

Y4
. In 8/4
91-48

1019

9144
In 8/4
4/8/16
87-16

STATE TAX WITHHOLDING FOR INTERSTATE TRANSPORTATION EMPLOYEES

GOVERNMENT

Storage

RECEIVED

MAY 7 1970

THE LIBRARY
KANSAS STATE UNIVERSITY

HEARING BEFORE THE SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES NINETY-FIRST CONGRESS

SECOND SESSION

ON

**H.R. 1240, H.R. 10634, H.R. 11882,
and H.R. 13612**

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

APRIL 16, 1970

Serial No. 91-48

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



U.S. GOVERNMENT PRINTING OFFICE

44-155 O

WASHINGTON : 1970

KSU LIBRARIES

AJ1900 808082

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HARLEY O. STAGGERS, West Virginia, *Chairman*

SAMUEL N. FRIEDEL, Maryland
TORBERT H. MACDONALD, Massachusetts
JOHN JARMAN, Oklahoma
JOHN E. MOSS, California
JOHN D. DINGELL, Michigan
PAUL G. ROGERS, Florida
LIONEL VAN DEERLIN, California
J. J. PICKLE, Texas
FRED B. ROONEY, Pennsylvania
JOHN M. MURPHY, New York
DAVID E. SATTERFIELD III, Virginia
BROCK ADAMS, Washington
RICHARD L. OTTINGER, New York
RAY BLANTON, Tennessee
W. S. (BILL) STUCKEY, Jr., Georgia
PETER N. KYROS, Maine
BOB ECKHARDT, Texas
ROBERT O. TIERNAN, Rhode Island
RICHARDSON PREYER, North Carolina

WILLIAM L. SPRINGER, Illinois
SAMUEL L. DEVINE, Ohio
ANCHER NELSEN, Minnesota
HASTINGS KEITH, Massachusetts
GLENN CUNNINGHAM, Nebraska
JAMES T. BROYHILL, North Carolina
JAMES HARVEY, Michigan
ALBERT W. WATSON, South Carolina
TIM LEE CARTER, Kentucky
G. ROBERT WATKINS, Pennsylvania
DONALD G. BROTZMAN, Colorado
CLARENCE J. BROWN, Ohio
DAN KUYKENDALL, Tennessee
JOE SKUBITZ, Kansas
FLETCHER THOMPSON, Georgia
JAMES F. HASTINGS, New York

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

Professional Staff

JAMES M. MENDER, Jr.
WILLIAM J. DIXON

ROBERT F. GUTHRIE
KURT BORCHARDT

SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS

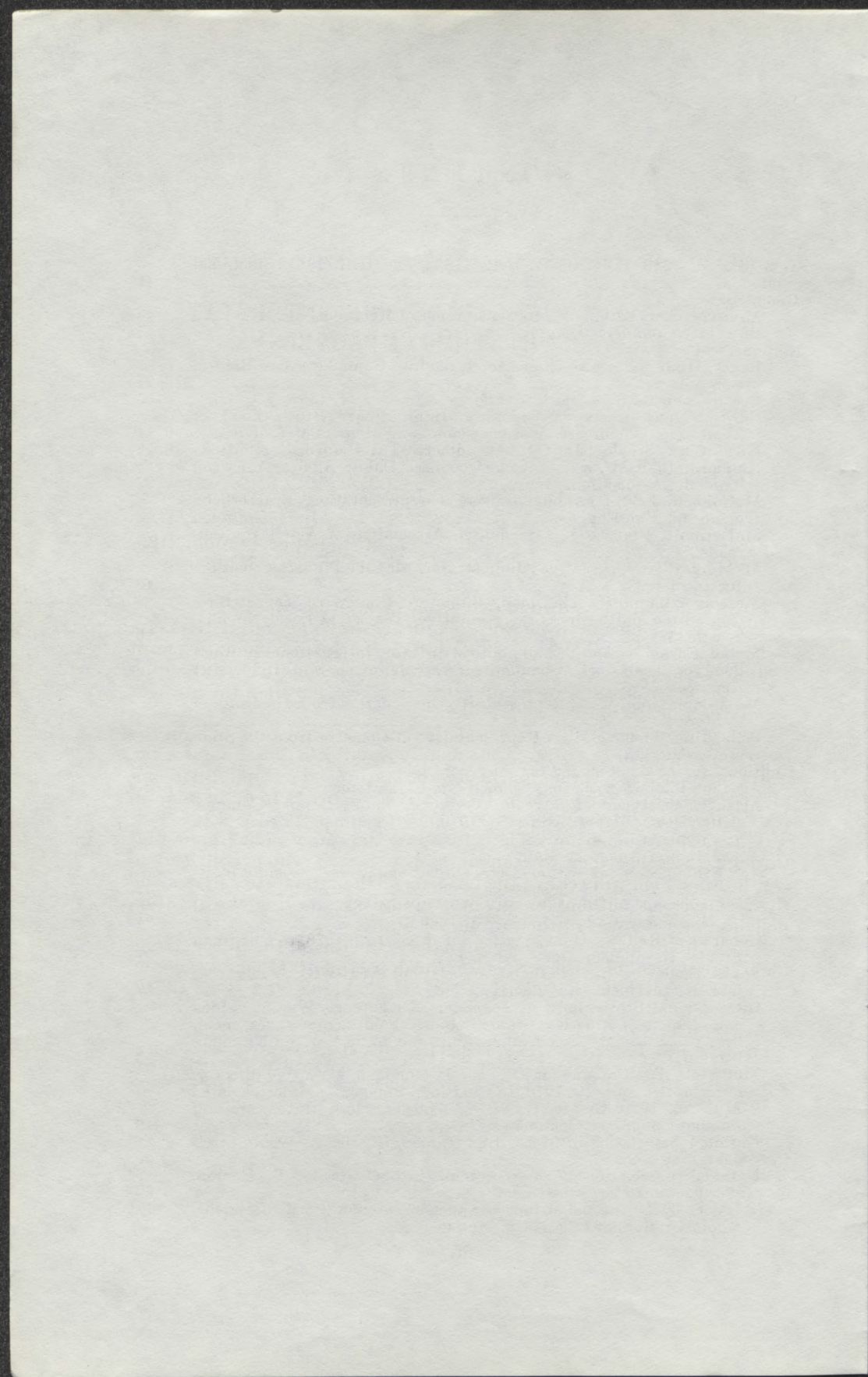
SAMUEL N. FRIEDEL, Maryland, *Chairman*

JOHN D. DINGELL, Michigan
J. J. PICKLE, Texas
BROCK ADAMS, Washington

SAMUEL L. DEVINE, Ohio
GLENN CUNNINGHAM, Nebraska
ALBERT W. WATSON, South Carolina
DAN KUYKENDALL, Tennessee

CONTENTS

	Page
Text of H.R. 1240, H.R. 10634, H.R. 11882, and H.R. 13612 (identical bills).....	1
Report of—	
Advisory Commission on Intergovernmental Relations.....	3
Interstate Commerce Commission.....	5
Statement of—	
Baker, Herbert L., vice chairman, Interstate Commerce Tax Reform Committee.....	16, 21
Beattie, Donald S., executive secretary, Congress of Railway Unions.....	36
Curlee, Dan, legislative assistant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.....	9, 11
Gilge, Capt. Stanley, Interstate Commerce Tax Reform Committee.....	16, 18
Kinnaird, John M., assistant chief counsel, Public Affairs, American Trucking Associations, Inc.....	22
McCulloch, E. L., national legislative representative, Brotherhood of Locomotive Engineers.....	43
McDermott, Francis O., tax counsel, Association of American Railroads.....	26
McMurray, Kay, executive administrator, Air Line Pilots Association, International.....	46
Martin, William H., chairman, Interstate Commerce Tax Reform Committee and business representative, Teamsters Local No. 741, Seattle, Wash.....	16
Moore, Carlos, legislative and political director, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.....	9
Moss, Hon. John E., a Representative in Congress from the State of California.....	5
Pelly, Hon. Thomas M., a Representative in Congress from the State of Washington.....	8
Additional material submitted for the record by—	
Air Line Pilots Association, Council No. 67, statement.....	67
Alaska Department of Revenue, Vernon L. Snow, Deputy Commissioner, letter dated April 23, 1970, to Chairman Friedel, with attachments.....	51
Association of American Railroads:	
Examples of tax withheld on railroad employees traveling interstate as part of their assigned duties.....	32
Governmental finances in 1969—Table 8. State individual income taxes as of January 1, 1969.....	34
Congress of Railway Unions, letter dated April 23, 1970, to Chairman Friedel, re supplementary statement.....	37
Flight Engineers' International Association, AFL-CIO, William A. Gill, Jr., president, statement.....	67
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, States that withhold income taxes; members of Multistate Tax Commission; and nature of State's membership.....	13
Multistate Tax Commission, Eugene F. Corrigan, executive director, letter dated April 10, 1970, to Chairman Staggers, and letter dated April 20, 1970, to Mr. E. W. Williamson, clerk, Interstate and Foreign Commerce Committee.....	49
National Association of Motor Bus Owners, Charles A. Webb, president, statement.....	65
National Association of Tax Administrators, Charles F. Conlon, executive secretary, statement.....	62
T.I.M.E.-DC, Inc., Lawrence Anderson, senior vice president, administration and secretary, statement.....	24



STATE TAX WITHHOLDING FOR INTERSTATE TRANSPORTATION EMPLOYEES

THURSDAY, APRIL 16, 1970

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

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman) presiding.

Mr. FRIEDEL. The subcommittee will be in order.

Today the subcommittee will commence hearings on H.R. 1240, H.R. 10634, H.R. 11882, and H.R. 13612. These bills would exempt certain wages and salaries of employees from income tax withholding under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence.

As I understand it, the proposals before us do not encroach on the taxation powers of the States, but merely prohibit withholding for tax purposes in States through which interstate carriers and their employees are physically present for relatively short periods of time in providing interstate transportation.

This problem has been with us for some time now, and I hope that through these hearings we can develop a record which will lead to legislation which will relieve the burdens of the interstate carriers and their employees without in any way unduly restricting the taxation policies and practices of the individual States.

At this point in the record we shall place the text of the bills pertaining to the subject of this hearing and the departmental reports thereon.

(The text of H.R. 1240, H.R. 10634, H.R. 11882, and H.R. 13612, and departmental reports thereon follow:)

[H.R. 1240, H.R. 10634; H.R. 11882, and H.R. 13612, 91st Cong., 1st Sess., introduced by Mr. Moss on January 3, 1969; Mr. Adams on April 28, 1969; Mr. Pelly on June 4, 1969; and Mr. Fulton of Pennsylvania on September 4, 1969; respectively, are identical as follows:]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Sec. 323. Separability of provisions."

and inserting in lieu thereof:

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

"Sec. 324. Separability of provisions."

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

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

"SEC. 1112. (a) No part of the wages or salary paid by any air carrier to an employee who performs his regularly assigned duties as such an employee on an

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

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

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

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

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

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS,
Washington, D.C., March 6, 1969.

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

DEAR MR. CHAIRMAN: This is in reply to your request of February 11, 1969 for a report together with comments on H.R. 1240, a bill to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence. The subject bill would immunize regulated interstate rail, water, motor, and air carriers from the requirements to withhold income taxes and to report earnings of employees to any State or subdivision other than the State or subdivision in which an employee resides. The income tax liability of employees of the carriers would not be explicitly affected, only the obligation of the carriers to withhold such taxes and make information returns.

The legislation could have significant implications for the uniform applicability of State and local income taxes because employer withholding and informational reporting are the foundation of effective State and local income taxation. The specific policy issue raised by the subject bill has not been presented in detail to the Advisory Commission members for their consideration. Hopefully, however, the views expressed here reflect the Commission's position since they are inferred in large measure from the thorough study of State and local income taxes conducted by the Commission and published in its report *Federal-State Coordination of Personal Income Tax*.

States (just as the Federal Government) generally impose their income taxes on all residents and on all income from sources within their borders, regardless of the residence of the income recipient. This is a well-established principle of income tax jurisdiction (*Shaffer vs. Carter* (1920) 225 U.S. 37, 40 S. Ct. 221). Thus, a State can tax all of the income of its residents, wherever derived, as well as that portion of a nonresident's income that originates within its borders. Compliance and enforcement of State income taxes to the full extent of this jurisdictional reach is greatly facilitated by employer withholding and informational reporting.

Currently, income taxes of either States or localities, or both, are withheld at the source in a total of 38 States and the District of Columbia. In the District of Columbia employers withhold on residents only; in California and North Dakota employers withhold on nonresidents only; in all other States withholding applies to residents and non-residents alike in the absence of specific reciprocal exemption agreements. Routinely, all States require wage information from employers. Without this tax administrators would lack the data for their tax compliance and enforcement efforts.

Withholding must be credited with much of the striking improvement in State income tax collections. The experience of States enacting withholding has been a median increase of 10 percent over the prior level of collections. States with large numbers of nonresident earners find withholding of particular help.

Local income taxes would fail on feasibility grounds without withholding. Thus,

withholding assures a greater degree of compliance with the State and local tax system and enhances its productivity.

With the advent of withholding, it has become the practice in most States to allow residents a credit for income taxes required to be paid to the State of employment. The main argument in favor of this system is that it ties in so well with the withholding system now operating in the States, for it recognizes the fact that an employer can be required to withhold taxes for the State in which his business is located while he cannot be required to do so by another State unless he also operates in that State. With the employer collecting the income tax the nonresident can more readily be included. It is significant in this connection that 8 of the 9 States that dropped their nonresident credit or exemption since 1956 have installed a withholding system since that time.

A few income tax States—Indiana, Kentucky, Maryland, Michigan, Minnesota, West Virginia, and Wisconsin—exempt a nonresident's income from their tax if his State accords their residents like treatment. Employers are, of course, relieved of the responsibility for withholding where reciprocal arrangements operate. But, to the extent that this option is exercised in these States, the State must obtain a declaration of income and an estimated tax payment from the taxpayer—a method of collection that results in delaying receipts somewhat compared to withholding and one that may necessitate somewhat greater administrative effort to assure the same degree of compliance.

There is no denying that withholding and reporting obligations imposed on businesses operating both intra- and interstate can be substantial. The States, as much if not more than the Federal Government, have demonstrated concern to minimize the cost burden this tax collecting technique imposes on employers. State income tax statutes generally allow employers a choice among several methods of withholding to enable them to choose the least costly method of compliance from the employer's viewpoint. Some State statutes provide that the tax administrator can, subject to prior approval, permit an employer to withhold by a method of the employer's devising that will produce a result substantially comparable to the withholding method provided by statute. Many tax administrators have authority to permit withholding based on a percentage of Federal income tax withheld—a figure every employer must determine in any case. Thus employers generally have, if they choose to exercise it, some degree of both statutory and administrative flexibility within which they can seek to minimize their withholding cost compliance burden.

In general, the Congress has exercised the utmost restraint on questions of State and local taxing jurisdiction, preferring to look to the States themselves for the resolution of jurisdictional problems with one another. Indeed, Congress, by legislation, and the executive branch, by administrative action, has in several ways affirmatively assisted State and local jurisdictions in the enforcement of their tax laws.

The single exception to this Federal policy occurred when the Congress, in Public Law 86-263, approved September 14, 1969, prohibited the withholding of State and local taxes from the wages of masters, officers, and other seamen who are members of the crew of a vessel engaged in coastwise, intercoastal, interstate, or noncontiguous trade. That legislation, however, affects only some of the income tax States and is relatively minor revenue significance to them. The subject bill would, in contrast, involve more individuals and is therefore of far greater revenue significance to the States and localities. It would not only relieve a major group of employers from complying with withholding requirements, but also would deprive tax administrators of the principal foundation—information returns—for their tax compliance and enforcement efforts toward a substantial number of nonresident individuals who may be liable for State income taxes.

The subject bill thus raises the issue of whether the legislation ultimately is intended to facilitate an escape from State income taxes by those who reside in non-income taxing States yet earn part of their income in States imposing an income tax. The States, if they so elect, can resolve any problems by reciprocally exempting regulated carriers from one another's reporting and withholding requirements with respect to employees who are nonresidents. As mentioned previously, several States reciprocally exempt nonresidents. We understand that other States have through the exercise of administrative discretion dealt with situations in which the burdens of withholding impinge severely on certain employers. The Committee may wish to question State tax administrators on this point.

In our view, State solutions are much to be preferred to Federal legislation,

principally on grounds of Federal-State comity. Federal legislation would unavoidably interfere with well-established jurisdictional rules in State and local taxation. It would run counter to the National Government's policy of assisting State and local governments in the enforcement of their tax laws. Moreover, a remedy developed by the States themselves could be made applicable to other groups of industrial and commercial employers whose employees regularly perform services in several States, and who also experience extraordinary compliance burdens where such exist. This approach has the added merit of not singling out any category of employer for special legislative treatment as the subject bill would do.

Sincerely yours,

WM. G. COLMAN,
Executive Director.

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., April 13, 1970.

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

DEAR MR. CHAIRMAN: This replies to your request for the comments of the Commission on H.R. 1240 and H.R. 10634, bills, "To amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence", and similar legislation.

Section 1 of these bills would amend the Interstate Commerce Act by adding a new section 26A which would, in effect, provide that wages of a person employed by a carrier, subject to Part I of the Interstate Commerce Act, and who works in two or more States, shall be subject to withholding for State or local income tax purposes in the States in which such person resides. Sections 2 and 3 of the bills provide for a similar exemption from multiple State or local income tax withholding for employees of interstate regulated motor carriers and water carriers by inserting new provisions in Parts II and III of the Act, designated as section 226A and section 323 respectively. Section 4 makes a similar change in the Federal Aviation Act for employees of regulated air carriers.

Although we have no specific information as to the need for this legislation, it is our understanding that its basic purpose is twofold. First, it would exempt employees of the regulated carriers covered by it from income tax withholding by two or more State or local taxing authorities on the same income. Second, it would relieve the carriers themselves of the recordkeeping and other requirements necessary to comply with the requirements of the income tax laws except in the taxing jurisdiction in which the employee in question resides, as shown in the carrier's employment records.

Since it involves State and local tax policies, rather than economic regulation, we question whether it is desirable to consider this legislation in terms of amendments to the Interstate Commerce Act and the Federal Aviation Act. If this type of legislation is given favorable consideration, we believe it would be more appropriate for it to be enacted as a separate statute. Subject to this observation, we would not be opposed to such enactment.

Sincerely yours,

GEORGE M. STAFFORD, *Chairman.*

Mr. FRIEDEL. Our first witness this morning will be our colleague on the full committee, the Honorable John E. Moss of California. Mr. Moss has a statement he would like to present to us this morning. Welcome, Mr. Moss; proceed as you see fit.

STATEMENT OF HON. JOHN E. MOSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Moss. Mr. Chairman, I am pleased to appear before you and the other members of the subcommittee on behalf of my bill, H.R.

1240, which, as you know, concerns the exemption of wages and salaries of certain employees from withholding for tax purposes under the laws of States or subdivisions other than the State or subdivision of the employee's own residence.

Mr. Chairman, the Federal Government has a solemn obligation to insure the free flow of commerce throughout the United States. Any constraints or unnecessary burdens on this flow of commerce thrown up by our States must be removed by Congress. The cause of economic stability is served by such actions, and the country as a whole is the ultimate beneficiary.

My bill is designed to remove what is rapidly becoming a serious burden on interstate commerce. This is the policy followed by at least 14 States, with varying degrees of intensity, of requiring withholding from the wages of nonresidents who are paid for personal services performed within their boundaries.

This type of taxation reaches its most confused application when directed at the transportation workers—our air, water, rail, and motor carrier employees—who, due to the nature of their employment, perform work in more than one State. The withholding of tax liabilities from their wages, and the resultant filing of multiple reports for several tax agencies in different States, creates an undue hardship on this particular group. My bill would counteract this unfair taxing procedure by exempting them from the nonresident withholding provisions of these States.

From the point of view of both compliance and enforcement, State nonresident taxation policies fall unevenly on our transportation workers. In terms of compliance, the major problem transportation firms encounter is the lack of uniformity in State laws and regulations. Each State has particular regulations of its own that sets it apart from the others; and it is a difficult, time-consuming, and costly job for the legal and accounting staffs of the transportation industries to keep current with the ever-changing regulations. For example, in some States withholding is not required of nonresidents unless the earnings of a nonresident in that State reasonably may be expected to be sufficient to incur some tax liability. This means some transportation workers operating in a State are subject to withholding while the wages of others, earned in the same State for the same company, are exempt. This, of course, necessitates a great deal of paperwork for the companies concerned.

Another compliance problem occurs when the transportation companies have to figure exactly how much to withhold for each State that requires it. Work routes vary for transportation drivers over a given time period. A good example of the absurd lengths such compliance could entail was given recently by a spokesman for the Air Line Pilots Association. With modern jet aircraft, he pointed out, a crew based in New York may fly the following schedule for a month—New York, Pittsburgh, Chicago, Omaha, Denver, Salt Lake City, and San Francisco. At the end of this month, the crew will have flown over or through most of all the States of the Union. For the company to have to prorate their crews' withholding, giving each State flown over a certain percentage, strikes me as ridiculous bureaucracy of Parkinsonian proportions.

Compliance of this nature creates tremendous difficulties for both employers and employees of the transportation industry involving a great deal of time and effort on their part out of all proportion to the benefits which accrue to the taxing jurisdiction.

On the level of enforcement, State nonresident withholding policies definitely discriminate against the transportation workers. Other more visible nonresident individuals are not taxed on their earnings within a particular State. A good example are our professional athletes who play games and compete in various States during a season yet do not prorate their withholding among these States. Also, consider the businessman or lawyer who makes business calls out of State. These people are earning income in other States yet they do not prorate their withholding.

These few examples show not only the patchwork application of the withholding policies but also raise serious questions as to whether the laws are capable of being properly enforced. In any case, many individuals are escaping enforcement while the transportation workers are clearly held accountable.

A result of these State taxing policies on the transportation industry, one which we certainly do not want to see continue, can be seen in its impact on the economy in general. The withholding provisions of the 14 States create, as we have seen, a sizable administrative burden on the transportation firms which increases overhead costs. These costs are added on to the price of the product and it is the consumer who is hurt in the long run. The extra costs are borne by the innocent consumer whose reduced real wages already reflect significant cost increases in other products.

A corollary effect is seen in the labor sector. The transportation workers see their take-home pay reduced by these State withholdings and their living standards decline relative to other wage earners. The end result is a demand on their part for higher wages with consequent inflationary impact.

There seems little doubt that the nonresident withholding tax policies of the States present serious difficulties to our transportation workers and that relief is necessary. Along these same lines on the Federal level, Congress has sought recently, in the Tax Reform Act of 1969, to simplify withholding and filing procedures for students, and other part-time employees, who incurred no tax liability for the year. Starting May 1, 1970, wages paid to this group can be exempt from withholding.

It is evident that Congress is working to rationalize tax collection procedures. Its operating principle—to reduce withholding and filing for those that will not incur any final tax liability—should serve as a precedent in guiding our action on this bill.

In summary, Mr. Chairman, State nonresident withholding tax policies create major compliance and enforcement problems which fall particularly hard on our transportation industry. I feel congressional action is necessary not only to offer relief but also to avoid creating a serious economic bottleneck in the transportation industry which would, as we have seen, only add fuel to our raging inflationary fires. I therefore urge prompt consideration and enactment of my bill which offers, I submit, the simplest and most practical answer to this problem.

Mr. FRIEDEL. Thank you, Mr. Moss, for taking time out of your busy schedule to share your views with us today.

Mr. Moss. It has been a pleasure, Mr. Chairman. Thank you for the opportunity.

Mr. FRIEDEL. Our next witness is our good friend and colleague, Congressman Thomas M. Pelly of the great State of Washington.

**STATEMENT OF HON. THOMAS M. PELLY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF WASHINGTON**

Mr. PELLY. Thank you, Mr. Chairman.

Mr. Chairman, and my colleague from the State of Washington, Mr. Adams, I appreciate this opportunity to express my views on H.R. 11882 and other bills to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salaries of employees from withholding for tax purposes under the laws of the States or subdivisions thereof other than the State or subdivision of the employee's residence.

I should say at the outset that I support H.R. 1240, the bill introduced by Mr. Moss. And, he has indicated to me his willingness to accept the language from my bill which differs only in that it would also cover U.S. seamen and fishermen against unfair taxation of nonresidents.

I introduced H.R. 11882 to strike down by means of legislation a decisions by the Washington State Supreme Court making residents of the State of Washington liable for Alaska State income taxes on income paid in Washington State, yet earned in Alaska by nonresidents.

This litigation has been in the courts for a long time, and Alaska now is demanding back-taxes from 1960.

Many of the victims of this discrimination are maritime personnel who earn their living on ships that serve Alaska. In addition, however, there are airline and trucking employees who live outside Alaska, yet they are being ordered to pay State income taxes.

As I understood it, Mr. Chairman, when the Alaska Statehood Act was enacted by the Congress of the United States, in the hearings and in the debate, full assurance was given that under the Constitution of the new State of Alaska, there would be no discrimination against nonresidents. But, now that promise is overlooked and persons living in the State of Washington who have no property and derive no benefits from Alaska; who have no children in Alaska schools must pay tribute because their source of income does business in Alaska.

This taxing of nonresidents is taxation without representation, and it works a tremendous hardship on the families of the few U.S. citizens who are unfortunate enough to earn their living with business concerns who do business in Alaska.

The courts have opened up a Pandora's box and the precedent is such that the American citizen anywhere in the United States will be in danger of having his earnings subject to taxation in two or even more States.

I urge the passage of this legislation, Mr. Chairman, and again, I appreciate this opportunity to appear and express my views.

Mr. FRIEDEL. I want to thank you, Congressman, for your very forthright statement.

You make it very simple and understandable. I hope the committee can take favorable action on this measure.

Mr. Adams?

Mr. ADAMS. I have no questions, Mr. Chairman. I just want to welcome my colleague here and I appreciate your support of the bill, Mr. Pelly. It is a pleasure to have you here with us this morning.

Mr. PELLY. Thank you very much.

Mr. FRIEDEL. Our next witnesses will be Mr. Carlos Moore, legislative and political director, and Mr. Dan Curlee, legislative assistant of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

STATEMENTS OF CARLOS MOORE, LEGISLATIVE AND POLITICAL DIRECTOR, AND DAN CURLEE, LEGISLATIVE ASSISTANT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Mr. MOORE. Thank you, Mr. Chairman. I also have with me my legislative assistant Mr. Dan Curlee, whom I will ask to say a few words in a few minutes, if it is all right with the Chair.

My name is Carlos Moore. I am legislative and political director for the International Brotherhood of Teamsters.

On behalf of our general Vice President, Frank E. Fitzsimmons, the General Executive Board and our entire membership, I wish to express my appreciation for this opportunity to bring to this hearing the views of the International Brotherhood of Teamsters on the growing and persistent problem of State taxation of nonresident transportation employees. The difficulties generated by this practice of an increasing number of States has special significance for us, because out of our 2 million plus membership approximately 150,000 are over-the-road drivers. It is these over-the-road drivers who move mountains of the Nation's products from State to State. It is these drivers whose duties carry them away from their home States into and through the States of their neighbors where these drivers are taxed.

They are taxed not because they helped to elect the officials who designed the tax policy; they are taxed not because they are a part of the community that will benefit from the programs financed with tax revenues. They are taxed because it is convenient to tax them, and their presence is visible. They are taxed because they are easy targets who have no representation within the bodies that levy the taxes. This is taxation without representation, a concept foreign to our American heritage.

The International Brotherhood of Teamsters opposes the taxation of nonresident transportation workers as unconstitutionally discriminatory, chaotic, and an unconstitutional impediment to interstate commerce.

THE SCOPE OF THE PROBLEM

At this time 38 States have an income tax law, and of these 38 income tax States at least 18 of them have an announced policy of requiring

withholding from the wages of nonresidents who are paid for personal services performed within their boundaries. Direct evidence has been gathered concerning an active policy of nonresident transportation worker taxation in Alabama, Alaska, Arkansas, California, Indiana, Iowa, Kansas, Louisiana, Maryland, Missouri, Nebraska, New Mexico, New York, Oregon, South Carolina, Utah, Vermont, West Virginia. This evidence, in the form of letters from the various tax officials and excerpts from the tax laws of the various states, will be made available to this committee.

The number of States that actively pursue a policy of requiring employers to withhold from the pay check of nonresidents is steadily growing. One can be sure that as the need for more State revenue grows, so also will grow the probability that States will turn to the policy of taxing nonresidents. By shifting a part of the tax burden to nonresidents a State administration can freely manipulate that part of the tax burden borne by those who cannot vote them out of office. A nonresident has precious little chance of redress in a State where he is no one's constituent.

One of the most aggressive States in this area of taxation is Alaska. Alaska, in written correspondence to individuals and to Teamsters Local 741 in Seattle, Wash., has indicated a definite intent to collect taxes on the wages of truck drivers who have driven to Alaska from as far back as 1960. The State of Alaska has said that failure to pay could, in the usual course of events, result in the use of a private collection agency to pursue the matter for the State.

An example of how the problems encountered by our over-the-road drivers can reach absurd proportions can be found in an examination of the financial records of K. D. Myers of Jackson, Miss. Mr. Myers works as an over-the-road driver for Arkansas-Best Freight Systems, a common carrier in interstate commerce. In 1967 and 1968, in an honest effort to comply with the law, Mr. Myers' employer withheld State income tax from Myers' wages for the States of Oklahoma, Indiana, Wisconsin, Louisiana, Missouri, Arkansas, and his home State of Mississippi.

Similarly, a fellow employee of Mr. Myers, one M.A. Quennville, has furnished records reflecting withholdings for the States of Indiana, Missouri, Wisconsin, Louisiana, and Arkansas in 1967 and 1968.

DISCRIMINATORY PRACTICE

Nonresident taxation policies are difficult to enforce. Transient persons are not readily kept up with, in most cases. Who is to know if a traveling salesman is driving his auto across a State in the course of his employment, or if an executive of a corporation comes into a State for a meeting with a client for a day, a month, or even longer. Laws requiring withholding from the income of nonresidents are at best amenable only to inequitable, patchwork enforcement.

Under present practices, laws requiring withholding for State income tax from wages of non-residents are enforced in a blatantly discriminatory manner. Many very visible individuals who are present within a State which is not their residence, performing services for which they are paid, are not required to report these earnings to that host State. In short, the nonresident interstate transportation

worker is held accountable while others are left untouched. This uneven enforcement of the law is discrimination.

The International Brotherhood of Teamsters wants this discrimination stopped now. Nonresident tax policies are not being equally enforced; they are not capable of being equally enforced. The application of these laws amounts to a failure by the States to achieve equal protection of the law, as guaranteed by the U.S. Constitution, 14th amendment, section 1.

AN IMPEDIMENT TO INTERSTATE COMMERCE

A law that taxes the value of a product that crosses a State line is by its very nature a tax on interstate commerce, and a driver's labor is a product. A tax that causes unnecessary friction and confusion within the fabric of interstate commerce is an impediment to the free flow of economic intercourse between the several States and therefore an interference with interstate commerce.

We oppose the imposition of State income taxes on nonresident transportation workers, on the grounds that such taxes interfere with the free flow of interstate commerce and therefore are unconstitutional, being in derogation of the intent of article I, section 8(3) of the U.S. Constitution. These taxes adversely affect the free flow of interstate commerce by increasing the cost and therefore the price of products which must move from one State to another. The cost is increased because of the direct expense to the employer for administering the collection of the taxes. Also these taxes reduce the take-home pay of the employee who is engaged in the most obvious interstate commercial activity—interstate transportation. This economic drain on this special group of employees reduces their real wages out of proportion with other working citizens, adding to their need to seek a better gross wage. This in turn also drives up the price of interstate goods.

The imposition of these taxes interferes with and burdens the free flow of interstate commerce because the collection of the taxes places an added economic burden on goods that move in the stream of interstate commerce by way of regulated common carriers

THIS IS A FEDERAL PROBLEM

The solution to this problem does not lie in the creation of 50 separate laws in our 50 separate States. Interstate commerce is an issue of national scope. And now is the time to act. House bill 10634 must be passed now before the problem grows into a giant "Frankenstein" with 50 independent parts. We must not wait until many more States have a vested interest in a tax policy directed at non-residents.

I thank you, Mr. Chairman, and I would like for Mr. Dan Curlee at this time, with your permission, to make a few oral statements concerning some of the cases that we have been involved in.

Mr. FRIEDEL. Mr. Curlee, you may proceed.

STATEMENT OF DAN CURLEE

Mr. CURLEE. Thank you, Mr. Chairman.

With your permission, we would like to submit for the use of

the committee some material that we have collected from the various States.

This material consists of letters that set out the State policies in connection with interstate taxation. Also, there are some excerpts from State laws that explain how they approach this problem.

(The material referred to may be found in the committee files.)

Mr. CURLEE. We also have withholding records mentioned in the testimony Mr. Moore gave to you. We would like to present these to you and hope that these exhibits will help to expose the nature and the scope of the problem that we are dealing with.

Also, there is material that points out the approach that has been taken up to this point for the solution to this problem by the various States. They have two approaches: One is a credit approach and one is a reciprocal approach.

It should be noted that the reciprocal approach accomplishes exactly what this legislation that is before this committee does. It deals with the withholding aspect only.

The reciprocal agreement goes something like this: If you have two States, both of which have a policy of taxation of nonresidents, these States will exchange agreements stating that if State A will not withhold, then State B will not withhold from their respective nonresidents.

There are many problems with this, and with the credit process, because of the possibility of having various forms between the various States of these agreements. A bigger problem is the inequality that is generated when you have a State that doesn't have an income tax law. This nontax State cannot participate in reciprocal agreements.

Also, one last thing I would like to point out: Early last year, almost a year ago, the House passed a bill, H.R. 7906. This bill was for the protection of corporations. It dealt with the taxation of corporations in interstate commerce by the various States. It sought to sort out their problems and do something similar to what we are asking for today for employees instead of corporations. We would like to see something done as beneficial to the folks as we have for the corporations.

Thank you.

Mr. FRIEDEL. I think you are referring to the Willis bill. They were years in getting that legislation passed that was very much needed. I agree that this legislation should be passed.

I see we have a group that has just walked in. Some of them are from my district of Baltimore. This is the Maryland and Washington, D.C., Association of Letter Carriers. We welcome you here and you might enjoy seeing how the legislative committees work.

One thing that I would like to say in getting back to this subject, when your trucks or the drivers go through a State they buy gasoline and pay taxes in that particular State, do they not?

Mr. CURLEE. Yes, sir; they do.

Mr. FRIEDEL. So, the State does benefit when interstate trucks go from one State to another.

Mr. CURLEE. Indeed, they do, sir.

Mr. FRIEDEL. I have no further questions.

Mr. Adams?

Mr. ADAMS. Thank you, Mr. Chairman.

I appreciate your coming in this morning to testify on this matter. I want to be certain that in the materials that you are going to submit, that you have an analysis of the individual States that are applying their tax laws to nonresidents and in particular the types of collection that they are attempting to use.

Mr. CURLEE. The material is limited at this point to letters responding with whether or not they have a policy of withholding from the wages of nonresidents who perform permanent services within their State.

Mr. ADAMS. Also, do you have contained in that some type of analysis as to the States that are part of the Multistate Tax Commission as compared to the States that are pursuing this policy of withholding wages from people who may be traveling through the State but have no residence in it?

Mr. CURLEE. No, we have no comparison between those two types of things.

Mr. ADAMS. If that could be done, perhaps one of the other witnesses will supply it. We have invited members of the Multistate Tax Commission to testify on this problem. I want to be sure whether or not the membership of the Multistate Tax Commission is coincidental in all cases with those States who are following this policy of requiring employers to withhold. Thus if some States, after they have gotten the withholding power, are not in the compact, they will continue to use this harassing power to collect taxes from nonresidents. So, we would appreciate having the facts of that situation, if you could supply it to the committee.

Mr. CURLEE. We could make an attempt to, sir.

(The following information was received for the record:)

States that withhold	Members of Multistate Tax Commission	Nature of committee membership	States that withhold	Members of Multistate Tax Commission	Nature of committee membership
Alabama.....	Alabama.....	Full member-ship.	Vermont.....	Not a member.....	
Alaska.....	Alaska.....	Do.	West Virginia.....	West Virginia.....	Associate.
Arkansas.....	Arkansas.....	Do.	Texas.....	Texas.....	Full member-ship.
California.....	California.....	Associate.	Illinois.....	Illinois.....	Do.
Indiana.....	Indiana.....	Do.	Florida.....	Florida.....	Do.
Iowa.....	Not a member.....		Nevada.....	Nevada.....	Do.
Kansas.....	Kansas.....	Full member-ship.	Idaho.....	Idaho.....	Do.
Louisiana.....	Louisiana.....	Associate.	Hawaii.....	Hawaii.....	Do.
Maryland.....	Not a member.....		Colorado.....	Colorado.....	Do.
Missouri.....	Missouri.....	Full member-ship.	Wyoming.....	Wyoming.....	Do.
Nebraska.....	Nebraska.....	Do.	Montana.....	Montana.....	Do.
New Mexico.....	New Mexico.....	Do.	North Dakota.....	North Dakota.....	Do.
New York.....	New York.....	Associate.	Massachusetts.....	Massachusetts.....	Associate member.
Oregon.....	Oregon.....	Full member-ship.	Pennsylvania.....	Pennsylvania.....	Do.
South Carolina.....	Not a member.....		South Dakota.....	South Dakota.....	Do.
Utah.....	Utah.....	Do.	Tennessee.....	Tennessee.....	Do.
			Virginia.....	Virginia.....	Do.

Note: The multistate tax commission has 2 kinds of members, 1, full member States, that have joined pursuant to an act of their respective State legislatures, and 2, associate members that have joined pursuant to executive agreement.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. Mr. Moore, it is good to see you here. This is one of these pieces of legislation that you kind of have a difficult time figuring out why anybody would be against it. Who is against this legislation? Do you know?

Mr. MOORE. Yes, sir. Some of the States are against it.

Mr. KUYKENDALL. Is an organization of State governments or anything against it?

Mr. MOORE. The only group I know of is the group that testified over in the Senate, I believe, the Interstate Tax Compact, a little special committee, I don't believe with any official sanction.

Mr. KUYKENDALL. For the record I would like to indicate some things here to see what you and your management together—and it is sure nice to have you and your management together on this—buy in a State in which you don't live. You do have to buy license plates, don't you?

Mr. MOORE. Yes, sir.

Mr. KUYKENDALL. Your driver when he stops makes a purchase of anything, he pays sales tax, gasoline, tobacco, regular sales tax on food.

Mr. MOORE. Anything that is purchased in this State, tread rubber.

Mr. KUYKENDALL. So, the individual passer-through, not only has to buy license plates, not only does he pay tax on gasoline, but he himself ends up paying a sales tax, like on tobacco or his food or whatever he happens to buy, and if he spends the night and has a dinner or happens to have a mixed drink or a beer or something like that, there is a rather heavy tax on that.

Let's look at for the record some of the benefits in this State that the ordinary citizen avails himself of that your driver does not avail himself of. I guess the biggest single item in any State budget, Mr. Chairman, is education. Certainly this driver in no way avails himself of the education.

What is getting to be one of the biggest is health benefits, that your driver does not avail himself of. Can you think of a couple of others that we can put in the record? You can't say police protection because he does have that. But what else might be there?

In other words, your driver is paying a certain amount of taxes, and your employer, and it seems to me it is a relatively just division of what they are and are not availing themselves of in the State.

Can you think of some of the other large expenditures of money that the passer-through would not avail himself of? Education and health are the two biggest.

Mr. FRIEDEL. A couple of things, if they have an accident, they would have to have a truck repaired in that State, they might have to go to a hospital and pay the hospital bills.

Mr. KUYKENDALL. Let's look at another thing here.

I am on record through the years as being very strong in States responsibilities, States living up to those responsibilities, States collecting their taxes. But this somewhat reminds me, Mr. Chairman, of the movement that is now going on between the insurance companies as far as liability is concerned.

A lot of them have suddenly found out that instead of arguing with each other, if everybody just paid their own, they will all come out even and won't have to pay the legal fees. It seems to me that if every State would just collect his own with no reciprocation, wouldn't that be about even in the end?

Mr. MOORE. Absolutely.

Mr. KUYKENDALL. This is one of the reasons why it seems so ridiculous that everybody would get in this donnybrook. Just as soon as one State starts penalizing another State, that State will reciprocate and they will end up kind of like this liability insurance thing where I understand 40 percent of total cost of liabilities is law suits.

If they would go ahead and pay their own, there wouldn't be any law suits and they would come out even.

So, I have a feeling here that these States would come out even. Don't you agree?

Mr. MOORE. Absolutely. The benefits that the States derive, the services that the people perform certainly outweighs any charge that the States should put on these people.

Some people try to argue the point that these drivers and the companies, the employers, derive a great profit out of this. It is just not there. The service that is being performed really certainly outweighs any taxes that should be collected or be put against these people for traveling there.

We feel like we are doing a tremendous service to Alaska.

Mr. KUYKENDALL. Mr. Moore, even if they are getting a profit, doesn't the truckdriver stationed in that State get a profit out of the other State, the other way?

Mr. MOORE. Certainly.

Mr. KUYKENDALL. I am saying it totally reciprocates. I will not apologize to anybody for making money. Sure, he may make money by going through this State. But after all, the man in that State can make money by going through the other States, too. I don't know of any States that don't have any truckdrivers.

Mr. MOORE. I know of nothing that would probably create a tendency to divide the country any more than 50 separate pieces of taxation policies set out by the 50 different States. I know of nothing that divides us any more than that type of thing.

Mr. KUYKENDALL. Particularly on nonresidents.

Mr. MOORE. Absolutely.

Mr. KUYKENDALL. I am going on record, Mr. Chairman, as saying that my attitude on States does not necessarily apply to matters of cities and suburbs. I am not going to state my own opinion on that, but I was going to state on the record my strong feeling that this taxation, whether it be a railroad employee or whether it be an airline employee or whether it be a trucker, that doesn't apply in my own feeling to the right of a central city possibly to look at their suburbs, particularly if they are incorporated outside and are availing themselves of their total services of the suburb.

Mr. FRIEDEL. Mr. Pelly testified and also would like to have seamen included, too.

Mr. KUYKENDALL. I think they should be. Mr. Pelly has a particular problem up the coast to Alaska.

Thank you.

Mr. FRIEDEL. Mr. Moore, on page 2 of your statement, you say that of 38 States which have income taxes, at least 18 of them have announced a policy of requiring withholding from the wages of non-residents.

I notice among the 18 States that they have the State of Maryland. Am I going to have a problem there?

Mr. MOORE. It is, of course, a good question. I would think Congressman, that, say, a Congressman from Texas that lives or resides at this point in the State of Maryland, a teamster, a trucker or airline pilot that resides in Texas, his official home, he is domiciled in the State of Maryland, temporarily, like a Congressman or we might say the President of the United States is a good example. The President has claimed his official residence in the State of California and pays taxes in the State of California, I am sure. He goes to Maryland on occasions to Camp David, I believe it is.

As far as we interpret the law, the State of Maryland could withhold taxes from his paycheck.

Mr. FRIEDEL. If you are a Member of Congress, we work in Washington and get paid in Washington, but the State of Maryland gets my income tax and the State of Washington gets your income tax and the State of Tennessee gets your income tax.

Mr. MOORE. I know some of the Members have, of course, questioned the State of Maryland and other States about withholding of taxes from their checks or attempting to.

I don't know what the conclusion has been. But I don't imagine that they are holding as much money from Congressmen's paychecks as they would from a truckdriver or airline pilot or railroad man. I don't know. I wouldn't certainly attempt to verify that.

Mr. FRIEDEL. I want to thank you, Mr. Moore.

Mr. MOORE. Thank you so much for allowing us this time.

Mr. FRIEDEL. Our next witness will be Mr. William H. Martin, Western Conference of Teamsters; Mr. Herbert L. Baker, vice chairman, Interstate Tax Reform Committee. I understand they also have with them a Capt. Stanley Gilge.

You may proceed.

STATEMENTS OF WILLIAM H. MARTIN, CHAIRMAN, INTERSTATE COMMERCE TAX REFORM COMMITTEE AND BUSINESS REPRESENTATIVE, TEAMSTERS LOCAL NO. 741, SEATTLE, WASH.; CAPT. STANLEY GILGE; AND HERBERT L. BAKER, VICE CHAIRMAN, INTERSTATE COMMERCE TAX REFORM COMMITTEE

Mr. MARTIN. My name is William M. Martin, chairman of the Interstate Commerce Tax Reform Committee, and business representative for Teamsters Local 741 in Seattle.

I would like Capt. Stanley Gilge to make a few remarks and I am sure he can answer some questions on this multistate tax compact that was asked by the gentleman up here.

This is Mr. Baker on my left. He is a retired member of the cooks and stewards. I am sure he can answer a lot of questions on the maritime business. But as chairman of this ad hoc committee, known as the Interstate Commerce Tax Reform Committee, composed of members of all the various labor unions engaged in interstate commerce, airlines, ships, trucks and rail, our purpose is to effect and support legislation that would stop the encroachment of our incomes by the payment of taxes to any State other than the State of our residence. We speak for hundreds of thousands of people—we believe our cause is a just one.

I first became active in this effort in January 1969, when it came to my attention that the State of Alaska was attempting to tax "retroactively" for several years all of our truckdrivers that pass through that State. As a business agent of Teamsters Local Union 741 Seattle, I believe it my duty to pursue this issue to a sensible conclusion. With several other members of our committee we traveled to Juneau, Alaska and consulted with representatives of the Governor's office in an attempt to prevail upon their logic that this tax problem was creating a monster. Our meeting accomplished little except a series of postponements by the State of Alaska in their demand for payment, the latest being until May 31 of this year. We later went to New York City and to this city where we met with Members of the House and Senate and placed our problem before them.

After the introduction of H.R. 10634 and S. 2044 we then consulted Mr. George Kinnear, director of revenue, State of Washington, and at that time chairman of the Multistate Tax Compact. In June of 1969 we were invited to a meeting of that compact held in Houston, Tex. Mr. Gilge was at that meeting as well as a member of the Airlines Pilots Association, Mr. Woodward. While we have the deepest respect for the ability and integrity of Mr. Kinnear it became apparent that the tax compact could in no way solve our problems. They do not have full participation from the 50 States and we do not believe their conclusions are binding among the States that do participate.

At this time, I began to believe that perhaps Disraeli was almost right when he said, "More pernicious nonsense was never devised by man than treaties of Commerce." But in recapturing our thoughts we must come up with a better quote from James A. Garfield—"Commerce is the equalizer of the wealth of nations" and this flies squarely in the face of what we bring before your committee. We submit that the employees engaged in the transportation of people, goods, and services are the most viable part of the economy of any State. How can any State say that as an employee in commerce we owe them a tithe, is beyond the realm of commonsense. We believe we own our tax commitments to the State of our residence, where we have our roots. We all pay our due share there, plus our Federal tax which a great part is used to build roads, airports, port facilities, et cetera. We land our airplane, drive our truck or berth our ships in facilities that have been paid for in good part by Federal tax dollars, yet the several States suddenly become a mother hen over these facilities and assume that they are in command of all that passes through, or over, or on, these facilities. We most respectfully disagree. If one of our people eats a meal, buys a lodging, repairs his equipment, requires medical attention, buys a beer, he contributes to that State's economy by these acts.

I submit as a classic example the State of Alaska. Prior to their oil boom the "tourist" was their stock in trade. The airplane, ship, and bus brought those tourists into Alaska. Now, if it be fair to tax the pilot, the ship crew, the bus driver, because they operate over and into Alaska, would it not also be fair to tax each passenger because he also was in Alaska. They wouldn't dare because the tourist contributes to Alaska's economy—well, do we not do the same? We brought that "viable" contribution into the State so he could spend his money in the first place.

If due consideration be given to the testimony given before the Senate committee on March 4 and 5 of this year, it will become self-evident that the taxation by the several States our people engaged in interstate commerce will contribute nothing to the free flow of commerce but will conversely, if it is not stopped, create a bar to the free flow of commerce, the like of which we have not yet visualized. Our people are just not going to put up with this growing encroachment on their pay. We will insist upon being indemnified for this encroachment.

We most respectfully feel that our problem can only be adjudicated through legislation. We plead our case before you, gentlemen, and most sincerely hope that our pleas will not be in vain, and that your judgement will prevail in our favor.

As chairman of the Interstate Tax Reform Committee, and in behalf of the many thousands of people concerned, I most respectfully thank you for the opportunity to appear before you. If there are any questions I will be most happy to respond.

With the permission of the chairman, I would like to ask Mr. Gilge to make a few brief statements, with your permission.

Mr. FRIEDEL. Captain, you may proceed.

STATEMENT OF CAPT. STANLEY GILGE

Mr. GILGE. Honorable chairman and associate members of the committee.

I am a member of the U.S. Merchant Marine. In an adjacent room to where you are now sitting there is at present a hearing being conducted by the Merchant Marine Committee to prove, substantiate, or develop the economic survival of my industry.

My industry has never been so singularly attacked as by the system of multistate taxation. Now, in a period of extreme economic stress, which we are undergoing due to foreign competition, which I am sure you are aware of, our vessels are laying idle, being scrapped, junked, and the American seaman is on the beach.

I wish this morning to point out some hostility to this bill, as the Honorable Mr. Kuykendall pointed out, and who can be against it?

I will attempt to do three things, cite who is against it and why; secondly, I would like to better acquaint you with the effects of the multistate tax compact; and thirdly, in closing, very briefly give you an example of the extremist, the most extreme type of hardship ever heard exerted on an American working man.

It may seem to those present that multistate taxation is not quite the bear that it appears to be, because the answer of the Multistate Tax Compact is, and as has not been brought out here as yet this morning, that whatever taxes you pay to a separate State from your State of residence are then, of course, duly deductible from your State of residence.

So, you wouldn't pay more total tax. You would be just paying to more separate entities. This will be the answer.

Who is against it? No. 1, 10634 is definitely opposed by the Multistate Tax Compact who are themselves seeking congressional legality for the process of tax equality.

Secondly, of course, the revenue collectors and Governors of the States who are aware of their budgetary requirements and the limitations within their States of reaching those requirements and going a field to obtain revenue are against it.

Thirdly, many, many corporations who share a large burden in the total tax budget that are not engaged in interstate commerce but do business completely within a State are opposed to this, simply because it is an economic measure that will require them to come up with a larger share of the tab of running their State than they would have to if foreign citizens, when I say foreign I mean from adjacent or distant States, were able to pay or forced to pay.

I cite the State of Alaska as an example. We approached the State of Alaska with what we hoped would be a reasonable settlement on this particular problem. We met in Juneau and got a partial agreement. We met again in Houston, Tex.

The reason this committee went to Houston, and at that time I was chairman of the committee, was because of the continual reference by Senators, Congressmen, by proponents and opponents of this bill to the inherent right of States to tax, the inherent right of the individual States to tax, yet not one word was ever mentioned about the consent of the government, which was also an integral part of our Constitution in my view.

At this compact, they told, for instance, that no man would pay more than his share of the tax. So, my first question was to the committee, we had decided, by the way, to go along with this committee if they could offer us real relief other than Federal legislation to cooperate with them, to assist them in setting this thing up.

It became apparent as the meeting went on in Houston that the machinery was getting more complex, there were less States willing to join it. I have and my committee members and my membership behind me have certain objections to a multistate compact.

Mr. Moore very ably pointed out some of them. I am a resident of the State of Washington. Let's say for the sake of argument we impose a 14 percent baseline income tax on an individual. Then I am obligated to pay Washington 14 percent of my income. They then will apportion out according to constitutionally approved apportionment formulas to the States their share of that 14 percent for whatever measure of compensation I receive due to that State's traffic.

I asked a question: I said, "Fine, supposing the State of New York has a 22-percent base. Then there is an excess amount billed to me. What happens then? You have made me an involuntary resident of the State of New York with all of the burdens and responsibilities but none of the privileges."

I also submit further to you, gentlemen, that the Multi-State Tax Compact is a completely voluntary thing. The Congress and Senate will be here as long as the United States is. The Multi-Tax Compact is an interim measure until something better can be devised. I have no faith in such temporary institutions in this country. That was exemplified by the second settlement we made in Texas with the State of Alaska.

After a 2-hour session between myself and the collector of revenue of Alaska, who is even now an officer of the Multi-State Compact, who made certain settlements, walked out of the room and abrogated each and every one of them separately and has not to this day honored one of those concessions.

Gentlemen, we no longer believe in the State's ability to manage this type of a program. Alaska, as you well know, just had a recent boom in their oil deposits and revenues from that oil deposit.

If another State develops oil, Indiana for instance, or Ohio, in this amount and it becomes relatively attractive to them to remove themselves from the tax compact, they have only to pick up their briefcase and walk out. This cannot be called a stable organization insofar as setting permanent taxation for individuals of this country.

There are so many avenues in the multistate tax compact arrangement of a nebulous nature that I don't think it is a practical thing for us to submit to it. Therefore, we have appealed to you people for Federal legislation to correct this problem.

One of the witnesses—and this may be hearsay evidence, the two gentlemen on my left are well acquainted with the story and the man, and this sits the urgency of this legislation not to be completed next year or the year after or in 1975.

We have a man named Carl Tilden who was a seaman. He was a member of the Sailors Union for approximately 40 years. He sailed on the west coast to Alaska. He was a man of integrity, hard working and during the later years in his life, his wife became mentally ill. He was of Scandanavian origin and he was, how should I say it, quite proud, let's say is the best work, rather than put his wife in a State institution he put her in a private institution and paid for her care.

Subsequently, he retired from the union. After his retirement, he was attacked by the State of Alaska for 8 prior years taxation amounting to almost \$2,000 outside of his monthly pension of between \$250 and \$300. He had nothing other than a small house. The State of Alaska made it known to him they were going to attach his property for this money which would make him independent in finding other quarters to live in in order to be able to support his wife.

Subsequently, this man is not here today because he has fled the country. We need this legislation and we need it now in all facets of the industry.

I, as a shipmaster, a seaman on my ship, the airline pilots and to a great degree the truckers and railroad employees do not receive the benefits of the State, which Mr. Kuykendall was questioning, in any manner, shape or form in some respects. For instance, if I have a riot aboard my vessel in any port, I cannot call in the local facilities to aid me, I cannot call on the local sheriff or the local police department or the State troopers. There is only one man that has jurisdiction on my vessel, that is a Federal marshal.

If I am to pay income tax to that State where my ship calls at and I cannot get a driver's license, a hunting license or be eligible for the ballot, I submit and it is my view, that that State does not have the consent of the Government. This legislation is the only thing that is going to rectify it.

How acute is the problem? I will cite in closing an instance. My home is in Seattle, Wash. I work on a vessel that is owned in the city of New York by a New York State corporation. That ship is registered in the State of Delaware and loading cargo at the present time in New Orleans, La.

Four States have jurisdiction over me taxwise with no indemnification as to the selling of that tax. Therefore, gentlemen, I respectfully hope that you will favorably consider 10634 and thank you for letting my segment of the industry present its remarks.

Mr. FRIEDEL. Thank you.

Mr. Baker?

STATEMENT OF HERBERT L. BAKER

Mr. BAKER. Yes, sir. Honorable gentlemen:

My name is Herbert L. Baker. I am a member of the Marine Cooks and Stewards Union, vice chairman of the Interstate Tax Reform Committee, representing approximately 10,000 to 12,000 west coast seamen. I have worked as a seaman in the Alaska trade for the past 35 years, with the last 25 years as chief steward. The State of Alaska has levied not only what we consider a discriminatory tax on seamen, but a tax without representation and confiscatory in nature.

Our members on vessels operating in that trade have been tax billed not only for the time spent in Alaskan ports or even in Alaskan waters, but for the entire voyage from Seattle back to Seattle. While our immediate tax problem concerns Alaska, the fact that 34 States have enabling acts on the books, it could and would seem apparent that crew members would be multitaxed in each and every port, whichever coast.

The State of California and Oregon also have State income taxes, and have in the past, billed transit nonresident seamen on their gross income. A resident Seattle seaman could be dispatched from Seattle, but by virtue of the company being California and/or Oregon based, imposes taxes, although he is a nonresident.

In addition, they pay local property and school taxes; and the gasoline taxes and auto license fees are the highest in the Nation today. The temper of the employees involved in this situation has risen to a point where they may soon demand that their representatives negotiate with their employers for some form of financial relief. In a good many cases, seamen do not even put ashore in Alaskan ports, yet as transient, when they do go ashore, they are spending money rather than removing money from the State.

Realizing Federal and State bodies are in urgent need of tax dollars, we can't help but wonder where the full effect of taxation of this type will lead to. First, we are taxed. Second, costs such as these if they prevail, will obviously have to be negotiated into future contracts, which would obviously be passed on to the shipper. This, in turn, would be passed on to the consumer, who, in actuality is the resident. Every man, woman, and child in Alaska or the imposing States would be bearing the burden of such costs.

The people for whom I speak are responsible citizens of this Nation and their community. They have established their homes and make significant contributions to the economy of their immediate areas. They pay Federal income taxes and State taxes, and very soon, we in the State of Washington, will also be assessed another sales tax.

I am at your disposal if you have any questions. I respectfully thank you gentlemen for affording me the time and opportunity to appear before you with the views of the people I represent, and trust your good judgment will prevail.

Mr. FRIEDEL. I want to thank you.

Mr. ADAMS?

Mr. ADAMS. I have no questions of Mr. Baker. I do have just one question of Captain Gilge which is, you mentioned if your ship is in a port such as New York and you have trouble on that, you have to call the Federal marshal. Is that correct?

Mr. GILGE. There are, as you have read in the cases of vessels and especially aircraft lately in the hijacks, the local police who have willingly cooperated with them and with us on things such as fire. They are not obligated to do so, nor can we depend on them to do so, because the entire industry is regulated by the Federal branches, the Coast Guard, Maritime Commission and so on.

The only person who has jurisdiction, in fact it may be a ridiculous answer, but there are only two people who get a man off a ship today, and that is the U.S. Marshal or your wife.

Mr. ADAMS. Thank you.

Mr. FRIEDEL. Mr. Kuykendall?

Mr. KUYKENDALL. Thank you, Mr. Chairman.

I appreciate your statement. I just want to ask you gentlemen to give us a pledge. I don't know of anybody that is against this legislation. The phone calls that I have had for the legislation have been entirely from industry, from management, pushing for the legislation. I happen to think that the problem is a great deal wider than just interstate transportation.

So, I would like for you to give us an unofficial pledge now, that if we pass this legislation and solve your problem, that if we start broadening this effort to just prevent interstate taxation on the payrolls, period, that you won't just say, "we have got our problem solved, you take care of yourself." We are going to want your help on that one, too, when the time comes.

Thank you.

Mr. FRIEDEL. Thank you, gentlemen.

Our next witness will be Mr. John M. Kinnaird, assistant chief counsel, public affairs, American Trucking Associations, Inc.

**STATEMENT OF JOHN M. KINNAIRD, ASSISTANT CHIEF COUNSEL,
PUBLIC AFFAIRS, AMERICAN TRUCKING ASSOCIATIONS, INC.**

Mr. KINNAIRD. Thank you, Mr. Chairman.

Gentlemen, as the chairman has indicated, my name is John M. Kinnaird, and I am assistant chief counsel, public affairs, of the American Trucking Associations, Inc. As you probably know ATA is the national trade association of the motorcar industry. It represents all types of motor carriers and has affiliated associations in every State and in the District of Columbia.

The purpose of H.R. 1240—as well as the other bills subject of this hearing—is to exempt certain transportation companies from State income tax withholding provisions as they relate to nonresident employees of such companies. It does not in any manner affect the power of the State to tax.

Included in the scope of the bill are motor carriers, railroads, airlines, buslines, water carriers and express companies and with Mr. Pelly's amendment, of course, seamen and fishermen.

More specifically, this bill would provide that no part of the wages or salary paid by the carrier to an employee who performs his regularly assigned duties as such an employee on a motor vehicle (aircraft, vessel, locomotive, et cetera) in more than one State, shall be withheld for tax purposes pursuant to the laws of any State or subdivision thereof other than the State or subdivision of such employee's residence, as shown on the employment records of such carrier; nor shall such

carrier file any information return or other report for tax purposes with respect to such wages or salary with any State or subdivision thereof other than such State or subdivision of residence.

We appear here today to affirm our support of H.R. 1240 and related bills. This is not a new position for ATA since we testified 6 years ago before this same subcommittee on an identical bill, S. 1719. The reasons for our support of the legislation then remain valid today. The only change is that with the passage of 6 years, the problem of motor carriers being required by State laws to withhold income taxes from the wages of nonresident truck drivers has become even more burdensome due to additional States imposing and enforcing such requirements. To be specific, in 1964 only 35 States required withholding of income taxes from nonresidents. Today, 38 States require such withholding by nonresidents.

The trucking industry by virtue of its inherent nature operates from, into, and through various States and political subdivisions. As an industry, it is subject to a variety of taxes ranging from the usual property, real and personal, and income taxes to those of a more special nature involving highway use. It also withholds income taxes from its employee's wages for both the Federal Government and where required, for the State of residence of the employee. However, as was pointed out in 1964, beginning in approximately 1960, several States imposed an additional requirement on our industry—the requirement of income tax withholding for States other than the State of residence of the employee; States through which the employee drove his truck in the normal course of his employer's business; States other than the State of the driver's residence.

Due to an increasing number of complaints from various trucking companies, the ATA Reciprocity and Taxation Committee in 1968 initiated a study of the problem. The membership of this ATA committee consists of both State trucking association managers and executives of various trucking companies throughout the United States. At about the same time, the National Accounting and Finance Council of ATA began to explore the same situation. The membership of this council consists of motor carrier executives whose duties involve the accounting and administrative functions of their employer. Both groups concluded that the nonresident State income tax withholding requirements created a serious problem because of (1) the administrative cost to the employer; and (2) the serious difficulty of compliance.

As a result, the ATA executive committee unanimously voted to support enactment of legislation similar to H.R. 1240.

However, a minor amendment to H.R. 1240 is required. Due to the fact that with the creation of the Department of Transportation in April 1967, certain of the jurisdiction which the Interstate Commerce Commission had over private carriers was transferred to the Department of Transportation along with the transfer of the ICC Bureau of Motor Carrier Safety. Section 2 of H.R. 1240 amends part II of the Interstate Commerce Act and uses the term "motor carrier." In order to avoid any question as to whether this term includes private carriers, we would appreciate the following amendment:

On page 3, line 7 of H.R. 1240, after the words, "subject to the provisions of this part" add the words "or by any private carrier of property by motor vehicle."

I believe you will find certain of the conclusions reached by the two ATA groups to be of interest. They include the following:

1. Proper withholding for nonresident employees requires complete knowledge of numerous and often complicated State laws, rules and regulations.

2. Determination of the exact amount to be withhold is often difficult, particularly because of lack of uniformity among the State withholding laws.

3. Payroll procedures even though computerized are subject to continuous change because the routes traversed by an individual driver vary from State to State over a given period of time.

4. The cost of administering the nonresident withholding requirements is extensive due to frequent change in payroll amounts.

5. In the majority of instances, cost of administration exceeds the amount of tax withheld and transmitted to the State.

Many motor carriers indicated a willingness to appear and testify before you in support of this bill. However, we felt that one operator whose experience with the problem was typical of all would suffice. Thus, I would like to have the statement of Mr. Lawrence Anderson, senior vice president—administration and secretary of T.I.M.E.—DC. placed in the record to inform you in more detail as to the burden incurred by his company as a result of the imposition of State income tax withholding requirements on nonresident employees.

In closing I would like to emphasize that we are not challenging the power of the State to levy an income tax. We are simply asking for relief from the burden of withholding State income taxes from the wages of nonresident employees. Such relief would be afforded by the enactment of H.R. 1240.

I gave Mr. Anderson's copy to the clerk.

Mr. FRIEDEL. That will be included in the record.

(The statement of Lawrence Anderson, referred to, follows:)

STATEMENT OF LAWRENCE ANDERSON, SENIOR VICE PRESIDENT—ADMINISTRATION,
AND SECRETARY, T.I.M.E.-DC, INC., LUBBOCK, TEX.

My name is Lawrence Anderson. I reside in Lubbock, Texas, where I am employed by T.I.M.E.-DC, Inc. as Senior Vice President—Administration and Secretary. I have been employed by the company or its immediate predecessor for a period exceeding 20 years. As Senior Vice President, I am familiar with the overall operations of the company and I am directly responsible for all administrative matters, including accounting functions.

T.I.M.E.-DC, Inc. is a motor common carrier transporting general commodities with the usual exceptions over regular routes and in some instances, over irregular routes, under and by virtue of a certificate of public convenience and necessity as issued by the Interstate Commerce Commission in Docket No. MC 35320.

Our company operates over 39,000 miles of authorized routes in 38 states and in the District of Columbia. T.I.M.E.-DC, Inc. has 45 full-fledged terminals throughout its system, employs 6,421 people and utilizes 7,526 pieces of equipment.

Attached hereto is Appendix A which sets forth the domicile of our over-the-road drivers and lists the states into or through which they operate. In the right-hand column, the states with the asterisk indicates those states having income tax withholding requirements affecting both our personnel and our company.

As indicated by Appendix A, numerous states have enacted income tax withholding requirements relative to non-residents. However, the simple fact that there are numerous such withholding requirements is not by itself a correct picture of the scope of the problem. For in addition to the presence of the requirement, is the lack of uniformity among the various state laws. This lack of uniformity makes it exceedingly difficult for our company to effect compliance in every instance. Our legal department together with our accountants spend much time keeping current with the many rules, regulations and changes therein. We have

to make every effort to comply since we are subject to auditing by each state and I want to point out that the cost of such audits is imposed by the states upon the carrier.

I have attempted to determine some estimate of the cost that T.I.M.E.-DC. incurs as the result of state income tax withholding as it relates just to non-residents. Such an estimate is most difficult to determine. However, I believe you will find the following example to be both pertinent and interesting. All payrolls for our company are processed and the records maintained in Lubbock, Texas. Our payroll system is computerized and each state that has or changes its withholding requirements necessitates additional computer programming time. This involves additional work on the part of our programmers, system personnel, test time, legal time and computer time. We know that each computer instruction costs \$3.00. Some changes in the matter of state income tax withholding necessitate a minimum of 1500 instructions or a cost of \$4,500.00. This may seem a rather startling figure but again it is due in many respects to the lack of uniformity I previously mentioned.

One major problem is that the basis for what constitutes taxable income differs in that some states require a determination on a mileage basis while others are on a days work basis. Thus, T.I.M.E.-DC. has to first determine the amount of pay earned when the employee was working in a given state. Then, the law of that state has to be applied to such earnings before a proper income tax deduction can be ascertained. Furthermore, since the withholding period ranges from weekly in some states to various periods in others, another complicating factor enters the picture. Add to this the fact that an employee may operate in certain states for several weeks and then change to another area thereby requiring adjustments in his deductions should the change bring him into or through a state requiring us to withhold.

I sincerely hope that my testimony will be of assistance in your study of the problem and that you will conclude that enactment of H.R. 1240 be recommended.

Thank you for this opportunity to testify in support of H.R. 1240.

T.I.M.E.-DC, INC. OVER-THE-ROAD DRIVERS—DOMICILE AND LIST OF STATES INTO OR THROUGH WHICH THEY DRIVE

Domicile	Number of drivers	States into which they drive
Atlanta, Ga.	50	Georgia,* Alabama,* Mississippi,* Louisiana,* Texas, Tennessee.
Chattanooga, Tenn.	1	Tennessee, Alabama,* Georgia.*
Cincinnati, Ohio.	7	Ohio,* Indiana,* Kentucky.*
Chicago, Ill.	105	Illinois, Indiana,* Ohio,* Pennsylvania, New York, Massachusetts,* Connecticut, Michigan,* New Jersey.*
Dallas, Tex.	9	Texas, Oklahoma.*
Decatur, Ala.	1	Alabama,* Tennessee, Georgia.*
Denver, Colo.	324	Colorado, Nebraska,* Iowa,* Illinois, Indiana,* Ohio,* Michigan,* Kansas,* Missouri,* Kentucky,* Wyoming, Idaho, Oregon,* Washington, New Mexico,* Arizona, Calif.* Utah, Nevada.
Detroit, Mich.	2	Michigan,* Canada, New York.
Evansville, Ind.	27	Indiana,* Illinois, Kentucky,* Missouri,* Tennessee.
Kansas City, Mo.	9	Missouri,* Kansas.*
Knoxville, Tenn.	94	Tennessee, Virginia.*
Little Rock, Ark.	3	Arkansas,* Tennessee, Oklahoma.*
Los Angeles, Calif.	397	California,* Arizona, New Mexico,* Texas, Oklahoma,* Kansas,* Missouri,* Illinois, Indiana,* Ohio,* Kentucky,* Pennsylvania, New Jersey,* New York, Oregon,* Washington, West Virginia.*
Lubbock, Tex.	43	Texas, New Mexico,* Oklahoma.*
Memphis, Tenn.	94	Tennessee, Mississippi,* Alabama,* Arkansas,* Missouri,* Kentucky,* Illinois.
Nashville, Tenn.	70	Tennessee, Alabama,* Kentucky,* Illinois.
Oklahoma City, Okla.	105	Oklahoma,* Texas, New Mexico,* Arizona, California.*
Oakland, Calif.	33	California,* Oregon,* Washington,*
Phoenix, Ariz.	52	Arizona, California,* New Mexico.*
Paris, Tenn.	10	Tennessee, Kentucky,* Illinois.
Portland, Oreg.	64	Oregon,* Washington, California,* Vancouver, British Columbia.
St. Louis, Mo.	32	Missouri,* Illinois, Indiana.*
Sallisaw, Okla.	33	Oklahoma.*
Seattle, Wash.	66	Washington, Vancouver, British Columbia, Oregon,* California.*
Stockton, Calif.	8	California.*
Tulsa, Okla.	4	Oklahoma, Kansas,* Missouri.*
Vancouver, British Columbia.	4	British Columbia, Washington.
Vinita, Okla.	9	Oklahoma,* Missouri.*
Winchester, Va.	175	Virginia,* Maryland,* Pennsylvania, New Jersey,* New York, Connecticut, Rhode Island, Massachusetts,* District of Columbia, Tennessee, West Virginia.*

*Denotes States having withholding tax.

Mr. KINNAIRD. I won't take the time to read it. But it will give you more detail as to his particular experience. As I say, his company is typical of our truck operators who have this problem.

Mr. FRIEDEL. Mr. Adams?

Mr. ADAMS. I have no questions. Thank you.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. No, thank you.

Mr. FRIEDEL. Mr. Kuykendall?

Mr. KUYKENDALL. Thank you.

I don't believe any of the other witnesses have mentioned this point. I was going to ask one of them and I forgot it.

It will be almost ridiculous to think that you would have one of these pacts between States that didn't have similar income taxes, wouldn't it?

In other words, if a bunch of States go together in a pact, they are going to have similar income tax levels. So, are they not, in your opinion, doing nothing but just trading dollars and creating overhead?

Mr. KINNAIRD. That is correct.

Mr. KUYKENDALL. In other words, they are going to trade dollars back and forth and create a lot of bureaucratic overhead. It seems to me the State itself may be losing money on it.

Mr. KINNAIRD. Yes, sir; and unless the quid pro quo is fairly equal, the States are very reluctant to enter into a reciprocity agreement.

Then you also have the situation that since 38 States have State income tax requirements and we have 50 States in the United States, it is impossible to reciprocate with a State which does not have a State income tax. I believe the State of Washington, if I remember correctly, does not have a State income tax and therefore could not reciprocate with the State of Alaska to alleviate the problem that the previous witnesses have been talking about.

Mr. KUYKENDALL. This almost reminds me of the first grocery store in town to put in trading stamps. He does all right as long as he is alone. So, the first State that thought of this probably did all right. But when all the States get a reciprocating basis, you are doing nothing but trading dollars and fooling no one.

Thank you.

Mr. FRIEDEL. I want to thank you. I would like to say briefly, if we can pass legislation, we will stop a lot of headaches.

Our next witness will be Mr. Francis O. McDermott, tax counsel, Association of American Railroads.

STATEMENT OF FRANCIS O. McDERMOTT, TAX COUNSEL, ASSOCIATION OF AMERICAN RAILROADS

Mr. McDERMOTT. Good morning, Mr. Chairman.

In view of the late time, I have a lengthy statement which I would like to summarize and then have it submitted for the record.

Mr. FRIEDEL. That will be done. Your statement will be included in the record following your summation.

Mr. McDERMOTT. My name is Francis O. McDermott, tax counsel for the Association of American Railroads, a voluntary, nonprofit organization with offices located here in Washington, D.C. My appearance today before this committee is on behalf of the association and its member roads.

The purpose of H.R. 1240 is to exempt the wages and salary of certain employees of regulated interstate transportation carriers from the withholding tax requirements of States and local subdivisions, except in the State or local subdivision of the employee's residence. It would also relieve these carriers of any duty to file information returns for tax purposes on the wages and salaries of certain employees, except in the State or local subdivision of such employee's residence. In so doing, the bill would remove the substantial burden to interstate commerce which the imposition of withholding taxes on non-resident employees of these carriers by States and local subdivisions has caused. However, I think this is very important, the bill will not impair the general taxing authority of the State and local governments nor will it relieve the employees of their liability to pay taxes properly due.

The same objectives were the subject of identical pieces of legislation, H.R. 10743 and S. 1719 during the 88th Congress. This committee conducted hearings on H.R. 10743 in August of 1964. At that time, the bill was limited to employees of certain airline and motor carriers. As suggested by the association, and based on other testimony before the Senate Commerce Committee, its companion bill S. 1719 was ordered reported with amendments to include rail and water carriers. Regretably, after Senate passage and House committee hearings, it died with the adjournment of the 88th Congress.

Today, we urge this committee to take this opportunity to relieve regulated interstate carriers of the burden which is imposed on them by the multitudinous State and local tax authorities. We also recommend that the limited exemption provision dealing with the railroads be clarified to reflect coverage for a substantial number of railroad employees who are principally engaged in maintaining our roadways. In addition to these maintenance of way personnel, we believe the bill should also apply to a small group of employees who operate out of railroad terminals on motor trucks. Many of these employees in the course of performing their duties similarly cross State lines or municipal borders. With this expanded exemption affording relief to railroad employees principally engaged in the interstate transportation, the AAR wholeheartedly endorses this bill and its salutary objectives.

As many committee members are well aware, railroads operate throughout the continental United States and are subject to the laws and regulations of the States and their political subdivisions. Presently, there are 42 States, including the District of Columbia, which impose income taxes on individuals.

Prior witnesses have indicated that there are 38 States that impose income taxes. Of the 42 to which I refer, four impose income taxes either on intangible or types of income other than wages so that these States would not be involved in withholding on wages.

Of these, 36 require withholding at the source whether the wage earner is a resident or nonresident; three States limit the withholding requirement to nonresidents; and three States have no withholding requirement.

Mr. Chairman, my statement goes on to point out how the withholding is required both on a State and local level by imposing withholding on employees traveling through those States.

It also shows how many people in the railroads are in the interstate transportation to which this particular bill would apply.

I think it is very important for the committee members to realize that this bill does not apply to every employee of every railroad. It only applies to those employees whose duties principally take them across State lines and through different jurisdictions. And the burden is imposed on the railroads to withhold on their wages based generally on the amount of miles involved in their travel through the different jurisdictions.

The statement contains some graphic illustrations of how the imposition of withholding on the different railroads does indeed cause a tremendous burden on the interstate transportation of goods.

Also my statement contains an appendix of examples of actual withholding of employees employed by two of our major railroads.

Mr. FRIEDEL. The appendix will be included along with the statement.

Mr. McDERMOTT. Thank you, Mr. Chairman. I believe the committee will realize the impact and burden placed upon the carriers, in particular the railroads by the withholding provisions. A few examples of these as applied show the minimal amounts continually required to be withheld by railroads on interstate employees.

One illustration reflects that during the year 1969 a road engineer on the Norfolk & Western Railway had gross earnings of approximately \$10,500.

Throughout that year he was a resident of Ohio. His road maintenance duties took him into the States of Indiana, Illinois and Michigan. The tax withheld for Indiana was a little over \$60, for Illinois, \$2.75 and for Michigan 5 cents; and for the taxing jurisdiction of Ohio, of which he was a resident, \$21.

On gross earnings of \$10,000, the requirement to submit to the State of Michigan a form showing withholding of 5 cents, as well as the administrative cost to the railroad and to the State is quite ridiculous.

Another example is a Southern Railway employee. His total wages were a little over \$10,000 also for the year 1969. The taxing jurisdiction of Louisville, Kentucky, received a statement showing one penny was withheld from the individual on the wages earned. On the other hand, no withholding form was submitted to the State of Kentucky, nor was withholding for the State of Kentucky required.

However, during that entire year the Southern Railway had to maintain a record in order to determine whether withholding on behalf of Kentucky would or would not be necessary for this employee.

These examples can be multiplied by the thousands in the railroad industry and really demonstrate the tremendous burden placed upon interstate carriers. This is the point of H.R. 1240 and related bills, to remove such a burden as well as to reduce unnecessary costs both to States and railroads involved.

This whole problem is just one more burden that handicaps the railroad in their efforts to put themselves in shape to meet their share of the transportation challenge that faces our Nation. We hope the committee will recognize the need for this bill.

In any event, we are pleased to join our transportation and labor associates in urging this committee to act favorably on this measure.

(Mr. McDermott's prepared statement follows:)

STATEMENT OF FRANCIS O. McDERMOTT, TAX COUNSEL,
ASSOCIATION OF AMERICAN RAILROADS

My name is Francis O. McDermott. I am Tax Counsel for the Association of American Railroads ("the AAR"), which is a voluntary, nonprofit organization with offices located in Washington, D.C. My appearance before this Committee is on behalf of the Association and its member roads.

The purpose of H.R. 1240 is to exempt the wages and salary of certain employees of regulated interstate transportation carriers from the withholding tax requirements of states and local subdivisions, except in the state or local subdivision of the employee's residence. It would also relieve these carriers of any duty to file information returns for tax purposes on the wages and salary of certain employees, except in the state or local subdivision of such employee's residence. In so doing, the bill would remove the substantial burden to interstate commerce which the imposition of withholding taxes on the nonresident employees of these carriers by states and local subdivisions has caused. However, the bill will not impair the general taxing authority of state and local governments, nor will it relieve employees of their liability to pay taxes properly due.

These same objectives were the subject of identical pieces of legislation, H.R. 10743 and S. 1719, during the 88th Congress. This Committee conducted hearings on H.R. 10743 in August, 1964. At that time the bill was limited to employees of certain airline and motor carriers. As suggested by the AAR, and based on other testimony before the Senate Commerce Committee, its companion bill S. 1719 was ordered reported with amendments to include rail and water carriers. Regrettably after Senate passage and House committee hearings it died with the adjournment of the 88th Congress.

Today we urge this Committee to take this opportunity to relieve regulated interstate carriers of the burden which is imposed on them by the multitudinous state and local tax authorities. We also recommend that the limited exemption provision dealing with the railroads be clarified to reflect coverage for a substantial number of railroad employees who are principally engaged in maintaining our roadways. In addition to these maintenance of way personnel we believe the bill should also apply to a small group of employees who operate out of railroad terminals on motor trucks. Many of these employees in the course of performing their duties similarly cross state lines or municipal borders. With this expanded exemption affording relief to railroad employees principally engaged in interstate transportation, the AAR wholeheartedly endorses this bill and its salutary objectives.

As the Committee members are well aware railroads operate throughout the continental United States. In our operation we are subject to the laws and regulations of the states and their political subdivisions. Presently there are 42 states, including the District of Columbia, which impose income taxes on individuals. Of these 36 require withholding at the source whether the wage earner is a resident or nonresident; 3 states limit the withholding requirement to nonresidents; and 3 states have no withholding requirement.

It should also be noted that of these states which impose an income tax on individuals 33 require the filing of an information return; 7 may require such a return; and 2 states have no such requirement.

In addition to the impact of state income tax provisions on interstate employers, the burden of compliance with the requirements of municipalities must not be overlooked. For example, the city of Detroit, together with 11 other Michigan cities, imposes an income tax on residents as well as nonresidents with respect to income arising from sources in the city. These cities require that the tax be withheld by the employer as to both residents and nonresidents. Similar situations occur in Ohio (which has no state income tax), but the cities of Akron, Canton, Cincinnati, Columbus, Dayton, Springfield, Toledo, and Youngstown impose a personal income tax.

From this rather cursory summary of the varied state and municipal requirements, it seems apparent that their adverse impact on transportation corporations engaging in interstate commerce and employing thousands of employees is great. For example, in 1969 Class I line-haul carriers employed an estimated 578,000 persons. Of this number some 165,000 employees were engaged in train and engine service which includes personnel operating or assisting in the operation of trains and engines in road and yard service. This category covers, among others, passenger and freight conductors, passenger and freight brakemen and flagmen, passenger and freight engineers and firemen. These are the men, in general, who operate the trains in interstate transportation service and this is the type of personnel generally

subject to the various withholding requirements of more than one of the states and their political subdivisions.

In addition to the train and engine service personnel there is a substantial number of railroad employees who are engaged daily in maintaining roadway, signals, communications, and structures, but are not clearly given relief under the present provisions of H.R. 1240. Just last year there were approximately 85,000 such employees. In the discharge of their duties, they frequently cross state lines, and more often municipal boundaries. This subjects them to any withholding provisions of such state or municipality. The services of these employees are essential to our railroads in the discharge of their obligation to maintain their road property at their own cost. Public crews do this for the highway users and the airlines obviously do not have this obligation.

Another aspect of the problem is that many railroad operating employees, particularly in freight service, do not consistently perform the same job every day. This employee fluidity compounds the difficulty of maintaining records and the employer is bewildered by the problem of determining which part of its employees' salaries is subject to withholding, the basis to be used and the taxing authority to which it must report. This determination is difficult and time-consuming—and therefore, costly.

A graphic illustration was provided by the Wabash Railroad (now part of the Norfolk and Western Railway) during this Committee's prior hearing. The Wabash then operated in 4 states which required withholding—New York, Indiana, Missouri, and Iowa. Of these the first 3 required withholding regardless of whether the individual was a resident or nonresident; Iowa required withholding only in the case of a nonresident, but an information return in the case of a resident. Thus, withholding for state purposes was applicable in the case of 1,050 resident and nonresident train and engine service personnel. The Wabash also operated in 5 cities which required withholding—Maumee, Defiance, and Toledo, Ohio; Detroit, Michigan; and St. Louis, Missouri. This affected some 300 train and engine service personnel.

The burden placed on the Wabash Railroad alone in complying with these provisions was, we believe, obvious and this railroad reported that the administrative cost of compliance approximated \$14,000 per year.

The Chicago, Rock Island and Pacific Railroad Company told a similar story with respect to withholding and filing of information returns for nonresidents. This road stated:

"In order that we may make the proper withholding deductions from the individuals in Train & Engine Service, they being nonresidents, it is necessary for the various superintendents to advise the Accounting Department of any changes in the crew consist, and also the changes of residence of the crew. It would be most helpful to us, that is the Rock Island, if no deductions were made for nonresident employees."

Fourteen states in which this road operates today impose a personal income tax—11 of which require withholding for nonresidents. Even though the Rock Island has adopted the modern technique of computerized data it faces the problem that it cannot determine nonresident state earnings for its train and engine personnel.

This, of course, underscores the purpose of the pending bill and emphasizes its necessity to employees of railroads subject to the Interstate Commerce Act.

During the prior hearings one of the most striking illustrations supporting the need for the enactment of this legislation was provided by another member of our Association, the Pullman Company. This sleeping car company operated in all the states except Alaska and Hawaii. It had an employee on each of its cars and a conductor on every train where more than one of its cars was used. Generally, these sleeping car employees worked through to destination and, thus, in a single trip crossed several states. Also these employees received sleep time en route for which they were not paid. Similarly, at the end of each trip they also had their layovers of various duration. While these operations were regular and on a fixed schedule, the company had a number of special movements and seasonal operations of short duration. Extra employees would be used to operate in a number of states in the course of a year.

Pullman was primarily concerned with the problem of withholding on nonresidents for state income tax purposes. The period of time such a nonresident employee is in the state determines, where proration is used, the per cent of his salary or wages subject to withholding, as well as the amount of his exemption. This was true in 16 of the states in which the company operated. Consequently, any employee whose base annual salary exceeded the state's annual exemption

was subject to withholding even though his time in the state may have been limited to a single trip. Prorating the salaries of these employees presented a problem since their rate of pay was not based on miles but on hours of the basic month. Furthermore, if time in the state was used as a basis for proration the company was confronted with the problem of unpaid sleep periods and layover time. To these problems was added additional complexity resulting from a constant turnover in personnel and employee substitutions for vacation periods. The problems were such that no practical method of machine accounting could do the job.

There are cases where the cost of collecting a tax is greater than the amount collected and therefore of no apparent benefit to the state or city. For example, Pullman made a study of this matter in 1962 in relation to its 1961 operations in just one state. It had 172 nonresident employees on regular lines in this state during that year. Of these, 43 had less than 5% of their time in the state; 66 more than 5% and less than 10%; and only 7 over 30%. Withholding on a semi-monthly basis under the state withholding table resulted in less than 25 cents per pay day for each of these 172 employees. Extending this for a year on the assumption that the same number of exemptions and the same proportion of earnings in the state would remain constant resulted in a total withholding of \$1,200 for state tax purposes. However, the total amount due the state on an annual basis was \$900, so that a refund of \$400 was due the group, or less than \$2 each. For the \$900 involved, the state had to process each of these returns and risk processing 172 claims for refund. It seems clear that the state would not net anything in this situation. For this company to make the computations and the payroll deductions, each man's time sheet had to be checked each pay day. Since no formula method would have been accurate, the work had to be done manually. The result to this company for this one state alone was a cost in excess of \$5,000 per year; \$5,000 to collect \$1,200 when only \$900 was due!

This particular company no longer faces these complex problems for it no longer operates as a sleeping car company nor engages in interstate railroad transportation. As of January 1, 1969 the Pullman Company terminated such operations. However, these operations were absorbed by railroads and the problems faced by Pullman are now spread throughout the industry.

Recourse to litigation in this area is not a suitable answer. The rules governing the right of the taxing authorities to impose and collect taxes on nonresidents are clear and the possibility of successful litigation is remote. If this were not the case, the widespread operations of the railroads or any one railroad would require a multiplicity of suits which would be costly to undertake.

The enactment of H.R. 1240, amended to clearly cover all railroad and sleeping car employees engaged in interstate transportation services and crossing State lines in their duty would be a simple means of alleviating this difficult and costly problem. Thus, to provide total and adequate relief, we urge its extension to *all* employees of railroads and sleeping-car companies subject to Part I of the Interstate Commerce Act whose regularly assigned duties require them to cross State lines of municipal boundaries thereof.

There is no logical reason why a segment of railroad labor force, so important to railroad operation, should not be covered by H.R. 1240. Neither is there a basis for distinguishing, either logically or in practice, between such an employee and one who discharges his duties "*on a locomotive, car or other track-borne vehicle*" as this bill presently does.

In addition to maintenance-of-way personnel there is another group of railroad employees whose duties should logically fall within the provisions of this bill. This is a relatively small group of employees who operate out of railroad terminals on motor trucks, who are under the provisions of Part I of the Interstate Commerce Act, and who may, in the course of discharging their duties, cross state lines or municipal boundaries. The relative smallness of the size of this segment of the railroad labor force or the fact that they are not *on a locomotive, car or other track-borne vehicle* in the discharge of their interstate duties should not justify non-coverage.

I believe the Committee will realize the impact and burden placed upon interstate carriers and in particular the railroads with a few examples showing the minimal amounts continually required to be withheld by railroads on interstate employees' wages. I have attached to my statement (Exhibit A) examples of tax withheld on railroad employees by two of our major railroads. One illustration reflects that during the year 1969 a road engineer on the Norfolk & Western Railway had gross earnings of approximately \$10,500. Throughout that year he was a resident of Ohio. His road maintenance duties took him into the states of Indiana, Illinois, and Michigan. The tax withheld for Indiana was a little over \$68, for

Illinois \$2.75, for Michigan 5¢, and for the taxing jurisdiction of Montpelier, Ohio \$31.21. Obviously for gross earnings of \$10,000 the requirement to submit to the state of Michigan a form covering the withholding of 5¢ from an employee's wages as well as the administrative costs both to the railroad and to the state is ridiculous.

Another example is an employee of the Southern Railway engaged in train service, whose total wages were a little over \$10,000 for 1969. The taxing jurisdiction of Louisville, Ky. received a withholding statement showing that one penny had been withheld on the individual from the wages earned for the work performed in that area. On the other hand no withholding form was submitted to the state of Kentucky nor was withholding for the state of Kentucky required. However, Southern had to maintain a record throughout the year in order to determine whether withholding would or would not be necessary for this employee.

These examples can be multiplied by the thousands in the railroad industry and demonstrate the tremendous burden placed upon interstate carriers. This is the point of H.R. 1240—to remove such a burden as well as to reduce unnecessary costs both to states and to railroads involved.

This whole problem is just one more burden that handicaps the railroads in their efforts to put themselves in shape to meet their share of the transportation challenge that faces our nation.

We sincerely hope that the Committee will recognize the need for this bill and in a broader form. In any event we are pleased to join our transportation and labor associates in urging the Committee to act favorably on this measure.

EXHIBIT A

EXAMPLES OF TAX WITHHELD ON RAILROAD EMPLOYEES TRAVELING INTERSTATE AS PART OF THEIR ASSIGNED DUTIES

Railroad	Year	Individual job	Residence	Period	Gross earnings	Jurisdictions involved	Tax withheld
Norfolk & Western Ry.	1. 1969	Cook/maintenance of way.	Missouri	Annual	\$7,081.10	Indiana	\$32.34
						Illinois	21.24
	Do	Foreman/ maintenance of way.	do	do	13,152.89	Missouri	75.12
						Indiana	54.77
	Do	Road engineer	Ohio	do	10,540.45	Missouri	147.45
						Indiana	68.56
	Do					Illinois	2.72
						Michigan	.05
	Do					Montpelier, Ohio	31.21
						Indiana	8.21
Southern Ry.	1. 1969	Train service	Indiana	Semimonthly	353.00	Indiana	8.21
						Illinois	2.24
	Do	do	do	do	228.27	Louisville, Ky	.02
						Indiana	6.17
	Do	do	Illinois	Annual	10,771.95	Illinois	3.33
						Louisville, Ky	.01
	Do	do	do			do	.01
						Jefferson County, Ky.	.33
	Do	do	Virginia	do	5,899.83	Kentucky 1	0
						Illinois	93.63
Do	4. 1969	do	Virginia	do		North Carolina	39.45
						South Carolina	39.66
						Virginia	112.67

¹ No actual withholding required by the Commonwealth of Kentucky because of employee's taxable gross income in that State, \$29.48, was less than amount on which withholding would be required. However, continuous records must be maintained to determine whether withholding is necessary.

Mr. FRIEDEL. Thank you. Mr. Adams?

Mr. ADAMS. I have one question. I have been waiting for some of these amounts to come in. As I understand what the problem really becomes for the employee is he may not owe the amount of money that is alleged by the States, because they are very complicated formulas of whether you travel over the road or you spend the night and all kinds of things. Even if he doesn't owe it, he can't afford to hire, under your example, a lawyer in Indiana to collect \$68, a lawyer in Illinois to collect \$2.72, a lawyer in Michigan to collect 5 cents for him.

So, in effect, we don't even know whether these amounts are accurate. But he is required to pay because he can't fight. Is that about the size of it?

Mr. McDERMOTT. Yes; and he is denied the use of that particular amount of money through the year to meet the current living expenses which he faces everyday as an individual. So, when he does not have that \$68 in his pocket, he cannot meet his living expenses which he otherwise would. If we were not required to withhold on his wages, he would have the money in hand.

Mr. ADAMS. I wanted to ask you because you are tax counsel. These amounts that are listed here as withheld are not necessarily the amount he would owe if the matter were litigated?

Mr. McDERMOTT. That is correct, sir, because all of his individual circumstances are obviously not known to the employer, and the State requirements for withholding are predicated on a general formula. Thus if he has additional itemized deductions he may not even owe the amount withheld. He also has to go through the additional burden of filing a claim for refund on the overwithholding at the end of the taxable year.

Mr. ADAMS. Do your employees know that they can even file these refund forms? Do you give a man a stack of forms? You just don't do that, do you?

Mr. McDERMOTT. No, sir. To my knowledge, we try to assist them to the greatest extent possible, but we cannot furnish them with all of these forms. We make them available to individuals as best we can.

Mr. ADAMS. In certain States do they require you to withhold on gross amounts for time spent or time passed through?

Mr. McDERMOTT. Generally what we use is an allocation formula based on the amount of mileage involved in the particular individual's duties. For example, if he is working on a train going from Washington to New York, it is the amount of miles spent in the District of Columbia, the amount of miles in Maryland, Pennsylvania, Delaware, et cetera. This allocation formula is applied to the train and engine personnel thru data processing.

However, we have a bigger problem with the roadway maintenance personnel. They work in different States at different times. So, we have to hand calculate their withholding. This is a tremendous burden. In fact, one of our larger railroads in response to a questionnaire that we circulated reflected that the total amount of administrative withholding costs for nonresident employees only comes to \$57,000 annually.

I think you might like in the record copy of the type of income taxes that the States have, as published by the Census Bureau. It is a compilation chart which I will be very happy to submit for the record.

Mr. FRIEDEL. Without objection, it will be included.

(The following table was received for the record:)

GOVERNMENTAL FINANCES IN 1969

Table 8. State Individual Income Taxes as of January 1, 1969

State	Rates applying to taxable income			Taxable income brackets		Personal exemptions			Federal income tax deductible	Withholding required
	Lowest rate (percent)	Highest rate (percent)	Number of rate steps	Lowest amount under--	Highest amount over--	Single	Married	Dependents		
Alabama.....	1.5	5.0	4	\$1,000	\$5,000	\$1,500	\$3,000	\$300	Yes	Yes
Alaska.....	(1)	-	8	-	-	600	1,200	600	No	Yes
Arizona.....	2.0	8.0	5	1,000	7,000	1,000	2,000	600	Yes	Yes
Arkansas.....	1.0	5.0	5	3,000	25,000	27,500	235	26	No	Yes
California.....	1.0	10.0	10	2,000	14,000	225	250	28	No	(3)
Colorado.....	43.0	8.0	11	1,000	10,000	750	1,500	750	Yes	Yes
Delaware.....	1.5	11.0	11	1,000	100,000	600	1,200	600	(2)	Yes
Georgia.....	1.0	6.0	6	1,000	10,000	1,500	3,000	600	No	Yes
Hawaii.....	2.25	11.0	11	500	30,000	600	1,200	600	No	Yes
Idaho.....	62.5	9.0	6	1,000	5,000	600	1,200	600	Yes	Yes
Illinois ⁷	2.5	-	-	Flat rate	Flat rate	1,000	2,000	1,000	No	Yes
Indiana.....	2.0	-	-	Flat rate	Flat rate	1,000	2,000	500	No	Yes
Iowa ⁸	0.75	5.25	7	1,000	9,000	215	230	210	Yes	Yes
Kansas.....	2.0	6.5	5	2,000	7,000	600	1,200	600	Yes	Yes
Kentucky.....	2.0	6.0	3	3,000	8,000	220	240	220	Yes	Yes
Louisiana.....	2.0	6.0	3	10,000	50,000	2,500	5,000	400	Yes	Yes
Maine ⁷	1.0	6.0	6	2,000	50,000	1,000	2,000	1,000	No	Yes
Maryland.....	2.0	5.0	4	1,000	3,000	800	1,600	800	No	Yes
Massachusetts.....	94.0	-	-	Flat rate	Flat rate	2,000	102,600	600	No	Yes
Michigan.....	2.6	-	-	Flat rate	Flat rate	1,200	2,400	1,200	No	Yes
Minnesota.....	1.5	12.0	11	500	20,000	219	238	219	(5)	Yes
Mississippi.....	3.0	4.0	2	5,000	5,000	4,000	6,000	-	No	Yes
Missouri.....	11	4.0	7	1,000	9,000	1,200	2,400	400	Yes	Yes
Montana ^{7 12}	2.0	11.0	10	1,000	35,000	600	1,200	600	Yes	Yes

Nebraska.....	(13)	-	-	-	600	1,200	600	No	Yes
New Hampshire.....	(14)	-	-	-	600	600	600	No	No
New Jersey ¹⁵	2.0	14.0	1,000	23,000	16,600	161,200	600	No	(3)
New Mexico ⁷	1.0	9.0	500	100,000	600	1,200	600	No	Yes
New York ¹⁵	2.0	14.0	13	23,000	16,600	161,200	600	No	Yes
North Carolina.....	3.0	7.0	5	2,000	1,000	2,000	600	No	Yes
North Dakota.....	1.0	11.0	7	3,000	600	1,500	600	Yes	(1)
Oklahoma.....	1.0	6.0	6	1,500	1,000	2,000	500	Yes	Yes
Oregon ⁷	4.0	10.0	7	500	5,000	1,200	600	(5)	Yes
Rhode Island.....	(17)	-	-	-	(17)	-	-	No	No
South Carolina.....	2.0	7.0	6	2,000	10,000	181,600	800	(5)	Yes
Tennessee.....	(19)	-	-	-	-	-	-	No	No
Utah.....	2.0	6.5	6	1,000	5,000	1,200	600	Yes	Yes
Vermont ⁷	(20)	-	-	-	600	1,200	600	No	Yes
Virginia.....	2.0	5.0	3	3,000	5,000	2,000	300	No	Yes
West Virginia.....	1.5	5.5	24	2,000	200,000	1,200	600	No	Yes
Wisconsin.....	2.7	10.0	15	1,000	14,000	1,220	210	No	Yes

¹Rate is 16 percent based on Federal income tax at rates in effect on Dec. 31, 1963.

²Tax credit. For California only, for 1969 an additional 10 percent credit with certain limits applies.

³Nonresidents; not general.

⁴Plus surtax of 2 percent on intangibles income over \$5,000. Tax credit of one-half percent is applicable to the first \$9,000.

⁵Subject to specified limitations.

⁶Plus \$10 filing fee for each return; tax credit of \$10 for each personal exemption allowed.

⁷Incorporates 1969 legislative actions.

⁸Residents or nonresidents are not subject to income tax if their net income is \$3,000 or less. If payment of the tax reduces net income to less than \$3,000, the tax is reduced to that amount that would result in allowing the taxpayer to retain a net income of \$3,000.

⁹Interest and dividends, and capital gains on intangibles taxed at 8 percent; annuities, at 2 percent.

¹⁰Minimum allowance; on earned income, actual amount up to \$4,000.

¹¹Less fixed deductions ranging from \$5 up to \$135.

¹²Plus 10 percent surcharge.

¹³Individuals, estates, and trust taxed at rate of 10 percent of adjusted Federal income tax liability.

¹⁴Income from interest and dividends taxed at 4.25 percent.

¹⁵Tax imposed on New York resident individuals deriving income from New Jersey sources and New Jersey residents deriving income from New York sources.

¹⁶Plus tax credit of \$10 for single person and \$25 for married persons or head of household.

¹⁷A tax is imposed at the rate of 10 percent on an individual's dividend interest, and net capital gains income as reduced by a personal exemption of \$2,000 and subject to certain adjustments.

¹⁸Any person 65 years of age or older with no dependents is exempt from tax if his gross income is \$2,800 or less. If he has a dependent, he is exempt from tax if gross income is \$4,000 or less.

¹⁹Dividends and interest taxed at 6 percent; 4 percent on dividends from corporations with 75 percent of property taxable in State.

²⁰Individuals are taxed at rate of 25 percent of Federal income tax liability, exclusive of the Federal 10 percent surcharge, plus a 15 percent State surcharge.

Excerpt from U.S. Dept. of Commerce, Bureau of Census
State Tax Collections in 1969, Government Finances/GF 69 No. 1

Mr. FRIEDEL. Thank you very much, Mr. McDermott.
Our next witness is Mr. Donald S. Beattie, executive secretary, Congress of Railway Unions.

**STATEMENT OF DONALD S. BEATTIE, EXECUTIVE SECRETARY,
CONGRESS OF RAILWAY UNIONS**

Mr. BEATTIE. Mr. Chairman, I understand I was to be listed for tomorrow. I don't have a prepared statement, but I can give you a statement. I would like to add some material at a later date for the record.

Mr. FRIEDEL. All right, without objection.

Mr. BEATTIE. So I shall read the statement which I gave to the Senate side. I had planned to change it. I will read this one.

My name is Donald S. Beattie, and I am executive secretary of the Congress of Railway Unions, an association of chief executive officers of five standard railroad unions, which speaks for at least 75 percent of the railroad workers in this country.

The organizations I represent are: Brotherhood of Maintenance of Way Employees; Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express & Station Employees; Hotel & Restaurant Employees and Bartenders' International Union; Seafarers' International Union of North America; United Transportation Union.

We appreciate this opportunity to appear in support of H.R. 1240. We join with the Association of American Railroads and others in urging adoption of this legislation.

The statement of Francis O. McDermott, tax counsel for the American Railroads, outlines the general problem of multiple tax accounting and its effect on the railroad industry and many railroad employees; accordingly, I will avoid repetition of details already in the record.

The withholding of taxes by many States and political subdivisions poses an unreasonable and unfair burden on employees working in interstate commerce, who because of the nature of their employment, perform work in States and political subdivisions other than that in which they reside. This legislation is not designed to relieve such employees of valid taxes where such are due; but the withholding of wages and the filing of multiple reports for several tax agencies in different States and other tax jurisdictions create undue hardship on those who perform transportation service.

Then too, transportation workers have great difficulty in determining the validity of taxes imposed by out-of-State taxing agencies. The employee, because he has no control over taxes withheld from his check, is stuck with picking up the tab even though he may have no tax obligation. Certainly if the taxes are valid for out-of-State residents for work performed away from home, then the collection burden should be on the agencies.

The withholding of taxes, which at the end of the year proves specious, deprives the employee of use of such moneys during the course of the year. There is no good reason to burden employees with the maze of accounting and paperwork required to secure the refund of money unjustly withheld.

In many instances, the State and local taxing bodies are unjustly enriched at the worker's expense because the amount of refund does

not justify the effort involved in supporting claim for recovery. This undue harassment of transport workers in interstate commerce is of major concern to the unions who are protecting their welfare.

Since Congress last considered this problem in 1964, more and more States and municipalities have adopted tax withholding legislation. It is only a matter of time before such practices will become almost universal. The passage of this legislation will point up how Congress feels in this area of multiple tax withholding and will be a guideline for new legislation and for the amending of existing legislation. Any legislation which contributes to tax equality and uniformity of application deserves the support of the Congress.

Another concern of the railroad brotherhoods is the wasteful diversion of funds that might better be put to productive use. This legislation would stop unneeded and costly expenditures by the railroads. Wages, rules, working conditions and job security for railroad employees is dependent upon a healthy industry. While often we disagree with management we do not condone unjustified waste of railroad assets that are so badly needed to rebuild a vibrant railroad industry.

Thus, we urge the passage of H.R. 1240 now being considered by your committee.

We also view this as a first step. We would like to see for complete relief of these employees in interstate commerce an amendment which would perhaps not be inconsistent with the Smith amendment to H.R. 7906, I believe that was the number, which would prohibit the taxing of nonresidents.

This is the only answer, the only real answer for the employees. We feel as the previous witness in the maritime industry that if you pay your taxes in the State where you reside, you have taken your share, borne your share.

If this were to be applied throughout the country, everyone would share equally in his tax obligation.

Mr. FRIEDEL. Would this bill do that?

Mr. BEATTIE. This bill does not. It simply prohibits the withholding of taxes. It doesn't relieve the employee of liability.

Mr. FRIEDEL. Mr. Adams?

Mr. ADAMS. I have no questions of Mr. Beattie.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. No, thank you.

Mr. FRIEDEL. Thank you very much.

Do you have that amendment?

Mr. BEATTIE. I should like to add some material and the language of an amendment that I may propose.

Mr. FRIEDEL. Thank you.

(The following letter and attachments were received for the record:)

CONGRESS OF RAILWAY UNIONS,
Washington, D.C., April 23, 1970.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics of the Committee on
Interstate and Foreign Commerce, U.S. House of Representatives, Washington,
D.C.

DEAR MR. CHAIRMAN: When I appeared before the Subcommittee on Transportation and Aeronautics on April 16, 1970, to offer testimony in the hearings on H.R. 1240 and the other related bills, I requested permission to file a supple-

mentary statement to develop additional aspects of the multiple tax problems to which these bills are directed. I am submitting this letter to the Subcommittee pursuant to the arrangements which we made at that time.

The problems with which these various bills deal are the increasing burdens imposed on interstate transportation employers and their employees by states and subdivisions of states in the levying, collecting, and reporting of overlapping taxes on wages and salaries. As I pointed out in my testimony on April 16, these various bills are concerned with only one aspect of the problem, i.e., the obligation of the employer to withhold state and local income taxes from the wages of its employees subject to the tax. Of no less importance is the problem of relieving the employee and of interstate commerce generally of the burdens of multiple taxation and multiple reporting.

Ideally, at some remote period in time, there might conceivably be developed some kind of balance in the taxing policies of the various states and subdivisions of states in which only a single tax is levied and collected. Realistically, of course, we have no basis for anticipating a single taxing structure of this nature and are thus compelled to work out some federally-directed approach, as contemplated by H.R. 1240, to relieve these pressures on interstate employment and to attain some kind of uniformity in the imposition and collection of these multiple taxes.

In preparing my testimony in support of H.R. 1240, I had the opportunity to review the efforts of Mr. J. A. McGlothlin, Assistant Director, Kansas State Legislative Board, United Transportation Union, to correct the multi-state income tax problem at the local level. Mr. McGlothlin has dealt continuously with the problem for the last 7 years, appealing to every forum available to him, including members of the United States Congress, state legislators, tax commissioners and the Multi-State Tax Commission—all to no avail. Despite numerous assurances that the problem of multiple state taxing and filing had been recognized and would be alleviated by appropriate authority, during these seven years the situation has worsened.

I am attaching for the record, Mr. McGlothlin's testimony to the Multi-State Tax Commission at their hearing in Houston, Texas on June 18, 1969.

You will note that on page 3 of his testimony, Mr. McGlothlin explained the difficulty operating railroad employees confront in meeting their tax obligations to a multiplicity of taxing authorities since their earnings vary from day to day depending upon a number of factors including different types of services performed, miles run per trip, and various components of the compensation system.

Also attached for the record is Mr. McGlothlin's letter addressed to me under date of April 14 in which he refers to a recent development which offers further proof of the urgent need for federal legislation.

The State of Missouri has now initiated a program requiring non-resident employees to estimate and pre-pay the State income tax. It is virtually impossible for railroad men to estimate earnings and pre-pay taxes on a quarterly basis for work that is to be performed in irregular freight, maintenance of way, signal maintenance service, etc. The State of Missouri instituted this program despite the fact that it is a member of the Multi-State Tax Commission, which organization has given recognition to the problem by establishing a Subcommittee on Withholding for Non-Resident Employees in Interstate Commerce.

Through hearings and personal discussions, representatives of the transportation labor unions have thoroughly briefed this subcommittee on the problem. Reportedly, these efforts plus the threat of federal legislation prompted the Commission to circulate a proposed solution among their constituent states. The proposed solution contemplates action by the states rather than the United States Congress. The objectives of the Commission and the results achieved by this relatively new organization are highly commendable. The Commission now has approximately 18 regular members and 13 associate members, thus involving only a portion of the states in which the problem exists. Even if all 50 states were regular members and all 50 state members were to agree upon a solution, we would still face years and years of delay before the legislators could translate the proposal into law and regulation.

The only answer lies in the prompt enactment of federal legislation with uniform application throughout the states and political subdivisions to relieve the undue burden presently placed on interstate commerce.

As I pointed out earlier, the bills pending before the Committee do not go far enough to relieve the tax burden. The pressure on the interstate employee is no less compelling than that imposed on the interstate employer and must be relieved. There is a single basic concept suggested by experience in related fields which has direct and immediate application to the legislative problems with which the

Subcommittee is confronted, and I should like to outline this concept briefly for the Subcommittee for its consideration in identifying the guiding principles which should be followed in the perfecting of the bill.

The concept is simply that interstate employment should not be burdened by more than a single withholding tax and by more than a two-state tax liability. The states with the dominant interest in taxing wages and salaries of interstate workers are (1) the state in which the employee resides and (2) the state which may be characterized as the center of the employee's economic activity, i.e., where he earns more than 50 per cent of his wages. No one can quarrel with the principle that each such state has a legitimate interest in imposing a tax on the employee so occupied because of the employee's direct and immediate connection with it.

It is important, however, to stress that not more than one of these states should be permitted to withhold, and the preference should be given to the state which is the center of the employee's economic activity. It should also be stressed that the tax paid to the state of withholding on behalf of the non-resident employee should be credited to the employee's tax liability in the state of his residence. In other words, the tax paid by a non-resident employee to the state in which he earns most of his wage should be credited against the tax which he owes to the state of his residence in order to avoid the burden of double taxation.

The foregoing single concept for cutting through the tangle of state tax laws on interstate employment activity can and, in my view, should be applied to the companion problem of multiple taxes imposed by municipalities and other subdivisions of states upon the wages of employees engaged in interstate transportation.

The application of this concept, in its various projections, will no doubt create some problems. For example, the so-called center of economic activity of a non-resident interstate employee may shift from year to year. How is the interstate employer to determine, in this situation, to which state he must pay the withheld tax? Similarly, an interstate employee may divide his time evenly among a number of states with the result that he spends considerable less than 50 per cent of his working time in any one state. In this circumstance, which of these various states, if any, can be characterized as the interstate employee's center of economic activity? We suggest that these are details which can be worked out in the shaping of the bill. It occurs to me that the guiding principle in the development of solutions to these peripheral problems should be the avoidance of complicated tax reporting burdens. The solutions should be simple and direct.

Developments in the Uniform Unemployment Compensation Act and in the Uniform Division of Income for Tax Purposes Act may be helpful in the approach to the problem. Generally, these deal with matters of identifying which of a number of states should have responsibility for the payment of unemployment compensation and to the shifting of unemployment tax credits from state to state or in the division of tax revenues in which more than one state may have an interest. These appear to represent collateral elements which the Multi-State Tax Commission should be encouraged to work out for future legislation by the states and possibly by the Congress.

I should like to suggest that the problem of providing immediate relief to the interstate transportation employer and his employees is the most pressing problem at this time and that Congress should limit its consideration to legislation dealing with this problem alone. The somewhat comparable conditions facing other employers and employees who may have a less direct and immediate connection with interstate commerce involve more complex issues and can and should be referred to the states acting through the Multi-State Tax Commission for their study and action. The guidelines for the development of the approach by the states to these related problems will be provided by the federal legislation resulting from these hearings.

The legislation should embrace a single taxing concept dealing with the double aspects of the problem (1) tax withholding and (2) tax liability. Not more than one state may require withholding; not more than two states may impose a tax on wages. The concept recognizes that the state which is the center of the employee's economic activity has the prior claim to withholding and that the state of residence has an equal right to tax with the important qualification that taxes paid to the former must be credited against taxes imposed by the latter to avoid double taxation. The center of the interstate employee's economic activity can be most simply defined as the state in which the employee earns more than 50 per cent of his wages.

I should also like to point out that the pending bills are deficient in at least one other respect, as suggested by Francis O. McDermott in his testimony before

the Committee. He pointed out that the bills as drawn are limited in scope to wages earned by railroad employees "on a locomotive, car, or other track-borne vehicle" and should be extended to include railroad employees engaged principally in maintaining roadways, signals, communications and structures as well as employees operating out of railroad terminals on motor trucks. We believe this position well taken and support it.

I should again like to express my appreciation to the Subcommittee for the opportunity to present these views.

Very truly yours,

DONALD S. BEATTIE,
Executive Secretary.

STATEMENT OF J. A. MCGLOTHLIN, ASSISTANT DIRECTOR, KANSAS STATE LEGISLATIVE BOARD, UNITED TRANSPORTATION UNION, BEFORE THE MULTISTATE TAX COMMISSION AT HOUSTON, TEX., JUNE 18, 1969

My name is Jack McGlothlin and I reside at 704 Turner Road, Pittsburg, Kansas. I am Assistant Director, Kansas State Legislative Board of the United Transportation Union. We represent all of the operating employees on railroads in the United States and Canada, with the exception of some locomotive engineers, also nation-wide and in Kansas we represent Bus Drivers. The United Transportation Union represents a total membership of approximately 280,000 members.

I have a letter of authorization from Mr. Charles Luna, International President, to appear here and represent the International United Transportation Union as well as our Kansas Legislative Board. (Copy included.) Mr. Kinnear graciously invited me to appear before you this evening in behalf of the operating railroad men we represent.

In a letter dated May 28, 1969, addressed to Mr. Kinnear, I set forth the problems that our Kansas members face in trying to comply with a myriad of state income tax laws and forms. To save time and in order to avoid repetition, each of you will be furnished a copy of my letter to Mr. Kinnear and his reply dated June 3, 1969, for your records and consideration.

During some of our darkest hours, I corresponded with former Congressman Robert Ellsworth, a personal friend, and at that time, he sent me a copy of legislation he was intending to introduce in behalf of the air line pilots. He was and still is interested in our multistate tax problems.

Also interested are U.S. Representative Joe Skubitz and U.S. Senator James B. Pearson, both members of Congress from Kansas and members of the House and Senate Commerce Committees, respectively.

During our 1969, Kansas Legislative Session, bills were introduced to invoke county and/or city earnings taxes. I asked two Senators, authors of the bills, if they had given any thought to what this means to transportation employees working through unnumbered cities and counties and what a "can of worms" would be opened with that legislation. They were not aware of the ramifications inherent in income and earnings tax laws as applied to transportation workers. We have members paying Kansas City, Missouri, City Earnings Tax on 14 miles of earnings they make each trip into and out of Kansas City. As information, I spent 5 weeks as a member of our Board of Directors in Cleveland, Ohio in January and part of February, 1969.

When I received my check in Pittsburg, Kansas, \$15.00 had been withheld for Cleveland City Earnings tax. A Rock Island engineer member of the UTU works out of Fairbury, Neb. into Kansas on a tri-weekly local, Monday, Wednesday and Friday. The opposite side of the local works out of Fairbury into Kansas Tuesday, Thursday and Saturday. The railroad withholds Kansas Income Tax from the crew's salaries on the Monday, Wednesday and Friday local, but does not withhold Kansas Income Tax from the crew's salaries on the Tuesday, Thursday and Saturday local.

Two UTU engineers were recently called into Topeka, Kansas, by the AT&SF Rwy. Co. to act as witnesses or testify at the carrier's request. Their homes are located in Marcelline, Missouri. Kansas Income Tax was withheld from one man's salary but not from the other.

Gentlemen, as a Legislative Agent (Lobbyist) who has spent the last 10 years at every session of the Kansas Legislature and 6 out of those 10 years working in our behalf in the U.S. Congressional halls and office, I know a little about your tax problems. But, to be candid, the tax bite is bad enough, and why further penalize the man with a multitude of forms that harrass him no end because of his occupation. Approximately 90% of our members who find themselves in this

situation to to a public accountant or tax reporting firm and pay from \$15.00 to \$50.00 to get the forms made out.

Each of you will be furnished a Kansas Railroad map and I have circled the location of the "homes" of the men involved in Multistate Tax Reporting and have numbered each one. Attached to the map is a listing, by corresponding number and city name, which supplies full information relative to these men's work and their necessary reporting. It is evident that this is a real and not an imaginary problem for our members here and is practically every other state in the Continental United States. As you study the map and the explanatory listing, you will see we have a real dilemma.

Due to changing assignments, either by choice or by being forced to change, few, if any, railroad men (operating) work the same job 365 days out of the year. From the information I have furnished each of you, you can readily see that keeping an accurate record of miles worked within any one state is improbable to say the least. Switching pay at given points, while en route, type of work and rate of pay for each particular trip varies. All these things have a bearing upon the amount of money made in any one state. Even the "weight on drivers" of the particular diesel locomotive governs enginemen's pay and can vary from day to day. Since 1965 our members have been forced to keep as honest a record as possible and pay each state its proportionate share of his total state income tax. For your ready reference, attached are copies of correspondence exchanged in 1965 with your representatives of the Missouri and Oklahoma Director of Revenue Office. In each case I asked why the railroad no longer furnished the State W-2 forms as they had always done. I also asked if their offices would accept our men's statement of earnings in their states, without question. To date, they have not replied.

Due to the exact record keeping system of the railroads, all of the items which comprise a train crew's pay are minutely checked and records kept on a trip by trip basis for each man on the crew. The railroad is capable of telling exactly how much money each crew member of each train made on each trip; also, where the service was performed and on which segment of track the earnings were made. Undoubtedly you will agree with me that it would be properly the obligation of the employer to furnish the desired information instead of placing this burden on the individual employee.

A Kansas City Southern-Louisiana and Arkansas Railroads operating employee, working either in freight or passenger service south of Pittsburg, Kansas, works into and through Kansas, Missouri, Arkansas and Oklahoma. Kansas requires a copy of each state income tax report made to other states before you receive credit in Kansas. Beginning with report for 1968, Kansas requires each individual to furnish a copy of their Federal return. Counting the copy you send each state, as well as Kansas, and one for the individual's records, that amounts to 14 copies. In reality, gentlemen, isn't this reaching a point of asininity? I'll admit that H&R Block and people in that business think it's fine!!!!

I realize there are differences in state allowable exemptions. Also, there are differences in the rates imposed, as some are based upon state established formulas and some are based on a percentage of an individual's Federal tax, such as Kansas. Nevertheless, with the talent, experience and "know-how" that will be gathered here tomorrow (Thursday) and Friday, I feel sure you can arrive at a mutually satisfactory solution to this *real* problem. You are capable of presenting adequate, equitable and acceptable legislation to our state legislatures in 1970. You are the most influential State Officer, in these matters, as far as the state legislators are concerned.

Also, I am aware that added personnel would be required to allow each employee to pay his full tax to the state that is his "home state" and have the home state pay the percentage owed to the other state and/or states. Have you considered doing this and charging a 2 or 3 percent of the total tax owed to pay for this type of handling? I have talked to our members in Kansas, both individually and in meetings, and they would not be adverse to paying a reasonable amount to rid themselves of this perennial multistate April 15th malady. By handling in this manner, possibly the employee would be given an option to pay and have his home state handle the matter or to continue in the "jungle" in which we find ourselves at the present time, which seems to be getting deeper and deeper.

Thank you for your kind attention and your generosity in allowing me to appear before you.

UNITED TRANSPORTATION UNION,
Pittsburg, Kans., April 14, 1970.

Re: Multi-State Income Tax—UTU members.

Mr. DONALD E. BEATTIE

*Executive Secretary, CRU, Railway Labor Building,
400 First Street N.W., Washington, D.C.*

DEAR SIR AND BROTHER: I sent copies of the most pertinent material, from my file, to you this morning after our telephone conversation. You indicated that you needed additional names of men who actually have been required to file multiple state income tax forms and pay multiple state income tax. The following names are but a few, of many, who have had this burdensome requirement forced upon them. (All Pittsburg, Kans.—KCS R.R.)

1. C. D. Neptune, 111 East 14th, Kansas, Oklahoma, Missouri, Arkansas.
2. Harry Cummings, 135 East Atkinson Ave., Kansas, Oklahoma, Missouri, Arkansas.
3. Beryl Shellenberger, 206 East 22d St., Kansas, Missouri.
4. W. H. Williams, 208 S. Walnut, Kansas, Oklahoma, Missouri, Arkansas.
5. E. M. Cloud, 1710 N. Grand, Kansas, Oklahoma, Missouri, Arkansas.
6. Harold Zehr, 612 E. 10th St., Kansas, Oklahoma, Missouri, Arkansas.
7. Howard Allison, 1901 N. Smelter, Kansas, Oklahoma, Missouri, Arkansas.
8. L. W. Johnson, 510 Hobson Place, Kansas, Oklahoma, Missouri, Arkansas.
9. John Sanders, 527 W. Martiu, Kansas, Oklahoma, Missouri, Arkansas.

These are some of the enginemen I was able to contact today. It is merely a sampling of the approximately 140 men in train and engine service here.

Our organizations have men working in the field, in officer and other capacities that earn much of their salaries in from 4 to 8 states. What of their predicament? The Interstate Commerce Commission recently had Examiner Earl S. Dowell hearing F.D. 25927 from Chicago, Illinois to Los Angeles, Calif. Is he required to file income tax forms in each state? The Department of Transportation as well as the ICC have field men who do most of their actual work and earn most of their income in states other than that in which they reside. Do they file income tax forms, multi-state? This is really ridiculous!

I have enclosed a form, just received, by one of our Pittsburg men. His name appears No. 6 on the above list. The state of Missouri is now sending like forms to all our members who have been filing and *paying* state income tax to Missouri.

Please note that the state now wants pre-payment in the form of an estimated earnings within said state. Anyone who knows anything about railroad operating men's employment knows how impossible this type of pre-earning estimate would be. This is further proof that Federal Legislation is needed now to put an end to this continuous and increasing harrassment.

I trust the information furnished will be of some benefit to you.

Sincerely and fraternally yours,

J. A. MCGLOTHLIN.

Enclosure.

MISSOURI
28-10ES

Estimated Tax Declaration - Installment 1
for Individuals (1970)

(Due on or before April 15, 1970)

To be used for making declaration and payment

Installments are due by 15th of April, June, September and January. Fiscal year taxpayers-See instructions.

Your social security number

XXXXXXXXXXXX

Spouse's social security number

Name and Address →

ZEHR, HAROLD & G

612 E 10TH ST

PITTSBURG

KS 65762

1. Estimated tax for the year

ending is \$
(MONTH AND YEAR)

2. Amount of this payment \$
(also enter in your Record of Payments)

Your Signature

Spouse's signature (if joint declaration)

Return this Form with check or money order payable to:
MISSOURI DIRECTOR OF REVENUE
Box 999, Jefferson City, Missouri 65101

MISSOURI
28-10ES

Estimated Tax Declaration - Installment 2
for Individuals (1970)

(Due on or before June 15, 1970)

To be used for making declaration and payment

Installments are due by 15th of April, June, September and January. Fiscal year taxpayers-See instructions.

Your social security number

XXXXXXXXXXXX

Spouse's social security number

Name and Address →

ZEHR, HAROLD & G

612 E 10TH ST

PITTSBURG

KS 65762

* 1. Estimated tax (or amended estimated tax) for the year

ending is \$
(MONTH AND YEAR)

2. Amount of this payment \$
(also enter in your Record of Payments)

Your Signature

Spouse's signature (if joint declaration)

* Complete only if this is an original or amended declaration.

Return this Form with check or money order payable to:
MISSOURI DIRECTOR OF REVENUE
Box 999, Jefferson City, Missouri 65101

Mr. FRIEDEL. Our next witness is Mr. E. L. McCulloch, national legislative representative, Brotherhood of Locomotive Engineers.

STATEMENT OF E. L. McCULLUCH, NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Mr. McCULLOCH. Thank you, Mr. Chairman.

I am E. L. McCulloch, national legislative representative for the Brotherhood of Locomotive Engineers with offices at 814 Railway Labor Building, 400 First Street, NW., Washington, D.C.

I come before this subcommittee not as a tax expert but as an elected representative of a national and international railway labor organization who has been representing locomotive engineers and firemen employed in interstate commerce for in excess of 100 years.

On behalf of these members and their families and on behalf of our chief executive officer, C. J. Coughlin, grand chief engineer, I wish to express to Chairman Friedel and the members of the subcommittee our appreciation for the opportunity to testify in behalf of our membership on H.R. 1240.

There has been no time in memory when public opinion has been so unanimous in protest of high and inequitable taxes at all levels of government. There is no relief in sight. Instead, virtually every taxing jurisdiction in the Nation is persistently seeking new sources of tax revenues.

When the voters have had the opportunity to express themselves by referendum or representation, the trend has been to reject new taxes. With this rejection of new taxes, each of the 50 States have been left to deal with the taxing of nonresidents as it has seen fit; a situation which certainly warrants legislation to protect the public against taxation without representation or double taxation in the sense that regardless of the primary revenue source, be it property or income taxes or a combination thereof, there is a class of individual taxpayers working in interstate commerce that pays a high property tax in the absence of State or local taxes while at the same time, paying an income tax at the full rate in- and out-of-State taxing jurisdiction without the benefit of an offsetting credit.

It is argued by those taxing jurisdictions, which tax nonresidents, that such individuals receive certain public benefits for which they should share the costs. This argument is not without merit but there exists no national standard by which State and local taxing jurisdictions may fairly and equitably apportion the tax burden between residents and out-of-State residents taking into consideration the relative benefits derived by each class.

Contrary to other forms of transportation, locomotive engineers working in interstate railroad transportation perform service on private property which is subject to city, county and State taxing agencies. Our members enter and leave each State on private road-bed owned by a private taxpaying industry and in many cases, eat, sleep and relax in accommodations provided by the carrier and in many instances, return to their domiciled State over the same privately owned property without having need for any of the public services provided by local taxing jurisdictions. In other instances, operating employees enter and leave a State or a taxing jurisdiction on private property, aboard train and therefore, in no way, subject a taxing jurisdiction to any of the responsibilities imposed by residents and therefore should not be subject to State or local taxes.

Contrary to popular opinion, the activities of locomotive engineers and railroad operating personnel do not fall into set patterns. Their travel in interstate service is governed by diverse operating requirements, each of which may involve a succession of operations in different States.

This operation exposes railroad operating employees to multiple taxation by a number of States and municipalities. Tax reports to these multiple jurisdictions, aside from being costly and complex, are a source of continued irritation to our members who honestly believe, and I think justly so, that they are being treated unfairly and represent a clear-cut case of "taxation without representation." They also feel that the Congress is the only body with jurisdiction to resolve this issue.

Besides being costly and complex, railroad employees find it very difficult to question the validity of out-of-State tax assessing agencies except through costly litigations. This is an unjust burden to place upon employees and fairness would indicate that the burden should be upon local agencies and justice would indicate that the collection of local and State taxes not be extended to agencies outside the jurisdiction of the State or subdivision of the employee's residence.

For example: A locomotive engineer living in Denison, Tex., works between Denison and Muskogee, Okla. All of the miles made by this engineer, except about six or seven, are made in the State of Oklahoma. Therefore, most of his earnings are made in the State of Oklahoma and he is required to pay Oklahoma State income taxes on practically all of his earnings.

Texas has a 4-percent State sales tax on nearly every item this engineer purchases since he does his buying in the State of Texas, not Oklahoma, and also pays property taxes, school taxes, and personal property taxes. Oklahoma does not make any allowances to this engineer for the moneys spent in Texas for Texas taxes in any form. Neither does Texas make any allowances to this engineer due to the fact that he has to pay Oklahoma income taxes in computing how much this man pays in the form of taxes in Texas. Texas charges taxes on sales instead of an income tax. Therefore, this engineer must pay the Texas sales tax on every item purchased with the money he made while running in Oklahoma, which I dare say, is far in "excess" of the average State income tax.

Then, without any deductions allowed him for these taxes collected by Texas, the State of Oklahoma turns around and charges this same engineer a State income tax on all of his earnings made in mileage over tracks in Oklahoma.

Another example: Engineers living in Parsons, Kans., who work into Oklahoma and engineers living in Boonville, Mo., who work in Kansas, all pay State income tax to the State in which they reside plus sales tax. Then each State into which they run charge them State income tax on the portion of their income made running into that State. There is no deduction given by either State for State taxes (sales or income) collected by the other State.

Locomotive engineers recognize and compliment the House for passage of the Interstate Taxation Act as a step in the right direction. The Smith amendment, as set out in section 501 of the act, as I understand it, prohibits double taxation by States or municipalities. Although the tax credit provision of section 501 will not benefit residents of States where State or local income taxes are not imposed, who must pay out-of-State income taxes, it will however prohibit the taxation of an individual's income in its entirety in more than one State. Prompt action by the Senate on this important legislation would give employees working in interstate commerce some relief from double taxation but will, in no way, resolve the root evil of taxing non-residents.

Just as there is a pressing need for the establishment of an equitable system for the taxation of interstate commerce, there is, in my opinion, an urgent need to create a national standard to restrict the levying of taxes on the incomes of out-of-State residents. Members of the Brotherhood of Locomotive Engineers are adamantly opposed to these double standards of taxation and favor legislation to prohibit any State or subdivision from levying income taxes on nonresidents of the State. Otherwise, I feel strongly that a taxpayer's revolt is imminent.

President Nixon said, "We shall never make taxation popular but we can make it fair."

Locomotive engineers join President Nixon in this note of optimism and appeal for action by this Congress to effect a fair and equitable system of taxation at all levels of government. Otherwise, we suggest that Congress consider outlawing the State income tax in its entirety.

Again, we wish to express our appreciation for being invited to testify and encourage the immediate enactment of H.R. 1240 and similar bills.

Thank you, Mr. Chairman.

Mr. FRIEDEL. I want to thank you, Mr. McCulloch.

Mr. Adams?

Mr. ADAMS. I have no questions, Mr. Chairman.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. No, thank you.

Mr. FRIEDEL. Thank you.

Mr. McCULLOCH. Thank you.

Mr. FRIEDEL. Our next witness is Mr. Kay McMurray, executive administrator, Air Line Pilots Association, International.

**STATEMENT OF KAY McMURRAY, EXECUTIVE ADMINISTRATOR,
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL**

Mr. McMURRAY. I think I can assist your committee with the time problem if we could just have our statement introduced in full in the record. Then I would like to make a couple of offhand comments, not because taxes hurt our people any worse than the other employees, but simply because I feel that the position our people are in serves to really point out the ridiculous situation that we are in and the thing we are asking for relief from.

Mr. FRIEDEL. Your full statement will be included in the record following your comments.

Mr. McMURRAY. We have one unique situation that has arisen recently. It came up once about 4 years ago. This doesn't apply to other people. Some of the States are now discussing how taxes should be paid for the time we fly over the State. I don't know that this is so ridiculous as it sounds when we consider that some States intend to tax us a portion of the income simply because we land in the State for 20 minutes. But when you take the possibility of each of the States that our people fly through or over during a given year that they will have withholding tax imposed upon them, then it quickly becomes a problem of monumental proportions.

In the statement we have, for example, a specific example of the type of work that our people do. One carrier has the schedule which requires a crew based in New York to operate a schedule which flies through Pittsburgh, Chicago, Omaha, Denver, Salt Lake City and San Francisco and then this individual returns to New York nonstop and for purposes of taking advantage of winds and weather, he may be over the Southern States or fly as far north as Canada.

So, in any given year he will be either through or over every State in the Union.

In addition, we have a problem of actually determining how this tax should be divided. For example, this is contained in the statement, between Seattle and Alaska there are four routes over which we operate our aircraft depending on the weather at the time. One of the routes requires approximately 20 minutes over the State and one route requires approximately 1 hour and 40 minutes.

So, the burden of determining how much should actually be withheld becomes one of negotiation rather than technical fact.

For these reasons plus all of the reasons that previous witnesses here have testified to, we feel that the committee should just be impelled to act favorably on this legislation. We will, of course, assist in providing any additional information that might be helpful, Mr. Chairman.

Thank you.

(Mr. McMurray's prepared statement follows:)

STATEMENT OF KAY McMURRAY, EXECUTIVE ADMINISTRATOR, AIR LINE PILOTS ASSOCIATION, INT'L.

The Air Line Pilots Association is an association of the professional air line pilots of the scheduled United States carriers. At present, it has a membership of 30,000 active and inactive members employed by 46 certificated air lines. The Association represents air line pilots in all aspects of their professional life. It is their bargaining agent under the Railway Labor Act, maintains an extensive air safety organization in 141 councils scattered throughout the United States and foreign countries, and is spokesman for the air line pilot in his relationship with municipal, State, Federal, and international organizations.

Internationally, we are an active participant in the International Federation of Air Line Pilots Associations which is a federation of the pilots representing organizations of 44 countries and represents the professional pilots of practically all civil aviation in the world outside the Iron Curtain countries.

We are pleased to appear before you today to state and discuss our views in support of bills HR 1240, HR 10634, HR 11882 and HR 13612.

My name is Kay McMurray and I am the Executive Administrator of the Association.

The crew members-represented by the Association operate aircraft through or over all of the fifty states. Consequently, any duplicating tax compliance procedures among states and their local subdivisions quickly presents a problem of burdensome proportions. The magnitude of the problem is apparent when it is realized 38 states impose net income taxes on individuals. All of them require withholding on the full amount earned by residents and 31 states require withholding on amounts earned by residents and non-residents within their borders. In addition, numerous cities impose income taxes and require withholding as to both residents and non-residents.

Under current conditions, with state governments and their subdivisions seeking methods of obtaining increased revenues to support their various programs, it is anticipated that the problem will increase rather than diminish. Of interest to our membership is the fact that the tax commission of at least one state several months ago took the position that the state has a right to tax flying personnel on income earned in flying over the state even though the plane does not touch down inside the state itself. When the foregoing is applied to schedules normally flown, the matter of compliance quickly becomes almost impossible. For example, with modern jet aircraft, a crew based in New York may fly the following schedule for a month: New York, Pittsburgh, Chicago, Omaha, Denver, Salt Lake City and San Francisco. The return to New York is flown non-stop and for purposes of wind advantage or to avoid storm areas, may be flown on routes as far north as the Canadian border and as far south as Texas. In a month's flying the crew will have flown over or through practically all the states of the Union with the exception of the extreme southeast states, Hawaii and Alaska. The next month may find the same crew operating a schedule as follows: New York, Cleveland, Miami, with a return—Miami, Tampa, Pittsburgh, Cleveland, New York. (The foregoing schedules are actual examples with layover problems eliminated for brevity.)

As can readily be ascertained, the crew will be affected by the tax matter here under consideration in practically every state. Let us assume that it is possible for the employer to determine the proportionate amount of flying done over or through each state. (This alone is a problem of great magnitude and we doubt that it could be done equitably in view of the versatility of the aircraft and the variables which enter the selection of flight routes.) Our people would then be confronted with deductions of burdensome proportions.

As a specific example, for over a decade Western Airline pilots domiciled in Seattle, Washington, and operating to terminals within Alaska have been involved with non-resident income taxes. During this period certain undesirable features have been encountered which are sources of continued conflict.

At its inception, the tax was generally regarded as a nuisance item, and few pilots were concerned about the \$25 or \$30 withheld annually. Over the years, this nuisance tax has increased to the extent that some senior captains are actually paying more tax money to the state of Alaska than to their state of residence for sales tax.

Because of the nature of airline flight scheduling, the accounting departments find it impossible to accurately determine the apportionment of withholding to the Alaska Revenue Department for each crew members. Pay checks are continually being returned for corrections. This is an annoyance to the employee and an increasing financial burden to the employer.

The possibilities for computation errors are unlimited when attempting to determine the tax owed by each crew member. I would like to cite an example—Western Airlines has a choice of four (4) possible routes when dispatching an aircraft from Seattle, Washington to Anchorage, Alaska. On Route Alpha (A) the flight proceeds over Canadian territory via Vancouver Island and the Queen Charlottes to Sandspit, British Columbia—then over International waters to the vicinity of Seward, Alaska, then direct to Anchorage, Alaska. The actual flying time over Alaska air space is approximately 20 minutes—the total scheduled time is 3 hours 10 minutes.

Weather conditions occasionally dictate the utilization of Route Delta (D). This flight proceeds from Seattle, Washington over Vancouver Island and enters Alaska air space in the vicinity of Ketchikan, Alaska, and is subject to Alaska tax regulation for the remainder of the flight. On Route Delta 713 nautical miles of the 1,291 total are flown over Alaska air space—broken down into flying hours, this is approximately one hour and 40 minutes.

Unfortunately, the computers in the payroll department of Western Airlines do not have the exact routing—they are only programmed to handle the information that it requires 3 hours 10 minutes to fly to Anchorage, Alaska from Seattle, Washington.

The majority of the 160 Western Airlines crew members domiciled in Seattle, Washington in 1969 can substantiate irregularities connected with the Non-resident Alaska Income Tax.

In 1964, Alaska agreed that hardships attributable to the multiplicity of withholding requirements should be remedied by interstate cooperation through reciprocity agreements on withholding requirements. Six years later, Alaska still does not have reciprocity language written into its tax statutes.

While the situation just described applies to air crewmen, the same problems exist to a large degree among those employees in other interstate transportation media. Witnesses before this Committee will testify with respect to those problems. Consequently, we will not burden the Committee unduly in this regard other than to state our support for this legislation which would ameliorate the burden imposed on other groups as well as our own.

In addition, of course, the problems confronted by the employer who must implement a satisfactory withholding procedure are very costly and burdensome. We support their viewpoint on this matter and urge the Committee to give serious consideration to all facets of the problem.

As the Committee may be aware, a similar problem was considered by the Congress in a previous session. After due deliberation, a statute, effective September 14, 1959, was enacted which provides relief for merchant seamen. It is our view that the same considerations which prompted previous legislative action are involved in this legislation. Further, action should be taken promptly in order that the various taxing bodies may have some guide lines in preparing their future programs. This will avoid another serious problem which would result in the event it became necessary to correct the problem after state fiscal policies and tax procedures had been more fully developed.

We also wish to emphasize that the proposed legislation does not impair the tax authority of the states and their subdivisions. Nor does it relieve the employee of the liability to pay taxes which are properly due. It merely relieves the employee and employer from collection procedures which create difficulties out of proportion to benefits which the taxing bodies might derive. In fact, as indicated, if the situation is not corrected, the individuals whom we represent will shortly be confronted with a problem of filing tax returns with which the individuals simply cannot cope.

We appreciate this opportunity to appear and present our views. We urge adoption of the proposed legislation and wish to assure you of our desire to assist in any manner possible to aid the Subcommittee in its deliberations on the bills.

Mr. FRIEDEL. Thank you.

That could cause a serious problem or headaches, 20 minutes and then an hour and 40 minutes, over the same State, depending on which way the wind is blowing.

Mr. McMURRAY. We want you to be comfortable on the ride, too.

Mr. FRIEDEL. Mr. Adams?

Mr. ADAMS. Is there presently a tax being levied on airline personnel for a time when a plane lands in a State?

Mr. McMURRAY. Not to my knowledge at the present time, although the city of Denver recently passed a statute which would require them to withhold \$4 a month for any fellow who flew through there. We had a long discussion with them and they have withheld implementation of that tax at the present time. But it is still on the books.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. No questions, Mr. Chairman.

Mr. FRIEDEL. Thank you very much.

Mr. Adams?

Mr. ADAMS. Mr. Chairman, today we invited the Multistate Tax Commission to come in and we have asked them to come in tomorrow. I have just received a communication from the staff indicating that Mr. Corrigan cannot come in tomorrow. So, I would like to ask, Mr. Chairman, that the record be held open for 5 days so that he may submit a statement, and whoever else from the Multistate Tax Commission who wants to submit a statement will have that time to do so.

(The following statement was received for the record:)

MULTISTATE TAX COMMISSION,
Denver, Colo., April 10, 1970.

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

SIR: I recently appeared before the Senate Commerce Committee to testify with respect to S. 2044, which is the Senate equivalent of H.R. 1240 on which the House Subcommittee on Transportation and Aeronautics, of which you are a member, intends to hold hearings on April 16. In view of the fact that I will be unavailable to testify at that time because of a speaking engagement in Chicago, I want to take this opportunity to inform you of the activities of this Commission in seeking to respond to the complaints which have caused S. 2044 and H.R. 1240 to be recommended. (Meanwhile, I have requested the opportunity to testify before your Subcommittee on this proposed legislation at a later date.)

Our position is that we oppose the proposed legislation because:

- (1) it eases withholding burdens of employers only and does not solve the problems of the employees for whom it was devised;
- (2) it precludes the states from obtaining from certain employers even that information concerning their employees which is reasonably necessary for efficient administration of the states' income tax laws; and
- (3) we believe that the states will cure the problems of their own initiative, and we are vigorously encouraging them to do so.

A committee of our Commission has been active in this field for nearly one year. On March 14, 1970, that committee produced proposed uniform legislation which would cure more problems than the legislation currently before you even purports to do. We are currently circulating our committee's proposed legislation among the tax administrators of our member states. We expect substantial support from among them.

In drafting the proposed legislation, our committee made the following assumptions which I am sure you will find to be most considerate of the problems not

only of common carrier employees but of employees of all carriers as well as of those carriers themselves:

(1) A carrier employee should not have to file an income tax return with or incur tax liability to more than two states regardless of the number of states in which his compensation may have been earned.

(2) A carrier employee should not be required to have on deposit with more than one state, by means either of withholding or of filing of estimates or both, monies in amounts which exceed the amount which would be required to be so deposited had all of the compensation been earned in one state.

(3) A carrier should not be required to withhold tax from compensation of an employee for more than one state at any one time and should, if he exercises reasonable judgment, be able to discharge his withholding obligation to all states, with respect to a particular employee, by withholding for only one state for a calendar year.

The committee's proposed legislation requires withholding for the state in which the employee earns more than 50% of his compensation. If he does not earn more than 50% of his compensation in any one state other than his state of residence, then withholding is required for only the state of residence.

As for the employee's tax liability, that is limited to a maximum of two states: 1) the state in which he earns more than 50% of his compensation; and 2) the state of his residence.

It is important to note that, in the case of carrier employees, since almost never will such an employee earn more than 50% of his compensation in any one state, only the state of the employee's residence will be entitled to require withholding or to exact any income tax with respect to that employee. In short, for all practical purposes, this legislation would reduce both withholding liability and tax liability to only one state insofar as carrier employees are concerned.

The tax administrators of our member states have not yet had time in which to comment on the uniform legislation proposed by our committee. The committee anticipates, however, that most of our state tax administrators will approve its proposal and will proceed to encourage the passage of this legislation in their respective states. Meanwhile, their good intentions can be expected to be reflected in their administrative practices. We request that you afford the states the opportunity to pursue these measures.

In closing, we do call your attention to the fact that one of our member states, Illinois, would prefer a different approach to the problem. They consider their proposal to be simpler and easier to administer than that which our committee recommends, although our committee's proposal would not, apparently, cause any great problem for Illinois. It was the committee's opinion that the Illinois approach, while it might be favored by a few states, would be rejected by most states, whereas the committee's recommendation can probably anticipate widespread support. I will not presume to describe the Illinois approach to you in detail at this time. I am informing Illinois Director of Revenue, George Mahin, of the pending hearings, however, and you can probably anticipate receiving full information from him concerning the Illinois position.

Sincerely yours,

EUGENE F. CORRIGAN,
Executive Director.

MULTISTATE TAX COMMISSION,
Denver, Colo., April 20, 1970.

Mr. E. W. WILLIAMSON,
*Clerk, House Interstate and Foreign Commerce Committee, House of Representatives,
Rayburn House Office Building, Washington, D.C.*

DEAR MR. WILLIAMSON: Thank you so very much for your kind consideration and courtesy in attempting to make it possible for me to appear before the Subcommittee on Transportation and Aeronautics to testify. I regret very much that my schedule at the Tax Foundation Seminar in Chicago precluded my making the appearance. It may well be, however, that the materials which I forwarded to Mr. Toner conveyed my message as well as anything which I could have said. The main concern of this Commission is that your Committee understands that this Commission is seeking to be helpful in all areas of state and local taxation of multistate business; and that it is not simply trying to interfere with progress. On the contrary, we are seeking to play a constructive role in seeing to it that, if and when federal legislation is to become a reality, that legislation will accomplish its purposes in the best manner possible with minimal undesirable side effects.

You may be interested in the enclosed copy of a speech¹ which I delivered at the Chicago tax seminar. It appears to have been received with general approval because of the conciliatory and constructive approach of the Commission which it revealed.

Please let us know if we can be of any service whatsoever to you, not only with respect to the instant proposed legislation, but with respect to any other matters pertaining to state and local taxation of multistate business.

Thank you again for having gone far out of your way in your effort to make available to us the opportunity to testify before the committee.

Sincerely,

EUGENE F. CORRIGAN,
Executive Director.

Mr. FRIEDEL. The record will be open for 5 days for any additional statements.

The meeting now stands adjourned.

(The following letter and statements were received for the record.)

STATE OF ALASKA,
DEPARTMENT OF REVENUE,
OFFICE OF THE COMMISSIONER,
Juneau, Alaska, April 23, 1970.

Re: H.R. 1240 and S. 2044—Taxation of transportation workers.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, House Committee on Interstate and Foreign Commerce, Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE FRIEDEL: On April 16, 1970 your subcommittee held hearings on H.R. 1240. Earlier on March 4, 1970 the Senate Commerce Committee held hearings on S. 2044, which is identical to H.R. 1240.

These bills would prohibit a carrier subject to regulation by the Interstate Commerce Commission from withholding state income taxes for, or making information reports to a state other than the state of the employee's residence, with respect to wages and salaries paid to employees working on trucks, trains, boats, and airplanes that operate between two or more states. More than thirty states recently expressed their objection to S. 2044.

According to the newspapers some witnesses said many unkind things about our great state of Alaska. Because of this I am writing to you to review Alaska's history in this area. Also to point out that H.R. 1240 and its companion bill S. 2044 fail to solve the problems for which they were introduced.

In 1949 the Territory of Alaska enacted an Income Tax Act. It was similar to that of other states in that it taxed all income received for services performed in the state. Alaska income tax was withheld by employers including shipping companies and airlines. In 1955, 46 U.S.C. 601 was passed by Congress as a result of pressures by seamen's unions and their employers. That section prohibits employers from withholding income taxes for any state from the wages of seamen. Following passage of 46 U.S.C. 601, few seamen filed income tax returns in Alaska even though large numbers of them received substantial salaries for services performed within the state's waters. In the early 1960's Alaska started a court action in the State of Washington to collect income tax from nonresident seamen. In 1966 the Supreme Court of Washington unanimously held that although the employer was not required to withhold state income tax from their wages, the seamen were subject to Alaska's income tax for income received for services performed within the state. *State of Alaska v. Petronia et ux, et al* 418 P. 2d 755 (Wash. 1966). The seamen's unions appealed the case. The Supreme Court of the United States denied certiorari at 389 U.S. 7 (1967).

In 1968 this department mailed consolidated individual income tax return forms to a sizable number of seamen who had performed services in Alaska waters for a number of years. Some seamen voluntarily filed returns and paid the tax. Others formed a group known as the Maritime Tax Reform Committee (now the Interstate Commerce Reform Committee) to fight the collection of taxes by Alaska.

In February 1969, six union representatives from the Maritime Tax Reform Committee, including three from seamen's unions, two from the Teamsters union,

¹ A copy of the speech referred to may be found in the committee's files.

and one from the airline pilots union, came to Juneau and for several hours poured out their grievances to the State of Alaska for asserting its right to the tax. One of the group's requests was a complete dropping of any claim by Alaska for income taxes from transportation workers who reside outside the State of Alaska. The union representatives claimed they were willing to pay a state income tax. However, they objected to having to pay it to several States and also objected to having to file multiple returns.

This writer advised the group that Alaska would review the requests but made no promise about dropping the tax liabilities. Since that time no affirmative action has been taken to collect the tax from the seamen during which time we have endeavored to seek a solution that would be fair and equitable to the state, other taxpayers, the seamen, and other transportation workers who complain of having to file multiple returns in many states.

The writer has worked closely with George Kinnear, Director of Revenue for the State of Washington and until recently also Chairman of the Multistate Tax Commission, in seeking a solution to the transportation workers complaints. At Mr. Kinnear's request the Multistate Tax Commission held a hearing in Houston, Texas in June, 1969. Railroad, airline, teamsters and seamen union representatives were present and testified. Later a Multistate Tax Commission subcommittee was appointed by Mr. Kinnear to study the problem and recommend a solution.

The Multistate Tax Commission subcommittee held meetings in Colorado Springs in October, 1969 and in Washington, D.C. in January, 1970. A substantial number of industry representatives were present during the Washington, D.C. meetings. Another meeting of the subcommittee was held in Denver, Colorado on March 13 and 14, 1970. The subcommittee is drafting a model law which it will recommend within the next few months which will be fair and equitable to all concerned. S. 2044 is definitely not fair to the states.

Since the transportation unions did not furnish any statistics to support their claims of having to file multiple tax returns, the subcommittee requested its members to contact various transportation industries to establish the extent of the alleged problem. I contacted two trucking companies, two shipping companies, and four airline companies operating into and out of Alaska. The results of my inquiries are as follows:

1. Consolidated Freightways and Lynden Transport, two of the largest trucking firms operating into and out of Alaska were contacted. Both indicated that all of their drivers who come into the state drive for them only in the states of Washington and Alaska. Since Washington does not have an income tax and the workers are exempt from Canadian income tax because of a treaty, Alaska is the only state for which these employers would have to withhold the income tax and is the only state in which these workers would have to file an income tax return. (Note: Alaska does not tax the earnings a person receives for services rendered outside the state.)

2. Alaska Steamship Company and Sea-Land Service, Inc., the two largest shipping companies operating into the state were contacted. They advised that none of their workers who came into Alaska sailed for them into any other state than Washington. Unless those workers sailed into other states as employees for other companies these seamen would not have to file an income tax return with any other state than Alaska.

3. Northwest Orient Airlines, Pan American World Airways, Western Airlines, and Alaska Airlines were contacted. Northwest Orient and Pan American Airways did not furnish the requested information regarding their flight crews. Western Airlines advised that through the year 1968 all of its flight crews flying into Alaska flew only in the States of Alaska and Washington. Accordingly, Western Airlines only had to withhold income tax for one state, Alaska, and those employees had to file returns in only one state, Alaska, since Washington does not have an income tax. Beginning in 1969 Western crews flew into other western states as well as the State of Alaska.

Alaska Airlines flies entirely in the State of Alaska except for flights made to Seattle, Washington. Accordingly, its flight crews would only have to file income tax returns in the State of Alaska and the employer withhold taxes for one state.

As a result of our limited investigation it would appear, with the possible exception of airline flight crews, transportation workers operating in interstate commerce in and out of Alaska only have to file one tax return. If Washington enacts an income tax, that would only be two returns to prepare and file. Does the filing of two returns constitute an undue burden on the taxpayer?

H.R. and S. 2044 are defective because they do not solve the problem of relieving transportation workers of paying taxes to various states or filing multiple returns. Outside of withholding for only one state the only thing these bills do is

to relieve the employer of having to furnish any information to states other than the state of residence listed on the employer's records. If the employee lists as his residence a state that does not have an income tax there would be no income tax paid to any state because no other state could obtain the records to ascertain the error or fraud.

H.R. 1240 and S. 2040 do not say that the worker is exempt from income taxes in states other than his state of residence. He still remains liable to those states. These bills will do nothing but cause ill feelings and foster tax avoidance by workers because of the insulation of records. The states at a price could overcome the confidentiality of records provisions by requiring all ships, trucks and airplanes docking, entering or landing in the state to register and list the names, social security numbers and addresses of the crews or drivers. Assessments could be made based on the best information available or by obtaining copies of Federal returns through exchange of information agreements. Do we want this to occur? I hope not. H.R. 1240 and S. 2044 are patently unfair.

H.R. 1240 and S. 2044 are deficient because the state of residence may not have any bearing on where the work is performed. These bills may result in the states where the work is performed receiving nothing. For example a transportation worker living in Kansas City, Kansas but working for an employer in Kansas City, Missouri as a truck driver may drive from Missouri into a third state. Under this bill only Kansas would receive any tax. Missouri and the other state would be precluded from obtaining any information from the employer who operates within their states regarding the employee's name or amount earned by him. Another example would be a truck driver who lives in Wendover, Nevada at the Utah border who drives back and forth between Wendover and Salt Lake City, Utah. 99% of his labors are performed in the State of Utah. Under H.R. 1240 and S. 2044 Utah would receive nothing. Or take the case of a truck driver or bus driver who drives from Grants Pass, Oregon near the California border to Los Angeles. California would receive nothing even though it furnished virtually all of the roads and police protection.

An example of bad results which could occur in the airline industry under H.R. 1240 and S. 2044 is Alaska Airlines. Probably less than 10% of the flying time of Alaska Airlines flight crews is spent in Washington. All other time spent in another state is spent in Alaska. This could include travel from Sitka to Juneau to Yakutat, Cordova, Anchorage, Fairbanks, and Nome picking up passengers and freight within the state and dropping them off at other places both in and outside the state. If the pilot lives in Seattle, as do many members of its flight crews, the State of Alaska would receive nothing under H.R. 1240 and S. 2044, even though Alaska has furnished airports and is largely responsible for the income received by the flight crews.

Intrastate transportation complicates the interstate problem. For example, many of Alaska Airlines flight crews probably handle more intrastate business than interstate. The same is true of many bus drivers and railroad workers. What part of the transportation workers wages do the workers seek to have exempt from the taxes of states? Is it the part covering the time travelled between the state's borders and the first point where the worker stops within the state or does it include intrastate operations as well? If it covers intrastate operations, upon what basis should interstate workers be exempt on intrastate work? An intrastate worker is not exempted regardless of his residence. The issues are complex, but the states do have some rights that should be considered.

It is doubtful Congress can constitutionally restrict states from imposing their income tax on the salary of persons received for services performed within the state. The tax is on income not on doing business. Congress can of course regulate withholding as it did when it passed 46 U.S.C. 601. But that act did not solve the problem as evidenced by the *Petronia* case, *supra*. Is Congress working with the states or against them?

The only solution that avoids constitutional problems and gets to the root of the problem is for the states to pass uniform laws which will give proper relief. The Multistate Tax Commission is working towards a uniform act which would be fair to both the workers and the states and could be adopted by all states.

It is suggested that Congress withhold action on H.R. 1240 and S. 2044 until the Multistate approach has a reasonable time to be adopted by the states. Certainly H.R. 1240 should not be passed in its present form.

Very truly yours,

VERNON L. SNOW,
Deputy Commissioner.

Enclosures.

§ 601. Attachment or arrestment of wages: support of wife and minor children;
State tax laws

No wages due or accruing to any master, seaman, or apprentice shall be subject to attachment or arrestment from any court, and every payment of wages to a master, seaman, or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages or of any attachment, encumbrance, or arrestment thereon; and no assignment or sale of wages or of salvage made prior to the accruing thereof shall bind the party making the same, except such allotments as are authorized by this title. This section shall apply to fishermen employed on fishing vessels as well as to seamen: *Provided*, That nothing contained in this or any preceding section shall interfere with the order by any court regarding the payment by any master or seaman of any part of his wages for the support and maintenance of his wife and minor children: *And provided further*, That no part of the wages due or accruing to a master, officer, or any other seaman who is a member of the crew on a vessel engaged in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade shall be withheld pursuant to the provisions of the tax laws of any State, Territory, possession, or Commonwealth, or a subdivision of any of them. As amended Sept. 14, 1959, Pub. L. § 86-263, 73 Stat. 551; Apr. 25, 1968, Pub. L. 90-293, § 1(d), 82 Stat. 108.

* * *

The STATE OF ALASKA, one of the
United States, Respondent,

v.

Walter PETRONIA and Rosa Petronia,
his wife et al., Appellants.

No. 38086.

Supreme Court of Washington,
Department 1.

Oct. 6, 1966.

Rehearing Denied Dec. 7, 1966.

Suit by State of Alaska to collect income tax on seamen's earnings while vessels were operating within Alaska's boundaries. The Superior Court, King County, James W. Hodson, J., rendered judgment, and the seamen appealed. The Supreme Court, Hunter, J., held that benefits of employment afforded by economic activity of Alaska constituted minimum connections between Alaska and seamen to avoid denial of due process, that rule requiring uniform system regulated solely by federal government in maritime commerce has not been violated by imposition of taxes on earnings of seamen within waters of Alaska, and that tax as applied was not in violation of commerce clause.

Affirmed.

1. Constitutional Law ⇨46(1)

Although issue of constitutionality of enactment of sister state is normally prerogative of state wherein legislation was enacted, where attorney general of sister state has requested that jurisdiction be taken under reciprocity statutes and constitutionality of an act of sister state has been interposed as a defense, the Supreme Court will consider constitutionality of such act. AS 43.10.070; RCWA 4.24.140.

2. Constitutional Law ⇨283

Taxation ⇨956, 1005

Where 16% of seamen's voyage pay was allocable to time vessel was within boundaries of Alaska, benefits of employment afforded by economic activity of Alaska constituted minimum connections within rule for imposition of proportioned

Alaska state income tax upon seamen and there was no denial of due process under Fourteenth Amendment to Federal Constitution. AS 43.20.070; U.S.C.A.Const. art. 1, § 8, cl. 3; Amend. 14.

3. Admiralty ⇨1

Rule requiring uniform system regulated solely by federal government in maritime commerce must be applied to facts of each case. U.S.C.A.Const. art. 1, § 8, cl. 3.

4. Taxation ⇨933

Federal statute prohibiting withholding of any sums from master's, officer's, or seaman's wages for state tax purposes in vessels engaged in foreign, coastwise, inter-coastal, interstate, or noncontiguous trade did not disturb right of Alaska to impose income tax upon seamen for portion of voyage pay earned while vessel was in territorial waters of Alaska. 46 U.S.C.A. § 601; AS 43.20.070.

5. Taxation ⇨933

Federal statute prohibiting withholding of any sums from master's, officer's or seaman's wages for state tax purposes in vessels engaged in foreign, coastwise, inter-coastal, interstate, or non-contiguous trade was not based upon determination that imposition of tax by Alaska violated constitutional rule of uniformity but rather was directed against territorial requirement that shipping concerns withhold monies from seaman's wages. 46 U.S.C.A. § 601; AS 43.20.070.

6. Admiralty ⇨1

Test of whether any particular matter is maritime in nature and is thereby precluded from state regulation or legislation is whether or not exclusive features of admiralty matters are involved.

7. Admiralty ⇨1

Rule requiring uniform system regulated solely by federal government in maritime commerce was not violated by imposition of taxes on earnings of seamen within waters of Alaska. AS 43.20.010, 43.20.040, 43.20.070, 43.20.130; U.S.C.A.Const. art. 1, § 8, cl. 3; 46 U.S.C.A. § 601.

8. Commerce ⇐72
Taxation ⇐931

Alaska's imposition of income tax on wages of seamen earned within its boundaries was not attempt to interfere with or control conduct of any business or tax on privilege of doing business and did not violate commerce clause of federal constitution. AS 43.20.010, 43.20.040, 43.20.070, 43.20.130; U.S.C.A.Const. art. 1, § 8, cl.3.

9. Taxation ⇐933

Doctrine which denies states other than state of home port right to impose taxes on vessels engaged in lawful commerce on other than inland waters was not violated by properly proportioned Alaska state income tax upon wages of seamen earned within taxing state's boundaries. AS 43.20.010, 43.20.040, 43.20.070, 43.20.130; U.S.C.A. Const. art. 1, § 8, cl. 3.

Vance, Davies, Roberts & Bettis, J. Duane Vance, John M. Darrah, Seattle, for appellants.

Warren Colver, Atty. Gen., Michale M. Holmes, Deputy Atty. Gen., of Alaska, Juneau, Aiken, St. Louis & Steere, Charles E. Siljeg, Seattle, for respondent.

HUNTER, Judge.

This is an appeal from a judgment entered in four consolidated cases by the superior court for King County. These actions were instituted by the attorney general of the state of Alaska under our reciprocal tax collection statute, RCW 4.24.140, for the enforcement of the payment by certain merchant seamen of income taxes asserted to be owed to the state of Alaska.

Of the four defendant (appellant) seamen, Walter Petronia, Morris K. Nainoa and Charles Frankle are residents of the state of Washington, and John W. Massey is a resident of the state of Oregon. All, however, were covered by collective bargaining agreements between the Pacific District of the Seafarers International Union and the Pacific Maritime Association, and were hired out of the union dispatch

hall in Seattle. The question of this court's jurisdiction is not raised by any of the defendants. The facts are set out in a written stipulation between counsel for the parties and are undisputed.

The defendants' duties as seamen were exclusively on board ships, relating principally to the operation and maintenance of the vessels which they were aboard. For the taxable year in question, 1960, they earned a substantial percentage of their voyage pay while the vessels upon which they were serving were within the boundaries of the state of Alaska.

The pertinent part of Title 43, Alaska Statutes, applicable to the defendants provides:

Sec. 43.20.010. *Tax on individuals, fiduciaries, corporations, and banks.* (a) There is levied and there shall be collected and paid for each taxable year upon the net income of every resident and nonresident individual, fiduciary, and bank that is required to make a return and pay a tax under the Federal Income Tax law a tax equal to 16 per cent of the total income tax that would be payable for the same taxable year to the United States * * *.

Sec. 43.20.040. *Income from sources in the state.* (a) Income from sources in the state, for the purposes of this chapter, includes * * * (2) income from a business, trade, or profession, and compensation for services rendered in the state * * *.

Sec. 43.20.070. *Employees of interstate carriers.* The tax levied by this chapter applies to that portion of the voyage pay of vessel personnel of interstate carriers engaged in the Alaska trade which is earned in the waters of the state. The tax also applies to that portion of the pay earned in the state of the personnel of carriers operating vehicles or airplanes on land or in the air on routes to and from the state. In determining the portion of the voyage pay of vessel personnel earned in the waters of the state, the method of allocation provided for in §

130(g) of this chapter shall be used. (Italics ours.)

Sec. 43.20.130. *Allocation of business income.* * * *

* * * * *

(g) The value of vessels operating on the high seas and compensation of employees engaged in operating the vessels shall be apportioned to the state in the ratio which the number of days spent in ports inside the state bears to the total number of days spent in ports inside and outside the state. The term "days spent in ports" does not include periods when ships are tied up because of strikes or withheld from the Alaska service for repairs, or because of seasonal reduction of service. Days in port are computed by dividing the aggregate number of hours in all ports by 24. The value of aircraft and automotive vehicles operating as freight and passenger carriers from, to, and inside the state and compensation of employees so engaged are apportioned to the state in the ratio which the number of days during which the services are rendered inside the state bears to the total number of days during which the services are rendered inside and outside the state.

Applying the ratio in § 43.20.130, *supra*, the defendants earned approximately the following percentage of voyage pay while serving as seamen aboard vessels within the waters of Alaska: For the taxable year of 1960, Petronia, 17 per cent; Nainoa, 16 per cent; Frankle, 26 per cent; and Massey, a higher percentage.

The apportionment of wages earned in Alaska by the defendants, and the amount of taxes assessed them in pursuance of the statutes, are not in issue in this case. All parties agree that the sole issue is whether the state of Alaska can constitutionally levy a tax on the net income of seamen engaged in interstate and foreign commerce, where the tax is levied only on that portion of the seamen's net income which is attributed to their activity within the boundaries of the State of Alaska. The trial

court held that the Alaska net income tax was constitutional and entered judgment against the defendants in the amounts due under the act, in pursuance of the stipulation. The defendants appeal.

[1] Although the parties raise no question as to the jurisdiction of this court on this appeal, we have nevertheless considered the propriety of our considering, in the first instance, the issue of the constitutionality of an enactment of a sister state. We consider this normally to be the prerogative of the state wherein the legislation is enacted; however, in the instant case we have acquired jurisdiction at the express request of the attorney general of Alaska based upon the following reciprocity statutes existing between our states, by his institution of these consolidated actions:

Sec. 43.10.070 [Alaska Statute]. *Reciprocity in collection of taxes.* (a) The courts of the state shall recognize and enforce the liability for taxes lawfully imposed by the laws of every state or territory which extends a like comity in respect to the liability for taxes lawfully imposed by the laws of this state. The officials of a state or territory may bring action in the courts of this state for the collection of their taxes. The certificate of the secretary of state of the other state or territory that the officials have the authority to collect the taxes sought to be collected by the action is conclusive proof of that authority.

(b) The attorney general may bring action in the courts of other states or territories to collect taxes due the state.

RCW 4.24.140. *Action by another state to enforce tax liability.* The courts of the state shall recognize and enforce the liability for taxes lawfully imposed by the laws of any other state which extends a like comity in respect to the liability for taxes lawfully imposed by the laws of this state and the officials of such state are hereby authorized to bring an action in all the courts of this state for the collection of such taxes: *Provided*, That the courts of this state shall not rec-

ognize claims for such taxes against this state or any of its political subdivisions: *Provided, further*, That the time limitations upon the bringing of such actions which may be imposed by the laws of such other state shall not be tolled by the absence from such state of the person from whom the taxes are sought. The certificate of the secretary of state of such other state to the effect that such officials have the authority to collect the taxes sought to be recovered by such action shall be conclusive proof of that authority.

The constitutionality of the Alaska Net Income Tax Act, as it applies to these defendants, has been interposed as a defense. We therefore have no alternative other than to test the constitutionality of this enactment, in view of the reciprocity statutes, *supra*.

[2] The defendants first contend that the Alaska Net Income Tax Act, as it applies to the defendant seamen, constitutes a deprivation of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

The defendants admit that a state may levy a personal income tax upon a nonresident under certain conditions. But these conditions require the existence of minimum connections between the nonresident and the taxing authority. The defendants cite *Shaffer v. Carter*, 252 U.S. 37, 40 S.Ct. 221, 64 L.Ed. 445 (1920); *Northwestern States Portland Cement Co. v. State of Minnesota and Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, 79 S.Ct. 357, 3 L.Ed.2d 421 (1959); *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, 61 S.Ct. 246, 85 L.Ed. 267 (1940).

We find no difficulty in ascertaining that these cases support the rule of law as stated by the defendants. In *Northwestern States Portland Cement Co. v. State of Minnesota and Williams v. Stockham Valves & Fittings, Inc.*, *supra*, the court stated:

It strains reality to say, in terms of our decisions, that each of the corporations

here was not sufficiently involved in local events to forge "some definite link, some minimum connection" sufficient to satisfy due process requirements. * * * (Italics ours.)

The court further stated, quoting from *Wisconsin v. J. C. Penney Co.*, *supra*, that

[T]he "controlling question is whether the state has given anything for which it can ask return." Since by "the practical operation of [the] tax the state has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred * * *" it "is free to pursue its own fiscal policies, unembarrassed by the Constitution * * *." (Italics ours.)

The defendants argue that the rule as applied to nonresident corporations and nonresident individuals transacting business on land within a state is not comparable to the activities of seamen on vessels within a state's waters, which are open to interstate and foreign commerce; that the benefits afforded seamen are *de minimis*; that virtually all the protection normally afforded by a state to a nonresident employee is afforded to seamen exclusively by the federal government; that virtually the only benefits available from the state of Alaska to seamen such as the defendants are the protection and benefits they are afforded by the state when they are on shore in strictly a tourist or recreational capacity.

This argument of the defendants is impressive; however, it overlooks a most significant element considered in applying the test of benefits in determining minimum connections. Probably the most significant benefits in the eyes of these defendant seamen are the wages they contemplated receiving for their services during the course of the vessel's voyage. The business productivity generated by Alaska was accountable for the wages earned by the defendants when they were in Alaskan waters. The activity of their employment in Alaska constituted a minimum of 16 per cent of their voyage pay for the year 1960, within

the meaning of the Alaska statute, § 43.20-070, *supra*. We find no distinction between business generated by the economic activities of Alaska accountable for the employment of nonresidents whether it be on land or on the water within the Alaskan boundaries. We are satisfied that the benefits of employment afforded by this economic activity of the state of Alaska constituted minimum connections within the rule to avoid a denial of due process under the Fourteenth Amendment to the United States Constitution.

The defendants contend that the Alaska Net Income Tax Act, as it applies to seamen, is in violation of the commerce clause of U.S.Const. art. 1, § 8, clause 3.

The defendants first argue that the tax violates a rule of uniformity as applied to commerce; that the state of Alaska is forbidden to act in this area affecting commerce, despite the inaction of Congress, since it is an area which requires a uniform national system of regulation, and therefore requires the exclusive legislation of Congress, citing *Cooley v. Board of Wardens of Port of Philadelphia*, 12 Howard 299, 13 L.Ed. 996 (1851); *Hays v. Pacific Mail S. S. Co.*, 17 Howard 596, 15 L.Ed. 254 (1855); *Southern Pac. Co. v. Jensen*, 244 U.S. 203, 37 S.Ct. 524, 61 L.Ed. 1086 (1917); *The Law of Admiralty*, Gilmore & Black, (1957) pp. 43, 44.

The defendants' argument is characterized by the following pertinent quotes from the above authorities in support of this rule:

Either absolutely to affirm, or deny that the nature of this power [to regulate commerce] requires exclusive legislation by Congress, is to lose sight of the nature of the subjects of this power, and to assert concerning all of them, what is really applicable but to a part. Whatever subjects of this power are in their nature national, or admit only of *one uniform system, or plan of regulation*, may justly be said to be of such a nature as to require exclusive legislation by Congress. *Cooley v. Board of Wardens*

of Port of Philadelphia, *supra*, 12 Howard p. 319.

If New York can subject foreign ships coming into her ports to such obligations as those imposed by her Compensation Statute, other States may do likewise. The necessary consequence would be destruction of the *very uniformity in respect to maritime matters which the Constitution was designed to establish*; and freedom of navigation between the states and with foreign countries would be seriously hampered and impeded. * * * *Southern Pac. Co. v. Jensen*, *supra*, 244 U.S. p. 217, 37 S.Ct. p. 529.

These latter cases are now in a sense drowned law, since Congress has enacted a Federal Longshoremen's compensation statute. * * * But, however, one may react emotionally to the bringing to bear of their high-flown vagueness to the barring of the tiny and doubtless pathetically needed recoveries that were at stake, it is impossible not to concede that the *major premise* they state is a sound one. *If there is any sense at all in making maritime law a federal subject, then there must be some limit set to the power of the states to interfere in the field of its working.* The Law of Admiralty, Gilmore & Black, *supra*, p. 43. (Italics ours.)

[3] The above cases (*Southern Pac. Co. v. Jensen*, *supra* and *Cooley v. Board of Wardens of Port of Philadelphia*, *supra*) not only characterize the uniformity argument but they also indicate that it must be applied to the facts of each case. In *Cooley v. Board of Wardens of Port of Philadelphia*, *supra*, the court found there was no interference with the rule of uniformity by state licensing of harbor pilots, holding that problems involving pilots were local in nature, and noting that Congress had passed an act of August 7, 1789, § 4 (1 Stat. at Large 54), which specifically provided that regulation of pilots in bays, inlets and harbors shall be regulated by state law until further legislative provision may be made by Congress.

In *Southern Pac. Co. v. Jensen*, supra, the state of New York, by subjecting foreign ships to the obligation of her compensation statutes, was clearly interfering with a uniform system for the protection of seamen which was later recognized by the enactment of the Longshoremen's Compensation Statute, as cited in *Gilmore & Black*, supra.

In the instant case there is no attempt to regulate the activities of seamen in Alaskan waters by interference with the uniformity of the operation of the shipping industry by the imposition of the income tax on the earnings of seamen in Alaska.

[4] The difference between interference and noninterference with the rule of uniformity as it applies to maritime law is illustrated by the history of the Alaska Net Income Tax Act itself. A law similar to the one which presently exists was enacted by the Territorial Legislature in Alaska in 1949. It provided for a net income tax on seamen's wages to be withheld by their employers. In *Alaska Steamship Co. v. Mullaney*, 180 F.2d 805, 12 Alaska 594 (1950), this enactment was held by the Ninth Circuit Court of Appeals not to be repugnant to the commerce clause of the United States Constitution. As an outgrowth of this case, the United States Congress in 1959 passed a law, 46 U.S.C.A. § 601, prohibiting the withholding of any sums from a master's, officer's, or seaman's wages for state tax purposes in vessels engaged in foreign, coastwise, intercoastal, interstate, or noncontiguous trade. However, the right of the Territory of Alaska to impose taxes was not disturbed; it was only the withholding of monies from seamen's wages to which Congress directed and asserted its jurisdiction.

The defendants argue, however, that the above 1959 enactment demonstrates that the taxation of seamen engaged in coastwise trade or in foreign trade can admit only of a single system of regulation. We disagree.

[5] Congress clearly did not base this enactment upon a determination that the imposition of the tax by the territory of Alaska violated a constitutional rule of uniformity. Congress rather directed its action against the requirement by the Alaskan territory that shipping concerns withhold monies from seamen's wages. That this was Congress' concern is expressly disclosed by reference to its proceedings (86th Congress, 1st Session, Senate Report No. 433, p. 3, June 25, 1959) during consideration of the passage of the enactment:

S. 1958 would relieve the seamen and the steamship companies of the accounting burden enumerated above; it would also clarify the legal conflict between State and Federal law.

It is to be noted, however, that this legislation will not relieve the seaman of his liability to pay taxes properly due, will not affect the Federal withholding taxes, and will not in any way impair the general tax authority of the States.

* * * * *

Comments from the Maritime Administration of the Department of Commerce and the Department of State interposed no objection to favorable consideration of S. 1958. *The Department of the Treasury, viewing the legislation as a curb on the taxing jurisdiction of a State, recommended against enactment. As noted earlier, your committee does not believe this legislation would in any way affect the right of the State to tax; it would only limit in one particular the procedures for collecting those taxes. (Italics ours.)* U.S. Code Cong. & Admin. News 1959, p. 2332.

[6] The test of whether any particular matter is maritime in nature and is thereby precluded from state regulation or legislation is whether or not the exclusive features of admiralty matters are involved. In *Standard Dredging Corp. v. Murphy*, 319 U.S. 306, 309, 310, 63 S.Ct. 1067, 1069, 87

L.Ed. 1416 (1943), the United States Supreme Court said:

When state compensation laws began to provide a remedy for maritime torts, it was at least arguable that the state remedy interfered with the existing admiralty system of relief through actions such as maintenance and cure. But in dealing with unemployment insurance "exclusive federal jurisdiction" is not affected at all. Congress retains the power to act in the field, and in the meantime, federal courts have nothing to do with it. *No principle of admiralty requires uniformity of State taxation.* Taxes on vessels and other business activities of operators have previously been upheld. * * * (Italics ours.)

[7] We hold that the rule requiring a uniform system regulated solely by the federal government in maritime commerce has not been violated by the imposition of taxes on earnings of seamen within the waters of the state of Alaska by the Alaska Net Income Tax Act; that Congress has not disturbed the right of a state to impose income taxes on the wages of seamen earned within its boundaries.

[8] The defendants argue that the commerce clause was violated by reason that the tax imposed on seamen's wages is inconsistent with *Robbins v. Shelby Cy. Taxing Dist.*, 120 U.S. 489, 7 S.Ct. 592, 30 L.Ed. 694 (1887), also cited in the recent case of *Northwestern States Portland Cement Co. v. State of Minnesota* and *Williams v. Stockham Valves & Fittings, Inc.*, *supra*. In that case there was an interference with the ability of an itinerant drummer, who resided in the state of Ohio, to do business in Tennessee by imposing a tax for the privilege of doing business in that state. This case is not apposite to the instant case. In *Robbins v. Shelby Cy. Taxing Dist.*, *supra*, there was a direct interference with the right of a person to do business within a state by exacting a tax for the privilege. The Alaska Net Income Tax Act, as

it applies to these seamen, makes no attempt to interfere with or control the conduct of any business. It is not a privilege tax.

[9] The defendants contend that the imposition of income taxes upon them is contrary to the home port doctrine, which denies states other than the state of the home port the right to impose taxes on vessels engaged in lawful commerce on other than inland waters. Defendants cite *Hays v. Pacific Mail S. S. Co.*, *supra*; *Ott v. Mississippi Valley Barge Line Co.*, 336 U.S. 169, 69 S.Ct. 432, 93 L.Ed. 585 (1949), and others. An examination of these cases discloses they are not apposite. These cases involved the exaction of personal property taxes on the vessels by states other than the state of the home port, constituting an undue burden on commerce. The instant tax is not a direct tax upon interstate commerce or the vessels engaged therein. It is rather a tax upon the income derived therefrom, properly proportioned so as to tax only that net income of seamen which is earned within the jurisdiction of Alaska.

Defendants' counsel argue that defendant Massey is subjected to multiple taxation since as a resident of Oregon he is required to pay a tax upon all of his earnings. The constitutionality of the Oregon statute is not an issue in this case. We are concerned solely with the constitutionality of the Alaska enactment, which imposes taxes only on this defendant's income earned in the jurisdiction of Alaska. There is therefore no valid multiple taxation issue raised on this record.

The trial court correctly held that the Alaska Net Income Tax Act as applied to the defendant seamen was not in violation of the commerce clause and the Fourteenth Amendment to the United States Constitution.

The judgment is affirmed.

ROSELLINI, C. J., HILL and HALE, JJ., and WARD, J., pro tem., concur.

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

The tax commissioners of the following States

Alabama	Michigan
Alaska	Minnesota
Arkansas	Mississippi
California	Montana
Delaware	Nebraska
Georgia	New Mexico
Hawaii	New York
Idaho	North Carolina
Illinois	North Dakota
Indiana	Oklahoma
Iowa	Oregon
Kentucky	South Carolina
Louisiana	Utah
Maryland	Virginia
Massachusetts	Wisconsin

express their opposition to the enactment of H.R. 1240 on several grounds:

- (1) That it is undesirable on principle
- (2) That there is no evidence of multiple withholding situations involving numerous States and small amounts of tax sufficient to warrant congressional intervention
- (3) That the States have taken action in many instances to eliminate multiple withholding
- (4) That the prohibition of withholding and information returns is tantamount to providing a tax exemption for the employees affected
- (5) That the bill is much too broad and would prevent withholding and information reports to be made to a State where an employee earns 90 percent or more of his income, and
- (6) That, in any case the prohibition on withholding of information reports should not apply to a State, other than the State of residence, which is the employee's basing point or duty station or in which he earns a substantial proportion of his income, say, one-third or more.

DOUBLE TAXATION NOT INVOLVED

At the outset, it should be clearly understood that the question of double taxation is not involved here. No Federal legislation of any kind is needed for that purpose. All the States, without exception, agree in principle and in practice that the same earned income should not be subjected to tax in more than one state. This objective is achieved by granting the taxpayer a credit for the income tax paid to another state or by excluding such income from the measure of the tax.

LEGISLATION NOT NECESSARY

The earlier hearings on similar proposals before the Congress suggest that the carrier proponents of Federal legislation are mostly concerned with the possibility of multiple withholding burdens rather than with actual conditions. There have been some cases where trucking companies have been nominally subject to withholding requirements on small amounts of employees' earnings but these instances were speedily dealt with by State action. In fact, between the time hearings were held on S. 1719 before the Senate Commerce Committee in February 1964, and the hearing before the House subcommittee in August of that same year, the specific sources of complaint cited by the trucking industry had already been eliminated.

The tax commissioners took the position at that time that to the extent employment in several States might give rise to unnecessary and multiple withholding requirements, appropriate action should be taken through interstate cooperation by means of reciprocity agreements and other measures to relieve the employer of this burden. A number of instances, where such action had been taken with completely satisfactory results, were cited:

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

other than his State of residence. The commissioner of revenue will make a similar agreement with any other State where a multiple withholding problem might arise. This agreement further provides that an employer may discontinue withholding if the North Carolina resident works outside the State and his employer is required to withhold for another State.

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

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

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

Another method used to relieve multiple withholding burdens on employers of nonresidents is to specify a minimum amount under which the withholding requirement does not apply. This is done by regulation in Minnesota, and is provided by a statute, recently enacted, in Wisconsin, the annual amounts being \$700 and \$1,500 respectively.

Within the past year, a number of States have been surveyed to ascertain whether there have been complaints from carriers of one kind or another in respect to withholding or reporting requirements. This survey indicated there had been no substantial change in the situation in the past 5 years. Complaints were reported by only a few States and most of these had been worked out satisfactorily, the principal exception being the case of the seamen employed in Alaska waters. The objection there, it should be noted, is to the payment of any tax at all.

Several additional States reported on their procedures for avoiding or eliminating multiple withholdings by virtue of through traffic operations or infrequent travel through the State, as follows:

California: Minimum earnings for withholding, \$3,250 single; \$6,500 married, plus further allowance for dependents; also has exemption certificate procedure.

Idaho: Follows post of duty approach; no requirement of withholding if post of duty in another State.

Indiana: Has reciprocal exemption agreements with Georgia, Kentucky, Michigan, North Carolina, and Wisconsin and will make similar agreement with other States.

Kansas: Withholding requirement does not apply if 10 percent or less of income earned in State. Uses a certificate of nonresident allocation where withholding applies.

Michigan: Reciprocal agreements with Indiana, Wisconsin, and Kentucky. Minimum for withholding is amount in excess of \$1,200 for each Federal exemption. Withholding required only from company with terminal or general office in the State.

Minnesota: Reciprocal agreements with Wisconsin and North Dakota.

Missouri: No withholding on nonresident carrier employees unless a substantial portion of the employee's duty time is spent in Missouri or the employee is based at a terminal in the State.

Montana: Does not require withholding from nonresident employees engaged exclusively in interstate commerce except where the point of duty ends or begins in the State (base of operations).

Nebraska: New income tax. One overwithholding situation which it is expected will be worked out satisfactorily. Reciprocal agreements authorized.

New York: Taxable income proportioned according to the number of total working days in the State; if it may be reasonably expected that earnings will not exceed exemptions, no withholding is required.

Oklahoma: No complaints. Airline flight personnel subject to withholding only if residents of State.

Wisconsin: Minimum for withholding \$1,500. No withholding on nonresident flight personnel. Any information to the contrary is incorrect.

This enumeration shows that the States are definitely alert to the need to make their withholding rules and procedures realistic while enforcing them to the extent needed to insure the collection of substantial tax liabilities.

TANTAMOUNT TO EXEMPTION

The elimination of the withholding and information report requirements is for all practical purposes tantamount to a grant of a tax exemption. The experience of the several States in attempting to collect income taxes from nonresident full-time employees prior to the adoption of withholding affords ample proof of the truth of this statement.

The consequences of such a policy would be acute in border areas between States and particularly so in metropolitan border areas. Consider, for example, a situation where an employee resident in a border city in State A derives 95 percent of his income from service performed almost wholly in neighboring State B on a regular daily-trip basis. Under existing law, the employer withholds the tax due State B. Under the bill, H.R. 1240, the employer would not withhold the tax and would not even file an information return. The likelihood is that the employee would not pay any income tax either. It is true that the bill does not purport to affect the employee's liability for taxes in any State but in practice unless the employee voluntarily files a return it is going to be virtually impossible for the tax department in State B to identify and locate that taxpayer, let alone collect the tax from him. In fact, if the employer does not maintain a place of business in the adjoining State (State of employee's residence), it is quite likely that no State—neither the State of employment nor the State of residence—will have any direct information as to the source or amount of the employee's earnings.

BILL MUCH TOO BROAD

Even if a case could be made for the necessity of Federal legislation to protect carrier employers from the burden of complying with withholding requirements involving small amounts and many States, the present bill would still be objectionable because it goes far beyond that purpose. For instance, in the metropolitan border example cited earlier, how could either the withholding requirement or an information report in those circumstances be characterized as burdensome in any practical sense? It can hardly be suggested that such a situation warrants the intervention of the Congress. Yet, in that situation and in various analogous situations involving only one State other than the State of residence, the present bill would eliminate the withholding and reporting requirements, and, as a by-product, perhaps, also, the payment of any tax at all.

Moreover, a noncarrier employee in a substantially similar situation would be subject to withholding and his employer would have to comply with this requirement. Why should the carrier employer and the carrier employee be treated any differently from any other employer or employee similarly situated? The answer is, of course, that they should not be treated differently. It is one thing to say that by virtue of the extreme mobility of some carrier employees, both the carrier and the employee should be protected against multiple withholdings on small amounts of income earned in operations among many States. It is quite another thing to say that, in identical factual situations, there will be one rule for employers and employees generally and another rule for carriers and their employees. Yet, this is precisely the result that will follow from the enactment of H.R. 1240 as the bill stands now.

This suggests that, if all other objections to the bill were not persuasive, at the very least H.R. 1240 should be amended so as to provide that the prohibition against withholding and information reporting is not effective as to any State. (1) which is the employee's base point or duty station, or (2) in which a substantial proportion of the employee's service is performed; say one-third, or more. The tax jurisdiction of the base-point State was specifically recognized and approved in the statement of the Teamster Union representative on a bill similar to H.R. 1240 in the 88th Congress.¹

The views of the tax departments on a percentage test amendment are not unanimous. The Department of Taxation and Finance of the State of New York, for example, would oppose any amendment which would make liability for withholding and information reports dependent on a percentage-of-earnings test. Also, the Department of Revenue of the State of Illinois regards a base point approach as preferable to a percentage of earnings test.

¹ Sidney Zagri, legislative counsel, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hearing, S. 1719, 88th Cong., 2d Sess., Feb. 24, 1964, pp. 50, 53.

The State tax agencies which join in the presentation of this statement are the following:

Alabama: Department of Revenue.
 Alaska: Department of Revenue.
 Arkansas: Department of Revenues.
 California: Franchise Tax Board.
 Delaware: State Tax Department.
 Georgia: Department of Revenue.
 Hawaii: Department of Taxation.
 Idaho: State Tax Commission.
 Illinois: Department of Revenue.
 Indiana: Department of Revenue.
 Iowa: Department of Revenue.
 Kentucky: Department of Revenue.
 Louisiana: Department of Revenue.
 Maryland: Office of the Comptroller of the Treasury.
 Massachusetts: Department of Corporations and Taxation.
 Michigan: Revenue Division, Department of Treasury.
 Minnesota: Department of Taxation.
 Mississippi: State Tax Commission.
 Montana: Board of Equalization.
 Nebraska: State Tax Commissioner.
 New Mexico: Bureau of Revenue.
 New York: Department of Taxation and Finance.
 North Carolina: Department of Revenue.
 North Dakota: Office of State Tax Commissioner.
 Oklahoma: Oklahoma Tax Commission.
 Oregon: Department of Revenue.
 South Carolina: South Carolina Tax Commission.
 Utah: State Tax Commission.
 Virginia: Department of Taxation.
 Wisconsin: Department of Revenue.

STATEMENT OF CHARLES A. WEBB, PRESIDENT, NATIONAL ASSOCIATION OF
 MOTOR BUS OWNERS

The National Association of Motor Bus Owners (NAMBO) is the national trade association for the intercity motor bus industry. Its members include Greyhound Lines, all companies affiliated with the National Trailways Bus System, and more than 400 carriers not affiliated with either system. Collectively, these members of NAMBO provide over 90 percent of the intercity motor bus transportation in the United States.

In general, the proposed legislation would exempt from withholding for tax purposes under the laws of any State or subdivision thereof, other than the State of the employee's residence, wages paid to any employee who performs his regularly assigned duties as such an employee on a motor vehicle in more than one State. The bills further provide that no carrier subject to the provisions of part II of the Interstate Commerce Act shall file an information return with respect to such wages with any State or subdivision thereof other than the State or subdivision in which the employee resides.

Insofar as the intercity bus industry is concerned, the proposed exemption is limited largely to the wages paid to bus drivers who perform their regularly assigned duties in interstate commerce in two or more States. There are a few stewardesses and tour guides who would also benefit from the proposed legislation.

NAMBO testified in favor of similar legislation (S. 1719) in 1964 in the 88th Congress. At that time, however, only one or two States were enforcing their laws requiring motor carriers of passengers to withhold taxes from the wages of non-resident bus drivers. Six years ago we supported the proposed legislation to eliminate a potential burden on carriers and their drivers. Today, the burden is no longer potential but real.

At the present time, 14 States are enforcing, or have attempted to enforce, withholding on nonresident drivers employed by one or more interstate motor carriers of passengers. These are the States of Alabama, Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, and Wisconsin. I understand that motor carriers of property have been subjected to withholding requirements for nonresident truck drivers in three or four additional States.

Despite the improvement in data processing equipment, the accounting burden imposed by these laws on the larger carriers which have such equipment is substantial. Earnings of affected bus drivers are usually allocated to a State on the basis of a mileage prorate. However, it is not necessary for a carrier to maintain records on the miles driven by a driver in a particular State except for the purpose of complying with State laws on withholding of nonresident drivers' wages for tax purposes. The practical difficulties of compliance were explained as follows in a letter to me dated March 5, 1970, from Mr. J. M. Clarke, vice president and comptroller, Greyhound Lines—East:

"The method generally followed in determining the subject earnings in those States where we do withhold from nonresident drivers is to establish the miles operated in the State during each pay period and then multiply this by his straight-time driving pay rate. This is not an accurate computation, since it does not take into account the various types of pay items other than straight-time driving. However, it seems to be the most practical, under the circumstances, and has not been subjected to audit or question as yet.

"The clerical effort necessary for compliance on our part becomes quite considerable. In each payroll period, we must determine the miles operated in each of the States involved by nonresident drivers, translate this into a gross wage figure, and then apply the applicable State tax rate. Much of this is, of course, done mechanically through our computer operation but it still requires a good deal of manual effort. It has been our experience that this type of data development is far from error free and there are particular complications involved in cases where we mistakenly withhold tax from the wrong employee, who may never have driven in this particular State."

Although the burden of compliance is substantial for the larger members of NAMBO, it is relatively heavier for the smaller carriers who cannot afford highly mechanized accounting systems. Over 70 percent of our members have annual gross operating revenues amounting to less than \$1,000,000 a year. I was advised several weeks ago by a small carrier in Baltimore that it had been notified by the State of Mississippi to comply with its income tax withholding law. This notice was prompted by a charter movement between Baltimore and New Orleans. The carrier has no terminal or other place of business in Mississippi and no employees working in that State. In all probability, its buses will not traverse the State of Mississippi more than two or three times a year. However, it is required to compute the mileage of its drivers in Mississippi and to withhold part of their wages, even though its drivers will never incur any tax liability in the State. In addition to the paperwork burden on the carrier, the drivers, of course, are inconvenienced by being deprived of part of their wages and by the necessity of filing for a refund at the end of the year.

A small carrier in Owosso, Mich., provided the following example on the need for the proposed legislation:

"The latest example in Mississippi was for a charter operation that was only in the State less than one day. It was operated interstate but we are still assessed withholding tax on driver's wages. Since the amount was less than \$2.00, we simply paid from company funds rather than get involved in the vast bookkeeping required to collect from an employee and reimburse for home State tax taken out on these wages. If this problem becomes multiplied by 50 States, in many of which we operate much more service than in Mississippi, then our problem becomes horrendous."

If you will multiply those two examples involving Mississippi by 12 States and by more than 400 passenger carriers the dimensions of the problem for our industry will be understood.

Many of our small carriers are not now complying with State income tax withholding laws and regulations applicable to nonresident drivers because the States involved have made no effort to enforce them with respect to drivers who merely pass through the State. This lack of enforcement is not likely to continue. First, disregard of the requirements by tax officials and by carriers breeds a contempt for law which is unhealthy. And, secondly, enforcement against carriers whose vehicles merely pass through the State is not difficult because most States require permits from charter bus operators using their highways.

In conclusion, I would like to emphasize that the proposed legislation does not encroach upon the taxing power of the States and their subdivisions. The bill would not affect, for example, the right of the State of Iowa to tax the income of bus drivers who live in Rock Island, Ill., but who work out of a bus terminal in Davenport. The bill merely relieves motor carriers of passengers and their

interstate bus drivers from cumbersome collection procedures which, in general, are far more costly than the taxes derived therefrom by the States and their subdivisions. This point was explained as follows in the letter of Mr. J. M. Clarke referred to above:

"When we come to the end of a year, further time must be spent in developing and reporting the gross wages and tax withheld amounts to the States. It is at this point that the seeming futility of the entire effort becomes most apparent. In the vast majority of the cases, the nonresident driver has not earned enough to make him actually subject to any tax. To illustrate this aspect, we made an analysis of the withholding in the year 1969 of tax on wages earned in Mississippi nonresident drivers. In that State, the exemption amount is \$4,000 for single employees and \$6,000 for a married employee. Following is a summary of the results of this special study:

NUMBER OF EMPLOYEES

Wages in Mississippi	Total	No tax withheld	Tax withheld	Amount of tax withheld
Under \$1,000.....	93	90	3	\$14.43
\$1,001 to \$2,000.....	20	14	6	57.34
\$2,001 to \$3,000.....	36	12	24	225.59
\$3,001 to \$4,000.....	14	1	13	135.50
\$4,001 to \$6,000.....	10	4	6	162.34
Over \$6,000.....	11		11	681.21
Total.....	184	121	63	1,276.41

"These data show that we were obliged to compute the Mississippi earnings for 184 nonresident drivers, that the amounts thus developed indicated no need for tax withholding in the case of 121 of the employees, that tax withholding was required for 63 of the drivers but will have to be refunded to at least all but 17 of those drivers. The amount of the tax withheld which might be retained by the State is obviously of no great significance and is hardly equal to the expense incurred by us in making the collection.

"Perhaps the best argument which can be advanced at this time in support of the proposed legislation is that the revenue realized by the State is not commensurate with the burden placed on the employer. As indicated by the statistics noted above, the great majority of the nonresident employees for whom we establish earnings and deduct taxes are not actually subject to any tax liability. Consequentially, the bulk of our work serves no good purpose, the employee is exposed, at the least, to a nuisance in obtaining a refund of the tax which has been withheld and the State itself unnecessarily adds to its workload by having to process the information returns and tax refund requests."

For the reasons set forth above, NAMBO urges prompt and favorable consideration of the proposed legislation.

STATEMENT OF WILLIAM A. GILL, JR., PRESIDENT, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO

Mr. Chairman and committee members, FEIA represents flight engineers on certain United States flag and domestic air carriers. FEIA also has affiliated with it members of flight engineer unions from 10 other countries of the free world.

I thank the committee for allowing me to express the flight engineers' opinions on the legislation being considered.

The Flight Engineers' International Association supports and urges passage of H.R. 1240, a bill to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salaries of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or Subdivision of the employees' residence.

We support this legislation because it will offer reasonable and just relief to many of our members who are now being taxed unfairly and arbitrarily by the State of Alaska, and because it will prohibit these unfair tax practices from spreading to other States, some of which are already contemplating adopting the same unjustifiable practices.

FEIA is violently opposed to the action of the State of Alaska whereby employees, merely because their employer selects a route which carries them over

or through a particular State, are taxed for carrying out their individual duties and responsibilities assigned to them by their employer on these routes. These individuals receive absolutely no benefit from the State, and to require tax on their income merely because their duties require flying over the State, or making an occasional landing within it, is nothing more than exacting a tribute for being an airline flight-crew member. The income of these individuals is no more dependent upon any incident of statehood than is the carrier's employee who scheduled him to fly over the State, or the dispatcher who routed his flight over it, or the passenger who saw fit to get where he was going by that flight.

These persons are not taxed by the State, nor should they be. Are there reasons why flight crews are more tax liable to the State than they? We think not.

They are only being forced to pay a tribute to enhance the State's treasury because they are travelers. This is not merely regressive taxation, it is repressive taxation.

Our members fly to virtually every country of the world and yet not a single foreign country requires a tax on their income. Nor should they.

Our members, likewise, fly to every State in the Union. Should they be subject to income tax in every State? We think not. How about every country, every city, every township which has the authority to levy taxes; should we be subject to these taxes also? We think not. If Alaska is entitled to this tribute, why are they not all entitled to demand it?

We believe a line must be drawn at once and we believe the legislation being considered draws the line fairly.

Therefore on behalf of FEIA's 3,000 members, and over 25,000 of our colleagues in other flight-crew positions throughout the United States, and in league with our brothers engaged in other forms of interstate commerce, we urge this committee to give immediate and favorable consideration to this bill.

Thank you, Mr. Chairman.

STATEMENT BY COUNCIL NO. 67, AIR LINE PILOTS ASSOCIATION

Council No. 67 of the Air Line Pilots Association comprises 155 pilots employed by Alaska Airlines, Seattle, Wash.

We are supporting the enactment of House bill 10634 because, without this bill or similar legislation, employees of interstate carriers may well be taxed by every State and local government through which they pass. Such taxation offers no return to the taxpayer in the form of schools, fire protection, or other government services. The transient taxpayer is merely a handy source of nonvoting revenue.

For the airline pilot, the matter of keeping track of what his tax bill, and to whom it is owed, would present a bookkeeping problem of gigantic proportions, since a pilot's pay is based on a number of variables, including the type of airplane, gross weight, mileage, etc. Only the air traffic controllers could advise the aircraft when it was crossing a State line, which would only add another burden to an already overloaded work force.

Problems also exist in the area of tax credits. In computing a State income tax, taxes paid to other governments may or may not be allowed as deductions, making the interstate carrier employee subject to an unfair proportion of the tax bill, not to mention the problems involved in filing a dozen or more tax returns each year.

We urge that your committee give its support to House bill 10634, or similar legislation.

(Whereupon, at 11:45 a.m., the subcommittee adjourned.)