generally, for the purpose of collecting from such public service companies the same or more revenue received from them during the 1965 tax year. Thus, the general assembly has taken action to deprive the railroads and other public service companies in like position from enjoying the benefits of the equalization program during the next 2 years. There is no assurance that these same tactics may not be repeated indefinitely.

LOUISIANA

1. *Dixon et al.* v. *Flournoy* (tax year 1964), 247 La. 1067, 176 S. 2d 138 (1965). Relief denied.

2. *Bussie et al.* v. *Long et al.*, U.S. District Court, Eastern District of Louisiana, C.A. No. 3345 (filed 1966). Suit to require tax commission to equalize assessments throughout Louisiana and to enjoin commission from approving tax rolls and the collection of taxes not assessed on a basis of full cash value.

MICHIGAN

1. *Chicago and North Western Ry. Co.* v. *Michigan Department of Revenue*, U.S. district court, southern division, western district (tax year 1965), pending on State's motion to dismiss for want of jurisdiction.

2. *Wyandotte Chem. Corp.* v. *City of Wyandotte* (tax year 1960), 321 F. 2d 927 (1963) decision of circuit court of appeals, sixth circuit, reversing district court decision in taxpayers favor on the ground that the taxpayer's remedy in State court was adequate.

MISSISSIPPI

1. There are no recent cases, which may possibly be accounted for by reason of the fact that a losing taxpayer in an assessment appeal must pay 10 percent of the contested taxes as a penalty (code 1940 § 9853).

MISSOURI

1. *Norfolk & Western Ry. Co.* v. *Missouri State Tax Commission*, Circuit Court, Cole County, Mo. (tax year 1965), relief denied December 1965, pending on appeal to Missouri Supreme Court.

2. *May Dept. Stores Co.* v. *State Tax Commission of Missouri* (tax year 1955), 308 S.W. 2d 748 (1958). Relief denied.

MONTANA

1. *Yellowstone Pipe Line Company et al.* v. *State Board of Equalization*, 138 Mont. 603, 358 P. 2d 55 (1960). (Relief denied because State constitution permitted classification of property for assessment.) A dissenting opinion in this case found systematic, intentional discrimination by the board in its practice of assessing pipeline properties.

NEW JERSEY

The following suits for declaratory judgments involve 1966 assessments:

1. *Lehigh Valley R. Co.* v. *Kingsley, State Division of Taxation et al.*
2. *Erie Lackawanna R. Co.* v. *Kingsley, State Division of Taxation et al.*
3. *New York Central R. Co.* v. *Kingsley, State Division of Taxation et al.*
4. *Pennsylvania R. Co.* v. *Kingsley, State Division of Taxation et al.*

Superior Court of New Jersey. This remedy is being tried because of long delays in obtaining decisions on appeals to State division of tax appeals. There are still pending 167 railroad appeals covering years 1953 through 1965 which have not reached the trial calendar. One railroad estimates that the earlier cases may not be concluded until about 1970.

5. *Dela. Lackawanna & Western R. Co.* v. *Director, State Division of Taxation*, 23 N.J. 561 (1957). Relief denied.

6. *Lehigh Valley R. Co. et al.* v. *Director*, 26 N.J. 173, cert. den. Relief denied.

7. *Lehigh Valley R. Co.* v. *Director*, 26 N.J. 188 (1957). Relief denied.

NEW YORK

1. *New York Central R. Co.* v. *Assessors of the City of Buffalo*, in Supreme Court for Erie County, N.Y. Separate suits filed for each tax year 1955 through 1965. In 1964, cases for the years 1955 through 1959 were permitted to lapse, account impossibility of matching proof to burdensome prerequisites of city assessors.

In January 1965, cases for years 1960 through 1964 came to trial. On one item, parties agreed to reduce assessment by about 50 percent, prior to conclusion of trial. On another item, court reduced assessment by about 60 percent and assessors have appealed. Case for year 1965 still pending.

SOUTH DAKOTA

1. *Chicago and North Western Ry. Co.* v. *Gillis et cet.*, 118 N.W. 2d 316 (1962). Relief denied regarding tax year 1962 in action for writ of mandate.

2. *Chicago and North Western Ry. Co.* v. *Gillis, et cet.*, 129 N.W. 2d 316 (1964). Declaratory judgment action regarding 1962 tax year and relief was again denied.

3. *Chicago and North Western Ry. Co.* v. *State Director of Taxation*, Circuit Court, Lincoln County, S. Dak. (tax year 1963). Decided September 1965, pending on appeal to supreme court.

TENNESSEE

1. *Nashville, C. & St. L. Ry.* v. *Browning et al* (tax year 1938), 176 Tenn. 245, 140 S.W. 2d 781 (1940) 310 U.S. 362 (1940). Relief denied.

2. *McCord et al.* v. *Southern Ry. Co.* (tax year 1945), 187 Tenn. 247, 213 S.W. 2d 184 (1948). Relief denied.

3. *McCord* v. *Nashville, Chattanooga & St. Louis Ry.* (tax year 1945), 187 Tenn. 277, 213 S.W. 2d 196 (1948). Relief denied.

4. *Browning et al.* v. *Alabama Great Southern Railroad Co.* (two cases). *McCord et al.* v. *Alabama Great Southern Railroad Co.* (tax years 1945–7–9),

195 Tenn. 252, 259 S.W. 2d 154 (1953), 187 Tenn. 302, 213 S.W. 2d 207 (1948). Relief denied.

5. *A.G.S. R. Co.* v. *Railroad and Public Utility Commission of Tenn.*, U.S. District Court, Middle District of Tennessee (tax year 1949). Decision not reported (1950), relief denied.

6. *Biltmore Hotel Court* v. *City of Berry Hill* (tax year 1963), 390 S.W. 2d 223 (1963). Relief denied.

7. *L&N R. Co.* v. *Public Service Commission of Tenn.*, U.S. District Court, Middle District of Tennessee (tax year 1965), pending on appeal to sixth circuit (1960).

8. *Southern Railway Co.* v. *Clement et al.*, Chancery Court, Davidson County, Tenn. (tax years 1964, 1965), pending on appeal to Supreme Court of Tennessee (1966).

9. *Southern Railway Co.* v. *Clement et al.*, Chancery Court, Davidson County, Tennessee (tax year 1965), still pending (1966).

The current round of tax litigation in Tennessee commenced with the *Browning* case decided by the Supreme Court of the United States in 1940. That decision in effect held that railroads could be assesed at full value, even though other property was assessed at only a small fraction of full value. Through the years, railroads have employed various legal theories in attempts to obtain relief from discriminatory and burdensome assessments, but because of the decision in *Browning*, all efforts have failed.

After years of frustration, one railroad has finally persuaded the Federal District Court at Nashville to retain jurisdiction of an ad valorem tax case on the ground that there is no adequate remedy under State law. *I&N R. Co.* v. *Public Service Commission*, docket No. 4310, M.D., Tennessee (1966). A decision favorable to the railroads has been appealed to the U.S. Circuit Court of Appeals for the Sixth Circuit.

Another phase of the ad valorem tax problem appears to be moving toward decision in the case of *So. Rwy. Co.* v. *Clement et al.*, supra, which is presently on appeal to the Supreme Court of Tennessee. Here, petitions were filed requesting that all assessments in Loudon and Hawkins Counties be raised to actual cash value, or 100 percent. The chancery court of Davidson County sustained the petitions and the State has appealed.

Following the decision in the two latter cases, plans were made to avoid the effect of the decisions should they become final. The Governor of Tennessee called the legislature into special session commencing March 14, 1966, to consider an amendment to the constitution to read, "The legislature may also provide for the assessment at different ratios of value of such different classifications of property as they may by statute recognize." This proposed amendment is aimed directly at railroad and other utility property.

VIRGINIA

1. *Richmond, Fredericksburg and Potomac R. Co.* v. *Commonwealth of Va.*, 203 Va. 294, 124 S.E. 2d 206 (1962).

WYOMING

1. *CB & Q R. Co.* v. *Bruch et al.* (tax year 1962), 400 P. 2d 494 (1965). Relief denied.

2. *CB & Q R. Co.* v. *Bruch*, district court, Laramie County (tax year 1963). Dismissed because of similarity to issues involved in 400 P. 2d 494.

3. *CB & Q R. Co.* v. *Bruch*, district court, Laramie County (tax years 1964–65). Two cases still pending relating to tax years referred to.

Mr. YOUNGER. Thank you.

The CHAIRMAN. At this time we will hear from Mr. Robert McDowell.

Will you come forward, sir?

Mr. McDowell, attorney for the State property valuation department appearing for Gov. William H. Avery.

The Governor is a former member of this committee. We are happy to have you as his representative. We hope that when you go back you will give him our best wishes and so forth for a good term of office as Governor.

Mr. McDOWELL. Thank you, Mr. Chairman.

STATEMENT OF ROBERT O. McDOWELL, ATTORNEY FOR THE PROPERTY VALUATION DEPARTMENT, STATE OF KANSAS

The CHAIRMAN. You may proceed.

Mr. McDOWELL. Due to the lateness of the hour, Mr. Chairman, I do have a rather short statement which I would like to read to the committee with their permission.

Chairman Staggers and members of the Interstate and Foreign Commerce Committee.

It is indeed my pleasure and privilege to appear before you today and bring you the personal greetings of our Governor William H. Avery, former member of this committee. Governor Avery has requested that I extend you his personal regard and well wishes. Also, on behalf of Governor Avery and Mr. Alvin E. Jones, director of property valuation department and other tax officials of the State of Kansas, we wish to make a statement in regard to H.R. 4972.

First and foremost, let us emphasize that tax officials of the State of Kansas are not opposed to legislation requiring that all property be assessed for tax purposes at the same ratio of full value. Therefore, in principle Kansas is not opposed to subsection 1 of section 25a. We do, however, have some question as to whether this legislation is either necessary or desirable. We do have particular objections to subsection 2 as being neither necessary or desirable.

The premises on which this proposed legislation is based appear to be—

1. That property of interstate carriers is assessed for purposes of property tax at a higher rate of true market value than other property, and
2. That adequate judicial remedies are not now available to interstate carriers through State appeal boards or State courts.

Since the main objection is centered on subsection 2 of the proposed legislation, we shall first discuss pertinent Kansas statutory provisions as well as the judicial remedies now available to any taxpayer including interstate carriers.

Kansas statutes enacted in 1963 require that all property be assessed for taxation purposes at 30 percent of full value. The statutes also provide that any assessor whether on a county level or on the State level or the State board of tax appeals or any other person responsible for determining assessed valuations shall be subject to a criminal penalty if they shall fail or refuse to assess any and all property at 30 percent of full value.

Railroad, pipeline, electric power, telephone and telegraph companies operating in more than one county in Kansas are assessed by the State property valuation department. Any of these companies have the statutory right to appeal their assessments first to the director of property valuation and, from the director's decision appeal may be

carried to the State board of tax appeals. After this, appeals may be taken to the State district courts or taxpayers may file an original action in the State district courts. The decisions of the district courts may be appealed to the State Supreme Court of Kansas.

The Supreme Court of the State of Kansas in a 1963 decision dealing with discriminatory assessments stated clearly this State's views upon such practices by holding as follows:

> Uniformity of taxation does not permit a systematic, arbitrary, or intentional valuation of the property of one or a few taxpayers at a substantially higher valuation than that placed on other property within the same taxing district.

It might be added that the principle of this language was clearly followed by the Supreme Court of Kansas in a case involving a specific railroad operating in Kansas upon their charge that their property was assessed at an arbitrary and discriminatory amount in relation to other property in the State of Kansas.

Thus, we would submit to the committee for their consideration, that adequate tribunals now exist for the determination of any and all questions concerning alleged discriminatory taxation practices and that such tribunals fairly and equitably decide these issues.

In regard to the premise that interstate carriers are assessed at a higher ratio than all other property, we would caution the committee against accepting at face value all information presented to the committee purporting to support that such discrimination does exist or that it exists in the degree indicated.

It is acknowledged that through the history of the property tax, there have been problems of unequal assessments. These problems have come about due to the diversified nature of tax administration, changing values and technical problems of determining sale, market, or true value. However, in recent years taxing officials in the several States and, of course, I am limiting my remarks to the State of Kansas particularly, have made marked progress in the techniques of assessing and in achieving uniformity. In some States, this progress has just recently showed visible results.

Kansas State tax officials were instrumental in the passage of the 1963 legislation requiring that all property be assessed for tax purposes at 30 percent of the full value. While this legislation applies to all property, the real problems were with real estate assessments.

As of this writing, 3 years after the passage of the legislation, 97 of the 105 counties of the State have either completed an appraisal of each parcel of real estate in the county or are in the appraisal process. When the appraisal program is completed in a county, the property is placed on the tax rolls at 30 percent of the full appraised value.

By law in the State of Kansas, personal property assessed values must conform to values prescribed by the State property tax department. These values which are determined annually with the cooperation of various industries and economic groups, are printed in catalog form and furnished to each assessing official. This has resulted in personal property being assessed at an extremely high degree of uniformity at 30 percent of full value.

For a number of years, the State property valuation department in assessing railroads, pipelines, electric power, telephone and telegraph companies has been striving to arrive at a 30-percent ratio for these companies and this goal has largely been achieved.

In assessing interstate carriers and utilities, the department in Kansas has used established methods of determining values, utilizing the standard approach as developed by the National Association of Tax Administrators.

Also, Kansas officials actively participate in utility assessing seminars sponsored by the Midwestern Association of Tax Administrators so as to continually improve assessing techniques.

We agree with and endorse the statement and position taken by Mr. Charles F. Conlon, executive secretary of the National Association of Tax Administrators, in a letter dated August 13, 1964, addressed to the Honorable John Williams, chairman of the Subcommittee on Transportation and Aeronautics, in which Mr. Conlon ably describes the efforts of State taxing officials in achieving equalization of assessments of all property and the potential adverse effect this legislation may have on taxing subdivisions of the State which are heavily dependent on property tax revenue for financing their operations.

If this legislation were to pass, it could greatly increase the caseload in an already overcrowded docket of Federal courts so that it could be a number of years before cases were decided. With the injunction feature of this proposed legislation, anticipated tax revenue of local taxing districts could be impounded for such a duration that it could result in a chaotic financial situation for such districts.

It is respectfully suggested that, before action is taken on this matter, full consideration be given to the potential impact upon local taxing districts and that the committee consider the progress States are making toward the elimination of discrimination in assessments.

Therefore, Mr. Chairman and members of this committee, we request that the record of this proceeding show that the State of Kansas is opposed to the enactment of H.R. 4972.

The CHAIRMAN. Mr. McDowell, we thank you for coming to the committee with your views.

We also want to thank the Governor. I assume that the Governor's statement will be in the record.

Mr. MCDOWELL. Yes, sir.

(The following letter was received from Governor Avery, of Kansas, stating his views:)

THE STATE OF KANSAS,
Topeka, Kans., February 25, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: This is in reference to H.R. 4972 which is before the committee for consideration.

First and foremost let us emphasize that tax officials of the State of Kansas are not opposed to legislation requiring that all property be assessed for tax purposes at the same ratio of full value. Therefore, in principal Kansas is not opposed to subsection 1 of section 25(a). We do, however, have some question as to whether this legislation is either necessary or desirable. We do have particular objections to subsection 2 as being neither necessary or desirable.

The premises on which this proposed legislation is based appears to be—

1. That property of interstate carriers is assessed for purposes of property tax at a higher rate of true market value than other property, and;
2. That adequate judicial remedies are not now available to interstate carriers through State appeal boards or State courts.

Since the main objection is centered on subsection 2 of the proposed legislation, we shall first discuss pertinent Kansas statutory provisions as well as

the judicial remedies now available to any taxpayer including interstate carriers.

Kansas statutes enacted in 1963 require that all property be assessed for taxation purposes at 30 percent of full value. The statutes also provide that any assessor, whether on a county level or on the State level or the State board of tax appeals or any other person responsible for determining assessed valuations, shall be subject to a criminal penalty if they shall fail or refuse to assess any and all property at 30 percent of full value.

Railroad, pipeline, electric power, telephone, and telegraph companies operating in more than one county in Kansas are assessed by the State property valuation department. Any of these companies have the statutory right to appeal their assessments first to the director of property valuation, and from the director's decision appeal may be carried to the State board of tax appeals. After this, appeals may be taken to the State district courts or taxpayers may file an original action in the State district courts. The decision of the district courts may be appealed to the State Supreme Court of Kansas.

The Supreme Court of the State of Kansas in a 1963 decision dealing with discriminatory assessments stated clearly this State's views upon such practices by holding as follows:

"Uniformity of taxation does not permit a systematic, arbitrary or intentional valuation of the property of one or a few taxpayers at a substantially higher valuation than that placed on other property within the same taxing district."

It might be added that the principle of this language was clearly followed by the Supreme Court of Kansas in a case involving a specific railroad operating in Kansas upon their charge that their property was assessed at an arbitrary and discriminatory amount in relation to other property in the State of Kansas.

Thus, we would submit to the committee for their consideration that adequate tribunals now exist for the determination of any and all questions concerning alleged discriminatory taxation practices and that such tribunals fairly and equitably decide these issues.

In regard to the premise that interstate carriers are assessed at a higher ratio than all other property, we would caution the committee against accepting at face value all information presented to the committee purporting to support that such discrimination does exist or that it exists in the degree indicated.

It is acknowledged that through the history of the property tax, there have been problems of unequal assessments. These problems have come about due to the diversified nature of tax administration, changing values and technical problems of determining sale, market, or true value. However, in recent years taxing officials in the several States have made marked progress in the techniques of assessing and in achieving uniformity. In some States, this progress has just recently showed visible results.

Kansas State tax officials were instrumental in the passage of the 1963 legislation requiring that all property be assessed for tax purposes at 30 percent of the full value. While this legislation applies to all property, the real problems were with real estate assessments.

As of this writing, 3 years after the passage of the legislation, 97 of the 105 counties of the State have either completed an appraisal of each parcel of real estate in the county or are in the appraisal process. When the appraisal program is completed in a county, the property is placed on the tax rolls at 30 percent of the full appraised value.

By law, personal property assessed values must conform to values prescribed by the State property tax department. These values which are determined annually with the cooperation of various industries and economic groups, are printed in catalog form and furnished to each assessing official. This has resulted in personal property being assessed at an extremely high degree of uniformity at 30 percent of full value.

For a number of years, the State property valuation department, in assessing railroads, pipelines, electric power, telephone, and telegraph companies, has been striving to arrive at a 30-percent ratio for these companies and this goal has largely been achieved.

In assessing interstate carriers and utilities, the department has used established methods of determining values, utilizing the standard approach as developed by the National Association of Tax Administrators. Also, Kansas officials actively participate in utility assessing seminars sponsored by the Midwestern Association of Tax Administrators so as to continually improve assessing techniques.

We agree with and endorse the statement and position taken by Mr. Charles F. Conlon, executive secretary of the National Association of Tax Administrators, in a letter dated August 13, 1964, addressed to the Honorable John Williams, chairman of the Subcommittee on Transportation and Aeronautics, in which Mr. Conlon ably describes the efforts of State taxing officials in achieving equalization of assessments of all property and the potential adverse effect this legislation may have on taxing subdivisions of the State which are heavily dependent on property tax revenue for financing their operations.

If this legislation were to pass, it could greatly increase the caseload in an already overcrowded docket of Federal courts so that it could be a number of years before cases were decided. With the injunction feature of this proposed legislation, anticipated tax revenues of local taxing districts could be impounded for such a duration that it could result in a chaotic financial situation for such districts.

It is respectfully suggested that before action is taken on this matter, full consideration be given to the potential impact upon local taxing districts and that the committee consider the progress States are making toward the elimination of discrimination in assessments.

Respectfully submitted for the committee's consideration.

Yours very truly,

WM. H. AVERY, *Governor.*

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. Mr. McDowell, I wish you would extend my personal regards to the Governor, Mr. Avery, on your return—although I am in disagreement with him on the conclusion.

Mr. MCDOWELL. I will convey these sentiments.

Mr. ROGERS of Texas. So far as Kansas is concerned you take the position that, by State law, violation of which would create a situation where criminal penalties could be invoked, 30 percent of the market value is the fixed percentage at which all property regardless of who owns it has to be assessed.

The only question in your mind or in the Governor's mind would be with regard to the amount or value that was fixed by the State board.

Mr. MCDOWELL. Mr. Rogers, maybe I did not clearly get into it enough in my statement, but our constitution in Kansas requires the legislature shall provide for a uniform and equal rate of assessment and taxation except mineral products.

The legislature in carrying out the mandate set the rate at 30 percent of what we call justifiable value. The assessors cannot even agree on this term. It would be full value or market value.

Mr. ROGERS of Texas. Your State board fixes it at the market value.

Mr. MCDOWELL. Well, our State board of equalization will hear an appeal but we have our taxing——

Mr. ROGERS of Texas. Who fixes the market value?

Mr. MCDOWELL. In the assessment of the interstate carriers this is done by the property valuation department using the recognized methods of valuing property. Of course, information is submitted by the industry on this. Then this valuation is determined and 30 percent is applied.

Mr. ROGERS of Texas. Now valuation that is determined, in order for you to get into court on this I presume you would abide by the procedures of the Administrative Procedures Act and require a showing that arbitrariness or capriciousness prevailed in order to upset the valuation board.

Mr. MCDOWELL. Yes. In Kansas by State law we do require this showing to be made.

Mr. ROGERS of Texas. Let me say this.

So far as Kansas is concerned then, you feel that you are all right, the people are treated fairly. If a showing is made that in a number of other States the same thing does not exist don't you think that people who are being discriminated against ought to have a forum to get some kind of correction of their ills?

Mr. McDowell. Again you understand my position; I am testifying for Kansas.

I would say that if the situation would exist among any property owners and not just interstate carriers where they were not assessed uniformly, then certainly relief is needed.

But again I question, and again I am sorry to keep locating myself back into Kansas on the specific issue, I personally feel if all the 50 States had the same setup that we have in Kansas maybe this problem would not exist.

But many other States have good State administrative remedies that possibly should be explored.

Mr. Rogers of Texas. You tell the Governor if he has this worked out in Kansas he had better watch out, we will turn the problem over to him to sell to the other 49 States.

Thank you, Mr. Chairman.

Mr. Younger. I have a statement for you to take back to the Governor. I have worked several years with him on the committee. I am very positive if he were on the committee he would be in favor of this legislation.

The Chairman. Mr. Nelsen.

Mr. Nelsen. I join with my colleague in sending greetings to Bill. Bill served on this committee with us and I have a very high regard for him. I hope you will deliver this very personal message to Bill.

Tell him I took one bottom off my plow. He will know what I mean.

Mr. McDowell. I will, Mr. Nelsen.

The Chairman. Thank you again, Mr. McDowell.

Mr. McDowell. Mr. Chairman, I thank you for the time and consideration. I know the hour is growing late.

The Chairman. We are sorry if we held you up.

Mr. McDowell. That is quite all right.

The Chairman. Our next witness will be Mr. William E. Peters. Is he present?

I would like to discuss this with you briefly before you start.

The committee will have to go and answer a quorum call. Do you want to wait until we reconvene and proceed this evening or do you want to put the statement in the record as given?

We will come back if you want us to come back.

STATEMENT OF WILLIAM E. PETERS, STATE TAX ATTORNEY, LINCOLN, NEBR.

Mr. Peters. I would like to abide by the convenience of the committee.

I will put my statement in the record with one request, if I may be so bold, that for the committee's benefit on the request of the committee to the industry representatives who are proponents of this bill, when the industry representatives tabulate the States wherein they do not feel they have received due process or adequate State remedy that they also will advise the committee of what action they have taken

under existing Federal legislation, which legislation provides them a Federal remedy under section 1341, title 28, when there is not an adequate State remedy to protect their constitutional rights.

I think that an examination of this would be very interesting to the committee. And, if there is a question, as some of the industry members have told me, that their problem in getting there is that the Federal courts have declined to exercise jurisdiction, then maybe we have a jurisdictional and procedural problem with regard to our judiciary and not with interfering, as Nebraska would say, with regard to the right of the State to work out an equitable tax policy.

My further comments I will submit in writing, sir.

The CHAIRMAN. Thank you, Mr. Peters.

Do either one of you gentlemen have any questions?

Mr. ROGERS of Texas. No.

Mr. YOUNGER. You are referring to a section of the Transportation Act?

Mr. PETERS. Section 1341 of title 28 of the United States Code of the Judiciary Act which provides with regard to State taxation if there are no adequate remedies——

Mr. YOUNGER. Yes, thank you.

The CHAIRMAN. Thank you. Your statement will be made a part of the record and also your statement you have made here.

Mr. PETERS. Thank you.

(The statement referred to follows:)

STATEMENT OF GEORGE J. DWORAK, NEBRASKA STATE TAX COMMISSIONER; SUBMITTED BY WILLIAM E. PETERS, STATE TAX ATTORNEY

There are two features of H.R. 4972 and the companion bills on which Nebraska desires to comment. These constitute subsections 1 and 2 of the proposed section 25a of the Interstate Commerce Act.

SUBSECTION (1)

The first observation on subsection (1) is to caution this committee that there are many problems in determining what is "true market value" and this, without developing ratios, in and of itself is a distinct and complex problem area. This point need not be elaborated at this time. You are only asked to accept the validity of this statement from a State whose revenue system is currently based primarily upon the property tax.

More serious than possible technical implementation is the expression of policy contained in subsection (1). Involved here is the right of the several States to determine their own tax structure. Nebraska believes that the States should be allowed to establish reasonable classified assessments without the Federal Government imposing conditions and policies upon the States.

The citizens and voters of Nebraska will this year vote on a constitutional amendment to authorize classified agricultural land. This type of legislation is not new. And, Nebraska feels that its voters should be permitted to adopt this public policy without the unseen federally imposed condition of the same treatment for selected industries.

Nebraska is not saying that we endorse discriminatory classifications. No administrator can say in good faith to this committee, nor anyone else, that classifications can be any other than reasonable. But there is nothing objectionable to reasonable classification. And it is suggested that the introducers of this legislation do not object to reasonable classifications or intend to deny reasonable classifications. The language does not prohibit lower ratios, nor does it prescribe the same ratios; the language only prohibits higher ratios for the selected industries.

Only one further point on subsection (1). Nebraska would question whether there is substantiating evidence that what might be called classified assessment is either discriminatory to or a burden on interstate commerce. This is especially true when all industries within a group are treated uniformly.

SUBSECTION (2)

The State of Nebraska is opposed to subsection (2). The opposition to this section results from the opinion that this section is not needed, could work a serious hardship upon the State and the State's political subdivisions, and that it is an infringement upon the right and the duty of the State courts to interpret State law.

The State of Nebraska, for a very good reason, does not allow injunctions against the collection of taxes. This policy is neither arbitrary nor capricious. It was designed only to insure the orderly flow of revenues into the State and the political subdivision. If the injunction process contemplated in the legislation were to be used, it would pose serious financial threat to Nebraska metropolitan areas. This would be accomplished by depriving subdivision governments of critical revenues and delaying the receipt of such revenues until such time as the Federal judicial process runs its course.

Nebraska provides a very adequate remedy through its court system for determination of property assessments. There is, of course, no need for the Federal courts to be injected into State taxation in the matter contemplated by this bill. Nebraska courts are more familiar and have had more experience with the determining valuations and the proper methods invloved. To change this procedure would accomplish uncertainty, delay, and unnecessary expense to the State of Nebraska and its political subdivisions, while doing nothing to the supposed problem reflected in subsection (1) of this legislation.

Further, Nebraska's position is that its own courts are the proper courts to interpret and construe Nebraska laws. Consequently, Nebraska is opposed to the provisions of subsection (2).

SUMMARY

Nebraska is opposed to H.R. 4972 and the identical companion bills which have been introduced because it is an unwarranted infringement upon the right of the State to determine State taxing policy and because it is an unwarranted infringement upon the right and duty of the State courts to decide the constitutionality of such tax policy.

Nebraska, therefore, respectfully requests that this committee refrain from reporting this bill out of committee.

(The following statement was later also submitted by Mr. Peters:)

SUPPLEMENTAL STATEMENT OF WILLIAM E. PETERS, STATE TAX ATTORNEY, STATE OF NEBRASKA

Because of the shortness of time on March 2, 1966, I chose not to present oral testimony at the hearings on H.R. 4972 and the 12 identical bills. I, therefore, submit this statement for the benefit of the committee and as a supplement to the statement of Nebraska State Tax Commissioner, George Dworak, a copy of which was filed with the clerk of the committee on March 2, 1966.

H.R. 4972 is deceptively simple in its appearances and length. However, no one can overstress the seriousness and complexity of this legislation. This bill is not only significant because of the problem which it attempts to meet, but also because of the impact it will have if passed in its present form.

Before discussing the issues involved, I wish to comment regarding the validity of the statistics presented. First, the industry is not exactly unbiased in this matter. Second, the statistics presented are not comprehensive and do not reflect the situation exising across the United States. For example, Nebraska which has consitutional and statutory classified assessment is not included. Third, the statistics are inaccurate and do not reflect present conditions. If the committee had had more time for testimony, it would have heard testimony that the statistics supplied for Iowa and Kansas were inaccurate. And, fourth, the statistics are premised on the conclusion that all railroad properties are indeed valued at "true market value," a conclusion which would appear to be somewhat tenuous. That there are tax laws and administrators sympathetic to railroad is as true as the statement that there are laws and administrators not sympathetic to the industry.

Why have I made the above comments about the statistics? Simply because of the fundamental importance of such statistics to the committee in determining the proper remedy to pursue once the public policy is established. I will outline under the discussion of subsection 2 of the proposed section 25A what I feel would be needed statistical information.

SUBSECTION (1)

Before discussing classified assessments, I would urge on the committee that nonoperating property of interstate carriers be excluded for the purposes of this act. I believe there is a substantial difference between operating property which carries or is incidental to the carriage of persons or property and property such as grazing lands, warehouses and factories, timberlands, oilfields, resort areas, etc. Taxation of such property, which is more in the nature of investments, under a reasonable classification system would not appear to be a burden upon interstate commerce.

The basic disagreement over subsection 1 is that of the propriety of classified assessments. This usually takes one of two forms, either a different means of arriving at value or a different percentage of value for the assessment rate. Another means of achieving this is to apply a different mill levy or exempt certain property within the taxing district from particular mill levies.

Resolving this disagreement is apparently a policy decision for the committee. But, before the committee condemns State classified assessments, it should be observed that reasonable classified assessments have long been permitted. No one has said that reasonable classifications are wrong, except those who are not in the preferred classes.

The decision before the committee would appear to be to permit reasonable classifications—the status quo—or to give interstate carriers most-favored-nation treatment. If the latter course is followed, then certainly everyone connected with interstate commerce, as the same is being defined by Congress and the courts, will be petitioning to be brought under the most-favored-nation treatment.

At this stage Congress will then be close to declaring that due process requires equal assessments rather than working under the interstate commerce clause. When this develops, then where is the logic not to apply the principle to income tax as well as property tax? And then what about the preferred treatment which Congress and States have seen fit to give certain industries? Isn't this then discriminatory? It has to be because reasonable classifications are declared discriminatory by H.R. 4972.

If we are truly concerned about the different treatment of interstate commerce carriers, then why not strike the words "a higher" and insert "any other"?

SUBSECTION (2)

Once the policy dispute is resolved, then it is necessary to make a serious study of the needed remedy. This is the very reason why current and detailed statistics on all the States are necessary. It would appear that the committee would want to know exactly what States discriminate, the degree of such discrimination, whether discrimination is by administrative practice or by law, and if by administrative practice, whether such is sanctioned by the courts of the particular jurisdiction. The committee is urged to have its own finding to rely upon or to afford adequate opportunity for both sides to verify the statistics relied upon. Further, it is questioned whether the Federal judicial process is any speedier than State judicial processes in those States where there is a significant delay before trial.

A proper grouping of the several States is necessary in order to determine whether or not a new and different remedy is needed, especially in light of basic policy innovations made in subsection 1.

If discrimination is by law, then adoption of subsection 1 will immediately invalidate many State statutes and constitutional provisions, at least so far as they apply in their operation to interstate commerce carriers. In these instances, it is submitted, there is no need shown for a new and unique Federal remedy. Certainly the State courts should not be judged as having failed to comply with Federal law, especially when they have not had the opportunity to do so.

If discrimination is the result of administrative practices, then it is necessary to determine if such action is sanctioned by the highest courts of the State. There is no reason to take away jurisdiction from State courts and place it in Federal courts unless the complainant has at least made a bona fide attempt to exhaust State remedies.

In addition to determining the true position of the States at the present time, it would appear advisable for the committee to seek advice as to present remedies available in the Federal courts. With a clear statement of public policy as subsection 1 would be, it is very possible that adequate remedies already exist and need only be tried.

Certainly a procedure which will: (1) increase the Federal court docket; (2) hinder, delay, and confuse the administration of State and local taxes; (3) deprive State courts of the right to determine State tax questions; and (4) jeopardize State and local revenue flows, should not be adopted unless there is a need for such a drastic remedy.

Even if there is a need for wholesale remedial changes, certain of those provided in subsection 2 should not be adopted.

First, the power to restrain by injunction the assessment, levy, and collection of any tax is basically foreign to good government and is contrary to existing Federal policy. See section 1341, United States Code, title 28. Not only does this disrupt efficient tax administration, but it may also seriously deprive local governments of revenue when needed. On the other hand, it is not fair to require taxes to be paid, and, if illegality is determined at some future date, to repay only the amount originally paid. Certainly a provision requiring State and local governments to pay interest on the portion declared illegal at the same rate as is charged delinquent taxpayers would not be unfair. This approach would appear to be a reasonable compromise, protecting both State and local governments and the taxpayer.

Second, subsection 2 provides that State remedies do not have to be exhausted. It is requested that those States which provide adequate State remedies not be punished for the omissions of others unless absolutely necessary. It is, therefore, suggested that the exhaustion of State remedies be required except in those situations where one or more of the following exists: (1) State constitutional or statutory provisions are contrary to subsection one; (2) administrative practices which result in discrimination have been sanctioned by the highest court of the State or where said court has refused to hear or determine the validity of such practices; (3) administrative practices have continued discrimination despite State court decisions to the contrary; and (4) a determination cannot be had through an appeal to a single administrative agency with further court appeals to a court having statewide jurisdiction.

In essence, Congress would be defining for purposes of Interstate Commerce what is not a "plain, speedy, and efficient remedy in State courts." It would then be unnecessary to change or amend section 1341 of title 28 of the United States Code. Further, this would leave the threat of injunction or other Federal process for those States which do not provide adequate State remedies for interstate commerce.

Certainly the approach and possible alternatives which I have proposed here will involve some effort. However, it is well-spent effort for those of us who believe we must make every effort to preserve the integrity of the States in our Federal system of government.

CONCLUSION

I reaffirm the support of Nebraska and our endorsement of the statements made by other States. Further, Nebraska is opposed to the legislation contemplated in H.R. 4972. However, if the committee's judgment is different from that of Nebraska, I would respectfully urge the committee to consider the proposals I have made. Certainly I believe the solutions discussed above would be more acceptable than those proposed.

The CHAIRMAN. This will conclude the hearings on this and allied bills. The record will be held open for 5 days for any other statements to be submitted for the record.

The committee will adjourn.

(The following material was submitted for the record:)

STATEMENT OF LYNN POTTER, CHAIRMAN OF THE IOWA STATE TAX COMMISSION

H.R. 4972 contains a basic provision appearing to insure common carriers against an assessed value being ascribed to their property by any State or subdivision at a higher ratio to "true market value" than is used in determining the assessed valuation of all other property in such district.

While assertion of this basic equitable principle is laudable, the questions of its necessity becomes serious when it is realized that such principle is already resident in State laws and that such relief for aggrieved taxpayers, as is available to all other taxpayers, is abundantly available to taxpayers who are common carriers. Since the States already have the principle of this bill included in their statutes and indelibly expressed in common law, it seems that a repetition in a Federal public law is nothing more or less than redundancy.

Paragraph 2 of the bill takes away from the States jurisdiction to enforce the statutes the States already have which assert the right of all taxpayers to have their property assessed on the same ratio as all other property.

Can it be that common carriers are a class apart and entitled to special Federal legislation which other taxpayers are denied?

The assessment of the property of common carriers is accomplished in most States by a central State assessment authority. Central assessing authorities have commonly followed the statutes of their States, have often been the subject of suits of common carrier groups and individual entities and have been subjected to widespread hypercriticism; but have never been exempted from suits in the proper State courts relating to the exercise of their assessment power. If the courts of the States obliged to sit in judgment of the action of all assessing bodies are to be circumvented so that their judgment applies only to property other than that of common carriers, it is questionable whether a consistency between the assessment of all other property and the assessment of the property of common carriers could ever be on the same basis.

In essence this bill splits the jurisdiction between the State court systems and the Federal court system. It is difficult enough for State court systems to be consistent without the additional jeopardy of adding another voice to the confusion.

Beyond the discrimination between jurisdictions proposed in this legislation by assignment of some jurisdiction to Federal courts and some jurisdiction to State courts lies the very practical fact that Federal district court dockets are still sufficiently crowded to postpone justice.

The practical truth is that suits initiated in Federal district courts may be continued from time to time, and in the meantime taxing districts sorely in need of revenue might be denied any revenue at all from the assessment and levy upon the property of common carriers.

Armed with the provisions of H.R. 4972, common carriers might find a way to postpone paying property taxes for many years in many districts with resulting overburdening of other taxpayers liable for property tax to those districts and the unjust enrichment through lack of assessment and levy of the common carriers.

If common carriers did not have the same redress to the courts of the State as other taxpayers, justification would be substantial for a measure such as H.R. 4972. The simple fact is that no such situation exists. Common carriers have come into State courts, have had their grievances redressed, and have, in many instances, obtained advantages not shared by other taxpayers. To give them the choice of going through the State courts or the Federal courts for redress of grievances is to give them a right and privilege which is patently denied other taxpayers.

In Iowa, interstate commerce receives the same rights and privileges granted to domestic commerce. Interstate taxpayers are granted the same rights and privileges that intrastate taxpayers enjoy. In addition interstate entities armed with Federal public laws have demanded and all too often received more favorable treatment than domestic property owners can possibly receive under State statutes.

If this bill becomes law, the promise that States make in their statutes and in their common law that all taxpayers shall be treated equally will become an impossibility. States cannot possibly honor their commitments when those commitments are subjected to separate jurisdictions over which the States have no control.

Conceivably interstate common carriers could find themselves in a position of unequal treatment by reason of a Federal court decision being more stringent upon them than the State statutes or the decision of the State courts. It is possible that interstate carriers could either be placed in a position of advantage or be placed in a position of disadvantage under the provisions of this act with resulting loss of equity they may now enjoy, by reason of divergence of judgment on the part of the two court systems.

In a very real sense interstate carriers are now insured against inequity by State statutes and by State jurisdictional procedures. A demand for separate treatment is a demand for special treatment and a demand for special treatment is a passport to inequity.

STATEMENT ON BEHALF OF THE STATE OF WYOMING ON H.R. 4972

On behalf of the State of Wyoming the following statement is hereby presented to the Committee on Interstate and Foreign Commerce of the U.S. House of Repre-

sentatives for the record. The State would have made formal application to appear before the committee, but we received absolutely no notice of the hearings.

First of all, we wish to completely concur and join in the statement and testimony given by Mr. Charles Conlon, of the National Association of Tax Administrators. Wyoming's Congressman, Teno Roncalio was a sponsor of H.R. 5310 which is one of the companion bills to H.R. 4972. We have since notified Congressman Roncalio of our complete opposition to such legislation and our reasons therefor and he has agreed to reconsider his position in the light of the complete testimony before your committee. We did not learn of the hearings on this legislation before we arrived in Washington, D.C., to testify before another committee with regard to H.R. 11798 and then immediately made arrangements to submit our testimony as soon as possible in the hope that the same could be included in the record. In case we are too late we beg that our testimony be inserted anyway if this can possibly be done as we believe that what we have to say will be valuable to the committee.

We have been involved in litigation with the Chicago, Burlington & Quincy Railroad and have thus acquired certain information in this regard which will have special pertinence. In the preparation of our case we had occasion to review the history of railroad taxation. When the railroads had virtual monopoly for so many, many years they gave little if no consideration to taxes because they merely passed them on to their customers. Thus this actually was a bit of indirect taxation of the people which was indulged in by both the railroads and the tax administrators; hence any errors which were made by the tax administrators of the various States were left uncorrected, and we submit that this was at least in part the fault of the railroads. Regardless of the skill of the tax administrator in appraising, he cannot possibly learn and know as much about the railroad's property as the railroad itself. Now that the railroads have considerable competition they have begun to object to the ad valorem taxes and there have been consequent reforms and adjustments. There have been tremendous adjustments in the last 10 or more years, but the railroads have tried to take advantage of this situation and push it far beyond the point of fair adjustment.

To be sure, some States might still be remiss in their taxation of railroads, but the railroads like any other taxpayer have adequate recourse in State courts. This has been proven in this last year alone in Nebraska and Illinois and probably other States as well.

The bill purports to give original jurisdiction to the Federal district courts to hear and determine interstate carrier tax disputes, but does not take the jurisdiction of this subject matter away from the State courts. On the face this seems to be harmless enough, and this is probably why our Congressman was inclined to sign the bill and testify thereon. However, when one looks a little deeper into the situation and the ramifications of the bill the rather substantial and sweeping changes which this provision alone creates become more clear. It would appear that the fundamental rule of law that one must first exhaust his administrative remedies before seeking judicial review is abrogated. This rule of law is steeped in judicial precedent and wisdom. The original tribunal must be given the first chance to correct its mistakes before seeking review. This is especially true concerning administrative agencies which are expert in their field of responsibility. Wyoming like most, if not all other States provides for an administrative protest hearing. This is a very speedy and expeditious remedy. We attach hereto as exhibit I our administrative rule which provides for this hearing. The inference of the bill and some of the testimony before your committee is that the tax administrators are prejudiced against the railroads and that they have a definite interest in collecting as much money for the State as possible from the railroads. We suggest that this is completely unjustified, false and uncalled for. The only interest of the tax administrators is to administer the State tax laws as fairly and proficiently as possible. All the testimony before your committee, especially that of James N. Ogden, president and general counsel for Gulf, Mobile & Ohio Railroad Co., concede that all the taxation laws of all the States are completely satisfactory if properly administered.

There is also a very serious inference in the bill and the testimony that State courts do not afford unbiased forums for hearing railroad tax appeals. This is a terrible slap in the face to not only the States, but also to all the lawyers and judges of the various States. We intend to take this matter up with the State and American Bar Associations. There is not one iota of evidence or justification to support this inference. Such suggestions are libelous and scandalous, and tend to smack against one of the branches of our Government which has a

longstanding heritage steeped in respect and justice. Most, if not all, tax litigation does not involve a jury trial. Checking the history of railroad litigation, only a very small and insignificant number of State railroad cases have been reversed by the Federal courts. As mentioned before, the State courts stand ready and have not been afraid to strike down State railroad tax assessments.

We suggest that most of the testimony in favor of the bill has been biased and distorted by railroad interests who are seeking this special legislation. For example, Mr. Ogden's appendix A shows that the State of Wyoming in 1964 assessed railroad property at 60 percent of their true market value and only assessed other property at 20 percent. This is completely untrue. Wyoming attempts to assess all property in accordance with the uniformity requirements in its constitution. We believe that, with the exception of mineral production, no property is assessed in excess of 30 percent of its true value in Wyoming, and there is reliable evidence that the average percentage of assessment to true value is 25 percent. Our tax experts have attempted to assess railroad property at 25 percent of true value.

Exact justice in matters of taxation is not possible; however, Wyoming is making a constant effort to equalize all classes of property as is required by law.

This brings us to a rather interesting subject, to wit, how to value railroads for ad valorem tax purposes. In our litigation with the Chicago, Burlington & Quincy Railroad, and in hearing and considering protests by other railroads, never did the railroads attack our property valuations as such, rather they challenged our theory of assessment. It has been their contention that the railroad property was worth only what it could produce and that we should only consider income and capital stock values. Of course, income can be hidden and the management efficiency can also cause substantial variations. Further, the average market value of stock does not include the value of complete or even controlling ownership. The plain truth is that a property tax is just that, i.e., a tax on property. A rancher or homeowner must pay a tax on the cost of purchasing their property regardless of whether it earns them a cent. The district court and the Supreme Court of the State of Wyoming stated that logic dictates and the Wyoming taxation laws with regard to railroads provide that certain things should be considered in valuing a railroad, and that as long as this was done and the proper figures used, the tax administrators were acting properly. The court also stated that the administrators were not bound to follow any specific formula or theory such as the railroad attempted to push off on them. By the way, this formula would have left absolutely no discretion to the administrators, but rather would bind them to a mathematical formula. Without attempting to be conceited, we tax administrators are supposed to have at least some special knowledge of taxation and property valuation.

The railroads offered such testimony as was given to this subcommittee. Most of it was biased and distorted. The committee should analyze these statistics by asking themselves who gathered and compiled this material and for what purpose. Another example of the type of evidence the railroads produce is actual sales price of various railroads. Upon analyzing these figures it will be seen that they are altogether unreliable because they are either distress or bankrupt sales or are not arm's-length transactions. Even the Supreme Court of Illinois who struck down its State's assessment came to this conclusion concerning these figures.

The States are not hideous moneygrabbers as some of the testimony would lead you to believe. Although Wyoming was successful in its litigation with the Chicago, Burlington & Quincy Railroad, its assessed valuations of the railroads continue to be reduced. (The litigation concerned the 1962 assessment. The railroad filed appeals for 1963 and 1964. After the 1965 assessment the railroad not only did not appeal the 1965 assessment, but also dropped the 1963 appeal. Currently we are litigating the 1964 appeal.) Furthermore, of its own volition, the State board of equalization has engaged a professional appraisal firm to completely reevaluate all railroads within the State of Wyoming. This will not be available for the current assessment year, but certainly will be available for the next.

Another objection to the bill is that the Federal dockets are usually crowded while the State courts are not. This causes considerable delay and the functions of government must continue regardless of whether or not all the tax moneys are collected. In fact, the Congress in many instances has enacted laws which specifically provide that no injunction can be issued with regard to many Federal taxes. The general rule is that an injunction can only be issued to restrain the collection of an illegal rather than an excessive or otherwise improper tax

Even then, a bond must be posted to protect the public revenues. It is not clear that this safeguard must still be followed under the provisions of the bill. We attach several exhibits as appendixes to this statement which are self-explanatory.

SUMMARY

We vigorously oppose H.R. 4972 and any similar legislation. There is no need for such legislation and the enactment of the same would disrupt the complete property taxation setup of most of the States. The problem has been distorted and exaggerated out of proportion by the testimony of the railroad interests. The inferences which impinge on the integrity of the State tax adminisrators and State courts are scandalous, libelous, absurd, and completely unjustified and unsupported. The States should be left alone to correct their problems in this very sacred and sovereign area concerning their taxation and revenues, especially because the railroads have just, speedy, and adequate remedies before the State taxing agencies and State courts. We wish to make it clear, however, that the reasons for which we oppose the bill are those hereinbefore set forth. We do not anticipate that the result of any litigation in the Federal courts would differ from the result of the same litigation in the State courts. We hold the integrity and impartiality of the former courts in just as high regard as we do the latter. Finally, we wish to strongly urge that this type of legislation is inconsistent with our federal system.

Respectfully submitted.

STATE BOARD OF EQUALIZATION FOR THE STATE OF WYOMING,
RICHARD J. LUMAN, *Chairman*,
FRANCIS HILLARD, *Member*,
RUDOLPH ANSELMI, *Member*.

Attest:
[SEAL]

ALEX J. ELIOPULOS, *Secretary*.

EXHIBIT I

CHAPTER 11–A—AD VALOREM TAX—ASSESSMENTS BY THE BOARD

Section 1. *Notice and Hearing.*

a. All taxpayers assessed for ad valorem tax purposes by the Board shall be notified of their respective final, true and assessed valuations on or before the first week day in June. All taxpayers protesting their respective valuations shall file their protests with the Board no later than eighteen (18) days from and after the date such notification was placed in the United States mails. After receiving a protest, the Board shall set the protest down for oral hearing if it thinks that oral hearing is necessary and shall deposit a notification of the time of hearing in the United States mail with proper postage affixed and properly addressed to the protesting taxpayer no later than seven (7) days before the date of the oral hearing.

For the purposes of this section the term "week day" shall mean Monday, Tuesday, Wednesday, Thursday or Friday.

b. The filed protests shall include the materials and be in compliance with the requirements of Sections 6 and 7 in Chapter I.

c. This rule and any amendments thereto shall appear on and be attached to all notifications of valuation when sent by the Board to a respective taxpayer.

EXHIBIT II

EXCERPTS FROM THE MINUTES OF THE STATE BOARD OF EQUALIZATION

Brief résumé of minute references to Chicago, Burlington & Quincy assessments since 1924.

July 16, 1924: Motion passed denied application of various railroads for reduction on basis that real property in State assessed at full and true value as are railroads.

July 12, 1926: C.B. & Q. did not appear to protest 1926 valuation which was set for this date so no hearing held.

July 25, 1927: C. B. & Q. appeared and protested its 1927 assessment.

July 30, 1927: Final valuation on railroads fixed. No change from tentative valuations.

June 28, 1928: C.B. & Q. appeared and made oral argument in support of written objection to 1928 value.

July 10, 1928: Board used several factors in arriving at railroad valuations including stocks and bonds and net earnings capitalized at 7 percent (see State board of equalization minutes at p. 84 of vol. 9).

July 6, 1929: Final valuations on railroads fixed. No mention of any protest by C.B. & Q.

July 10, 1930: C.B. & Q. representatives met with board but made no formal objection to 1930 assessment.

July 23, 1930: Final valuations on railroads fixed for 1930.

July 23, 1931: Final valuations on railroads fixed for 1931.

May 28, 1932: Minutes stated: "After considering all the evidence presented on behalf of the railroads (C.B. & Q. was listed as present) the board very carefully made a recheck of the returns submitted and arrived at the final valuations for all railroad companies as hereinafter set out *with the express understanding that such value is placed on the property of the various railroad companies in Wyoming on account of the poor financial condition of such companies and not as representing the true value of such property nor as an acknowledgement of precedent for future consideration of the value of such companies.*" [Emphasis supplied.]

June 14, 1932: C.B. & Q. appeared and protested 1933 assessment.

June 19, 1933: Final valuations fixed on railroads.

June 8, 1934: Final 1934 valuations on railroads set with no protests noted.

June 7, 1935: Final 1935 valuations on railroads set with no protests noted.

May 21, 1936: "The board this day determined values of the railroad companies' *physical properties* (emphasis supplied) in Wyoming for taxation for the year 1936, and set same."

June 12, 1936: Board met with C.B. & Q. representatives relative to tax value for the year 1936.

June 16, 1936: Board reviewed the assessment of the C.B. & Q. together with the protest and showing made by said company on June 12 and placed a final value for tax purposes for the year 1936 in the amount of $24,629,841.

June 25, 1937: Board reviewed tentative values on C.B. & Q. and others and declared the tentative value as set to be the final value for taxation purposes for the year 1937.

June 13, 1938: Discussed C.B. & Q. assessment for 1938 with its representatives and took the matter under advisement.

June 15, 1938: Fixed final 1938 valuation on C.B. & Q. same as tentative.

June 12, 1939: Tentative valuations on railroads set for 1939.

June 28, 1939: C.B. & Q. representatives protested 1939 assessement.

June 30, 1939: Final valuations set on railroads for 1939.

June 19, 1940: Tentative valuations on railroads set for 1940.

July 2, 1940: C.B. & Q. representatives protested 1940 assessment.

July 9, 1940: Final valuations set on railroads for 1940.

June 16, 1941: Tentative valuations on railroads set for 1941.

July 1, 1941: No protest shown by C.B. & Q. on 1941 tentative assessment.

July 3, 1941: Final valuations on railroads set for 1941.

June 11, 1942: Tentative valuations set on railroads for 1942.

June 26, 1942: Final valuations on railroads set for 1942. No protest noted for C.B. & Q.

May 19, 1943: Tentative valuations on railroads set for 1943.

June 9, 1943: Final valuations on railroads set for 1943. No protests noted.

May 19, 1944: Tentative valuations set on railroads for 1944.

June 13, 1944: Final valuations on railroads set. No protests.

June 5, 1945: Tentative valuations set on railroads for 1945.

June 11, 1945: Board discussed 1945 tentative valuation of C.B. & Q. with company representatives.

June 26, 1945: Final valuations on railroads set for 1945. No protests noted.

May 29, 1946: Tentative valuations set on railroads for 1946.

June 21, 1946: Final valuations on railroads set for 1946. No protests noted.

May 27, 1947: Tentative valuations set on railroads for 1947.

June 17, 1947: Representatives of C.B. & Q. appeared and protested 1947 tentative assessment.

May 28, 1948: Tentative valuations set on railroads for 1948.

June 18, 1948: Representatives of C.B. & Q. appeared and protested 1948 tentative assessment.

June 21, 1948: Final valuations set on railroads for 1948.
May 31, 1949: Tentative valuations set on railroads for 1949.
June 17, 1949: Representatives of C.B. & Q. appeared and protested 1949 tentative valuation and certain adjustments were made (minutes do not show detail).
May 20, 1950: Tentative valuations set on railroads for 1950.
June 14, 1950: Representatives of C.B. & Q. appeared and protested 1950 tentative valuation. No change made by board (no minute entry on 1951 tentative valuation).
June 28, 1951: Representatives of C.B. & Q. appeared and protested 1951 assessment.
July 5, 1951: Final valuations set on railroads for 1951.
June 6, 1952: Tentative valuations set on railroads for 1952.
June 24, 1952: Representatives of C.B. & Q. appeared and protested 1952 assessment.
July 8, 1952: Final railroad valuations fixed for 1952.
May 29, 1952: Tentative valuations set on railroads for 1953.
June 15, 1953: Representatives of C.B. & Q. appeared and protested 1953 assessment and presented a number of exhibits showing net railway operating income and the average market value of securities.
July 1, 1953: Final valuations on railroads for 1953 fixed same as tentative.
May 28, 1954: Tentative valuations set on railroads for 1954.
June 18, 1954: Representatives of C.B. & Q. appeared and protested the 1954 assessment. Final valuations were fixed this day.
June 10, 1955: Tentative valuations set on railroads for 1955.
June 28, 1955: Representatives of C.B. & Q. appeared and protested its 1955 assessment. Statements and exhibits were presented in support of protest.
July 6, 1955: Final valuations on railroads for 1955 fixed with certain adjustments.
June 12, 1962: Mr. R. R. Lines, appeared on behalf of the Union Pacific Railroad Co. and the Oregon Short Line Railroad Co. and thanked the board for its consideration in fixing the 1962 valuation on its property.
June 20, 1963: Mr. R. R. Lines, appeared on behalf of the Union Pacific Railroad Co. and the Oregon Short Line Railroad Co. and thanked the board for its consideration in fixing the 1963 valuation on its property.
Mr. R. R. Lines is the head tax official of the Union Pacific Railroad.

EXHIBIT III

Chicago, Burlington & Quincy Railroad tonnage handled each year, 1933–63 [1]

	Tons (2,000 pounds)		*Tons (2,000 pounds)*
1933	23,944,824	1949	45,882,336
1934	25,126,645	1950	49,056,732
1935	25,454,988	1951	53,344,607
1936	31,397,941	1952	50,264,564
1937	32,661,256	1953	50,236,447
1938	28,131,527	1954	47,616,718
1939	29,419,597	1955	49,183,080
1940	31,014,014	1956	50,130,458
1941	38,121,460	1957	47,131,182
1942	49,260,890	1958	47,607,839
1943	55,896,010	1959	48,817,715
1944	57,091,760	1960	47,272,863
1945	56,142,477	1961	48,328,695
1946	51,574,135	1962	52,346,451
1947	56,892,233	1963	54,092,128
1948	54,530,625		

[1] From annual reports to Public Service Commission. Account 541.

EXHIBIT IV

Comparison of railroad assessments in Wyoming, 1955–65

	Assessed valuation	Amount of decrease from previous year	Percent of decrease
Chicago, Burlington & Quincy RR. Co.:			
1955	24,866,994		
1956	24,772,839	94,155	0.38
1957	24,297,365	475,474	1.92
1958	24,298,752	[1] 1,387	[1] .006
1959	23,306,451	992,301	4.08
1960	22,731,772	574,679	2.47
1961	21,284,413	1,447,359	6.37
1962	20,719,660	564,753	2.65
1963	19,978,427	741,233	3.58
1964	19,275,171	703,256	3.52
1965	17,610,255	1,664,916	8.64
Total		7,162,584	[2] 28.8
Chicago & North Western Ry. Co.:			
1955	2,766,819		
1956	2,671,062	95,757	3.46
1957	2,418,731	252,331	9.45
1958	2,297,734	120,937	5.00
1959	2,090,103	207,691	9.04
1960	1,865,122	224,981	10.76
1961	1,756,690	108,432	5.81
1962	1,658,694	97,996	5.58
1963	1,523,194	135,500	8.17
1964	1,457,784	65,410	4.29
1965	1,266,785	190,999	13.10
Total		1,500,034	[2] 54.22
Colorado & Southern Ry. Co.:			
1955	3,596,638		
1956	3,580,224	16,414	.46
1957	3,426,599	153,625	4.29
1958	3,420,895	5,704	.17
1959	3,130,086	290,809	8.50
1960	2,800,729	329,357	10.52
1961	2,571,928	228,801	8.17
1962	2,446,692	125,236	4.87
1963	2,343,580	103,112	4.21
1964	2,310,444	33,136	1.41
1965	2,308,282	2,162	.09
Total		1,288,356	[2] 35.82
Oregon Short Line RR. Co.:			
1955	5,941,545		
1956	5,918,482	23,063	.39
1957	5,838,661	79,821	1.35
1958	5,797,411	41,250	.71
1959	5,624,736	172,625	2.98
1960	5,475,476	149,310	2.65
1961	5,351,477	123,999	2.26
1962	5,248,914	102,563	1.92
1963	5,163,194	85,720	1.63
1964	5,111,562	51,632	1.00
1965	4,884,983	226,579	4.43
Total		1,056,562	[2] 17.78
Union Pacific RR. Co.:			
1955	52,585,202		
1956	52,384,739	200,463	.38
1957	52,048,421	336,318	.64
1958	51,594,971	453,450	.87
1959	50,091,907	1,503,064	2.91
1960	49,059,101	1,032,806	2.06
1961	48,053,948	1,005,153	2.05
1962	47,115,431	938,517	1.95
1963	45,944,775	1,170,656	2.48
1964	45,421,942	522,833	1.14
1965	44,339,543	1,082,399	2.38
Total		8,245,659	[2] 15.68

[1] Increase.
[2] Since 1955.

EXHIBIT V

Assessed valuations of class I railroads in Wyoming since 1930

Year	Chicago, Burlington & Quincy RR.	Chicago & North Western Ry.	Colorado & Southern Ry.	Oregon Short Line RR.	Union Pacific RR. Co.
1930	$27,692,772	$7,970,916	$3,844,691	$5,942,312	$43,071,204
1931	27,675,345	7,881,004	4,297,108	5,752,620	43,473,252
1932	25,738,071	7,329,334	3,834,229	5,411,560	40,350,986
1933	24,890,744	7,082,363	3,631,438	5,232,264	39,097,830
1934	24,890,744	7,000,000	3,631,438	5,218,466	39,249,576
1935	24,700,347	5,520,751	3,545,168	5,108,581	40,000,076
1936	24,629,841	4,816,486	3,540,948	5,308,698	40,434,344
1937	24,642,750	4,816,486	3,470,133	5,438,270	41,495,523
1938	24,762,756	4,238,508	3,546,110	5,417,413	41,354,280
1939	24,761,686	4,013,508	3,470,493	5,727,164	41,354,541
1940	22,787,395	3,427,536	3,322,361	5,410,322	41,350,125
1941	22,552,721	3,290,435	3,279,955	5,464,425	41,763,626
1942	22,391,933	3,218,816	3,170,492	5,591,720	42,818,083
1943	22,747,469	3,234,677	3,232,361	5,611,005	43,452,604
1944	22,639,134	[1] 2,590,326	3,110,688	5,631,978	44,154,543
1945	22,922,698	2,670,377	3,212,955	5,695,854	44,669,762
1946	23,200,977	2,670,377	3,214,478	5,573,301	44,650,602
1947	23,427,861	2,699,901	3,227,838	5,612,340	45,187,751
1948	23,744,984	2,708,172	3,248,429	5,602,170	45,656,369
1949	24,007,475	2,902,357	3,336,819	5,704,603	45,918,376
1950	24,295,270	2,902,357	3,541,618	5,706,282	47,920,399
1951	24,652,048	2,814,852	3,541,618	5,813,920	48,626,159
1952	24,671,719	2,814,852	3,550,106	5,906,342	49,670,146
1953	24,667,176	2,810,435	3,543,068	5,979,645	[2] 52,515,905
1954	24,682,586	2,774,332	3,596,638	5,980,555	52,528,151
1955	24,866,994	2,766,819	3,596,638	5,941,545	52,585,202
1956	24,772,839	2,671,062	3,580,224	5,918,482	52,384,739
1957	24,297,365	2,418,731	3,426,599	5,838,661	52,048,421
1958	24,298,752	2,297,794	3,420,895	5,797,411	51,594,971
1959	23,306,451	2,090,103	3,130,086	5,624,786	50,091,907
1960	22,731,772	1,865,122	2,800,729	5,475,476	49,059,101
1961	21,284,413	1,756,690	2,571,928	5,351,477	48,053,948
1962	20,719,660	1,658,694	2,446,692	5,248,914	47,115,431
1963	19,978,427	1,523,194	2,343,580	5,163,194	45,944,775
1964	19,275,171	1,457,784	2,310,444	5,111,562	45,421,942
1965	17,610,255	1,266,785	2,308,282	4,884,983	44,339,543

[1] 84.03 miles of main track removed in 1943.
[2] 43.00 miles of main track added in 1952.

EXHIBIT VI

Percentage changes in ad valorem assessed valuation of various types of property in Wyoming from 1962 through 1965

	Percent of increase	Percent of decrease
Grazing lands	28.5	
Dry farmlands	25.0	
Pipelines	5.0	
Electric utilities	5.0	
Chicago, Burlington & Quincy RR		6.92

EXHIBIT VII

Chicago, Burlington & Quincy R.R. Co. betterments and/or additions

Year added:		Year added—Continued	
1955	($1,014,602)	1961	37,849
1956	(124,540)	1962	(14,760,654)
1957	15,047,040	1963	6,970
1958	(68,297)	1964	102,474
1959	475,320	1965	[1]
1960	82,083		

[1] Not available at this time.

NOTE.—Figures in parentheses represent decreases.

EXHIBIT VIII

BEFORE THE STATE BOARD OF EQUALIZATION FOR THE STATE OF WYOMING

GENERAL ORDER NO. 2, 1962

(Buildings and/or structures)

In the Matter of an Adjustment in the Boeckh System of Valuation for Taxation Purposes of Building and/or Structures Located on Urban, Suburban, Rural and Industrial Property, by Changing the Equalization Factor, the Yearly Depreciation Rate and the Maximum Total Allowable Depreciation

To the County Assessor and the Board of County Commissioners of _____ County, Wyoming:

By the Board:

Whereas it is apparent to the Board that the assessed valuation of buildings and/or structures located on urban, suburban, rural, and industrial property, as calculated under the Boeckh System, are not properly equalized with other classes of property in the State; and

Therefore, under the authority vested in the Board by Section 30-26, Wyoming Statutes, 1957, as amended by Chapter 158, Session Laws of 1961,

It is hereby ordered that the following adjustments in the application of the Boeckh System in the assessment of buildings and/or structures located on urban, suburban, rural and industrial property, shall be made effective for the taxing year of 1963:

1. The equalization factor shall be changed from 60% of the depreciated 1938-39 replacement cost to 63% of such cost.
2. The annual normal rate of depreciation of such buildings and/or structures shall be changed from two (2%) percent per year to one (1%) percent per year.
3. The maximum normal total allowable depreciation shall be changed from 60% to 56%.

It is further ordered that the County Assessor and the County Commissioners of _____ County shall take the necessary steps to carry out the provisions of this order as above set forth so that changes in the valuations of buildings and/or structures located on urban, suburban, rural and industrial property shall be made effective for the taxing year of 1963, and so remain until further order of the State Board.

Made and entered at Cheyenne, Wyoming, this 8th day of May A.D. 1962.

STATE BOARD OF EQUALIZATION FOR THE STATE OF WYOMING,

ALBERT P. BRUCH, *Chairman.*
WALTER W. HUDSON, *Member.*
WM. "SCOTTY" JACK, *Member.*

Attest:
[SEAL] D. W. DAHLMAN, *Secretary.*

EXHIBIT IX

STATE BOARD OF EQUALIZATION OF WYOMING,
Cheyenne, Wyo., December 20, 1965.

AD VALOREM TAX DEPARTMENT

GENERAL ORDER NO. 2, 1966

(Inventories)

To the Honorable Chairman, County Board of Equalization and the County Assessor:

By the Board: Pursuant to the authority granted to the State Board of Equalization under Section 39-26, Wyoming Statutes of 1957, this Order is hereby certified to you in accordance therewith.

It is hereby ordered that merchandise inventories, including consigned and floor planned property, be assessed for the year 1966 at 30% of the average inventory, at cost F.O.B. point of assessment.

It is further ordered that S. B. of E. Form No. 23 (Inventory), be used to obtain factual information on which to base inventory assessments for the year 1966.

Dated at Cheyenne, Wyoming, this 20th day of December A.D. 1965.

STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING,
RICHARD J. LUMAN, *Chairman.*
FRANCIS HILLARD, *Member.*
RUDOLPH ANSELMI, *Member.*
ALEX J. ELIOPULOS, *Secretary.*

Attest:

EXHIBIT X

STATE BOARD OF EQUALIZATION OF WYOMING,
Cheyenne, Wyo., December 20, 1965.

AD VALOREM TAX DEPARTMENT

GENERAL ORDER NO. 3, 1966

(Used Motor Vehicle & Farm Machinery Inventories)

To the Honorable Chairman, County Board of Equalization and the County Assessor:

By the Board: Pursuant to the authority granted to the State Board of Equalization under Section 39-26, Wyoming Statutes of 1957, this order is hereby certified to you in accordance therewith.

It is hereby ordered that used motor vehicle inventories be assessed for the year 1966 at 30% of the average inventory. Value of said inventory to be based on average loan values as shown by the Official Usd Car Guide, Moutain States Edition, issued by the National Automobile Dealers Association, including accessories and equipment. Average loan value to be used rather than average wholesale value in order to make an additional allowance for average reconditioning costs. The County Assessors shall exercise their best judgment as to the value of used motor vehicles in unusually poor, obsolete or unusually good condition.

It is further ordered that used farm machinery inventories be assessed on the same basis as has been ordered for assessment of used motor vehicle inventories, using the Official Tractor and Farm Equipment Guide as a base.

Dated at Cheyenne, Wyoming, this 20th day of December A.D. 1965.

STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING,
RICHARD J. LUMAN, *Chairman.*
FRANCIS HILLARD, *Member.*
RUDOLPH ANSELMI, *Member.*
ALEX J. ELIOPULOS, *Secretary.*

Attest:

EXHIBIT XI

STATE BOARD OF EQUALIZATION OF WYOMING,
Cheyenne, Wyo., December 20, 1965.

AD VALOREM TAX DEPARTMENT

GENERAL ORDER NO. 4, 1966

(Personal Property)

To the Honorable Chairman, County Board of Equalization and the County Assessor:

By the Board: Pursuant to the authority granted to the State Board of Equalization under Section 39-26, Wyoming Statutes, 1957, this Order is hereby certified to you in accordance therewith.

It is hereby ordered that the "Official Tractor and Farm Equipment Guide" be used as a base for assessing farm machinery for the year 1966. On new machinery use 30% of the "Current Suggested Retail Price," which is shown in the guide as "C-SRP" or "LP-SRP." On older machinery use 30% of the "Average As Is" value for the proper year.

It is further ordered that Boats be assessed on the same percentage as has been ordered for the assessment of farm machinery. Information on boat prices can be obtained from Outdoors, Inc., 103 Guitar Bldg., Columbia, Missouri.

It is further ordered that Aircraft be assessed at 30% of "Approx. Current Retail" prices as shown in the Aircraft Blue Book. This book can be obtained from Aircraft Dealers Service Association, P.O. Box 621, Aurora 8, Colorado. The subscription rate on this publication is $25.00 per year for quarterly issues, but it is our understanding that one issue can be ordered at a cost of $7.50, which should give you sufficient information. We suggest that you order the one for the 4th quarter of 1965.

It is further ordered that Commercial Furniture, Fixtures and Equipment (Line 79 on Abstract) be assessed at 25% of depreciated value (current value). Depreciation Pamphlet, S.B. of E. Form 24, ATD, with which you have been supplied, is designed to produce this result when properly applied. It is recommended that this Depreciation Pamphlet be studied carefully and that it be utilized whenever practicable.

It is recommended that the enclosed 1966 revised schedule covering Household Furniture, Refrigerators, Musical Instruments, Office Furniture, etc., be used as a guide in all counties for 1966.

It is further ordered that the enclosed 1966 schedule covering Oil Field Equipment and Tankage be used in all counties for 1966.

It is further ordered that the enclosed 1966 schedule covering Construction Machinery and Equipment be used in all counties for 1966.

Additional copies of any schedules will be mailed on request.

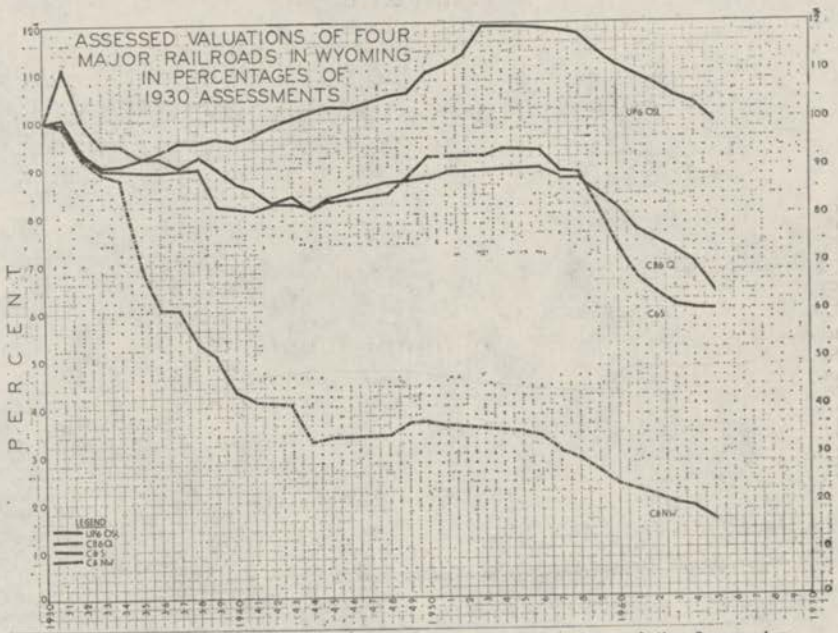
Dated at Cheyenne, Wyoming, this 20th day of December, A.D. 1965.

STATE BOARD OF EQUALIZATION FOR THE STATE OF WYOMING,
RICHARD J. LUMAN, *Chairman.*
FRANCIS HILLARD, *Member.*
RUDOLPH ANSELMI, *Member.*

Attest:

ALEX J. ELIOPULOS, *Secretary.*

EXHIBIT XII



This chart shows the percentage changes in assessed valuations of the four major railroads in Wyoming since 1930.

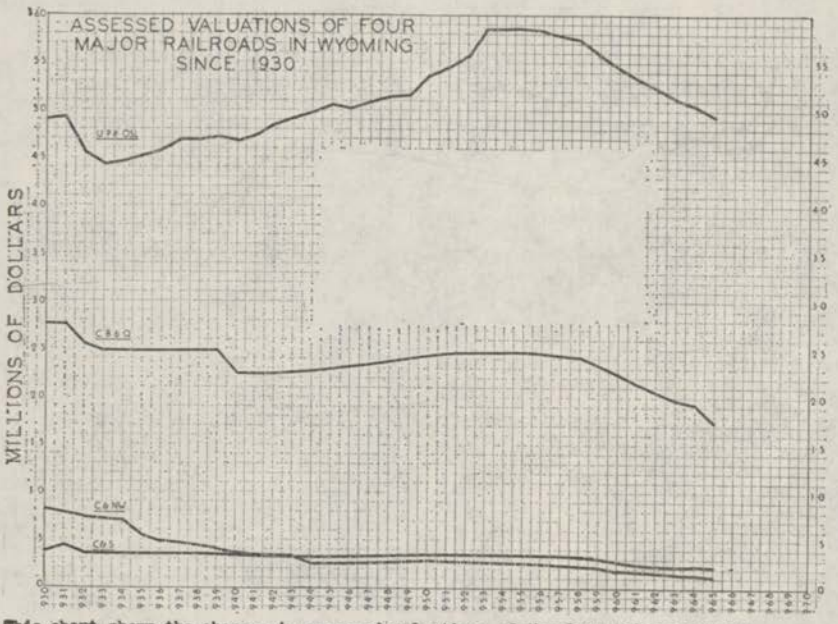
The actual figures are:

	1930	1965	Reduction of
Union Pacific Railroad Co.	100%	100.43%	.43% *
Chicago, Burlington & Quincy Railroad Co.	100%	63.59%	36.41%
Colorado & Southern Railway Co.	100%	60.04%	39.96%
Chicago & North Western Railway Co.	100%	16.09%	83.91%

*Increase

The foregoing figures were taken from official records of the State Board of Equalization and are available to the public.

EXHIBIT XIII



This chart shows the changes in assessed valuations of the four major railroads in Wyoming since 1930.

The actual figures are:

	1930	1965	Reduction of
Union Pacific Railroad Co.	$ 49,013,516	$ 49,224,526	$ 211,010 *
Chicago, Burlington & Quincy Railroad Co.	27,692,772	17,610,255	10,082,517
Colorado & Southern Railway Co.	3,844,691	2,308,282	1,536,409
Chicago & North Western Railway Co.	7,870,916	1,266,785	6,604,131

*Increase

The foregoing figures were taken from official records of the State Board of Equalization and are available to the public.

Notra Bona:
It should be pointed out that part of the reduction given to the Chicago and North Western Railroad was due to the fact that said railroad abandoned some 84.03 miles of track, and the Court should take judicial notice that this railroad is now renting CB&Q track for their needs in this area (see 13th biennial reports of the State Board of Equalization, 1943-1944)

STATEMENT OF THE DEPARTMENT OF REVENUE, STATE OF SOUTH DAKOTA

BACKGROUND

In 1957 South Dakota State Legislature enacted a law whereby real estate and personal property would be assessed at 60 percent of its market value rather than, as formerly at full and true value or 100 percent. This procedure has been followed by the majority of the counties and has been retained by them with a reasonable degree of success. Inasmuch as the ad valorem tax is entirely delegated for the support of primary and secondary education and the support of local government, the State government of South Dakota does not rely on the ad valorem tax in any way for the support of State government.

Although the State government is not direct recipient of the ad valorem tax, yet it is the State department of revenue that has the responsibility of assessment and apportionment of railroad and public utilities valuations.

OBJECTION

Although the ratio of assessment of all property in South Dakota has remained at a fairly static condition from 1955 to 1965, the actual gain in dollars of taxable value has been an increase of 72.87 percent. In spite of this increase our ratio of assessments to true and full value has remained about the same due to creeping inflationary economy. Railroad company assessments, however, have been reduced by 35.34 percent during this same period. This has resulted in a reduction of the railroad companies valuations for 1955 of $35,077,035 to $22,679,714 in 1965 of a decrease of 35.34 percent. This decrease of 35.34 percent on railroads, as compared to the increase on all other property of 72.87 percent, clearly indicated that the State of South Dakota has recognized the problem of equity in arriving at the taxable valunations pertaining to the railroad problem.

In South Dakota once the initial assessments on railroads are made then the State board of equalization reviews these valuations and then proceeds to equalize these assessments to the end that all railroads are assessed equitably one to another. The State board of equalization has established very generous factors of obsolescence to compensate for any disparities.

This proves, beyond question, that the alleged discrimination against railroads as far as South Dakota assessment procedure is concerned, is unfounded and untrue.

Any injunctive procedure, provided for H.R. 4972, in the Federal courts would not accomplish any more beneficial results for the railroads than is now accomplished by a careful yearly analysis each year as made by the department of revenue and when deemed necessary by the State courts.

Knowing how greatly there is an overcrowded docket in the caseload of Federal courts, it could be a number of years before cases could be decided. This would mean that the anticipated revenue in local taxing districts could be impounded for such long duration, and that it could result in a chaotic financial situation for all districts affected.

A decision from the State Board of equalization of South Dakota can be taken and tried as a single case to the circuit court. The decision on a single county court case could be applicable to all counties in the State without the necessity of further appeal to all other counties.

A decision by the circuit court may then be followed by an appeal to the South Dakota Supreme Court.

CONCLUSION

In conclusion, it is our belief that the discrimination in assessment of common carriers is grossly exaggerated and that it stems from the selfish interests of certain railroad companies who are not honest enough to recognize the true effort which the several States have made and are making to solve this very enormous problem of equity.

STATEMENT OF EUGENE W. WARD, GENERAL COUNSEL, TENNESSEE PUBLIC SERVICE COMMISSION

Chairman Staggers and honorable members of the Committee on Interstate and Foreign Commerce, I appreciate this opportunity to present my testimony to this committee.

I am Eugene W. Ward, general counsel for the Tennessee Public Service Commission, Cordell Hull Building, Nashville, Tenn. My testimony is presented in opposition to H.R. 4972 and the 12 other bills dealing with discriminatory property tax assessments against common carriers.

The Tennessee Public Service Commission is the agency in the State of Tennessee designated by the legislature with the duty to assess for ad valorem tax purposes the property of the various railroads, motor carriers and public utilities.

I can say to you without the least hestitation or equivocation that the Tennessee Public Service Commission does not now, nor has it ever engaged in discriminatory practices in assessing the property of any motor carrier, railroad, or public utility subject to the jurisdiction of that commission.

Tennessee Code Annotated, section 67-901, charges the Public Service Commission with the duty of assessing the property of all the public utilities in odd years at its actual cash value. The commission distributes these assessments to the cities, counties and taxing district where they apply their tax rate and collect the taxes.

The commission assesses the interstate common carriers by the same formula and by the same criteria that it assesses the property of intrastate common carriers. The commission has no jurisdiction over the assessment of the property of any other citizens and residents of the State other than the public utilities, railroads, and motor carriers.

It has never been alleged that this commission has taxed differently the property of intrastate and interstate carriers.

The only problem this commission has had with interstate carriers are those carriers that do not maintain any local property in Tennessee, but who use the highways of the State of Tennessee for the sole purpose of pickup and delivery in the State or traverse the State, and these interstate carriers maintain that they do not have a situs in the State. This matter has been litigated a number of times in the courts of the State of Tennessee, and the irregular route interstate carriers have been found to have a situs in the State of Tennessee for ad valorem tax purposes. I refer you to the cases of *Jack Cole* v. *Buford Ellington*, *Howard Soher* v. *Frank Clement* and *E. & L. Transport* v. *Ellington*.

In the recent case of *Burnham Van Lines*, v. *Pentecost*, the Supreme Court of the United States on November 15, 1965, dismissed an appeal by the petitioners from the Supreme Court of Tennessee for the want of a substantial Federal question. This case held that the taxing for ad valorem tax purposes of the property of these interstate carriers and the distribution to the various cities, counties, and special taxing dstricts was not a burden on interstate commerce.

H.R. 4972 proposes an amendment to the Interstate Commerce Act to permit the U.S. district court to assume jurisdiction upon a complaint that an interstate common carrier is being discriminated against by the assessment of a property tax at a value which bears a higher ratio to the true market value of such property than the assessed value of all other property in the taxing district subject to the same property tax levy bears to the true market value of all such property.

These interstate common carriers already have this remedy of applying to the State courts or the Federal courts whenever adequate remedy is not readily available in the State courts when they feel they are being discriminated against by being taxed at a higher value than local citizens.

In the case of *Southern Railway Co.* v. *Clement*, chancery court of Davidson County, Tenn., the chancellor held that the assessment of local tax assessors in Hawkins and Loudon Counties assessing property of local citizens at less than actual cash value was illegal and void. That there was no provision for assessment of less than 100 percent of value.

Also the case of *Louisville & Nashville Railroad Co.* v. *Public Service Commission and State Board of Equalization*, civil action No. 4310, the U.S. District Court for the Middle District of Tennessee held on February 11, 1966, that the assessment by the Tennessee Public Service Commission of the property of the Louisville & Nashville Railroad Co. at actual cash value was illegal and void since other private property in the cities and counties through which the railroad operated was assessed at approximately 30 percent of value. The Tennessee Public Service Commission was made a defendant in that case so it could be enjoined from distributing the assessments to the various cities and counties. There was no allegation that the commission assessed the Louisville & Nashville in excess of 100 percent; in fact, the commission alleged that the assessment for the current biennium amounted to approximately 65 to 70 percent. The Federal court held even this amounted to discrimination.

The Louisville & Nashville did not even have to argue that the assessments were a burden on interstate commerce. The only issue determining whether the Federal court could assume jurisdiction or not was whether the railroad had "an adequate remedy in State courts." The Federal court found there was no such remedy in Tennessee at that time.

Since then the chancellor of Davidson County chancery court issued his ruling in the *Southern Railroad* case.

These cases are a step in the right direction, and it is my opinion that the situation is being corrected and is being corrected as expeditiously as if these bills were passed.

On February 24, 1966, the parties entered into an agreement whereby the Louisville & Nashville Railroad Co. would pay, under protest, its ad valorem taxes for 1965 on the basis of 85 percent of the final assessment of the State board of equalization.

A number of similar cases have been filed in other States with similar results (Kentucky and Florida).

The interstate common carriers already have an adequate and speedy remedy available to them without the adoption of H.R. 4972 and other similar bills. There is no burden in the State of Tennessee on carriers engaged in interstate commerce, but if these bills were adopted it would most certainly be a burden on the Tennessee Public Service Commission and the State board of equalization. In other words these carriers would be holding this commission responsible for the conduct of the local tax assessors even though the commission has taxed the properties of all carriers under its jurisdiction at actual cash value. To require the commission to take into consideration the tax ratio and tax rates of approximately 425 cities, counties, and special taxing districts in the State, in arriving at the amount of the tax to be distributed to these taxing bodies, would require employment of triple the personnel employed by the tax department.

Thank you for the opportunity of expressing the views of the Tennessee Public Service Commission.

STATEMENT OF NORTH DAKOTA TAX COMMISSIONER LLOYD OMDAHL, SECRETARY, STATE BOARD OF EQUALIZATION, STATE CAPITOL, BISMARCK, N. DAK.

On behalf of the political subdivisions of the State of North Dakota, I wish to express my objection to passage of H.R. 4972 as it appears before your committee.

In 1963, the North Dakota Board of Equalization, which has the responsibility for assessing public utility properties in the State, recognized that North Dakota had been leving discriminatory and unconstitutional assessments against the utilities and railroads. This became very apparent to the board when a series of court decisions were issued upholding the public utilities in cases relating to unfair assessements in other States.

The State board initiated a program in 1963 that would gradually bring all properties in the State to a common level. As a part of that program, utility assessments have been gradually adjusted.

On February 17 and 18 of this year, we held a series of conferences with the various utilities—including common carriers—to discuss the progress of this equalization program. There was unanimous agreement that the equalization program in North Dakota would be reasonable and acceptable if continued to its stated conclusion.

Since North Dakota is already taking steps to achieve the intent of H.R. 4972, we must object to the passage of this proposal. It would create two major problems that are being avoided with our own program.

1. The measure would require that railroad property be assessed at the same level as other property in each taxing district. With some 2,000 assessing districts and considerable more taxing districts, this requirement would certainly confuse and compound the problems of a presently complex tax structure. In addition, it would be difficult to determine the true assessment level in each of the taxing districts.

2. If H.R. 4972 were passed, the equalization would take effect immediately. This would result in serious disruptions in our financing of school districts and other political subdivisions since there is an admitted difference between the level of assessments of railroads and that of local property at the present time.

We recognize that some political subdivisions in our State are benefiting at the expense of others because of the lack of uniformity in assessments of local property at the present time. However, steps are being made to establish a statewide level of assessment toward which all political subdivisions will move.

Perhaps the progress being made in North Dakota is little consolation if other States are still continuing discriminatory assessment practices. However, there appears to be little justice in penalizing North Dakota for the discrimination in other States.

CONTROLLER OF THE STATE OF CALIFORNIA,
Sacramento, Calif., February 24, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: We have just received information that the Committee on Interstate and Foreign Commerce will hold hearings on March 1 and 2, 1966, on H.R. 4972 and 12 other identical bills dealing with the property tax assessments of common carriers subject to the Interstate Commerce Act.

Under the Constitution of the State of California, the property of railroads, utilities, and certain other assessees is assessed annually by the California State Board of Equalization. When assessed, such properties are subject to taxation to the same extent and in the same manner as other properties. As State controller and a member of the State board of equalization, and as chairman of the board's committee on valuation of the property of State assesses, I am quite concerned as to the effect the proposed legislation would have upon California if enacted. My fellow board members are equally apprehensive about the drastic consequences that could follow such action by the Congress.

We are unable to arrange to testify personally before the committee on the dates that have been scheduled for hearing. Nevertheless, it is our desire to express our views in opposition to H.R. 4972 and the other related bills. It is requested that our objections and views contained herein be made part of the committee record and be made available to the full committee membership.

The proposal of the bill to allow use of writs of injunction or other extraordinary judicial process in the district courts to restrain the normal tax assessment and levy procedures could cause chaos in the budgeting and other fiscal affairs of local units of government in our State. The extraordinary remedies provided by the bill could operate to suddenly cut off a substantial portion of the flow of tax moneys to local governmental units and could deprive them of their ability to operate pending the outcome of protracted litigation begun in the lower Federal courts.

The approach of the bill constitutes a most drastic departure from widely accepted principles in tax matters that have been followed by the States and by the Congress in not allowing remedies prior to payment of tax to interfere with the flow of essential funds to Government. Section 1341 of title 28, United States Code, is a recognition by Congress that extraordinary remedies should not be afforded where to do so would be disruptive of state fiscal procedures. H.R. 4972 would be a complete reversal of that philosophy by the Congress.

In California, taxes paid by the railroads represent in many local jurisdictions a substantial portion of the fiscal lifeblood of counties, school districts, and other units of local government. If this flow were interrupted by the injunctive process, chaotic conditions would surely result. For example, railroads constitute 13.9 percent of the property tax base of Lassen County; 10.3 percent of the tax

base of Modoc County; and much larger percentages of the tax bases of some of the smaller local governmental units throughout the State. Altogether the railroads pay taxes amount to approximately $30 million to California local governments. It should also be pointed out that some local governmental units operate under tax rate and debt limitations and would have no alternative sources of interim revenues to turn to in order to temporarily replace tax dollars which could be withheld from them until resolution of Federal litigation.

Another objectional feature of the bill is that it would tend to channel the whole review process for certain assessees through the district courts to the circuit courts of appeal and the U.S. Supreme Court rather than through the established administrative review agencies and the courts of the State. The valuation and assessment of the type of properties involved is a highly specialized field, and the main function of the courts has been to see that procedures are reasonably directed to obtaining a fair appraisal and assessment. The Federal judicial procedure without prior administrative review would tend to be exceedingly cumbersome and would be in a field for which the Federal judiciary has no particular qualifications.

We question the obvious basic assumption of the bill that Federal legislation is needed or desirable. The railroads as well as other State assessees, have contended that they are assessed at a higher percentage of value than other properties. Suits designed to test this contention were filed in California by the four major railroads in 1959. They were subsequently withdrawn. Under the present law, where a Federal constitutional question is involved in suits in the state courts, the decisions of those courts are reviewable in the U.S. Supreme Court. We do not believe that it can be assumed that the California courts would fail or have failed to enforce the 14th amendment provisions prohibiting a State from denying to any person within its jurisdiction the equal protection of the law.

We believe there may be a constitutional question in the bill with respect to those instances where relief might be sought directly against a State agency making the property tax assessments. Whether an intrusion by the Federal courts in to the ordinary property tax assessing and review procedures historically reserved to the States and localities is within the general jurisdictional powers of Federal courts is not clear. The State has only consented to be sued in limited proceedings in the State courts.

The affording of special Federal judicial relief in problems involving inequities to one segment of industry involved with interstate commerce would set a precedent for other assessees to press for similar treatment. This could lead to Federal supervision of the local property tax through Federal judicial procedures for not only common carriers but utilities and commercial and industrial businesses which are engaged in interstate commerce. In any event, should litigation be initiated under the bill for the common carriers, there could ultimately be involved the assessment of the property of all utilities and related assessees whose property is assessed by our board on a statewide basis. We believe that the approach of the bill is an unnecessary and unwarranted intrusion of the Federal Government into the property tax processes.

I greatly appreciate the opportunity to bring the above-mentioned points to the attention of the Interstate and Foreign Commerce Committee. We would strongly recommend against enactment by the Congress of H.R. 4972.

Cordially,

ALAN CRANSTON.

NEW MEXICO STATE TAX COMMISSION,
Santa Fe, N. Mex., February 23, 1966.

HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Rayburn House Office Building,
Washington, D.C.

GENTLEMEN: I have a technical criticism of H.R. 4972.

The section to be added by this bill would prohibit assessment of a carrier's property "at a value which bears a higher ratio to the true market value of such property than the assessed value of all other property in the taxing district subject to the same property tax bears to the true market value of all such property."

This sets up a standard for judging the fairness of the assessment of the carrier's property, and the standard is the assessment of "all other property" subject to the same property tax.

A hundred years ago, all property was in most States subject to a single rule of assessment and taxation. This bill seems to assume that the same situation prevails today.

"* * * immediately following the Civil War discontent with the workings of the uniform ad valorem system became general. * * * the system had long since been abandoned in most European countries for a system of classification" (*Hilger* v. *Moore* (1919 Mont.) 182 Pac. 477, 482).

Newhouse, in Constitution Uniformity and Equality in State Taxation (Michigan Legal Studies series), page 635, states that beginning in 1874, as State constitutions were written or reviewed, there was a departure from the strict uniformity requirements in somewhat older constitutions, in favor of clauses stating that taxes (meaning property taxes) should be uniform upon the same class of property. Implicit in these provisions was a power in the legislature to classify property, and tax some property at higher rates than other property. The only remaining restriction was that classes created by the legislature should not be arbitrary, that there should be some reason for the discrimination.

States that still have the old-style universal uniformity requirements, while maintaining a facade of the same rate of tax levy on all property, behind the facade treat different types of property differently by assessing the property at different fractions of its true value. (Taxation of Intangibles Under the Illinois General Property Tax, 35 Ill. L.R. 716, 725.)

Of course, for practical purposes it does not matter whether inequality results from different millages applied to different classes, or from different ratios of assessed value to true value. H.R. 4972 assumes that there will be only one tax rate applied alike to carrier's equipment and other property, and that discrimination will come only in the form of unequal assessment. But many States have several property taxes, one for local assessed property, one for centrally assessed property, one for intangibles, etc. A State that wanted to discriminate and did not have the old style uniformity clause could simply impose a special property (or excise) tax on carrier's equipment, and then there would be no "other property * * * subject to the same property tax" with which to compare the carrier's assessment.

A sounder approach would be by analogy with Revised Statutes section 5219, 12 USCA section 548(1)(b), which prohibits State taxation of national bank shares in any way that results in an effective rate higher than that imposed on other moneyed capital.

The bill as proposed at best adopts a standard that no longer exists in most States; i.e., a single rate (of both assessment and levy) applied to all property. At worst, it might force upon these progressive States an iron rule of equality which was long ago found unsuitable to their needs.

Yours very truly,

JOHN B. SPEER,
Tax Commission Attorney.

OREGON STATE TAX COMMISSION,
Salem, Oreg., March 14, 1966.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR SIR: The Oregon State Tax Commission has received and reviewed a copy of the statement on H.R. 4972 and identical bills made by Charles F. Conlon, executive secretary of the National Association of Tax Administrators, before the Committee on Interstate and Foreign Commerce March 2, 1966, and wishes to go on record as enthusiastically endorsing his statement of opposition to H.R. 4972 and similar bills.

Although Oregon was not included in the Doyle report as a State discriminating against railroads in equalization of property valuations, it is appreciated that some States have reached a questionable level. We do not believe that review in the Federal courts is the solution until most if not all resources at the State level are pursued and exhausted. Recent action in some States and current efforts in others are examples to consciously resolve their problems which indicate the States are not unmindful of the need to reach a solution.

Although we believe that Oregon is not a State which is the target of H.R. 4972, Mr. Conlon's statements seem very fair and should be considered carefully by your committee. We also believe the type of legislation called for in H.R. 4972 is not warranted at this time.

Sincerely yours,

C. H. MACK, *Chairman.*

STATE OF WASHINGTON TAX COMMISSION,
Olympia, Wash., February 28, 1966.

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

DEAR MR. WILLIAMS: I have read Mr. Charles F. Conlon's paper to your committee regarding H.R. 736 and H.R. 10169 and concur with his very fine and complete statement. I would like to add to these statements as regards the State of Washington.

The constitution of the State of Washington requires that all property, whether it be locally assessed by the county assessor or assessed on the State level by the tax commission, be assessed at 50 percent of its fair market value for tax purposes.

Historically, up until 1951, the tax commission had made considerable effort to assess all State assessed properties, which includes all interstate utilities and railroads, at 50 percent of fair market value. Actually, in 1951 the average level of assessment of all utilities and railroads in this State was 46 percent.

At this time the legislature of the State conducted an extensive review and found that locally assessed property (that is property assessed by the individual county assessors) was being assessed, even in view of the constitutional mandate, at something less than 20 percent of fair market value. The legislature demanded that the commission commence a program whereby State assessed and locally assessed property would be treated in a like manner. A number of the counties in this State depend quite heavily—even up to as much as 35 percent of their ad valorem tax dollar, on utility and railroad property located within the confines of their respective counties. It would have been impossible and most certainly disastrous to have reduced or equalized the ratios on all locally assessed and State assessed properties in these counties.

A series of meetings were held with the assessors and all utility and railroad representatives and a program was planned whereby the ratio of assessment on all utility and railroad properties would be gradually reduced over a number of years. This program was to begin immediately and continue until some time approximately the year 1967 and at this point the two classes of property would be equalized.

We have continued to meet annually with all the tax officials concerned and have felt that his continuing program has met with unanimous approval.

I am submitting a chart which portrays the action taken since 1960 for your perusal.

Again, I concur with Mr. Conlon's statements as submitted in his original presentation in 1964.

Sincerely,

GEORGE KINNEAR, *Chairman,*
By CLYDE B. ROSE,
Property Tax Director.

Ratio comparison, 1960 through 1965

	1960	1961	1962	1963	1964	1965
Indicated county ratios as determined by State tax commission	23.9	19.7	19.7	20.0	19.9	18.8
Fixed county ratios as set by State board of equalization	32.3	30.9	29.7	28.2	26.4	23.9

NOTE.—All figures are statewide averages.

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., February 28, 1966.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Transportation Association of America strongly supports the various identical bills (H.R. 4972, etc.), which are the subject of hearings before your committee on March 1 and 2. These bills would make it unlawful—as an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce—for a State to assess property of any interstate common carrier at a ratio to market value higher than it assesses other property in the same taxing district. At the same time, these bills would provide a means by which such carriers could go into the Federal courts to seek relief against discriminatory property tax assessments.

For the record, TAA is a national transportation policy organization composed of transport users, investors, and carriers of all modes who work collectively to develop sound national policies aimed at the creation of the strongest possible transportation system under private enterprise. Policy positions, prior to final vote by the 115-member TAA board of directors, are first studied carefully by eight permanent panels composed of approximately 350 leaders from user, investor, air, freight forwarder, highway, oil pipeline, rail, and water carrier fields respectively.

To illustrate the unanimity of TAA membership support for legislation such as under consideration by your committee, the TAA board adopted the following policy position after receiving supporting recommendations from all eight of its advisory panels:

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

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

While this problem is of concern to all interstate common carriers, a particularly strong case in support of the need for relief proposed by this legislation can be made by the railroads. Several studies show that the ratio of assessments to fair market value in the case of railroad property is more than double those on other property, which amount to an excessive tax burden of well over $100 million a year.

An objective analysis of this problem by a special study group for the Senate Commerce Committee—see chapter I of part VII of its report on "Transportation Policies in the United States," January 3, 1961—clearly points out the need for such legislation.

Congress, in our opinion, has the constitutional authority to prohibit States from unduly discriminating against interstate commerce, as it has exercised by authorizing the ICC to provide relief to interstate common carriers from discriminatory intrastate rates and from unprofitable intrastate passenger services.

Finally, while judicial relief can be sought by carriers at the State level, the record indicates that this is a long, drawn-out process with generally unsatisfactory results.

Therefore, we urge that your committee take favorable action on this legislation at the earliest possible date.

We request that this letter be made a part of the official transcript of the hearings.

Sincerely,

HAROLD F. HAMMOND, *President.*

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., March 7, 1966.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the Nation's trucking industry we wish to express our interest in the legislation embodied in H.R. 4972, and similar bills, which would declare unlawful, and an undue burden upon interstate

commerce, the assessment of property of any common carrier which bears a higher ratio to its true market value than the assessed value of other property subject to the same property levy.

We respectfully request that two changes be made so as to include Interstate Commerce Commission regulated motor contract carriers within the scope of the bill and so as to make it entirely clear that all motor carriers subject to economic regulation by the Commission are covered.

These changes are indicated by the following suggested substitute for the language beginning with "common carrier" in line 6 and ending with "Act" in line 7 on page 2 of the bill:

"common *or contract* carriers subject to *economic regulation pursuant to the provisions of the Interstate Commerce Act*"

The suggestion that contract motor carriers be included stems from the fact that in many areas of regulated motor carriage the common and contract operations are quite similar and entitled to the same protection sought to be provided by this bill. I refer particularly to operations such as those of the automobile transporters and the tank truck operators.

The purpose of the other suggested change (spelling out the name "Interstate Commerce Act") is simply to make it clear that the provisions of the bill apply to parts of the act other than part I in which the proposed amendment to section 25 is to appear.

We are grateful for your consideration of our position in this matter.

Very truly yours,

W. A. BRESNAHAN, *Managing Director.*

(Whereupon, at 4:45 p.m., the hearing was adjourned.)

○