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COMMON AND CONTRACT CARRIER STATE PROPERTY TAX DISCRIMINATION

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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. 16245, H.R. 16251, H.R. 16316, H.R. 16357,
H.R. 16411, H.R. 16639, and S. 2289**

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

JUNE 9, 1970

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COMMON AND CONTRACT CARRIER STATE PROPERTY TAX DISCRIMINATION

TUESDAY, JUNE 9, 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 now come to order.

H.R. 16245 and S. 2289 would make unlawful certain property tax assessments of common and contract carriers. Legislation similar to this has been before us for some time. If carriers are subjected to discriminatory State and local taxes, obviously the carriers and ultimately all of their customers are going to share the costs of any discriminatory taxes.

(The text of H.R. 16245, H.R. 16251, H.R. 16316, H.R. 16357, H.R. 16411, H.R. 16639, and S. 2289, and departmental reports thereon follow:)

[H.R. 16245, H.R. 16251, H.R. 16316, H.R. 16357, H.R. 16411, and H.R. 16639, 91st Congress, 2d Session, introduced by Mr. Friedel on March 3, 1970; Mr. Nelsen on March 3, 1970; Mr. Cunningham on March 5, 1970; Mr. Pickle on March 9, 1970; Mr. Stuckey on March 11, 1970; and Mr. Watson on March 24, 1970; respectively, and S. 2289, referred to the Committee on Interstate and Foreign Commerce on February 2, 1970, are identical as follows:]

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

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

"SEC. 25a. (1) Notwithstanding the provisions of section 202(b), the following action by any State, or subdivision or agency thereof, whether such action be taken pursuant to a constitutional provision, statute, or administrative order or practice, or otherwise, is hereby declared to constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce and is hereby forbidden and declared to be unlawful: (a) the assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property owned or used by any common or contract carrier subject to economic regulation pursuant to the provisions of the Interstate Commerce Act at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all such other property; (b) the collection of any tax on the portion of said assessment so declared to be unlawful; or

(c) the collection of any ad valorem property tax on such transportation property at a tax rate higher than tax rates applicable to any other property in the taxing district.

"(2) As used in this section :

"(a) The term 'transportation property' means transportation property as defined in the regulations of the Interstate Commerce Commission.

"(b) The term 'assessment jurisdiction' means a geographical area, such as a State or a county, city, or township within a State, which is a unit for purposes of determining assessed value of property for ad valorem taxation.

"(c) The term 'all other property' means all property, real or personal, other than land used primarily for agricultural purposes or primarily for the purpose of growing timber.

"(3) Notwithstanding the provisions of section 1341, title 28, United States Code, or of the constitution or laws of any State, the district courts of the United States shall have jurisdiction, upon complaint and after hearing, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain any State, or subdivision or agency thereof, or any person from doing anything or performing any act declared by paragraph (1) hereof to be unlawful: *Provided, however*, That such jurisdiction shall not be exclusive of that which any Federal or State court may otherwise have: *And provided further*, That the provisions of this paragraph shall not become effective until three years after the date of enactment: *And provided further*, That no relief shall be granted hereunder unless the assessment percentage applied to carrier transportation property exceeds by at least 5 per centum the assessment percentage applied to all other property in the assessment jurisdiction."

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS,
Washington, D.C., February 24, 1970.

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

DEAR CHAIRMAN STAGGERS: From an intergovernmental relations standpoint, S. 2289 represents a substantial improvement over similar bills introduced in previous Congresses. Yet, the bill falls shy of full-scale accommodation to our federal system by penalizing States that legally impose classified rather than general property taxes.

Unless States possess wide latitude in assigning differential tax burdens to designated classes of taxpayers, they lack one of the critical powers of a tax policymaker. The ability of States to exempt property from taxation illustrates one use of this power. Another example is the practice in some States of classifying property for purposes of differential taxation.

Classification can be accomplished in several ways. Real and personal property may be subjected to differing rates, as in the District of Columbia. Certain types of personal property (e.g., merchants' inventories) may be assessed at a different percentage of value than other real and personal property, as in Florida. Montana and Minnesota, for example, have comprehensive legal property tax classification systems.

As long as these differential tax burdens are hammered out in the open legislative arena—and not "negotiated" behind the closed door of an assessor's office—only the requirements of due process are needed as a safeguard against any arbitrary and unreasonable legislative classification.

S. 2289 is overly protective when it goes beyond this point and guarantees to the carriers the most favorable tax treatment accorded any other types of real or personal property such as merchants' inventories.

The Advisory Commission has strongly advocated a vigorous State role in property tax administration to put an end to extra-legal (negotiated assessment) property tax classification schemes. Federal legislation designed to hurry this objective along may be appropriate but only if carefully drawn to allow States maximum discretion in formulating their tax policies.

Sincerely yours,

DAVID B. WALKER,
Acting Executive Director.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C. June 17, 1970.

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

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget regarding S. 2289 as passed by the Senate and H.R. 16245, two identical bills "To amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and an undue burden upon interstate commerce, certain property tax assessments of common and contract carrier property, and for other purposes."

The Department of Transportation, in its report to you dated March 5, 1970, discusses the background and issues relating to this bill. We concur generally in that Department's views.

Sincerely,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, March 17, 1970.

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

DEAR MR. CHAIRMAN: We have your letter of March 5, 1970, asking for our comments on S. 2289, which passed the Senate January 30, 1970.

S. 2289 is designed to alleviate State and local tax discriminations that might be suffered by carriers. It proposes to add to the Interstate Commerce Act a new section 25a which would (1) proscribe certain discriminatory property assessments and tax rates; and (2) vest jurisdiction in the United States District Courts to hold hearings upon complaints and issue necessary restraining orders.

We commented upon S. 2289, as originally introduced in the Senate, in our letter of June 12, 1969, B-158648, to the Chairman, Senate Committee on Commerce. The bill now incorporates our suggestion that the clause "as defined in the regulations of the Interstate Commerce Commission" be linked to the term "transportation property."

We also note that the bill has been clarified in several other respects relating to assessment jurisdiction and to the definition of the term "all other property." A five percent tolerance factor has been included in the last proviso of section 3 so that relatively small variations in assessments may not be made the subject of complaint proceedings.

If enacted, S. 2289 would not affect our functions and operations. Its subject matter is a matter of Congressional policy. We therefore have no recommendation to make as to its consideration by your Committee.

Sincerely yours,

LAWRENCE J. POWERS
(For the Comptroller General of the United States).

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., March 30, 1970.

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

DEAR CHAIRMAN STAGGERS: This responds to your request on March 5, 1970, for the views of the Interstate Commerce Commission on H.R. 16245,¹ a bill "To amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and an undue burden upon interstate commerce, certain property tax assessments of common and contract carrier property, and for other purposes."

¹ In an identical letter dated February 10, 1970, the ICC reported on S. 2289.

H.R. 16245 adds a new paragraph, designated as section 25a, to the Interstate Commerce Act. Section 1 of this new provision declares that the following action by a State or any subdivision or agency thereof with respect to the taxation of the real or personal property of any common or contract carrier subject to economic regulations under the Interstate Commerce Act shall constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce and therefore be forbidden and unlawful:

(a) the assessment (but only to the extent of any portion based on excessive values as hereinafter described), for the purposes of a property tax levied by any taxing district, of transportation property owned by or used by any common or contract carrier subject to this Act engaged in transportation of persons or property in interstate commerce at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the taxing district subject to a property tax levy bears to the true market value of all such other property;

(b) the collection of any tax on the portion of said assessment so declared to be unlawful; or

(c) the collection of any ad valorem property tax on such transportation property at a tax rate higher than tax rates applicable to any other property in the taxing district.

Section 2 of the proposed new section 25a provides that the district courts in the United States shall have jurisdiction to issue writs of injunction as may be necessary to restrain any State or political subdivision from assessing property in violation of paragraph 1, notwithstanding the provisions of section 1341 of the Judicial Code, 28, U.S.C. 1341. It also provides that such jurisdiction granted the district courts of the United States shall not be exclusive of that which any Federal or State court may otherwise have. This section also provides that it will not become effective for three years after the date of the enactment of S. 2289. Legislation similar to H.R. 16245 has been considered by Congress in the past, such as S. 927 in the 90th Congress, and S. 2289 passed in the First Session of the present Congress.

Although the provisions of H.R. 16245 apply to Commission-regulated carriers of all modes, it is well recognized that the basic purpose of this legislation is to provide a solution to a long-standing and deeply-rooted problem, the practice of many State or local government's taxing authorities setting inequitable and discriminatory assessments and tax levels on the property of the Nation's railroads. The variety and extent of discriminatory treatment in the assessing and taxing of the railroads' properties by State and local governments is well documented in the Doyle Report² which also suggested remedial legislation along the lines of S. 2289 and H.R. 16245³ to alleviate this problem. Although the Doyle Report's discussion of this subject was directed to discriminatory State and local tax policies against the railroads because of their large private investment in taxable right-of-way and other property, it is apparent that carriers of other modes which make use of publicly provided transportation facilities confront many of the same problems. Cf. *Alterman Transport Lines, Inc., v. Public Service Commission of Tennessee*, 259 F. Supp. 486 (M.D.D. Tenn. 1966), involving the issue of discriminatory property taxation against motor carriers.

In essence, the provisions of section 1 are designed to put an end to the widespread practice of treating for tax purposes the property of common and contract carriers on a different basis than other property in the same taxing district. In describing the extent of discriminatory tax treatment by State and local governments, the Doyle Report states that "despite State laws requiring uniform treatment, railroads and pipelines are discriminated against as compared to other property taxpayers in the same jurisdiction, due in large measure to outdated procedures (which are sometimes deliberately retained) for assessment of property", and went on to state that [the Committee] had information "showing the extent of overpayment of railroad and valorem taxes resulting from the assessment of railroad property at a percent of its value that is higher than the assessment of other taxpayer property is to the value of such other property"; and that "This confirmed the findings of this committee that there is a studied and deliberate practice of assessing railroad property at a proportion of full substantially higher than other property subject to the same tax rates."⁴ The Com-

² National Transportation Policy, Report prepared for the Committee on Interstate and Foreign Commerce, United States Senate, by the Special Study Group on Transportation Policies in the United States, (1961), pp. 445-491.

³ *Id.* at pp. 465-466.

⁴ *Id.* p. 458.

mission itself has had occasion to note in its report in the *Railroad Passenger Train Deficit* proceeding, 306 I.C.C. 417, that the existence of inequitable State and local property assessments and tax policies has served to jeopardize the continued existence of essential rail passenger service and recommended that State and local governments take steps to effect a greater degree of equity with respect to the tax burdens imposed on railroad properties as compared to that borne by taxpayers generally.

It is our understanding that this bill will forbid discriminatory property taxation of common and contract carrier property whether (1) such discrimination is expressly sanctioned by State law or constitutional provision, or (2) whether, despite existence of State laws on constitutional provisions requiring uniform property assessment of property and tax treatment, it is simply the administrative practice or custom to levy discriminatory levels of assessment of taxation. In the years since the Doyle Report's findings were published in 1961, several state courts, acting under the "equal protection" clause of the Fourteenth Amendment to the Constitution, have voided discriminatory assessments and tax levies on carrier property to the extent such practices were in conflict with the applicable state laws or constitutional provisions. In this regard, see *Louisville and Nashville R. Co. v. Public Service Commission of Tennessee*, 249 F. Supp. 894 (M.D.D. Tenn. 1966); *People v. Belt Ry. Co. of Chicago*, 226 N.E. 2nd 265 (1967) and cases cited therein. These decisions have not, as yet, touched upon the power of State or local authorities to levy discriminatory assessments or tax rates against carriers where the express provisions of state law or a state constitution permit such discriminatory treatment. This is most often accomplished by classifying carrier property in a separate class from all other taxable property in the same district, a practice which has been approved by the Supreme Court in *Nashville, Chattanooga & St. L. Ry. v. Browning*, 310 U.S. 362 (1940) against a claim that such classification is violative of the "equal protection" clause of the Fourteenth Amendment.

In the years since the issuance of the Doyle Report, steps have been taken by either State legislatures or local taxing authorities to alleviate discriminatory tax burdens on regulated carriers. While a number of States have reformed their property taxing and assessment practices to insure a greater degree of equity in the treatment of carriers, nevertheless, there are still serious problems which require the establishment of a uniform national policy in this area. Since section 2 of H.R. 16245 provides that the injunctive remedy for violation of the provisions of Section 1 will not become effective for three years after the date of enactment, State and local governments will be afforded ample time to implement this national policy on their own initiative.

For the reasons expressed above, we fully support the enactment of H.R. 16245.

Sincerely yours,

GEORGE M. STAFFORD, *Chairman.*

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, D.C., March 5, 1970.

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

DEAR MR. CHAIRMAN: This letter is in reply to your request for the views of this Department with respect to S. 2289, an Act "To amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and an undue burden upon interstate commerce, certain property tax assessments of common and contract carrier property, and for other purposes."

S. 2289 would make it unlawful, with certain exceptions discussed below, as a burden upon interstate commerce for a State or locality to assess, collect, or impose a higher rate of property tax on interstate carriers than on other similarly situated taxpayers. It would allow an aggrieved interstate carrier to bring suit in a Federal district court to challenge the excessive portion of a State or local transportation property tax. Also, it would allow the States 3 years after enactment within which the States may adjust their practices and laws.

BACKGROUND

S. 2289 is the latest in a series of bills which have been introduced in several Congresses to deal with a major grievance of regulated surface transportation carriers—that of discriminatory taxes and assessments on their real and personal property by State and local governments. This legislation has been a lively subject even since the issuance of the so-called “Doyle Report”¹ in 1961 which discussed, at some length, the various practices of the States and local governments in setting both the assessments and the rates of tax on railroad property. In general, these were (and are) either (1) the assessment of railroad property at a different (and usually higher) percentage ratio of value to the “true” or “fair” market value than other property; or (2) the setting of differentially higher rates on tax on railroad property even where all property is assessed at a uniform percentage ratio of value; or (3) a combination of both. The variety and extent of these practices is described in the testimony before the Senate Commerce Committee on S. 2289 and the published hearings on a similar bill in the 90th Congress, S. 927.

Although the problem of discriminatory property taxation is generally regarded as a railroad problem, bills on this subject, starting in the 89th Congress, cover common carriers of all modes subject to Interstate Commerce Commission regulation, the most recent being S. 927 in the last Congress. Following the hearings on S. 927, the Senate Committee reported an amended version of S. 927 which is identical to S. 2289. The present bill differs from S. 927 as originally introduced in that it includes (1) contract as well as common carriers; and (2) suspends the enforcement provisions of the bill for three years.

In essence, the purpose of S. 2289 is to require State and local taxing authorities to treat ICC-regulated carriers' real and personal property in the same fashion as other such property in a State or local taxing district. S. 2289 strikes at three related practices:

- (1) the assessment of transportation property at a higher ratio of “true” market value than other property in the same taxing district;
- (2) the collection of property taxes from such higher assessments;
- (3) the setting of differentially higher rates of tax on carrier property than other property.

In the case of Points 1 and 2, the objective is to require either “equalization” in assessment or, at the very least, assure that a carrier will not be assessed at a higher ratio to “true” market value than average (apparently weighted) ratio of the aggregate of all property in the taxing district. In other words, if agricultural property were assessed at 15% of value, residential at 30%, and other business at 40%, a carrier would be entitled to have its property assessed at a weighted average of these ratios.

In this connection, the thrust of S. 2289 is limited to the excess in the ratio to “true” market value and the tax collected from such excessive value. If, for example, railroad property were assessed at 60% of “true” market value and the average of all other property were 40%, S. 2289 declares unlawful *only* the 20% difference, not the entire assessment. Similarly, only the collection of property taxes on the 20% difference, not the entire tax, is prohibited. The purpose of Point 3 is to prevent the purpose and ultimate effect of Points 1 and 2 from being undermined as has happened in a number of States. For example, a State law, constitutional provision, or court decision directs that all property be assessed at a uniform average level which is then determined to be 60% of “true” market value. Thereafter, it is determined that ICC-regulated carriers will pay, for example, a \$50 per \$1,000 of value rate while all other property will be taxed at \$30 per \$1,000 of value, thus defeating the objective of uniformity while paying lip service to the principle.

Hearings have been held on the bill before the Senate Subcommittee on Surface Transportation on July 30, 1969, at which time it was supported by the railroads, motor carriers, oil pipelines, ICC, the State regulatory commissions and various individuals and opposed by various State and local officials and organizations of State and local taxing bodies. On February 2, 1970, the Senate passed S. 2289, as introduced, with four amendments: (1) the addition of a specific definition of “transportation property;” (2) inclusion of a 5% “tolerance factor” for erroneous assessments; (3) a clarification of what constitutes a “taxing dis-

¹ “National Transportation Policy,” a preliminary draft of a report prepared for the Senate Commerce Committee by the Special Study Group on Transportation Policies in the United States (1961), pp. 445-491.

trict;" and (4) the exclusion of property used primarily for the growing of timber or agricultural purposes from the definition of "all other property". The first amendment was suggested by the Comptroller General and defines transportation property in accordance with the ICC's Uniform System of Accounts. The remaining three, we understand, were suggested by Mr. George Kinneer, Director, Washington Department of Revenue. The second is designed to meet a general problem that exists in many States where a State agency "equalizes" local property assessments of a carrier operating in more than one taxing district. For example, a local assessor claims, in compliance with State law, to be assessing carrier property at 25% of "true market value," but upon analysis, the State agency determines that the actual rate is, in fact, 27%. Where a State has a "tolerance factor" of, say, 5%, the State agency will concede the difference as a matter of judgment. However, in the absence of the amendment to S. 2289, the carriers could claim that the use of a tolerance principal results in discrimination.

The third amendment clarifies what constitutes a "taxing district" for the purpose of S. 2289. It is designed to deal with the common situation of multiple or overlapping taxing districts within a given political subdivision which may have different ratios of assessments or rates of tax, e.g., county, school district, village, etc., which when compared, might be considered discriminatory under S. 2289. To deal with this problem, the Committee's amendment revises the present wording "in any taxing district" to "assessment jurisdiction" in the case of property assessments and "the same assessment jurisdiction and for the same fiscal purpose" in the case of tax rates.

ISSUES

The issues with respect to S. 2289 are basically four in number: (1) need for the legislation; (2) States' rights; (3) the effect on State and local revenues; (4) the effect on other socially desirable economic programs of the State or local jurisdiction. There, of course, is considerable overlap among these issues. As to the first point, the need for this legislation, it has been demonstrated in the several studies and hearings on this subject that discriminatory taxation of surface carrier property is widespread whether under color of law or not. While the States, often on the basis of a decision from either their own courts or the Federal courts, have made some progress in the area of discriminatory assessments, backsliding is always present unless there is a positive national policy in the picture. Even if some uniformity is achieved in assessment, it is easily defeated by setting different rates of tax on carriers' property than for other property; hence, the proscription of this practice in the bill.

The rights of the States by S. 2289 is basically a political issue since the constitutional power of Congress to legislate in this area is clearly appropriate under the commerce clause.

The matter of revenue loss is a serious one and, along with the "States' rights" issue, is the principal basis for the imposition of the three-year moratorium. Although measured in a total revenue sense, property taxes are not as important as in former years, revenue from this source is still of vital importance to local governments. Upon enactment of S. 2289, State compliance would, in effect, mandate either raising the assessment and/or taxes on other property, a difficult process for political and other reasons, or lowering the carriers taxes or assessments to the average level of other taxpayers. In sparsely developed States or local jurisdictions where a carrier, particularly a railroad, is the largest economic enterprise, the latter step would appear to have a large revenue effect. The total revenue effect is a matter of some dispute. In the Senate hearings on a similar bill in the 90th Congress, S. 927, the railroads stated that because of discriminatory assessments and/or tax rates in 21 States, around \$72.0 million in excessive property taxes were paid by the carriers in 1965. In this year's hearings on S. 2289, the excess taxes due to discriminatory tax policies were alleged to run around \$69 million, \$58 million in nineteen named states, the balance in nine others. While there is no similar information for other modes covered by S. 2289 and while there are, no doubt, other deficiencies in the data, a potential revenue loss to the States (and corresponding benefit to the carriers) of around \$65-70 million would, in theory, seem possible upon the enactment of the bill. It would appear, however, that State and local taxing bodies will take some action in the face of this possible erosion of revenue. During the three-year moratorium on the enforcement of S. 2289, the States or local governments could be expected to make up the potential revenue loss either by raising property tax

rates for all tax payers or, more likely, develop new forms of nonproperty taxes applicable to regulated carriers.

The fourth issue, the effect on other socio-economic policies of the State is in many ways the most difficult one. Many States, for such worthy objectives as industrial development, preservation of open space, promotion of the quality of urban life, natural resource policy and so forth, have structured either the assessment or tax rates of real property devoted to these purposes.

In the case of assessments, the effect of this bill on such classes of property would seem to be minor (except in jurisdictions having a heavy emphasis on natural resource or agricultural use) since the bill is apparently addressed to assessment ratios in excess of the *average* ratio of all property.

Discriminatory tax *rates* are another matter since the bill gives the carriers the benefit of the lowest rate. Here, again, the three-year enforcement moratorium provides for a period of adjustment.

CONCLUSIONS AND RECOMMENDATIONS

There is little question as to the existence of discriminatory property tax practices against the railroads and, to a lesser extent, other ICC-regulated carriers. Since, generally, they are only remotely related to the economic performance of the carrier, property taxes have a regressive effect on the carriers' financial posture and earnings which, because of intermodal competition, cannot always be passed along to the consumer. Even when allowance is made for the real prospect that the States will find other ways to raise revenue from the carriers to offset revenue losses, enactment of S. 2289 would seem to be of positive benefit to the regulated surface transportation industry. At the same time, the political issues in this legislation such as Federal involvement in matters of State and local concern, tax revenue loss, and the possible impairment of other valid State policies ought to be given weight. These latter considerations are most pronounced in States, most Western and Southern, which have a high percentage of property in agricultural and natural resource categories.

As noted, the Senate has passed an amended form of S. 2289. Three of the amendments are basically technical in nature and serve to make its provisions clearer and more easily administered by State and local governments. The fourth amendment, eliminating property used primarily for timber production and agricultural purposes from the definition of "all other property" may, in some instances, work to reduce somewhat the benefits of this legislation to the carriers. This amendment would permit the States to continue a measure of classification, if State law so permits, for purposes of differentially assessing property used for the growing of timber or for agricultural purposes. While the measure of relief to the carriers would not be as great as that under S. 2289 as introduced, some limited form of classification would not necessarily be unduly discriminatory in nature. In the Department's view, this compromise approach is justified in the public interest since it attempts to balance the competing interests involved.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report for consideration by the Committee.

Sincerely,

JAMES A. WASHINGTON, JR.,
General Counsel.

DEPARTMENT OF THE TREASURY,
Washington, D.C., June 8, 1970.

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

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 16245, a bill "To amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against an undue burden upon interstate commerce, certain property tax assessments of common and contract carrier property, and for other purposes."

The proposed legislation would, in general, make it unlawful for any State taxing district to assess a property tax against transportation property owned by a carrier engaged in interstate commerce to the extent that the assessed value on which such tax is based bears a higher ratio to the true market value of such transportation property than the assessed value of all other property within the

jurisdiction subject to a property tax bears to the true market value of all such other property.

The bill, in addition, would make it unlawful to collect any tax on the portion declared to be unlawfully assessed, to collect any *ad valorem* property tax on such transportation property at a tax rate higher than tax rates applicable to any other property in the taxing district, and grants jurisdiction to the Federal district courts to enjoin any State, subdivision or agency from performing any act declared to be illegal by the bill.

The bill has no impact on Federal taxation. Accordingly, the Treasury Department takes no position on the merits of this proposed legislation.

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

Sincerely yours,

JOHN S. NOLAN,
Deputy Assistant Secretary.

MR. FRIEDEL. We have a number of witnesses and I would request that their direct presentation be summarized wherever possible and that the witnesses do what they can to give us a complete but brief presentation.

Our first witness this morning is Mr. Thomas M. Goodfellow, president of the Association of American Railroads.

STATEMENT OF THOMAS M. GOODFELLOW, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS; ACCOMPANIED BY PHILIP M. LANIER

MR. GOODFELLOW. Good morning, Mr. Chairman.

I have with me Mr. Philip Lanier, who is vice president of the Louisville & Nashville Railroad Co., and who has been chairman of the committee that has put together our presentation. Mr. Lanier will testify later on more of the technical aspects of the bill in question.

I am Tom Goodfellow, president of the Association of American Railroads. I am here to express the support of the American railroads for the objectives contained in bill H.R. 16245, especially the elimination of the long-standing burden which discriminatory State and local property taxes impose on common carriers like the railroads.

Mr. Chairman, we are grateful for your interest as well as the interest of your fellow committee members who have introduced identical legislation. And, of course, our industry is greatly encouraged by the Senate's favorable action on S. 2289 earlier this year. This bill, also pending before your committee, has the same objectives as H.R. 16245.

I believe the time is now for Congress to take a definite step to assure that States give common carriers equal and fair treatment in property tax matters.

As you know, this problem is not a new one. Year after year it has gone by without corrective State action. It was 9 years ago that a special congressional study group confirmed there was a "studied and deliberate practice of assessing railroad property at a proportion of full value substantially higher than other property subject to the same tax rates."

Now circumstances have become such as to make the legislation pending here imperative.

The railroads' return on net investment in 1969 was only 2.38 percent, far below rates enjoyed by other industries and even below levels found by the Interstate Commerce Commission to be "substandard and

inadequate." And for the 12-month period ending March 31, 1970, it dropped to 2.08 percent. The industry has not earned as much as 4 percent on net investment since 1955—15 years ago.

Even so, the railroads have been spending heavily for modernization of their properties and rolling stock because they must.

In fact, there is no question that this industry needs to invest at least \$2 billion yearly for new cars and other capital improvements. That level was reached in 1966, but these outlays have had to be reduced sharply in the past 2 years under pressure of rising costs and shrinking earnings.

Business statistics of the Department of Commerce show that corporations in the United States, taken as a whole, generate their needed capital funds through depreciation and retained income. But railroads have not been able to do this, even though they have held their dividend payments to lower levels than other industries. They have had to resort to heavy borrowing just to sustain their curtailed rate of capital spending.

Loans against railroad equipment exceeded \$4 billion for the first time in 1967, and the total is even greater now. This increased debt and rising interest rates have caused a further drain on railroad earnings.

In the present inflationary economy there is little or no prospect for relief. Rail union contracts are presently under negotiation that will surely result in higher rates of pay. Prices of materials needed to operate and maintain the railroads are still rising and the end is not in sight.

Also, I direct your attention to various other proposals which could likewise result in large costs that the railroads are in no financial position to bear.

I refer, for example, to costly measures addressed to the safety of operations, including greatly expanded programs for highway railway-grade-crossing protection devices and separations. We are faced with recurrent increases in payroll taxes to finance railroad retirement annuities. And, as another example, there are the various proposals for dealing with problems of freight car supply.

Consideration of these matters—and of many others which are presented from time to time—cannot realistically ignore the severe limitations that exist on the financial resources of the railroads and their access to capital and operating funds. There is clearly a bottom to this barrel, and the railroad industry—especially in these times of rapid cost inflation—is perilously close to it.

In these difficult circumstances any continuation of unfair tax overcharges is clearly contrary, not only to the best interests of the railroads, but to the national interest as well. In the situation concerning us, these overcharges now amount of \$69 million annually.

We are not unaware that the States are also beset with money problems—problems arising from urban density, suburban blight and flight, and other demands of modern society.

But I hope it is clear we are not here asking special tax favor from the States. We seek only the same treatment accorded other taxpayers—in other words, fairness and nothing more.

Our industry's just tax contributions have been an important cornerstone of State and local tax programs, and we expect to continue to

pay our way and to contribute our fair share in assisting the States to meet their responsibilities to their residents. But we cannot ignore unjust, unfair and deliberately continued practices which put a greater tax burden on railroad property than on the property of other taxpayers.

It has been properly said, "The power to tax is the power to destroy." If unfair State tax policies continue unchecked, the economic vitality of our industry could well be sapped. Unaided, we can do little about this "destructive erosion."

We can only attempt to survive it.

And a part of the cost of survival must be passed on to shippers, who must, in turn, pass it on to consumers.

An industry like ours does not exist in a vacuum. The public needs the services of the railroads, and any inequities we suffer ultimately must be felt by the public.

Yes, the tax equalization envisioned by this bill is of critical importance, not only to the railroads, but also the public we serve.

In terms of service and modernization, overpayment of taxes attributable to the problem dealt with here could provide a 20-percent down-payment on 1,400 locomotives or on 23,000 freight cars.

The situation of the railroads is vastly different from that of the other principal modes of transportation with which the railroads must compete. Regardless of the financial circumstances of other operators, public funds continue to flow in vast and often increasing amounts for programs to provide highways, waterways, airways, and airports. This fundamental difference has an extremely important bearing on the capability of railroads to take steps which may, in the abstract, seem altogether desirable.

In short, and in good old American fashion, we have to make it on our own.

Fortunately, we have some inherent advantages over the other modes of transport, and I am proud to speak of them for just a moment. We have a capacity to move large volumes over great distances at reasonable speed and at low cost. We are more efficient from an engineering standpoint. We have greater fuel economy. We have an existing plant. We have near invulnerability to weather. Add these and other pluses and the flanged wheel keeps rolling on the steel rail because it is still the best all-around form of transportation. That is what I believe.

And because I also believe the predictions about the future of this country, I see a great need for healthy railroads in the decades ahead.

Economists predict a gross national product of nearly \$2 trillion by 1980. That is doubling the present GNP in a decade. There will be 245 million people and 77 million households. There will be an incredible demand for homes, automobiles, recreation equipment for everything the mind can devise and the heart desires.

Zooming consumer needs—and the related unprecedented production—will combine to place unheard-of demands and dependence on transportation.

Railroads are doing their best to prepare for the role they must play in our future. Their services will be vital. But the "name of the game" these days is modernization—and that takes money. Railroads can ill afford to have more money taken away from them—or more financial burdens put upon them.

Last year, 1969, marked the centennial of the driving of the Golden Spike, a symbol of the project which first permitted man to span this continent by rail. It was, of course, also the year when man first linked parts of the universe. Both events have a common basis: the ingenuity of man in meeting the challenges of his overexpanding environment. But we can only expect continued success in space if we continue our economic strength here on earth, and a vital cog in this is a modern transportation system.

So, in the circumstances now confronting the railroad industry, and for other reasons which qualified railroad witnesses will present at this hearing, I earnestly urge that you give favorable consideration to H.R. 16245 and its related bill S. 2289.

Mr. FRIEDEL. I want to thank you, Mr. Goodfellow. You made a very fine statement. What impressed me greatly was your statement on page 4 when you said that "we seek only the same treatment accorded other taxpayers—in other words, fairness and nothing more."

I think you made a contribution to the passage of this bill.

Mr. Cunningham, any questions?

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

I appreciate the statement that Mr. Goodfellow has made. I introduced similar legislation on March 5, 1970. I think, Mr. Chairman, the legislation is long overdue. We have been struggling with the problems of the railroads in this committee for many years. This is just one part of the jigsaw puzzle that is going to finally be put together to give relief to this vital segment of our overall transportation system.

I hope we can act upon this quickly and bring relief to the railroad industry. Mr. Chairman, that is all I have at the moment.

Mr. FRIEDEL. I want to thank you, Mr. Goodfellow. We have quite a few witnesses and we are trying to get them on.

Our next witness will be Mr. Philip M. Lanier, vice president, law, Louisville & Nashville Railroad Co.

Mr. LANIER. Thank you, Mr. Chairman.

Mr. FRIEDEL. Mr. Lanier, I see you have a very lengthy statement.

Mr. LANIER. I am going to summarize it, sir.

Mr. FRIEDEL. The full statement will be included in the record following your summary.

STATEMENT OF PHILIP M. LANIER

Mr. LANIER. Mr. Chairman, Mr. Cunningham; my name is Philip Lanier. I am vice president, law, of the Louisville & Nashville Railroad in Louisville, Ky. I am speaking today in behalf of AAR in support of H.R. 16245 and other bills identical with that, including the one which Mr. Cunningham has introduced.

This matter has been before Congress before. In 1964 and in 1966 on the House side and in 1967 and 1969 on the Senate side. On January 30 of this year the Senate passed a bill identical with the ones before this subcommittee unanimously. I emphasize the unanimity of this support because to me it speaks for the widespread agreement that this is sound legislation.

The purpose of the bills is to exercise the undoubted power of Congress in the field of interstate commerce to insure that taxation of interstate carriers by States and their subdivisions is on a nondiscrim-

inatory basis so that interstate commerce shall not be burdened with the disproportionate share of local charges.

The railroads are especially interested in this because of their great ownership of property. The property is either fixed in location in the case of right-of-way and tracks or it is movable. But if it is movable, it is operating constantly, at least some part of it, through the States, as in the case of cars and locomotives.

This property cannot be picked up in the case of the tracks and the right-of-way. In the case of cars and locomotives it must move through these particular States. It is, therefore, a ready target for the tax assessor and the assessors have utilized that fact, we think, to our disadvantage.

These taxes that we speak of as being excessive are a very substantial part of the cost of doing business. We estimate that in 1968 class I railroads paid \$293 million in property taxes. I will speak later of the degree of discrimination we find in that. These bills would declare the congressional policy in a congressional statement that taxation of transportation companies' properties must be at equalization ratios uniform with those used with other property generally, and at tax rates uniform with those used for other property.

The second aspect of the bill is to make the Federal courts readily available to enforce the requirements of uniformity.

The discrimination that I speak of has occurred and does occur in two ways.

First of all, in equalization ratio; that is, in the percentage of fair market value at which properties are assessed. As an example, railroad property may be actually put on the tax rolls for taxing purposes at 60 percent of value, whereas the other property is at only, say, 20 percent.

If the same tax rate of \$1 per \$100 is applied, we are paying 60 cents per \$100 of fair market value and the other taxpayer is paying 20 cents. The discrimination, therefore, is three times.

Less often there is a discrimination in the tax rate itself. That does not occur so frequently, but it is no less expensive than equalization. This discrimination almost always occurs in violation of the State's own constitution and statutes. It is a practical discrimination that I speak of and not one that is written into the law.

However, we are concerned with an increasing tendency on the part of States in the face of successful litigation by the railroads and other utilities to put into their constitutions a classification that would go beyond anything that they have to date.

Paragraph 3 of the proposed legislation would allow the complaining taxpayer to go into the U.S. district courts to seek an injunction or other process to restrain the imposition of this excessive tax. There is nothing new in this concept, although there have been complaints that there is something new.

Under the present law Federal courts are available, but they are available under conditions that are so stringent in their practical application that they are seldom invoked, unless it can be shown that the State remedy is not plain, is not speedy, and is not efficient. Then the Federal court has jurisdiction to issue an injunction.

We have found in the railroad industry, and I am sure it is true of other carriers, that this has often been used by the States, not as a shield to protect themselves from taxpayers' suits, but as a sword to make it more difficult for the complaining carrier to get relief.

Let me illustrate the practical application of this. In Illinois litigation was commenced in the State courts in 1952. After 400-some-odd cases had been filed, after nine or 10 of those had gone to the Supreme Court of the State of Illinois, one railroad 15 years later was still contesting some of its taxes. This railroad found that the State remedy, even though there was one in the statute, was not speedy, was not efficient, and was not very plain.

This is but one example and my statement contains a few others. I will skip over them for the sake of moving along.

I would like to point out at this time, Mr. Chairman, some aspects of H.R. 16245 and the other bills that reflect an effort to meet some of the objections which have been made to this legislation in the past. These bills now contain three amendments which were placed by the Senate into S. 2289. Those amendments are these:

The term "assessment jurisdiction" has been substituted for "taxing district." This is a technical matter that I need not get into at present. There has also been included a 5-percent tolerance factor relative to the injunction. The first amendment, this modest one of terminology, was intended to meet technical problems of overlapping taxing districts which State tax administrators pointed to before the Senate Commerce Committee.

The second, that of the 5-percent tolerance factor, was for the purpose of preventing issuance of restraining process in instances of unintended and insignificant variations in assessment. There are those instances and we who work in the tax field know it is not a precise matter.

The administrators asked for a tolerance factor and the Senate Commerce Committee placed one in the bill. That appears in paragraph 3 now of your bills.

I would also bring to your attention paragraph 2(c) of H.R. 16245 and the other bills. This paragraph defines the term "all other property." This definition excludes agricultural land and timberland from the body of property with which transportation property is compared for the purpose of measuring the degree of discrimination. This definition was inserted on the Senate floor and it too was adopted in order to meet some of the objections of the tax administrator.

The language of the House bills is the same as that of S. 2289 as passed. I think, therefore, that major objections of the State tax administrators have been met in the legislation as it appears before you and as you introduced it, Mr. Chairman.

The fact and the extent of this discrimination of which we complain are well documented. Reference is made in my statement to a number of sources. I can summarize them very quickly by saying that it started in 1944 with a document in the House of Representatives which commented upon the fact of the discrimination and the weight that it bore in the business of the railroads. The Senate Commerce Committee in 1961 sponsored a study made by General Doyle, which confirmed the continued existence of that.

Too, the Advisory Commission on Intergovernmental Relations confirmed it. The Census Bureau in studies in 1957, 1962, and 1967 confirmed that it still exists and they show the extent of it.

State legislative committees and State ad hoc committees appointed by the legislature or by Governors in various States have confirmed

the existence of this discrimination. California, Colorado, and Alabama, I refer to in my statement.

I have included as appendix A in my statement a list of court cases which I put forward as judicial findings of discrimination. I think, therefore, it is fair to say that this fact and the extent of the discrimination have been established by congressional studies, State legislative studies, State gubernatorial committee studies, and by other Federal organizations, including the Census Bureau and by the courts in cases before them.

In an effort to show you the probable extent of the discrimination, I have attached appendix B to my statement. This is not a complete résumé of the discrimination. It lists specifically 19 States and shows what we believe in 1968, the last figure available, to be the discrimination under which the railroads labor in those States.

There are an additional 11 States, I believe, listed, or 10 perhaps. They are summarized. We did not list them specifically. The total discrimination, total excessive tax, we believe in 1968 to have been \$58 million.

That is for the 19 States. For all of them we estimated it to have been \$69 million. We believe, in the 9 years in which this legislation has been before Congress, the railroads have paid excessive property taxes of over \$900 million. The situation is not improving, because while the dollar amount may have gone down, and it has since some of the earlier hearings, the number of States discriminating has increased.

I have summarized in my statement, too, an attempt to illustrate just what it is that the \$69 million means to the railroads. I will not go over those items except to point to one particular item: \$69 million, the excessive tax in 1968, exceeded the total amount of tax reduction realized by the industry in that year from the 7-percent investment tax credit.

This seems to me a perfect illustration of why it is appropriate for Congress to act in this field. Investment tax credit was enacted by Congress in an effort to meet some of the capital needs of all industries, including the railroads. Yet that particular relief that Congress intended to go into capital expenditures by the railroads was more than absorbed by the discriminatory taxation of the States. In other words, the policy of Congress relating to interstate commerce was frustrated. This is a clear example of what the Supreme Court was talking about when it said, "There is scope for operation of the commerce clause when State legislation normally of local concern is in point of fact aimed at interstate commerce or by its necessary operation is a means of gaining a local benefit by throwing the attendant burdens on those without the State."

On the point of the burden of interstate commerce, in the question of whether Congress is able to reach this particular discrimination, there was submitted in earlier hearings before this committee, 1966, a brief prepared by two professors at Vanderbilt University, Prof. Paul Hartman and Prof. Paul Sanders.

I have today copies of that brief and I would like to submit this for the record at this time, Mr. Chairman, if I may.

Mr. FRIEDEL. That we will keep for the files, not for the record. We will keep it in the files of our committee. In the meantime I will say that your appendices A, B, C, and D we will have included in the record.

Mr. LANIER. Thank you, sir.

I would also like to submit appendix C, a letter from Professor Sanders, dated June 4, 1970, in which he stated that the opinions which are expressed in that brief are still valid. He has examined the later cases and has found nothing to change his views that Congress is constitutionally empowered to act on this matter.

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

Mr. LANIER. Let me turn for a moment to the inadequacies of the existing remedies. I spoke earlier of litigation in Illinois which consumed 17 years. Now, this was partially in Federal courts and partially in the State courts, but when we went to the Federal courts they told us there was a plain, speedy, and efficient remedy under State law and they would dismiss the case.

That plain, speedy, and efficient remedy at State law consumed 17 years, 400 cases, as I cited a moment ago. We had an illustration in Kentucky several years ago in which the complexities of attacking a special rate which was enacted by the legislature for 2 years—applicable only to railroads and public utilities—the complexities were so great we gave up and concluded we would spend more money than if we were to pay the tax.

Had we had available the relief which these bills offer, the remedy of the Federal court, the whole matter could have been wound up in one case. The State constitution in my opinion could have been enforced, because in my opinion it was being violated by the legislation.

The Southern Pacific and the Santa Fe Railroads have had an experience in Arizona which I have detailed in my statement, which I will briefly go over with you at this time.

In 1960 the Southern Pacific brought suit in the Arizona State court under a constitutional provision which does permit reasonable classification. The legislature had not classified, however, but there was a practical classification. It asserted its property was assessed at 89 percent of its full value and that other property was assessed at only 20 percent. It won.

The Arizona Supreme Court in 1963 held the action of the State unlawful. It denied recovery, however, for back taxes, but it did say that injunctive relief would be available in the future.

The legislature thereafter eliminated the injunctive relief, it amended the law in 1964 to take it away. In 1967 it enacted a classification law putting railroads in the highest classification at 60 percent of full cash value.

Our competitors, the motor carriers, were in the third classification at 25 percent. So we ran into problems even within the discrimination.

The Santa Fe and Southern Pacific again went to Federal court. Again they were told there was a plain, speedy, and efficient remedy at State law. They went into the State court and in 1970, in January, the State court issued an opinion holding that the classification was unlawful. It ordered refunds. That was 10 years after this process started.

In between, the legislature had endeavored to write into the law the discrimination that had theretofore only been sanctioned. The case is not concluded. The matter has been argued before the supreme court of the State. It could go to the U.S. Supreme Court.

The Arizona Legislature has again refused to take any steps to alleviate the problem and, even if they prevail, the railroads will still have some discrimination written into the statute.

It is these legislative problems that bother us now. I want to give a bow to the many administrators in the States who have taken great steps in bringing about equalization of properties. We find—by “we” I mean the people who work in the field for the railroads—we find that at the administrative professional career level there is a great effort and interest in bringing about the good property administration practices that come with uniformity. Many of them have done a great deal.

The field we are getting a great concern in now is the increasing tendency on legislatures’ parts to enact classification in statutes—we can attack these on constitutional grounds—or amend the constitution. In Tennessee, as an example, my company, in about 1965, won an ad valorem tax case which said simply that the Tennessee constitution demands uniformity, and that the long-practiced discrimination by the State in the assessment by making railroads and utilities higher than other property was in defiance of the State’s own constitution.

The response of the legislature was to call a constitutional convention or to propose a call limited to the subject—which it very plainly stated in the bill and that bill is in the appendix—to classify properties for the purposes of taxation. I need not say, I suppose, that railroads would be in the very top class at 55 percent. The lowest class was 20 to 25 percent.

That call was submitted to the people and it passed. The delegates to that convention will be elected this year and the convention will be held next year.

If it writes classification into the constitution, it will have opened up an example for many other States to follow and appendix D is filled with bills selected throughout the country of just this kind of effort.

This is the area that we find most troublesome at the present time.

I may say that the idea of classification is not a unanimous one, even among the administrators in Tennessee. There are some who think it a very undesirable step and I believe—I know in the case of one—that, if they could point to a congressional act which they could say would simply nullify action of the State, they would be much gratified.

It is perfectly appropriate to amend the Interstate Commerce Act on this score. Congress has acted before in such instances to remove discrimination, for instance, in the question of intrastate rates being too low so that a burden was cast upon interstate rates. This is a perfect precedent for this kind of action. That, sir, is a summary, perhaps too long, of the statement which I have here.

I believe that the statement establishes that there is a discrimination. I believe it establishes with reasonable accuracy the extent of it and I believe it establishes the great value that the legislation which members of this committee and of this subcommittee have introduced, the great value that that legislation can have in promoting interstate commerce.

(Mr. Lanier’s prepared statement and appendixes follow:)

STATEMENT OF PHILIP M. LANIER, IN BEHALF OF ASSOCIATION OF AMERICAN RAILROADS

INTRODUCTION

My name is Philip M. Lanier. My business address is Louisville and Nashville Railroad, 908 West Broadway, Louisville, Kentucky. I am Vice President-Law of the Louisville and Nashville Railroad Company. I appear today in behalf of the member lines of the Association of American Railroads and in support of H.R. 16245, H.R. 16251, H.R. 16316, H.R. 16357, H.R. 16411, and H.R. 16639. The members of that Association operate 95% of all the railroad mileage in the United States, employ 93% of all railroad workers. In terms of traffic, they account for about 99% of the railroad industry.

Testimony will also be offered by Mr. Thomas Goodfellow, President of the Association, and by Dr. Rolf Weil, President of Roosevelt University, Chicago, who is quite knowledgeable in valuation and assessment and is thoroughly experienced in the field of establishing the fact of discrimination. He will describe to you how it is possible to establish a value of railroads for purposes of taxation and, from that and other evidence of a probative character, to demonstrate the degree of discrimination.

The House Committee on Interstate and Foreign Commerce has considered the subject matter of these bills before. In 1964 this subcommittee held hearings on H.R. 736 and H.R. 10169; in 1966, the full committee held hearings on H.R. 4972 and twelve identical bills; and in 1967 the Subcommittee on Surface Transportation of the Senate Committee on Commerce held hearings on S. 927; in 1969 that Subcommittee held hearings on S. 2289. That bill unanimously passed the Senate on January 30, 1970, being identical with the bills now before this Subcommittee. I emphasize the unanimity of the support for this legislation in the Senate, because it shows to me the widespread agreement that this is sound legislation. The AAR and its members have supported the legislation on each occasion.

The purpose of these bills is to exercise the undoubted power of Congress in the field of interstate commerce so as to insure that taxation by states and their subdivisions of the transportation property of certain interstate carriers, including the railroads, is on a non-discriminatory basis, in order that interstate commerce shall not be burdened with a disproportionate share of local charges. Because their properties are discriminatorily taxed, to their disadvantage and to the detriment of the shipping and traveling public, the railroads for whom I speak support this legislation.

Railroads own a great deal of transportation property. It is either fixed in location, as in the case of right-of-way and track, or movable but operating constantly through the state as in the case of cars and locomotives. Class I railroads (those having annual operating revenues of \$5 million or more) have 338,000 miles of track, 1,795,000 freight cars, 13,000 passenger cars and 27,000 locomotives.

This property cannot be picked up and moved elsewhere for production. It is, therefore, a ready target for the assessor. In 1968 Class I railroads paid property taxes of an estimated \$293 million. (Increased tax rates probably raised that sum in 1969.) This was 31% of our total tax bill and the equivalent of 52% of our combined net income for 1968, so we are talking about a highly significant subject.

In furtherance of its objective, these bills contain a clear Congressional statement that the taxation of the specified carriers' transportation property at equalization ratios or at tax rates not uniform with those used in respect of other property in the taxing district is unlawful as an unreasonable and unjust discrimination against and as an undue burden upon interstate commerce, and they make Federal courts readily available and accessible for purposes of remedying a contravention of the rule of uniformity.

This discrimination can and has occurred in at least two forms. Most often, it appears in the use of an equalization ratio higher than that used in respect of property generally within the taxing district. For example, a state may compute the fair market value of a railroad's transportation property and then place the assessment at 60% of value, thereafter applying a tax rate to that assessed figure. The assessment of the property of other taxpayers generally may be at, say, 20% of the fair market value. (In such a situation, the term "equalization" is a misnomer, but I need not dwell on that.) There is then applied to that 20% of value the same tax rate that was applied to the railroad's property. If that tax rate were, for instance, \$1.00 per \$100 of equalized value, then the *effective* tax rate applied against the railroad is 60 cents per \$100 of fair market value (\$1.00

times 60%) and the *effective* rate paid by other taxpayers is 20 cents per \$100 of fair market value. The discrimination in such a case lies in the fact that the railroad pays, per \$100 of fair market value, three times as much tax as does the other property owner even though the tax rate is nominally the same, that is, \$1.00 per \$100 of value.

Less often, there appears discrimination in the tax rates themselves; this simply means that a higher tax rate is applied to railroad property than to other property, and it is no less expensive than discrimination in equalization.

I should state at this point that the discrimination which is practiced is quite often—in fact, almost always—in violation of the provisions of the state's own constitution and statutes. It is a practical discrimination, not supported or sanctioned by the language or intent of the state's written laws. Quite often, too, it goes against earlier decisions of the state's courts declaring discrimination to be unlawful.

The effect of paragraph (3) of the proposed legislation is to allow a complaining taxpayer to go into the district courts of the United States to seek an injunction or other proper process, mandatory or otherwise, to restrain a state or subdivision or agency thereof, or any person, from performing an act declared by paragraph (1) of the bill to be unlawful.

There is nothing new in this concept. Under the present law, there is access to Federal courts under some conditions. The conditions are, however, so stringent in their practical application that they are seldom invoked. Any effort to invoke the aid of a Federal district court at the present time will be met by the assertion on the part of the defendant that, by reason of the provisions of 28 United States Code Section 1341,¹ the court may not entertain jurisdiction.

Relying upon that section, officials and agencies against which an action has been brought in Federal court will assert that state law provides that an aggrieved taxpayer may, for example, pay his tax under protest, sue for refund and, if he receives judgment, collect interest on the excessive amount. They assert that this is a plain, speedy and efficient remedy, and the court will often hold that to be the case. But in one midwestern state, where a plain, speedy and efficient remedy supposedly existed by virtue of statutory provisions in state law, litigation commenced in 1952 and after some 400-odd cases had been filed and after some 9 or 10 of those had gone to the Supreme Court of the state, one railroad was still, 15 years after starting, trying to bring to trial cases in four counties, involving, for a relatively small company, over half a million dollars in contested taxes. Delays were deliberate. A case would be called, for example, for a hearing on Friday morning; when the railroad's attorneys from out-of-state headquarters arrived, they would be told that the hearing had been delayed until Monday morning; when Monday morning came, the case would be put over until the end of the week; when Friday came, the case would be put over for two weeks and this continued, time after time. The last refund to this railroad was paid in 1969. Can this, in actuality, be called a speedy and efficient remedy?

In another instance, Southern Pacific and its rail affiliates were required to bring 48 separate suits in 48 separate California courts to challenge the level of railroad property assessments by 48 counties and cities in California.

I know of only one instance in which a Federal district court has, in recent years, taken jurisdiction of a case alleging property tax discrimination.² The taxpayer alleged and established that the Tennessee Constitution and statutes required uniformity of equalization ratios; that there was discrimination against it in the application to it of an equalization ratio higher than that generally prevailing in the State; that this discrimination was intentional; that the Tennessee Supreme Court had often stated that the remedy of any taxpayer in such a situation was to seek to raise to actual cash value the assessments of all taxpayers in the State that were below actual cash value; that the Supreme Court of the United States had stated that the failure of a state to grant the uniformity demanded by its own constitution deprived the aggrieved taxpayer of equal protection of the laws and thus constituted a violation of the Constitution of the United States; that, in such a case, the remedy prescribed by the Tennessee court constituted no remedy at all and did not satisfactorily protect the taxpayer in its constitutional right under the Fourteenth Amendment. The District Court accepted jurisdiction, held for the taxpayer, and was affirmed on appeal.³

¹ "The district court shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

² *Louisville and Nashville Railroad Company v. Public Service Commission, et al.*, 249 F. Supp. 894.

³ 389 F. 2d 247.

AMENDMENTS TO MEET TAX ADMINISTRATOR OBJECTIONS

During the course of hearings on the Senate Side on S. 2289, the Senate counterpart of the bills now before this Subcommittee, tax administrators made several objections to the bill. Reflecting their comments, the Senate Committee on Commerce adopted two amendments. They were—

(a) the use of the term "assessment jurisdiction" in place of "taxing district", and

(b) the inclusion of a 5% tolerance factor.

The first amendment was intended to meet technical problems of overlapping taxing districts and the second was for the purpose of preventing issuance of restraining process in instances of unintended and insignificant variations in assessments.

I wish to bring also to your attention paragraph 2(c) of H.R. 16245, which defines the term "all other property". This definition excludes agricultural and timber land from the body of property with which transportation property is compared for the purpose of measuring the degree of discrimination. The definition was inserted on the Senate floor. It was adopted in order to meet tax administrator objections concerned to protect certain state policies relating to such lands.

The language of the House bills is the same as that of S. 2289 as passed. Major wishes of the state tax administrators have, therefore, been met in this legislation.

THE FACT AND EXTENT OF DISCRIMINATION

The existence of the discrimination of which the railroads complain and which is the reason for their support of H.R. 16245 and identical bills has been well established. It has been recognized by study groups and by courts as a result of evidence produced before them.

As long ago as 1944, reference to discrimination appeared in a Congressional paper. In House Document No. 160, dated September 19, 1944, in "Letter from Board of Investigation and Research Transmitting a Report on Carrier Taxation", it was said:

"The officials of approximately half the states readily concede that railroads are being overtaxed because of inadequate equalization. . . . If we accept the standards of equity set forth in present tax laws, this failure to equalize state and local assessments is probably the most significant of the railroads' tax grievances."⁴

Some 17 years later, discrimination once again occupied the attention of a Congressional group, this time the Senate Committee on Commerce.⁵ This report stated that in 1957 railroads paid ad valorem taxes in 31 states in an amount that was excessive to the extent of \$141 million, when compared with the taxes on locally-assessed property. The Doyle Report relied upon information furnished by the Association of American Railroads, but it stated that while its own resources had not been such as to enable it to conduct an independent survey, its research had been sufficiently extensive to establish "that relative discrimination, of considerable magnitude, does, in fact, exist against the railroads in the assessment procedures of State and local governments for ad valorem taxation purposes. Therefore, the data is accepted as confirming the judgment of this study group that state and local assessment procedures do discriminate against the railroads."⁶

Two years after the publication of the Report on National Transportation Policy, the Advisory Commission on Intergovernmental Relations stated that the equalization problem had existed for a long time, "but in recent years it has become more serious, with utility property [including railroad property] centrally assessed at much higher ratios of market value than locally assessed property in numerous states."⁷

Studies of the Census Bureau published in 1957 and in 1962 substantiate the claim,⁸ and in 1967 and 1969 the Senate Committee on Commerce confirmed it.⁹

⁴ Pp. 124-25.

⁵ National Transportation Policy, Report of the Committee on Commerce, United States Senate, 87th Congress, First Session, by its Special Study Group on Transportation Policies in the United States, Report No. 445 (1961), sometimes referred to as the "Doyle Report".

⁶ P. 487.

⁷ The Role of the States in Strengthening the Property Tax 168.

⁸ U.S. Bureau of the Census, U.S. Census of Government: 1957, vol. V, Taxable Property Values in the United States; U.S. Bureau of the Census, Census of Governments: 1962, vol. II, Taxable Property Values.

⁹ Report No. 1483, 90th Cong., 2d sess., Discriminatory State Taxation of Interstate Carriers; Report No. 91-630, 91st Cong., 1st sess., Discriminatory State Taxation of Interstate Carriers.

Statement of the fact of discrimination is not limited to Federal and inter-governmental publications. A California legislative committee found in 1959 that the property of railroads and public utilities in California was being assessed at approximately twice the State-wide average for locally assessed property and that this practice was in violation of the California Constitution.¹⁰ A Colorado legislative council committee found that in 1959 State-assessed properties were being equalized at a level substantially higher than that prevailing for local assessments.¹¹

The Alabama Committee on the Revision of State Tax Laws stated, in a 1957 report, that local assessments were at levels "far below the statutory ratio [of 60% of actual market value]. Not a few counties are assessing at less than 20%; no county exceeds a 35% level of assessments." This was at a time when railroad property was being equalized in Alabama at not less than 40% of actual market value. Continued existence of that discrimination was found in 1967 by another legislative committee.¹²

I have attached to this statement as Appendix A reference to a few selected cases showing judicial findings of discriminatory equalization ratios, offering this as further evidence of the fact of discrimination.

To establish the probable extent of the current discrimination which the railroads of the Country are experiencing, I have attached to my statement Appendix B which sets out our best judgment as to the present degree of discrimination. The equalization ratios shown for property other than railroad transportation property are substantiated by reliable statistical studies or by the findings of an official state agency. You will see that specifically included in the statement as discriminating are 19 States, from all sections of the Country. The total of the estimated excessive taxes assessed against the railroads by those states in 1968 is slightly in excess of \$58 million. The specific list is not all-inclusive for there are other states which discriminate, but to a lesser degree. I have not specifically listed in the appendix any state in which the degree of discrimination is less than 20%, referring to them only in the aggregate. The total sum involved is, in the railroads' opinion, \$69 million. In our judgment the excessive property taxes paid by the railroads in the period during which remedial legislation has been before Congress—the last nine years—is over \$900 million.

This appendix illustrates that the situation in the Country is not improving. In 1967 Senate hearings on similar legislation,¹³ a table was submitted showing 21 states as discriminating and showing the excessive taxes as being \$71,891,435. Today, although slightly less in dollar amount, discrimination is practiced by at least 28 states.

THE EFFECT OF DISCRIMINATION

Let me translate \$69 million into tangible terms for the railroad industry. That amount of money—

Is enough to provide a 20 percent down payment on 23,000 new freight cars, or to purchase outright nearly 5,000 new freight cars.

Would pay for 14,680,000 new wooden cross ties, equal the approximate average number laid in replacement annually by Class I railroads in the past decade.

Would buy 500,000 tons of new rail, enough to renovate more than 2,250 miles of track.

Would build five modern push-button yards, each capable by classifying eight 100-car trains every hour.

Represents more than 10 percent of the railroad industry's entire net income in 1969.

Exceeds the total amount of tax reduction realized by the railroad industry in 1968 from the 7 percent investment tax credit.

Is equivalent to the gross revenue received by railroads for moving 5 billion tons of freight one mile.

Is equivalent to the net earnings on 40 billion ton-miles of average freight (or 13 million tons of freight hauled from coast to coast).

¹⁰ Final Report of the Joint Interim Committee on Assessment Practices to the California Legislature (1959), p. 12.

¹¹ "A Survey of State Assessment of Property", Legislative Council Report to the Colorado General Assembly: Public Utility Assessments, Research Report No. 33, 1959, p. vii.

¹² Report of the Joint Interim Committee on Ad Valorem Taxation of the State of Alabama.

¹³ S. 927.

I ask your particular attention to the statement above that \$69 million exceeds the total amount of tax reduction realized in 1968 by the railroad industry from the 7% investment tax credit. Here is an industry to which Congress had granted a degree of tax relief through the investment credit. Yet that relief was more than offset by discrimination on the part of certain states. This is a perfect illustration of the need and of the justification for Congress to enact this legislation. How can Congress expect that its policies for interstate railroads can be put into effect if states, through discriminatory taxation, so burden those railroads as to interfere with their serving the needs of interstate commerce? And is it not plain that when agencies of interstate commerce bear an excessive intrastate burden of more than 10% of their net income, the commerce itself is being burdened? This is a clear example of what the Supreme Court was talking about when it said ". . . there is scope for [operation of the Commerce Clause] when state legislation nominally of local concern is in point of fact aimed at interstate commerce, or by its necessary operation is a means of gaining a local benefit by throwing the attendant burdens on those without the state."¹⁴ This illustration speaks directly to the point of the power of Congress to enact such legislation as this, a subject discussed in detail by two distinguished professors of law, Messrs. Hartman and Sanders of Vanderbilt University. They have prepared a treatise on the point which was submitted to the House Commerce Committee at hearings in March, 1966, on earlier legislation. I have ten copies of this document, which I submit herewith, and I offer as Appendix C a letter from Professor Sanders in which he states that the views expressed in that brief four years ago hold good today.

THE INADEQUACIES OF EXISTING REMEDIES

In earlier hearings, opponents of the measure have asserted that paragraph (3) is unnecessary because under existing law if a state does not provide a plain, speedy and efficient remedy in its own courts, 28 USC Section 1341 is no barrier to going into Federal court. Thus, they say, either relief may be had through the state courts, with ultimate appeal to the Federal system, or access may be had to the Federal system in the first place.

It may be admitted that on paper there appears to be a means by which a railroad suffering discrimination in property taxation may obtain early and adequate relief either through the state system or through the Federal system. This is the letter of the law but the application of the law is otherwise.

I have earlier referred in my statement to a long period of litigation which was commenced in 1952 and came to final disposition only in 1969. A total of 17 years was consumed and in that time numerous suits were filed at both the Federal and state levels. The Federal cases were dismissed on the grounds that the state statutes provided for a plain, speedy and efficient remedy, and yet to achieve that remedy required 17 years and tremendous expense. The railroads that fought against that discrimination know that the law of the state, in its application, was unclear, excruciatingly slow and highly inefficient.

As another example, I cite the State of Kentucky and a recent dilemma which faced my own company in that State. After an opinion of the State's highest court holding that the State Constitution required uniform assessment of all property at its fair market value, the Kentucky Legislature passed a bill which had the effect of requiring my Company, other railroads and utilities in the State to pay, for a period of two years, at a higher tax rate than that which was applied to other property in any particular taxing district. The bill provided that for the years 1966 and 1967 the tax rates applicable to railroad and other public service property should be the higher of two stated rates. The one which actually applied was "that rate which will produce approximately the same amount of revenue from property of public service companies as was produced in the 1965 tax year." Inasmuch as other legislation enacted by the Legislature had placed a ceiling on the revenue which could be obtained for those two years by a taxing district, the same bill went on to provide that after the railroad and public service company rate had been fixed the rate levied on other property should be reduced so that the total revenue produced in the taxing district would not exceed the total allowed under other provisions of the law.

My company would have had to seek a refund in each of the 69 Kentucky counties in which it paid taxes, and we might have had to institute separate suits against each of them and against each of the many other taxing districts on our

¹⁴ South Carolina State Highway Dept. v. Barnwell Bros., 303 U.S. 177 (1938).

lines. To establish its right to refund, it would have had to have known the amount of revenue from public service company property in 1965; the aggregate 1966 and 1967 assessments of public service companies within the districts; the change in the total assessment roll in the taxing district for the years 1966 and 1967, including as a separate item, the amount of new construction; and the tax rates applicable to public service company property and to other property in the district. Now it may seem that it would be simple enough to go to the records and discover the answers to the questions, but this was at a time when the taxing authorities were in a great state of confusion arising by virtue of the limitation the Legislature had placed upon revenue to be received, this having an effect upon the legality of the tax rate which might be applicable to property generally. We were, in fact, receiving conflicting reports from the same taxing district as to the tax rate levied by the taxing authority and the whole situation led to litigation in the State of Kentucky by others attacking the legitimacy of some of the tax rates.

We felt that we had substantial sums of money at stake and yet, after surveying the situation with the greatest of care, we concluded that it was virtually impossible to unravel. Had we sought relief in Federal court, we would have been told that 28 USC 1341 barred our way. But if we could have relied upon the principles of this legislation we could have eliminated in a very short time an obvious, intentional and explicit discrimination against our properties.

Let me cite one further example of the dilemma posed by the present state of affairs. A Federal district court, acting under 28 USC 1341, found no lack of a plain, speedy and efficient remedy even though separate suits would have had to be commenced in 24 countries,¹⁵ but the Supreme Court of the United States has said that the necessity of making over 300 separate claims in 14 different counties prevented the state remedy from being plain, speedy and efficient.¹⁶ So the taxpayer knows that the number of state suits is significant, but there is no way of knowing in advance where a Federal court will draw the line between jurisdiction and lack thereof.

To me, gentlemen, the states have used Section 1341 as a sword against the railroads and other taxpayers which have a legitimate complaint over the slowness and the inadequacy of the state-prescribed remedy. Section 1341 was intended as a shield for the states; they have converted it into a vigorous weapon. It seems to me that the whole case for the railroads in support of this legislation can be put into short measure: If the states had provided over the years a plain, speedy and efficient remedy which the railroads and other complaining taxpayers could use to attack and overcome the discrimination—plain, admitted, of long standing—practiced against them by the states, I would not be here in 1970 citing to you a 1944 report of the House of Representatives to the effect that the properties of railroads were being discriminated against in ad valorem taxation by the states. That discrimination would long since have disappeared. Its continued existence over those 26 years is silent testimony to the effect that there is no such remedy in the state courts. And I do not mean by these comments to suggest that the discrimination has only existed since 1944. The old, dusty law books on the library shelves of the country contain opinions almost 100 years old describing a situation which is duplicated today.

THE RAILROAD'S EXPERIENCE IN ARIZONA

Arizona's treatment of the railroads in connection with property tax assessments affords a particularly good example of the need for this legislation both from the substantive and the procedural standpoints. It illustrates, at once, how some of the states are attempting to preserve, rather than alleviate, egregious discrimination against the rail carriers and also the procedural difficulties presently encountered by them in attacking such discrimination. It refutes the idea of the "plain, speedy and efficient remedy" being available, in practical effect, in state laws.

The Arizona constitution permits reasonable classification of property for tax purposes. Historically, however, Arizona's statutes, like those in most states, had not classified property differently from other property, but had given lip service to equality by providing both rail and most other properties were to be assessed at full cash value. Nevertheless, in actual practice, as in many states, railroad properties had long been assessed at a substantially higher ratio of full

¹⁵ *Chicago & Northwestern Railway Co. v. Lyons*, 148 F. Supp. 787 (1957).

¹⁶ *Georgia R. Co. v. Redwine*, 342 U.S. 299 (1952).

cash value than other properties. In 1960 Southern Pacific brought suit in the Arizona state court, alleging that its property was assessed at 89% of full cash value while other property was assessed on the average at only 20%. The complaint sought both recovery of taxes already paid and injunctive relief to prevent future discriminatory assessments.

This case went to the Arizona Supreme Court which held¹⁷ in 1963 that such discrimination was unlawful. However, the Court denied the railroad recovery of taxes paid because "the refund which appellant seeks together with other similar claims threatens the financial solvency of many taxing units of the state, particularly those in rural and undeveloped areas." As to the future, the Court indicated that the carrier could obtain injunctive relief, if it could establish the truth of the facts alleged. Thereafter the Arizona legislature not only refused any legislative relief for the future, but in 1964, amended the law to bar the railroad's right to injunctive relief in the state courts, which the Supreme Court had recognized a year earlier. Furthermore, in 1967 the legislature adopted an assessment classification law, under the terms of which: (1) railroad property was lumped with mining property, standing timber, private car line property and airline flight property, all of which was to be assessed at 60% of full cash value; (2) all other utility property (gas, electric, water, telephone and telegraph) and pipeline property was to be assessed at 40%; (3) commercial and industrial property (including real estate of motor and air carriers) was to be assessed at 25% and (4) all other property, including agricultural and residential property was to be assessed at 18% of full cash value.

Believing that they no longer had any effective remedy in the state courts, Southern Pacific and Santa Fe promptly filed suit in the Federal district court, seeking to enjoin application of this law before payment of taxes on the ground that it was unconstitutional to the extent it discriminated against the railroads in favor of other utilities and carriers in the lower 40% and 25% categories. However, a three-judge Federal district court dismissed the action in 1968,¹⁸ concluding that the Federal court was deprived of jurisdiction by 28 USC Section 1341, since there was a "plain, speedy and efficient remedy" in the state court by payment of the tax and suit for refund.

Subsequently both Southern Pacific and Santa Fe brought suits in the Maricopa County Superior Court in Phoenix seeking refunds of property taxes for 1968 and 1969 on the grounds that assessment of their properties at higher ratios of full cash value than those applied to other utilities and carriers violated the state and Federal constitutions. After a consolidated trial the court on January 9, 1970,¹⁹ issued its opinion and judgment finding that this classification, with the exception of residential property, was the result of a conscious attempt by the legislature to maintain the same relative property tax burdens as were imposed under the prior ad valorem tax statutes; that to the extent the law provided that the railroads were to be assessed at more than 40% of full cash value it violated federal and state equal protection and due process constitutional provisions. Refunds totalling some \$4 million were ordered.

While the result was gratifying, it is to be noted that the case is far from concluded. Both parties have appealed to the Arizona Supreme Court, which has set the matter for argument on May 21, 1970. Presumably the matter may ultimately go to the United States Supreme Court. In the meantime the Arizona legislature has again refused to take any steps to alleviate this discrimination for the future. Finally, even if the railroads should ultimately prevail, they still would not have acquired the right to be treated equally with all property taxpayers. This right, to which they are clearly entitled, can only be properly accorded by a Federal rule of law such as that embraced in the bills pending before your Committee.

LEGISLATIVE EFFORTS TO DISCRIMINATE

It has been said by those opposed to the principles of this legislation that the states are cleaning their own house and that, left alone, they would eliminate the discrimination by themselves. I have the greatest respect for the people who speak so and I do not question that what they say accurately represents their judgment. I cannot, however, agree with their conclusion. The plain fact is that they cannot speak decisively for the future and that there are others of quite a different mind.

¹⁷ Southern Pacific Company v. Cochise County, 377 P. 2d 770.

¹⁸ Southern Pacific Co. v. DeWitt, 288 F. Supp. 570.

¹⁹ The Atchison, Topeka and Santa Fe Ry. Co. v. Apache County, No. C.217196; and Southern Pacific Co. v. Cochise County, No. C.217229.

Acting on the assumption that there is no Federal Constitutional prohibition against a state constitution providing for classification of properties for ad valorem tax purposes, there have been numerous proposals in state legislatures for constitutional amendments or constitutional conventions which would provide for discrimination. Appendix D contains a representative recent sample of such proposals (including one made in 1970), including not only constitutional amendments but statutory amendments proposed in the hope that they would pass muster under the existing state constitution.

Included in the sample is a call for a Constitutional Convention in Tennessee. The question before it will be to amend the state constitution so as to classify property for tax purposes. Need I say that railroads are included in the class which would carry the highest equalization ratio? This Convention will meet next year. It has been called as a direct result of successful litigation establishing the right under the present constitution to uniformity of assessments. The sole purpose of the proposal is to write discrimination into the constitution.

The list is representative only and not intended to be all-inclusive. It is enough, however, to demonstrate that there exists an active conviction on the part of many legislators that railroads—and particularly the interstate railroads—are fair game for an excessive share of property taxation in their respective states.

THE PROPRIETY OF AMENDING THE INTERSTATE COMMERCE ACT

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

H.R. 16245 and the identical bills follow the language of Section 13(4) of the Interstate Commerce Act in declaring that the proscribed action by any state or subdivision or agency (in taxing common carrier property on a basis or at a rate higher than that at which other property in the same taxing district is taxed) "is hereby declared to constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce and is hereby forbidden and declared to be unlawful."

The fact that Section 13(4) deals with one type of discrimination or burden and these bills with another is immaterial, because they are both concerned with "unreasonable and unjust discrimination against and an undue burden upon interstate commerce." In the former, the prohibition is against a state's requiring a carrier to charge intrastate rates so low as to be unfair to or discriminate against, or to place an undue burden upon, interstate commerce—that is, so low as not to contribute their fair share to the revenues required by the carrier properly to perform its interstate operations. In H.R. 16245, the prohibition (simply stated) is against the action of a state or its subdivision in assessing and collecting taxes on carrier property at a higher rate or ratio than on other property in the same taxing district. In each case the act forbidden is unjust discrimination against interstate commerce, that is, against common carriers which are engaged in interstate operations and are subject to the Interstate Commerce Act. In each case the prohibition is against a type of discrimination or burden which would deprive a carrier of revenues needed in the performance of its services in interstate commerce.

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

Were Congress to conclude that the legislation embodied in these bills should not be passed, I entertain no doubt as to what would happen in the states. Speaking from my personal experience—and I have negotiated assessments and plead for equalization and uniformity in many of the southeastern states where my Company operates—I can say to you that I have heard administrators say—in the best of faith—that if the states do not remedy the situation themselves, then Congress will. Such assertions have been followed by the comment that despite the good will of the administrators—and I believe that most of the professionals favor uniformity as being a sound tax practice—it was politically inexpedient for the administration to grant equalization which the administrators recognized was due and was demanded under their own state laws. But I must go further and say that I did not even hear such comments as these until the railroads began to call for some Federal relief. While the evident possibility of Federal intervention has spurred the states into some activity, I have no doubt at all that were it to disappear, state activity would decline and twenty-five years from today, my successor

would be saying to Congress that it was long past time for some relief for railroads.

I remember a director of a Department of Revenue in one of the southern states who came into office and publicly announced that he was going to bring about uniformity of equalization of all properties in the state, as the constitution and laws of the state clearly required. The legislature literally nearly impeached him and he finally abandoned the program.

In closing, I would observe that, with a few exceptions, the passage of this legislation would not today demand anything of a state which is not already required by the constitution of the state. Most of the constitutions require uniformity of taxation and if the states would only adhere to the provisions of their own laws, we would not be here today; but they do not. The fault lies in the execution of the law, not in its contents. We are, of course, concerned with the possibility of amendments of constitutions and statutes. Congressional action would override any such amendments which might call for discrimination, and in the light of proposals such as those disclosed in Appendix D, it is essential that it do so.

I have shown, I believe, a clear and substantial burden on interstate commerce. Congress is empowered to demand its elimination. Having declared the burden, Congress should also make the Federal court system initially available to the aggrieved taxpayer, assigning to that system the basic role in applying the Congressional policy.

Thank you.

APPENDIX A

RECENT TAX LITIGATION IN WHICH DISCRIMINATION
AGAINST RAILROADS WAS FOUND

State	Case Citation	Assessment to	Assessment to
		True Value -- Railroads	True Value -- Other Property
Alabama	Louisville & Nashville RR Co. v. State of Alabama (Montgomery County Circuit Court, 1967).	40%	15.4%
Arizona	Southern Pacific Co. v. Cochise County (Arizona Supreme Court, 1963) 377 P.2d 770.	89%	20%
Georgia	Undercofler v. Seaboard Air Line R. Co. (Georgia Supreme Court, 1966), 152 S.E.2d 878	34%	9.25%-41.33%
Illinois	People v. Chicago, Burlington & Quincy RR Co. (Illinois Supreme Court, 1965) 210 N.E. 2d 196, Certiorari denied by U.S. Supreme Court, 384 U.S. 213 and 994 (1966).	100%	55%
Kansas	Kansas City Southern Ry. Co. v. Board of County Commis- sioners (Kansas Supreme Court, 1958) 331 P.2d 899.	60%	21%
Nebraska	In re Chicago & Northwestern Ry. (Nebraska Supreme Court, 1960) 101 N.W.2d 873	47-1/2%	35%
Tennessee	Louisville & Nashville RR Co. v. Public Service Commission (U.S. Dist. Court for Middle Dist. of Tennessee, 1966) 249 F.Supp. 894 (affirmed by U.S. Court of Appeals, 6th Circuit, 1968) 389 F.2d 247.	55-65%	30%

June 1, 1970

APPENDIX B

State	1968 railroad ad valorem taxes	Percent of value at which railroad property assessed 1968	Percent of value at which property of others assessed	Estimated reduction in railroad ad valorem taxes if railroad assessments had been made at the same per- cent of value as were the assessment of property of others	Percent of tax excessive
Alabama	\$ 2,626,487	30.00	16.70	\$ 1,164,409	44.33
Arizona	8,540,527	60.00	26.09	4,826,821	56.52
California	22,278,469	35.00	23.00	7,638,325	34.29
Idaho	4,133,796	30.44	12.20	2,477,018	59.92
Indiana	14,566,452	33.33	24.50	3,859,038	26.49
Kansas	13,571,178	30.00	18.00	5,428,471	40.00
Louisiana	4,631,778	40.00	17.10	2,651,692	57.25
Mississippi	3,403,395	30.00	13.50	1,871,867	55.00
Missouri	11,951,425	50.00	25.40	5,880,101	49.20
Montana	6,814,483	20.00	11.70	2,828,010	41.50
Nebraska	5,705,583	35.00	28.00	1,141,117	20.00
New Mexico	2,679,715	33.33	19.20	1,136,045	42.39
North Dakota	3,657,110	40.00	23.40	1,517,700	41.50
Ohio	26,101,538	55.00	39.87	7,180,296	27.51
Oklahoma	6,383,621	35.00	17.80	3,137,093	42.86
South Dakota	1,104,577	60.00	41.50	340,578	30.83
Tennessee	7,574,632	45.00	29.00	2,693,201	35.56
Utah	4,387,378	28.00	17.98	1,570,054	35.79
Wyoming	3,574,458	25.00	19.00	857,870	24.00
Total	\$153,686,602			\$58,199,706	37.87

\$10,842,600

18.81

June 1, 1970

Nine other states in which there is material discrimination, but where the percentage of discrimination is less than 20 percent

Appendix C

VANDERBILT UNIVERSITY

Nashville, Tennessee 37203

Telephone 254-5411 Area 615

School of Law

June 4, 1970

Mr. Philip M. Lanier
 Vice President-Law
 Louisville & Nashville Railroad Company
 908 West Broadway
 Louisville, Kentucky 40201

Re: H.R. 16245
 and identical bills

Dear Mr. Lanier:

I have examined carefully the above bill now pending in Congress and reviewed the statement I made on August 7, 1967 at the hearings on S. 927, 90th Congress, First Session before the Surface Transportation Subcommittee of the Committee on Commerce of the United States Senate. I have also reviewed the testimony given on March 2, 1966 before the Committee on Interstate and Foreign Commerce, House of Representatives, 89th Congress, Second Session with respect to H.R. 4972 and the Opinion and Supporting Memorandum prepared by Professor Paul J. Hartman and myself, dated August 2, 1965, on the subject, "The Power of Congress to Prohibit Discrimination in the Assessment of Property of Interstate Carriers for State Ad Valorem Taxes, etc."

It is my opinion that for the reasons detailed in my testimony on H.R. 4972 and S. 927 and the foregoing Memorandum, that the present bill (H.R. 16245) would be a constitutionally valid enactment under the Congressional exercise of the Commerce Power and would not be in violation of the Tenth and Eleventh Amendments or other constitutional restrictions on the exercise of federal legislative power.

In the period since the date of the 1965 Memorandum I do not find that there have been any authoritative court rulings suggesting that the scope of the Commerce Power is less than is stated in our Memorandum. It would appear that, if anything, the scope of the Commerce Power has been broadened by the United States Supreme Court decision in Maryland v. Wirtz, 392 U.S. 183, 88 S.Ct. 2017, 20 L.Ed.2d 1020 (1968). This decision also lends very important support for our conclusion that H.R. 16245 would not be found to be in violation of the Tenth Amendment or the Eleventh Amendment. The case holds that under the Commerce Clause Congress can regulate the minimum wages paid to employees of states and political subdivisions. The opinion of the Court, written by Mr. Justice Harlan, declared that the states could not claim sovereign immunity since it is clear that the federal government, when acting within a delegated power, may override countervailing state interests whether these be described as "governmental" or "proprietary" in character.

I shall not be able to be present at the Hearings on H.R. 16245. Concerning the constitutional validity of this proposed legislation my testimony would be identical, in every material respect, with that given at the Hearings on H.R. 4972 in 1966 and S. 927 in 1967.

Very truly yours,

Paul H. Sanders (S)

Paul H. Sanders
Professor of Law

PHS/ps

APPENDIX D

ALABAMA

SB 447 By Messrs. Cooper, Lindsey, Givhan, Giles, Branyon, Folsom,
Lolley, Leonard, Turner, Adams, Oden and Jackson
7-18-67 R1 RFD Finance & Taxation

A BILL
TO BE ENTITLED
AN ACT

Relating to ad valorem taxation; providing for the classification of property for purposes of taxation; and fixing percentages of the fair and reasonable market value of the property in the several classes at which such property shall be valued and taxes thereon assessed.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. All taxable property within this state shall be divided into the following categories or classes for the purposes of taxation and shall be assessed or valued for taxation at the following percentages of the fair and reasonable market value of such property: 1) the property of public utilities used in the business of the utility, forty percent; 2) tangible and intangible personal property not exempt by law, thirty percent; 3) real estate devoted to residential use and all property used for commercial and industrial purposes, twenty-five percent; 4) farm lands, including lands reserved for reforestation or for growing timber, fifteen percent.

Section 2. All laws or parts of laws in conflict herewith, including but not limited to the provisions of Code of Alabama 1940, Title 51, Sections 17, 44, 60, 107, and 135, all as amended, and Sections 7 and 8 of Act No. 259, H. 530, of the Regular Session of 1943 (General Acts 1943, p. 230) are hereby repealed. It is expressly provided, however, that no provision of currently effective law relative to exemptions from taxation are hereby repealed nor in any wise affected, but only such provisions as provide for the assessment for taxation at a different percentage of the fair market value of such property are repealed and superseded.

Section 3. This act shall become effective upon the ratification and adoption of an amendment to the Constitution authorizing the classification of property for purposes of taxation, and shall govern the valuation and assessment of property for tax purposes for the first year beginning thereafter and for each subsequent tax year; but shall not affect the valuation and assessment of property for any taxes which have theretofore accrued upon such property.

ALABAMA

SB 444 By Messrs. Cooper, Lindsey, Givhan, Giles, Branyon, Folsom, Lolley, Leonard, Turner, Adams, Oden and Jackson. R1 RFD Finance & Taxation

A BILL
TO BE ENTITLED
AN ACT

Proposing an amendment to Article XI, Section 217 of the Constitution of Alabama 1901 relative to ad valorem taxation; establishing a classification system of property taxation; fixing assessment rates for each class of property.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The following amendment to Article XI, Section 217 of the Constitution of Alabama 1901 is proposed, to become valid as a part of the Constitution when approved by a majority of the qualified electors voting thereon and upon proclamation by the governor:

PROPOSED AMENDMENT

"Section 217. The property of private corporations, associations, and individuals of this state shall be divided into the following categories or classes for purposes of taxation and shall be assessed or valued for taxation at the following percentages of the fair and reasonable market value of such property: 1) the property of public utilities used in the business of the utility, forty percent; 2) tangible and intangible personal property not exempt by law, thirty percent; 3) real estate devoted to residential use and all property used for commercial and industrial purposes, twenty-five percent; 4) farm lands, including lands reserved for reforestation or for growing timber, fifteen percent. All property of the same class shall forever be taxed at the same rate; Provided, this section shall not apply to institutions devoted exclusively to religious, educational, or charitable purposes."

"Fair Market Value," meaning of -- The intent and purpose of the tax laws of this State are to have all property and subjects of taxation assessed at the value which the particular property bears for the uses and purposes to which it is being devoted at the time the valuation or assessment thereof is made by the assessors. The value thus assessed shall be that value which would be realized from such property by a cash sale thereof when sold as such property and subjects of taxation are usually sold but not by forced sale thereof and only when sold to one purchasing

solely for the purpose of using such property for the particular purpose to which it is being devoted at the time of the assessment or valuation and without regard to any consideration of the use to which other property in the vicinity is being devoted, and without regard to recent sales except insofar as the same may tend to illustrate the market value of such property for the use to which it is being devoted. It is declared to be the further purpose and intent of the tax laws of this State that the assessors, whether municipal, county or State, in fixing the value of or in assessing tangible property for the purpose of taxation in this State shall in no case take into consideration the value which such property would have for prospective, future, potential or speculative use but shall consider only the fair market value which such property would have when sold for the use to which it is being devoted at the time of the assessment."

Section 2. An election upon the proposed amendment is ordered to be held on the first Tuesday after the expiration of three months from final adjournment of the current session of the Legislature. The election shall be held in accordance with the provisions of Section 284 and 285 of the Constitution of Alabama, as amended, and Chapter 1, Article 18, Title 17 of the Code of Alabama 1940.

Section 3. Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the State. If a newspaper is not published in the county, a copy of the notice shall be posted at the courthouse and in three other places in the county.

Introduced by Senator Petris

April 16, 1968

REFERRED TO COMMITTEE ON REVENUE AND TAXATION

Senate Constitutional Amendment No. 27—A resolution to propose to the people of the State of California an amendment to the Constitution of the state, by amending the fourth paragraph of Section 14 of Article XIII thereof, relating to property taxation.

1 *Resolved by the Senate, the Assembly concurring, That the*
 2 Legislature of the State of California at its 1968 Regular Ses-
 3 sion commencing on the eighth day of January, 1968, two-
 4 thirds of the members elected to each of the two houses of the
 5 Legislature voting therefor, hereby proposes to the people of
 6 the State of California that the Constitution of the state be
 7 amended by amending the fourth paragraph of Section 14 of
 8 Article XIII thereof, to read:
 9 The Legislature shall have the power to provide for the
 10 assessment, levy and collection of taxes upon all forms of tangi-
 11 ble personal property, all notes, debentures, shares of capital
 12 stock, bonds, solvent credits, deeds of trust, mortgages, and
 13 any legal or equitable interest therein, not exempt from taxa-
 14 tion under the provisions of this Constitution, in such manner,
 15 and at such rates, as may be provided by law, and in pur-
 16 suance of the exercise of such power the Legislature, two-thirds
 17 of all of the members elected to each of the two houses voting
 18 in favor thereof, may classify any and all kinds of personal
 19 property for the purposes of assessment and taxation in a
 20 manner and at a rate or rates in proportion to value different
 21 from any other property in this state subject to taxation and

LEGISLATIVE COUNSEL'S DIGEST

SCA 27, as introduced, Petris (Rev. & Tax.). Property taxation.
 Amends 4th par., Sec. 14, Art. XIII, Cal. Const.

Permits Legislature, by a two-thirds vote, to classify real property for purposes of taxation at a rate or rates different from other taxable property, as well as to classify personal property for purposes of assessment and taxation.

Vote— $\frac{2}{3}$; Appropriation—No; Fiscal Committee—No.

1 may exempt entirely from taxation any or all forms, types or
2 classes of personal property. *The Legislature shall have power,*
3 *two-thirds of all of the members elected to each of the two*
4 *houses voting in favor thereof, to classify any and all kinds of*
5 *real property for purposes of taxation at a rate or rates in*
6 *proportion to value different from any other property in this*
7 *state subject to taxation.*

Introduced by Senators Moscone and Marks

April 16, 1968

REFERRED TO COMMITTEE ON REVENUE AND TAXATION

Senate Constitutional Amendment No. 36—A resolution to propose to the people of the State of California an amendment to the Constitution of the state, by amending the fourth paragraph of Section 14 of Article XIII thereof, relating to property taxation.

1 *Resolved by the Senate, the Assembly concurring, That the*
 2 Legislature of the State of California at its 1968 Regular Ses-
 3 sion commencing on the 8th day of January, 1968, two-thirds
 4 of the members elected to each of the two houses of the Legis-
 5 lature voting therefor, hereby proposes to the people of the
 6 State of California that the Constitution of the state be
 7 amended by amending the fourth paragraph of Section 14 of
 8 Article XIII thereof to read:

9 The Legislature shall have the power to provide for the as-
 10 sessment, levy and collection of taxes upon all forms of tangi-
 11 ble personal property, all notes, debentures, shares of capital
 12 stock, bonds, solvent credits, deeds of trust, mortgages, and
 13 any legal or equitable interest therein, not exempt from taxa-
 14 tion under the provisions of this Constitution, in such manner,
 15 and at such rates, as may be provided by law, and in pursu-
 16 ance of the exercise of such power the Legislature, two-thirds
 17 of all of the members elected to each of the two houses voting
 18 in favor thereof, may classify any and all kinds of personal
 19 property for the purposes of assessment and taxation in a man-
 20 ner and at a rate or rates in proportion to value different from

LEGISLATIVE COUNSEL'S DIGEST

SCA 36, as introduced, Moscone (Rev. & Tax.). Property taxation.
 Amends par. 4, Sec. 14, Art. XIII, Cal. Const.

Permits Legislature to provide, or to authorize county boards of supervisors to provide, for the classification of real property for purposes of taxation at a rate or rates different from other taxable property, as well as allowing the Legislature to classify personal property for purposes of assessment and taxation.

Vote—3; Appropriation—No; Fiscal Committee—No.

Corrected 6-20-68

1 any other property in this state subject to taxation and may
2 exempt entirely from taxation any or all forms, types or classes
3 of personal property. *The Legislature shall have power to*
4 *classify, or to authorize county boards of supervisors to classify,*
5 *any and all kinds of real property for the purposes of assess-*
6 *ment and taxation in a manner and at a rate or rates in pro-*
7 *portion to value different from any other property in this*
8 *state subject to taxation.*

Introduced by Senators Danielson and Coombs

February 4, 1969

REFERRED TO COMMITTEE ON REVENUE AND TAXATION

Senate Constitutional Amendment No. 13—A resolution to propose to the people of the State of California an amendment to the Constitution of the state, by adding Section 1f to Article XIII thereof, relating to property taxation.

- 1 *Resolved by the Senate, the Assembly concurring, That the*
 2 Legislature of the State of California at its 1969 Regular
 3 Session commencing on the sixth day of January, 1969, two-
 4 thirds of the members elected to each of the two houses of
 5 the Legislature voting therefor, hereby proposes to the people
 6 of the State of California that the Constitution of the state be
 7 amended by adding Section 1f to Article XIII thereof, to
 8 read:
 9 SEC. 1f. Notwithstanding the provisions of the second
 10 paragraph of Section 12 of Article XI, the first sentence of
 11 Section 1 and the first paragraph of Section 14 of this article,

LEGISLATIVE COUNSEL'S DIGEST

SCA 13, as introduced, Danielson (Rev. & Tax.). Real property tax classifications.

Adds Sec. 1f, Art. XIII, Cal. Const.

Authorizes the Legislature to classify real property for tax purposes as (1) owner-occupied single family dwellings and the owner-occupied portion of multiple dwelling units, (2) other single family dwellings, (3) multiple dwelling units, (4) agricultural real property, and (5) all other real property, and to prescribe different maximum tax rates, assessment ratios and methods of assessment for each such class. Specifies that the maximum tax rates, assessed values and full cash values shall be less for owner-occupied single family dwellings and owner-occupied portions of multiple dwelling units than those established for other dwellings and that the rates and values of other dwellings shall be less than the rates and values established for agricultural real property and all other taxable real property.

Excepts certain golf courses and open space lands from the valuation requirements.

Vote— $\frac{2}{3}$; Appropriation—No; Sen. Fin.—No; W. & M.—No.

1 the Legislature may classify real property for tax purposes as
2 (1) owner-occupied single family dwellings and the owner-
3 occupied portion of multiple dwelling units, (2) other single
4 family dwellings, (3) multiple dwelling units, (4) agricultural
5 real property, and (5) all other taxable real property, and
6 may prescribe different maximum tax rates, assessment ratios
7 and methods of assessment for each such class.

8 Any maximum tax rate shall be lower for owner-occupied
9 single family dwellings and the owner-occupied portion of
10 multiple dwelling units than the rates prescribed for other
11 single family dwellings and multiple dwelling units; and the
12 maximum tax rates for other single family dwellings and
13 multiple dwelling units shall be lower than the maximum tax
14 rates provided for agricultural real property and all other
15 taxable real property.

16 Except as provided in Section 2.6 of this article and Article
17 XXVIII, any assessment ratio and method of assessment pre-
18 scribed for owner-occupied single family dwellings and the
19 owner-occupied portion of multiple dwelling units shall pro-
20 duce a lower ratio of assessed value to full cash value than
21 the ratios of assessed to full cash values prescribed for other
22 single family dwellings and multiple dwelling units; and the
23 assessment ratios and methods prescribed for other single fam-
24 ily dwellings and multiple dwelling units shall produce lower
25 ratios of assessed to full cash values than the ratios of as-
26 sessed to full cash values prescribed for agricultural real prop-
27 erty and all other taxable real property.

28 No maximum tax rate or assessment ratio prescribed pursu-
29 ant to this section shall be valid, unless a tax rate and assess-
30 ment ratio is prescribed for each class of real property de-
31 scribed herein.

Introduced by Senator Petris

April 16, 1968

REFERRED TO COMMITTEE ON REVENUE AND TAXATION

An act to amend Section 2151 of the Revenue and Taxation Code and Section 29100 of the Government Code, relating to property tax rates.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2151 of the Revenue and Taxation Code
 2 is amended to read:
 3 2151. The board of supervisors shall fix the rates of county
 4 and district taxes for each class of property subject to general
 5 property taxation and shall levy the state, county, and district
 6 taxes as provided by law.
 7 SEC. 2. Section 29100 of the Government Code is amended
 8 to read:
 9 29100. On or before September 1st of each year the board
 10 shall fix the rates of taxes for each class of property on the
 11 secured roll, designating the number of cents or fraction
 12 thereof, in the rate for each fund on each one hundred dollars
 13 (\$100) of taxable value of property. The rate shall be such as
 14 will produce, after due allowance for delinquency, and as ap-
 15 plicable, after due allowance for disputed tax revenues antici-
 16 pated to be impounded pursuant to Section 26906.1 of this
 17 code, the amount determined as necessary to be raised by taxa-
 18 tion on the secured roll.
 19 The allowance for delinquency shall be as fixed by law or by
 20 the board. The allowance for disputed tax revenues shall be as

LEGISLATIVE COUNSEL'S DIGEST

SB 1008, as introduced, Petris (Rev. & Tax.). Property tax rates. Amends Sec. 2151, R. & T.C., Sec. 29100, Gov.C.

Permits a board of supervisors to classify property subject to general property taxation and to fix a different rate of tax for each such class, instead of requiring that all such property be taxed at the same rate.

Makes operative effect of the enactment dependent upon adoption by the electorate of an appropriate amendment to the Constitution.

Vote— $\frac{2}{3}$; Appropriation—No; Fiscal Committee—No.

1 fixed by the board. The final determination for either or both
2 allowances may be made at the same time as tax rates are fixed.

3 The amount to be raised by taxation on the secured roll is
4 found by deducting from the total appropriations and reserve
5 requirements of a fund, the respective total of:

6 (a) The amount of estimated revenue from other sources,
7 including taxes anticipated on the unsecured roll, and

8 (b) The fund balance available.

9 The amount of revenue from other sources and of the fund
10 balance available may be reestimated at the time of fixing
11 the tax rates and may be increased or decreased by the board
12 and the amounts so determined by the board are conclusive and
13 final.

14 *Notwithstanding any other provision of law to the contrary,*
15 *the board of supervisors may classify property subject to gen-*
16 *eral property taxation and fix a rate of tax for each class.*

17 **SEC. 3.** This act shall become operative only if the amend-
18 ments to the fourth paragraph of Section 14 of Article XIII of
19 the Constitution of the State of California proposed by Senate
20 Constitutional Amendment No. -- of the 1968 Regular Session
21 of the Legislature is adopted by the electorate and in such case
22 at the same time as Senate Constitutional Amendment No. --
23 takes effect.

H. R. No. 231-656

By: Messrs. Howell of the 60th, Brooks of the 17th, Knapp of the 81st, Lewis of the 37th, Matthews of the 63rd and many others

A RESOLUTION

Proposing an amendment to the Constitution so as to authorize the General Assembly to classify property for taxation purposes; to provide for the submission of this amendment for ratification or rejection; and for other purposes.

BE IT RESOLVED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1

Article VII, Section I, Paragraph III of the Constitution is hereby amended by striking said Paragraph in its entirety and substituting in lieu thereof a new Paragraph III to read as follows:

"Paragraph III. Uniformity; classification of property. All taxes shall be levied and collected under general laws and for public purposes only. The General Assembly shall have the power to classify property for taxation. All taxation shall be uniform upon the same class of property within the territorial limits of the authority levying the tax."

SECTION 2

The above proposed amendment to the Constitution shall have written or printed thereon the following:

"YES () Shall the Constitution be amended so as to authorize the General Assembly to classify property for taxation purposes?"

NO ()

All persons desiring to vote in favor of ratifying the proposed amendment shall vote "Yes". All persons desiring to vote against ratifying the proposed amendment shall vote "No".

If such amendment shall be ratified as provided in said Paragraph of the Constitution, it shall become a part of the Constitution of this State.

IN THE SENATE
SENATE JOINT RESOLUTION NO. 113
BY STATE AFFAIRS COMMITTEE

A JOINT RESOLUTION

1 PROPOSING AN AMENDMENT TO SECTION 5 OF ARTICLE VII OF
2 THE CONSTITUTION OF THE STATE OF IDAHO TO PROVIDE
3 FOR THE CLASSIFICATION OF PROPERTY AND RATIO OF
4 ASSESSMENT; STATING THE QUESTION TO BE SUBMITTED TO
5 THE ELECTORS; AND DIRECTING THE SECRETARY OF STATE
6 TO GIVE LEGAL NOTICE THEREOF.

7 Be It Resolved by the Legislature of the State of Idaho:

8 SECTION 1. That Section 5 of Article VII, of the Constitution of the
9 state of Idaho be amended to read as follows:

10 SECTION 5. TAXES TO BE UNIFORM-EXEMPTIONS.—All taxes
11 shall be uniform upon the same class of subjects property within the
12 territorial limits, of the authority levying the tax, and shall be levied and
13 collected under general laws, which shall prescribe such regulations as shall
14 secure a just valuation for taxation of all property, real and personal and the
15 legislature by law shall have full authority to prescribe the classes of
16 property and fix the ratio of assessment within such classes: provided, that
17 the legislature may allow such exemptions from taxation from time to time
18 as shall seem necessary and just, and all existing exemptions provided by the
19 laws of the territory, shall continue until changed by the legislature of the
20 state: provided further, that duplicate taxation of property for the same
21 purpose during the same year, is hereby prohibited.

22 SECTION 2. The question to be submitted to the electors of the state
23 of Idaho at the next general election shall be as follows:

24 "Shall Section 5 of Article VII, of the Constitution of the state of
25 Idaho be amended to provide for the classification of property and the ratio
26 of assessment?"

27 SECTION 3. The Secretary of State is hereby directed to publish this
28 proposed constitutional amendment for six consecutive weeks prior to the
29 next general election, in one newspaper of general circulation published in
30 each county of the state of Idaho.

IN THE HOUSE OF REPRESENTATIVES
HOUSE JOINT RESOLUTION NO. 5
BY BRAUNER, COBBS, MAYNARD, ANDERSEN, MURPHY

A JOINT RESOLUTION

1 PROPOSING AN AMENDMENT TO SECTION 2 OF ARTICLE VII OF
2 THE CONSTITUTION OF THE STATE OF IDAHO TO STRIKE THE
3 REQUIREMENT THAT PROPERTY BE TAXED ACCORDING TO
4 ITS VALUE; STATING THE QUESTION TO BE SUBMITTED TO
5 THE ELECTORS; AND DIRECTING THE SECRETARY OF STATE
6 TO GIVE LEGAL NOTICE THEREOF.

7 Be It Resolved by the Legislature of the State of Idaho:

8 SECTION 1. That Section 2, of Article VII, of the Constitution of the
9 State of Idaho be amended to read as follows:

10 SECTION 2. REVENUE TO BE PROVIDED BY TAXATION.—The
11 legislature shall provide such revenue as may be needful, by levying a tax by
12 valuation, ~~so that every person or corporation shall pay a tax in proportion~~
13 ~~to the value of his, her, or its~~ upon property, except as in this article
14 hereinafter otherwise provided. The legislature may also impose a license tax,
15 both upon natural persons and upon corporations, other than municipal,
16 doing business in this state; also a per capita tax: provided, the legislature
17 may exempt a limited amount of improvements upon land from taxation.

18 SECTION 2. The question to be submitted to the electors of the State
19 of Idaho at the next general election shall be as follows:

20 "Shall Section 2 of Article VII of the Constitution of the State of
21 Idaho be amended to strike the requirement that property be taxed
22 uniformly according to its value?"

23 SECTION 3. The Secretary of State is hereby directed to publish this
24 proposed constitutional amendment for six consecutive weeks prior to the
25 next general election, in one newspaper of general circulation published in
26 each county of the state of Idaho.

IN THE HOUSE OF REPRESENTATIVES
HOUSE JOINT RESOLUTION NO. 4
BY BRAUNER, COBBS, MAYNARD, ANDERSEN, MURPHY

A JOINT RESOLUTION

1 PROPOSING AN AMENDMENT TO SECTION 5 OF ARTICLE VII OF
2 THE CONSTITUTION OF THE STATE OF IDAHO TO PROVIDE
3 FOR THE CLASSIFICATION OF PROPERTY; STATING THE
4 QUESTION TO BE SUBMITTED TO THE ELECTORS; AND
5 DIRECTING THE SECRETARY OF STATE TO GIVE LEGAL
6 NOTICE THEREOF.

7 Be It Resolved by the Legislature of the State of Idaho:

8 SECTION 1. That Section 5 of Article VII, of the Constitution of the
9 state of Idaho be amended to read as follows:

10 SECTION 5. TAXES TO BE UNIFORM—EXEMPTIONS.—All
11 property shall be classified as: real, personal and operating. All taxes shall be
12 uniform upon the same class of subjects property within the territorial
13 limits, of the authority levying the tax, and shall be levied and collected
14 under general laws, which shall prescribe such regulations as shall secure a
15 just valuation for taxation of all property, real and, personal and operating:
16 provided, that the legislature may allow such exemptions from taxation from
17 time to time as shall seem necessary and just, and all existing exemptions
18 provided by the laws of the territory, shall continue until changed by the
19 legislature of the state: provided further, that duplicate taxation of property
20 for the same purpose during the same year, is hereby prohibited.

21 SECTION 2. The question to be submitted to the electors of the state
22 of Idaho at the next general election shall be as follows:

23 "Shall Section 5 of Article VII, of the Constitution of the state of
24 Idaho be amended to provide for the classification of property as: real,
25 personal and operating?"

26 SECTION 3. The Secretary of State is hereby directed to publish this
27 proposed constitutional amendment for six consecutive weeks prior to the
28 next general election, in one newspaper of general circulation published in
29 each county of the state of Idaho.

CHAPTER 458

1969 ACTS OF INDIANA

SENATE ENROLLED
JOINT RESOLUTION NO. 3

A JOINT RESOLUTION proposing an amendment to Section 1, Article 10 of the Constitution of the State of Indiana, permitting the General Assembly to divide property into reasonable classifications for purposes of taxation or exemption; requiring it to provide for a uniform and equal rate of property assessment and taxation within each class; requiring it to prescribe regulations to secure just valuation of taxable property.

BE IT RESOLVED BY THE GENERAL ASSEMBLY OF THE STATE OF INDIANA:

SECTION 1. That the following amendment to the Constitution of the State of Indiana is hereby proposed and agreed to by this, the Ninety-sixth General Assembly of the State of Indiana, and is hereby referred to the next General Assembly for reconsideration and agreement.

SEC. 2. That Section 1 of Article 10 of the Constitution of the State of Indiana be amended to read as follows: Section 1. The General Assembly may divide property into reasonable classes for purposes of taxation or exemption from taxation and shall provide for a uniform and equal rate of property assessment and taxation within each class and for a just valuation of taxable property.

Session of 1970

HOUSE CONCURRENT RESOLUTION NO. 1070

By Messrs. Amrein, Dahl, Fish, Gabriel, Houglund, Howard,
Hoy, Lady, Ochs, Unruh of Gray, Ward and Winters.

1-15

A PROPOSITION to amend section 1 of article 11 of the constitution of the state of Kansas, relating to taxation, and providing for classification of property for assessment and taxation.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected to the House of Representatives and two-thirds of the members elected to the Senate concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 1 of article 11 of the constitution of the State of Kansas is amended to read as follows:

"Section 1. The legislature shall have power to classify all property for the purposes of assessment and taxation, and to provide for a uniform and equal rate of assessment and taxation; -except-that-mineral-products; money; -mortgages; -notes-and-other-evidence-of-debt-may-be classified-and-taxed-uniformly-as-to-class-as-the-legislature shall-provide for each class created by it. All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and all household goods and personal effects not used for the production of income shall be exempted from taxation."

Sec. 2. This resolution, if concurred in by two-thirds of the members elected to the house of representatives and two-thirds of the members elected to the senate, shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause the proposed amendment to be published and submitted to the electors of the state at the general election in the year 1970 as provided by law.

Session of 1970

SENATE CONCURRENT RESOLUTION NO. 38

By Senators Steineger and Gaar

12-30

A PROPOSITION to amend section 1 of article 11 of the constitution of the state of Kansas, relating to taxation, and providing for classification of property for assessment and taxation.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected to the Senate and two thirds of the members elected to the House of Representatives concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 1 of article 11 of the constitution of the state of Kansas is amended to read as follows:

"Section 1. The legislature shall have power to classify all property for the purposes of assessment and taxation, and to provide for a uniform and equal rate of assessment and taxation; except that mineral products, money, mortgages, notes and other evidence of debt may be classified and taxed uniformly as to class as the legislature shall provide for each class created by it. All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and all household goods and personal effects not used for the production of income, shall be exempted from taxation."

Sec. 2. This resolution, if concurred in by two-thirds of the members elected to the senate and two-thirds of the members elected to the house of representatives, shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause the proposed amendment to be published and submitted to the electors of the state at the general election in the year 1970 as provided by law.

Session of 1969

SENATE CONCURRENT RESOLUTION NO. 3

By Senator Steineger

A PROPOSITION to amend Section 1 of article 11 of the constitution of the state of Kansas, relating to taxation, and providing for classification of property for assessment and taxation.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected to the Senate and two-thirds of the members elected to the House of Representatives concurring therein:

Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state for their approval or rejection: Section 1 of article 11 of the constitution of the state of Kansas is amended to read as follows:

"Section 1. The legislature shall have power to classify all property for the purposes of assessment and taxation, and to provide for a uniform and equal rate of assessment and taxation; except that mineral products, money, mortgages, notes and other evidence of debt may be classified and taxed uniformly as to class as the legislature shall provide for each class created by it. All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and all household goods and personal effects not used for the production of income, shall be exempted from taxation."

Section 2. This resolution, if concurred in by two-thirds of the members elected to the senate and two-thirds of the members elected to the house of representatives, shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause the proposed amendment to be published and submitted to the electors of the state at the general election in the year 1970 as provided by law.

Senate Concurrent Resolution No. 3By Senator Steineger

A PROPOSITION to amend section 1 of article 11 of the constitution of the state of Kansas, relating to taxation, and providing for classification of property for assessment and taxation.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected to the Senate and two-thirds of the members elected to the House of Representatives concurring therein:

1 Section 1. The following proposition to amend the constitution
2 of the state of Kansas shall be submitted to the qualified electors
3 of the state for their approval or rejection: Section 1 of article 11 of
4 the constitution of the state of Kansas is amended to read as follows:

5 "Section 1. The legislature shall *have power to classify all*
6 *property for the purposes of assessment and taxation, and to pro-*
7 *vide for a uniform and equal rate of assessment and taxation,*
8 *except that mineral products, money, mortgages, notes*
9 *and other evidence of debt may be classified and taxed*
10 *uniformly as to class as the legislature shall provide for*
11 *each class created by it. All property used exclusively for state,*
12 *county, municipal, literary, educational, scientific, religious, be-*
13 *nevolent and charitable purposes, and all household goods and*
14 *personal effects not used for the production of income, shall be*
15 *exempted from taxation."*

16 Sec. 2. This resolution, if concurred in by two-thirds of the
17 members elected to the senate and two-thirds of the members
18 elected to the house of representatives, shall be entered on the
19 journals, together with the yeas and nays. The secretary of state
20 shall cause the proposed amendment to be published and submitted
21 to the electors of the state at the general election in the year 1970
22 as provided by law.

Session of 1967

Senate Concurrent Resolution No. 16

By Senator Joseph

A PROPOSITION to amend section 1 of article 11 of the constitution of the state of Kansas, relating to taxation, and providing for classification of property for assessment and taxation.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected to the Senate and two-thirds of the members elected to the House of Representatives concurring therein:

1 SECTION 1. The following proposition to amend the constitution
2 of the state of Kansas shall be submitted to the qualified electors of
3 the state for their approval or rejection: Section 1 of article 11 of
4 the constitution of the state of Kansas is amended to read as follows:

5 "SECTION 1. The legislature shall have power to classify all
6 property for the purposes of assessment and taxation, and to pro-
7 vide for a uniform and equal rate of assessment and taxation,
8 except that mineral products, money, mortgages, notes
9 and other evidence of debt may be classified and taxed
10 uniformly as to class as the legislature shall provide for
11 each class created by it. All property used exclusively for state,
12 county, municipal, literary, educational, scientific, religious, be-
13 nevolent and charitable purposes, and all household goods and
14 personal effects not used for the production of income, shall be
15 exempted from taxation."

16 SEC. 2. This resolution, if concurred in by two-thirds of the mem-
17 bers elected to the senate and two-thirds of the members elected
18 to the house of representatives, shall be entered on the journals,
19 together with the yeas and nays. The secretary of state shall cause
20 the proposed amendment to be published and submitted to the

Session of 1967

House Concurrent Resolution No. 1023

By Mr. Fatzner

A PROPOSITION to amend section 1 of article 11 of the constitution of the state of Kansas, relating to taxation.

Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected to the House of Representatives and two-thirds of the members elected to the Senate concurring therein:

1 SECTION 1. The following proposition to amend the constitution
2 of the state of Kansas shall be submitted to the qualified electors
3 of the state for their approval or rejection: Section 1 of article 11
4 of the constitution of the state of Kansas is hereby amended to
5 read as follows:

6 "SECTION 1. The legislature shall *have power to classify all*
7 *property for the purpose of assessment and taxation, and to*
8 *provide for a uniform and equal rate of assessment and taxation,*
9 *except that mineral products, money, mortgages, notes*
10 *and other evidence of debt may be classified and taxed*
11 *uniformly as to class as the legislature shall provide for*
12 *each class created by it. All property used exclusively for state,*
13 *county, municipal, literary, educational, scientific, religious, be-*
14 *nevolent and charitable purposes, and all household goods and*
15 *personal effects not used for the production of income, shall be*
16 *exempted from taxation."*

17 SEC. 2. This resolution, if concurred in by two-thirds of the
18 members elected to the house of representatives and two-thirds of
19 the members elected to the senate, shall be entered on the journals,
20 together with the yeas and nays. The secretary of state shall cause

1 the proposed amendment to be published and submitted to the
2 electors of the state at the general election in the year 1968 as
3 provided by law. This resolution shall be published by the secretary
4 of state in the 1967 Session Laws of Kansas, and shall be given a
5 chapter number therein.

SENATE BILL NO. 106

INTRODUCED BY

James Cotton Montz
Haughy

84-301

A BILL FOR AN ACT ENTITLED: "AN ACT TO PLACE LONG-TERM CARE FACILITIES IN CLASS FIVE TAXABLE AT SEVEN PERCENT OF ASSESSED VALUE FOR PROPERTY TAX PURPOSES; AMENDING SECTION 84-301, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by

1 the owner for personal and domestic purposes, or for the
2 furnishing or equipment of the family residence; all agricultural
3 and other tools, implements and machinery, gas and other engines
4 and boilers, threshing machines and outfits used therewith,
5 automobiles, motor trucks and other power-driven cars, vehicles
6 of all kinds except mobile homes, boats and all watercraft,
7 harness, saddlery and robes.

8 Class Three. Livestock, poultry and the unprocessed products
9 of both; stocks of merchandise of all sorts, together with
10 furniture and fixtures used therewith, except mobile homes; and
11 all office or hotel furniture and fixtures.

12 Class Four. (a) All land, town and city lots, with improvements,
13 and all trailers affixed to land owned, leased, or under contract
14 or purchase by the trailer owner, manufacturing and mining
15 machinery, fixtures and supplies, except as otherwise provided by
16 the constitution of Montana, and except as such property may
17 be included in Class Five or Class Seven.

18 (b) Mobile homes without regard to the ownership of the
19 land upon which they are situated, except those held by a
20 distributor or dealer of mobile homes as part of his stock in trade.

21 Class Five. (a) All moneys and credits, secured or
22 unsecured, including all state, county, school district and other
23 municipal bonds, warrants and securities, without any deduction
24 or offset; provided, however, that the terms "moneys and credits"
25 as herein used shall not embrace the moneyed capital employed
26 in the banking business by any banking corporation or individual
27 in this state.

28 (b) All poles, lines, transformers, transformer stations,
29 meters, tools, improvements, machinery and other property used and
30 owned by co-operative rural electrical and co-operative rural

1 telephone associations organized under the laws of Montana.

2 (c) All unprocessed agricultural products either on the farm
3 or in storage, irrespective of whether said products are owned
4 by the elevator, warehouse or flour mill owner or company storing
5 the same, or any other person whomsoever, and excepting livestock
6 and poultry and the unprocessed products of both.

7 (d) Land, not to exceed two (2) acres, and improvements
8 of long-term care facilities as defined by Section 69-5201, R.C.M.
9 1947.

10 Class Six. Property formerly included in this class is now
11 classified by section 84-308 of the Revised Codes of Montana, 1947.

12 Class Seven. (a) All new industrial property. New industrial
13 property shall mean any new industrial plant, including land,
14 buildings, machinery and fixtures which, in the determination
15 of the state board of equalization, is used by a new industry
16 during the first three (3) years of operation not having been
17 assessed prior to July 1, 1961 within the state of Montana. New
18 industry shall mean any person, corporation, firm, partnership,
19 association, or other group which establishes a new plant or
20 plants in this state for the operation of a new industrial
21 endeavor, as distinguished from a mere expansion, reorganization,
22 or merger of an existing industry or industries. Provided,
23 however, that new industrial property shall be limited to industries
24 that manufacture, mill, mine, produce, process or fabricate
25 materials, or do similar work in which capital and labor are
26 employed and in which materials unserviceable in their natural
27 state are extracted, processed or made fit for use or are sub-
28 stantially altered or treated so as to create commercial products
29 or materials; and in no event shall the term new industrial
30 property be included to mean property used by retail or wholesale

1 merchants, commercial services of any type, agriculture, trades or
2 professions. And provided further, that new industrial property
3 shall not be included to mean property which is used or employed
4 in any industrial plant which has been in operation in this state
5 for three (3) years or longer. Any person, corporation, firm,
6 partnership, association or other group seeking to qualify its
7 property for inclusion in this class shall make application to the
8 state board of equalization in such manner and form as may be
9 required by said board.

10 (b) Freeport merchandise. Freeport merchandise means those
11 stocks of merchandise manufactured or produced outside this state
12 which are in transit through this state and consigned to a
13 warehouse or other storage facility, public or private, within this
14 state, for storage in transit prior to shipment to a final destina-
15 tion outside the state, and which have acquired a taxable situs
16 within the state.

17 Stocks of merchandise do not lose their status as freeport
18 merchandise because while in the storage facility they are
19 assembled, bound, joined, processed, disassembled, divided, cut,
20 broken in bulk, relabeled or repackaged.

21 Any person, corporation, firm, partnership, association, or
22 other group seeking to qualify its property for inclusion in
23 this class shall make application to the state board of equaliza-
24 tion in such manner or form as may be required by said board.

25 The state board of equalization shall establish standards,
26 rules and regulations for the guidance of county assessors and
27 assessing freeport merchandise.

28 Class Eight: Any improvement on real property valued at not
29 more than fifteen thousand dollars (\$15,000), which is owned and
30 actually occupied by a widow, with or without minor or dependent

1 children, or by:

2 (1) a widow sixty-two (62) years of age or older, whether
3 with or without minor dependent children, or

4 (2) a widower sixty-five (65) years of age or older, whether
5 with or without minor dependent children, or

6 (3) a widow with minor or dependent children regardless of
7 age, or

8 (4) a recipient of retirement benefits not exceeding one
9 hundred fifty dollars (\$150) per month, if single, or two hundred
10 fifty dollars (\$250) per month if married. Provided such owner
11 and occupier is not gainfully employed to such an extent as
12 would render him or her ineligible for social security benefits,
13 should he or she be otherwise eligible for such benefits, and does
14 not have income from all sources, excluding retirement benefits
15 as mentioned in (4) hereinabove, in excess of one thousand five
16 hundred dollars (\$1,500) per year. Provided, further, that
17 one who applies for classification of property under this class
18 must make an affidavit before the county assessor of the county
19 in which said property is located, on a form as may be provided
20 by the state board of equalization supplied without cost to the
21 applicant, as to his income, if applicable, as to his retirement
22 benefits, if applicable, or, as to his marital status, if
23 applicable, and to the fact that he or she actually occupies such
24 improvements with right of the county welfare board to investigate
25 the applicant, on the completion of the form, as to answers
26 given on the form. Provided, further, that the value of said
27 property shall not increase during the life of the recipient
28 of retirement benefits or widow or widower covered under this class

29 Class Nine. All property not included in the eight (8)
30 preceding classes."

1 House BILL NO. 351

2 INTRODUCED BY Walt Paige Campbell

3 Zimmerman - Morgan Walter Stille

4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO CLASSIFICATION
5 OF CERTAIN REAL PROPERTY AND AMENDING SECTION 84-301, 84-302,
6 OF THE R.C.M. 1947."

7
8 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

9 Section 1. Section 84-301 class 8 R.C.M. 1947 is amended
10 to read as follows:

11 84-301. Classification of property for taxation. For
12 the purpose of taxation the taxable property in the state shall
13 be classified as follows:

14 Class one. The annual net proceeds of all mines and mining
15 claims, after deducting only the expenses specified and allowed
16 by section 84-5403; also where the right to enter upon land, to
17 explore or prospect, or dig for oil, gas, coal or mineral is
18 reserved in land by any person or corporation, the surface title
19 to which has passed to another, the assessor and the state and
20 county boards of equalization shall determine the value of the
21 right to enter upon said tract of land for the purpose of
22 digging, exploring, or prospecting for gas, oil, coal or minerals,
23 and the same shall be placed in this classification for the
24 purpose of taxation.

25 Class Two. All household goods and furniture, including
26 clocks, musical instruments, sewing machines, wearing apparel
27 of members of the family, and all personal property actually
28 used by the owner for personal and domestic purposes, or for
29
30

1 the furnishing or equipment of the family residence; all agri-
2 cultural and other tools, implements and machinery, gas and
3 other engines and boilers, threshing machines and outfits used
4 therewith, automobiles, motor trucks and other power-driven
5 car, vehicles of all kinds, boats and all watercraft, harness,
6 saddlery and robes.

7 Class Three: Livestock, poultry and the unprocessed
8 products of both; stocks of merchandise of all sorts, together
9 with furniture and fixtures used therewith; and all office or
10 hotel furniture and fixtures.

11 Class Four. All land, town and city lots, with improve-
12 ments, and all trailers affixed to land owned, leased or under
13 contract of purchase by the trailer owner, manufacturing and
14 mining machinery, fixtures and supplies, except as otherwise
15 provided by the constitution of Montana, and except as such
16 property may be included in Class Five or Class Seven.

17 Class Five. (a) All moneys and credits, secured or un-
18 secured, including all state, county, school district and other
19 municipal bonds, warrants and securities, without any deduction
20 or offset; provided, however, that the terms "moneys and credits"
21 as herein used shall not embrace the moneyed capital employed
22 in the banking business by any banking corporation or individual
23 in this state.

24 (b) All poles, lines, transformers, transformer stations,
25 motors, tools, improvements, machinery and other property used
26 and owned by co-operative rural electrical and co-operative rural
27 telephone associations organized under the laws of Montana.

28 (c) All unprocessed agricultural products either on the
29
30

1 farm or in storage, irrespective of whether said products are
2 owned by the elevator, warehouse or flour mill owner or com-
3 pany storing the same or any other person whomsoever, and excep-
4 ting livestock and poultry and the unprocessed products of both.

5 Class Six. Property formerly included in this class is
6 now classified by section 84-308.

7 Class Seven. All new industrial property. New industrial
8 property shall mean any new industrial plant including land,
9 buildings, machinery and fixtures which, in the determination of
10 the state board of equalization, is used by a new industry
11 during the first three (3) years of operation not having been
12 assessed prior to July 1, 1961 within the state of Montana. New
13 industry shall mean any person, corporation, firm, partnership,
14 association, or other group which establishes a new plant or
15 plants in the state for the operation of a new industrial en-
16 deavor, as distinguished from a mere expansion, reorganization,
17 or merger of an existing industry or industries. Provided,
18 however, that new industrial property shall be limited to in-
19 dustries that manufacture, mill, mine, produce, process or fab-
20 ricate materials, or do similar work in which capital and labor
21 are employed and in which materials unserviceable in their
22 natural state are extracted, processed or made fit for use
23 or are substantially altered or treated so as to create commercial
24 products or materials; and in no event shall the term new
25 industrial property be included to mean property used by retail
26 or wholesale merchants, commercial services of any type, agri-
27 culture, trades or professions. And provided further, that new
28 industrial property shall not be included to mean property which
29
30

1 is used or employed in any industrial plant which has been
 2 in operation in this state for three (3) years or longer.
 3 Any person, corporation, firm, partnership, association or
 4 other group seeking to qualify its property for inclusion in
 5 this class shall make application to the state board of equali-
 6 zation in such manner and form as may be required by said board.

7 Class Eight. Any improvement on real property valued
 8 at not more than ~~sixteen thousand dollars (\$16,000)~~, seventeen
 9 thousand five hundred dollars (\$17,500), which is owned and
 10 actually occupied by a widow, with or without minor or dependent
 11 children, or by:

- 12 (1) a widow 62 years of age or older, whether with or
 13 without minor or dependent children, or
- 14 (2) A widower 65 years of age or older, whether with or
 15 without minor or dependent children, or
- 16 (3) a widow with minor or dependent children regardless
 17 of age, or
- 18 (4) a recipient of retirement benefits ~~not exceeding~~
 19 ~~one hundred fifty (\$150) per month if single, or two hundred~~
 20 ~~fifty dollars (\$250) per month if married. Provided such~~
 21 ~~owner and occupier is not gainfully employed to such an extent~~
 22 ~~as would render him or her ineligible for social security~~
 23 ~~benefits, should he or she be otherwise eligible for such~~
 24 ~~benefits, and does not have income from all sources, excluding~~
 25 ~~retirement benefits so mentioned in (4) hereinabove, in excess~~
 26 ~~of one thousand five hundred dollars (\$1,500) per year. whose~~
 27 income from all sources is not more than \$3,300 for a single
 28 person and \$4,500, for a married couple per annum.

1 Provided, further, that one who applies for classification of
 2 property under this class must make an affidavit before the
 3 county assessor of the county in which said property is located,
 4 on a form as may be provided by the state board of equalization
 5 supplied without cost to the applicant, as to his income, if
 6 applicable, as to his retirement benefits, if applicable, or,
 7 as to his marital status, if applicable, and to the fact that
 8 he or she actually occupies such improvements with none other
 9 than his or her spouse, minor or dependent child or any other person
 10 not responsible for all or any part of the financial support of
 11 the affiant and that the improvements are not used for income-
 12 producing purposes other than such purposes as are normally per-
 13 mitted on or on such improvements with right of the county wit-
 14 ness board to investigate the applicant, on the completion of
 15 the form, as to answers given on the form. Provided, further,
 16 that the value of said property shall not increase during the
 17 life of the recipient of retirement benefits or widow or widower
 18 covered under this class.

19 Class Nine. All property not included in the eight preceding
 20 classes."

21 Section 2. Section 84-302, R.C.M. 1947, is amended to read
 22 as follows:

23 "84-302. Basis for imposition of taxes. As a basis for
 24 the imposition of taxes upon the different classes of property
 25 specified in the preceding section, a percentage of the true
 26 and full value of the property of each class shall be taken
 27 as follows:

28 Class 1. On hundred percent (100%) of its true and full
 29
 30

1 value.

2 Class 2. Twenty percent (20%) of its true and full value.

3 Class 3. Thirty-three and one-third percent (33 1/3%)

4 of its true and full value.

5 Class 4. Thirty percent (30%) of its true and full value.

6 Class 5. Seven percent (7%) of its true and full value.

7 Class 6. Forty percent (40%) of its true and full value.

8 Class 7. Seven percent (7%) of its true and full value.

9 Class 8. ~~Twenty percent (20%)~~ Fifteen percent (15%)

10 of its true and full value.

11 Class 9. Forty percent (40%) of its true and full value."

SENATE BILL NO. 176

INTRODUCED BY

Therese J. Rostak
Maureen James

84-301, 84-302

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A NEW RECLASSIFICATION OF PROPERTY FOR TAXATION; PLACING SOLVENT CREDITS, HOUSEHOLD GOODS AND UNPROCESSED AGRICULTURAL PRODUCTS IN A CLASS TO BE TAXED AT ONE PERCENT OF ASSESSED VALUE; AMENDING SECTIONS 84-301 AND 84-302, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. Classification of property for taxation.

For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

1 Class Two. All household goods and furniture, in
 2 cluding clocks, musical instruments, sewing machines,
 3 wearing apparel of members of the family, and all personal
 4 property actually used by the owner for personal and
 5 domestic purposes, or for the furnishing or equipment of
 6 the family residence, All agricultural and other tools,
 7 implements and machinery, gas and other engines and boilers,
 8 threshing machines and outfits used therewith, automobiles,
 9 motor trucks and other power-driven cars, vehicles of all
 10 kinds, boats and all watercraft, harness, saddlery and robes.

11 Class Three. Livestock, poultry and the unprocessed
 12 products of both; stocks of merchandise of all sorts, to-
 13 gether with furniture and fixtures used therewith; and all
 14 office or hotel furniture and fixtures.

15 Class Four. All land, town and city lots, with im-
 16 provements and all trailers affixed to land owned, leased,
 17 or under contract of purchase by the trailer owner, man-
 18 ufacturing and mining machinery, fixtures and supplies,
 19 except as otherwise provided by the constitution of Mon-
 20 tana, and except as such property may be included in
 21 Class Five or Class Seven.

22 Class Five. ~~(a) All moneys and credits, secured~~
 23 ~~or unsecured, including all state, county, school dis-~~
 24 ~~trict and other municipal bonds, warrants and securities,~~
 25 ~~without any deduction or offset, provided, however,~~
 26 ~~that the terms "moneys and credits" as herein used shall~~
 27 ~~not embrace the moneyed capital employed in the banking~~
 28 ~~business by any banking corporation or individual in~~
 29 ~~this state.~~

30 (b) All poles, lines, transformers, transformer stations, meters,

1 tools, improvements, machinery and other property used and
2 owned by co-operative rural electrical and co-operative
3 rural telephone associations organized under the laws of
4 Montana.

5 ~~(c) All unprocessed agricultural products either on~~
6 ~~the farm or in storage, irrespective of whether said pro-~~
7 ~~ducts are owned by the elevator, warehouse or flour mill~~
8 ~~owner or company storing the same, or any other person~~
9 ~~whomsoever, and excepting livestock and poultry and the~~
10 ~~unprocessed products of both.~~

11 Class Six. Property formerly included in this class
12 is now classified by section 84-308.

13 Class Seven. All new industrial property. New in-
14 dustrial property shall mean any new industrial plant,
15 including land, buildings, machinery and fixtures which,
16 in the determination of the state board of equalization,
17 is used by a new industry during the first three (3) years
18 of operation not having been assessed prior to July 1, 1961
19 within the state of Montana. New industry shall mean any
20 person, corporation, firm, partnership, association, or
21 other group which establishes a new plant or plants in
22 this state for the operation of a new industrial endeavor,
23 as distinguished from a mere expansion, reorganization, or
24 merger of an existing industry or industries. Provided,
25 however, that new industrial property shall be limited to
26 industries that manufacture, mill, mine, produce, process
27 or fabricate materials, or do similar work in which capital
28 and labor are employed and in which materials unserviceable
29 in their natural state are extracted, processed or made fit
30 for use or are substantially altered or treated so as to

1 create commercial products or materials; and in no event
2 shall the term new industrial property be included to mean
3 property used by retail or wholesale merchants, commercial
4 services of any type, agriculture, trades or professions.
5 And provided further, that new industrial property shall
6 not be included to mean property which is used or employed
7 in any industrial plant which has been in operation in
8 this state for three (3) years or longer. Any person,
9 corporation, firm, partnership, association or other group
10 seeking to qualify its property for inclusion in this class
11 shall make application to the state board of equalization
12 in such manner and form as may be required by said board.

13 Class Eight. Any improvement on real property valued
14 at not more than fifteen thousand dollars (\$15,000), which
15 is owned and actually occupied by a widow, with or without
16 minor or dependent children, or by: (1) a widow 62 years
17 of age or older, whether with or without minor or dependent
18 children, or

19 (2) a widower 65 years of age or older, whether with
20 or without minor or dependent children, or

21 (3) a widow with minor or dependent children regardless
22 of age, or

23 (4) a recipient of retirement benefits not exceeding
24 one hundred fifty dollars (\$150) per month, if single, or
25 two hundred fifty dollars (\$250) per month if married.

26 Provided such owner and occupier is not gainfully employed
27 to such an extent as would render him or her ineligible for
28 social security benefits, should he or she be otherwise
29 eligible for such benefits, and does not have income from
30 all sources, excluding retirement benefits as mentioned in

1 (4) hereinabove, in excess of one thousand five hun-
2 dred dollars (\$1,500) per year. Provided, further, that
3 one who applies for classification of property under this
4 class must make an affidavit before the county assessor of
5 the county in which said property is located, on a form as
6 may be provided by the state board of equalization supplied
7 without cost to the applicant, as to his income, if appli-
8 cable, as to his retirement benefits, if applicable, or,
9 as to his marital status, if applicable, and to the fact
10 that he or she actually occupies such improvements with
11 none other than his or her spouse, minor or dependent
12 children, or persons not responsible for all or any part
13 of the financial support of the affiant, and that the im-
14 provements are not used for income-producing purposes other
15 than such purposes as are normally permitted in or on such
16 improvements, with right of the county welfare board to
17 investigate the applicant, on the completion of the form,
18 as to answers given on the form. Provided, further that
19 the value of said property shall not increase during the
20 life of the recipient of retirement benefits or widow or
21 widower covered under this class.

22 Class Nine. (1) all household goods and furniture,
23 including clocks, musical instruments, sewing machines,
24 wearing apparel of members of the family, and all personal
25 property actually used by the owner for personal and
26 domestic purposes, or for the furnishing or equipment of
27 the family residence.

28 (2) all moneys and credits, secured or unsecured, in-
29 cluding all state, county, school district and other munic-
30 ipal bonds, warrants and securities, without any deduction

1 or offset; provided, however, that the terms "moneys and
 2 credits" as herein used shall not embrace the moneyed
 3 capital employed in the banking business by any banking
 4 corporation or individual in this state.

5 (3) all unprocessed agricultural products either on
 6 the farm or in storage, irrespective of whether said pro-
 7 ducts are owned by the elevator, warehouse or flour mill
 8 owner or company storing the same, or any other person
 9 whomsoever, and excepting livestock and poultry and the
 10 unprocessed products of both.

11 Class-Nine Class Ten. All property not included in
 12 the eight ~~nine~~ preceding classes."

13 Section 2. Section 84-302, R.C.M. 1947, is amended to
 14 read as follows:

15 "84-302. Basis for imposition of taxes. As a basis
 16 for the imposition of taxes upon the different classes of
 17 property specified in the preceding section, a percentage
 18 of the true and full value of the property of each class
 19 shall be taken as follows:

20 Class 1. One hundred per cent (100%) of its true and
 21 full value.

22 Class 2. Twenty per cent (20%) of its true and full
 23 value.

24 Class 3. Thirty-three and one-third per cent ($33 \frac{1}{3}\%$)
 25 of its true and full value.

26 Class 4. Thirty per cent (30%) of its true and full
 27 value.

28 Class 5. Seven per cent (7%) of its true and full
 29 value.

30 Class 6. Forty per cent (40%) of its true and full

1 value.

2 Class 7. Seven per cent (7%) of its true and full

3 value.

4 Class 8. Twenty per cent (20%) of its true and full

5 value.

6 Class 9. One per cent (1%) of its true and full value.

7 Class 9 10, Forty per cent (40%) of its true and full

8 value."

House BILL NO. 245
INTRODUCED BY William H. ...

84-301, 84-302

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 84-301 AND 84-302, R.C.M. 1947, TO CREATE A SEPARATE CLASS AND BASIS FOR IMPOSITION OF TAXES UPON STOCKS OF MERCHANDISE AND TO RE-NUMBER THE CLASS AND BASIS OF RESIDUAL PROPERTY."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used

1 by the owner for personal and domestic purposes, or for the
 2 furnishing or equipment of the family residence; all agricultural
 3 and other tools, implements and machinery, gas and other engines
 4 and boilers, threshing machines and outfits used therewith,
 5 automobiles, motor trucks and other power-driven cars, vehicles
 6 of all kinds except mobile homes, boats and all watercraft, harness,
 7 saddlery and robes.

8 Class Three. Livestock, poultry and the unprocessed products
 9 of both; ~~steaks-of-merchandise-of-all-sorts,-together-with~~
 10 ~~furniture-and-fixtures-used-therewith,-except-mobile-homes;~~ the
 11 furniture and fixtures of mercantile establishments; and all
 12 office or hotel furniture and fixtures.

13 Class Four. (a) All land, town and city lots, with improve-
 14 ments, and all trailers affixed to land owned, leased, or under
 15 contract or of purchase by the trailer owner, manufacturing and
 16 mining machinery, fixtures and supplies, except as otherwise
 17 provided by the constitution of Montana, and except as such
 18 property may be included in Class Five or Class Seven.

19 (b) Mobile homes without regard to the ownership of the
 20 land upon which they are situated, except those held by a dis-
 21 tributor or dealer of mobile homes as part of his stock in trade.

22 Class Five. (a) All moneys and credits, secured or
 23 unsecured, including all state, county, school district and other
 24 municipal bonds, warrants and securities, without any deduction
 25 or offset; provided, however, that the terms 'moneys and credits'
 26 as herein used shall not embrace the moneyed capital employed in
 27 the banking business by any banking corporation or individual
 28 in this state.

29 (b) All poles, lines, transformers, transformer stations,
 30 meters, tools, improvements, machinery and other property used

1 and owned by co-operative rural electrical and co-operative
2 rural telephone associations organized under the laws of
3 Montana.

4 (c) All unprocessed agricultural products either on the
5 farm or in storage, irrespective of whether said products are
6 owned by the elevator, warehouse or flour mill owner or company
7 storing the same, or any other person whomsoever, and excepting
8 livestock and poultry and the unprocessed products of both.

9 Class Six. Property formerly included in this class is
10 now classified by section 84-308. of the Revised Codes of
11 Montana, 1947.

12 Class Seven. (a) All new industrial property. New
13 industrial property shall mean any new industrial plant, including
14 land, buildings, machinery and fixtures which, in the determination
15 of the state board of equalization, is used by a new industry
16 during the first three (3) years of operation not having been
17 assessed prior to July 1, 1961 within the state of Montana. New
18 industry shall mean any person, corporation, firm, partnership,
19 association, or other group which establishes a new plant or
20 plants in this state for the operation of a new industrial
21 endeavor, as distinguished from a mere expansion, reorganization,
22 or merger of an existing industry or industries. Provided, however,
23 that new industrial property shall be limited to industries that
24 manufacture, mill, mine, produce, process or fabricate materials,
25 or do similar work in which capital and labor are employed and
26 in which materials unserviceable in their natural state are
27 extracted, processed or made fit for use or are substantially
28 altered or treated so as to create commercial products or
29 materials; and in no event shall the term new industrial property
30 be included to mean property used by retail or wholesale

1 merchants, commercial services of any type, agriculture, trades
2 or professions. And provided further, that new industrial
3 property shall not be included to mean property which is used
4 or employed in any industrial plant which has been in operation
5 in this state for three (3) years or longer. Any person, cor-
6 poration, firm, partnership, association or other group seeking
7 to qualify its property for inclusion in this class shall make
8 application to the state board of equalization in such manner
9 and form as may be required by said board.

10 (b) Freeport merchandise. Freeport merchandise means
11 those stocks of merchandise manufactured or produced outside
12 this state which are in transit through this state and consigned
13 to a warehouse or other storage facility, public or private,
14 within this state, for storage in transit prior to shipment to
15 a final destination outside the state, and which have acquired
16 a taxable situs within the state.

17 Stocks of merchandise do not lose their status as freeport
18 merchandise because while in the storage facility they are
19 assembled, bound, joined, processed, disassembled, divided, cut,
20 broken in bulk, relabeled or repackaged.

21 Any person, corporation, firm, partnership, association, or
22 other group seeking to qualify its property for inclusion in
23 this class shall make application to the state board of equali-
24 zation in such manner or form as may be required by said board.

25 The state board of equalization shall establish standards,
26 rules and regulations for the guidance of county assessors and
27 assessing freeport merchandise.

28 Class Eight. Any improvement on real property valued at not
29 more than fifteen thousand dollars (\$15,000), which is owned and
30 actually occupied by a widow, with or without minor or dependent

1 children, or by:

2 (1) a widow sixty-two (62) years of age or older, whether
3 with or without minor dependent children, or

4 (2) a widower sixty-five (65) years of age or older,
5 whether with or without minor dependent children, or

6 (3) a widow with minor or dependent children regardless of
7 age, or

8 (4) a recipient of retirement benefits not exceeding one
9 hundred fifty dollars (\$150) per month, if single, or two
10 hundred fifty dollars (\$250) per month if married. Provided
11 such owner and occupier is not gainfully employed to such an
12 extent as would render him or her ineligible for social security
13 benefits, should he or she be otherwise eligible for such benefits,
14 and does not have income from all sources, excluding retirement
15 benefits as mentioned in (4) hereinabove, in excess of one
16 thousand five hundred dollars (\$1,500) per year. Provided,
17 further, that one who applies for classification of property under
18 this class must make an affidavit before the county assessor of the
19 county in which said property is located, on a form as may be pro-
20 vided by the state board of equalization supplied without cost
21 to the applicant, as to his income, if applicable, as to his
22 retirement benefits, if applicable, or, as to his marital status,
23 if applicable, and to the fact that he or she actually occupies
24 such improvements with right of the county welfare board to
25 investigate the applicant on the completion of the form, as to
26 answers given on the form. Provided, further, that the value
27 of said property shall not increase during the life of the
28 recipient of retirement benefits or widow or widower covered
29 under this class.

30 Class Nine. ~~All-property-not-included-in-the-class-(C)~~

1 preceding classes. Stocks of merchandise of all merchants and
 2 manufacturers, except mobile homes.

3 Class Ten. All property not included in the nine (9)
 4 preceding classes."

5 Section 2. Section 24-302, R.C.M. 1947, is amended to
 6 read:

7 "24-302. Basis for imposition of taxes. As a basis for
 8 the imposition of taxes upon the different classes of property
 9 specified in the preceding section, a percentage of the true
 10 and full value of the property of each class shall be taken as
 11 follows:

12 Class 1. One hundred per cent (100%) of its true and full
 13 value.

14 Class 2. Twenty per cent (20%) of its true and full value.

15 Class 3. Thirty-three and one-third per cent (33 1/3%)
 16 of its true and full value.

17 Class 4. Thirty per cent (30%) of its true and full value.

18 Class 5. Seven per cent (7%) of its true and full value.

19 Class 6. Forty per cent (40%) of its true and full value.

20 Class 7. Seven per cent (7%) of its true and full value.

21 Class 8. Twenty per cent (20%) of its true and full value.

22 Class 9. ~~Forty per cent (40%)~~ Twenty-two per cent (22%)
 23 of its true and full value in 1970, eleven per cent (11%) of its
 24 true and full value in 1971, and one per cent (1%) of its true
 25 and full value in 1972 and each year thereafter.

26 Class 10. Forty per cent (40%) of its true and full value."
 27

House BILL NO. *284*

INTRODUCED BY *Edward P. Whitney*

Charles J. Reichert *Burnet*

84-301

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 84-301, REVISED CODES OF MONTANA, 1947 RELATING TO CLASSIFICATION OF PROPERTY FOR TAXATION, TO INCLUDE TELEPHONE COMPANIES SERVING RURAL AREAS AND CITIES AND TOWNS HAVING A POPULATION OF 800 PERSONS OR LESS AND WITH AVERAGE CIRCUIT MILES FOR EACH STATION OF MORE THAN ONE AND ONE-QUARTER MILES, IN CLASS FIVE (b); REPEALING ALL ACTS OR PARTS OF ACTS IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE".

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 84-301 R. C. M. 1947, is amended to read as follows:

"84-301. Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land by any person or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of

1 the family residence; all agricultural and other tools, implements
 2 and machinery, gas and other engines and boilers, threshing machines
 3 and outfits used therewith, automobiles, motor trucks and other
 4 power-driven cars, vehicles of all kinds except mobile homes, boats,
 5 and all watercraft, harness, saddlery and robes.

8 Class Three. Livestock, poultry and the unprocessed products
 7 of both; stocks of merchandise of all sorts, together with furniture
 8 and fixtures used therewith, except mobile homes; and all office or
 9 hotel furniture and fixtures.

10 Class Four. (a) All land, town and city lots, with improvements,
 11 and all trailers affixed to land owned, leased, or under contract
 12 or purchase by the trailer owner, manufacturing and mining machinery,
 13 fixtures and supplies, except as otherwise provided by the consti-
 14 tution of Montana, and except as such property may be included in
 15 Class Five or Class Seven.

16 (b) Mobile homes without regard to the ownership of the land
 17 upon which they are situated, except those held by a distributor
 18 or dealer of mobile homes as part of his stock in trade.

19 Class Five. (a) All moneys and credits, secured or unsecured,
 20 including all state, county, school district and other municipal
 21 bonds, warrants and securities, without any deduction or offset;
 22 provided, however, that the terms "moneys and credits" as herein
 23 used shall not embrace the moneyed capital employed in the banking
 24 business by any banking corporation or individual in this state.

25 (b) All poles, lines, transformers, transformer stations,
 26 meters, tools, improvements, machinery and other property used and
 27 owned by cooperative rural electrical and co-operative rural tele-
 28 phone associations organized under the laws of Montana and those
 29 same items of property owned by all other persons, firms, corporat-
 30 ions and other organizations which are engaged in the business of
 31 furnishing telephone communications, exclusively to rural areas, or
 32 to rural areas and cities and towns provided that any such city or

1 town has a population of eight hundred persons or less; and pro-
2 vided further that the average circuit miles for each station on
3 the system is more than one and one-quarter (1 1/4) miles.

4 (c) All unprocessed agricultural products either on the farm
5 or in storage, irrespective of whether said products are owned by
6 the elevator, warehouse or flour mill owner or company storing the
7 same, or any other person whomsoever, and excepting livestock and
8 poultry and the unprocessed products of both.

9 Class Six. Property formerly included in this class is now
10 classified by section 84-308 of the Revised Codes of Montana, 1947.

11 Class Seven. (a) All new industrial property. New industrial
12 property shall mean any new industrial plant, including land,
13 buildings, machinery and fixtures which, in the determination of
14 the state board of equalization, is used by a new industry during
15 the first three (3) years of operation not having been assessed
16 prior to July 1, 1961 within the state of Montana. New industry
17 shall mean any person, corporation, firm, partnership, association,
18 or other group which establishes a new plant or plants in this
19 state for the operation of a new industrial endeavor, as distinguish-
20 ed from a mere expansion, reorganization, or merger of an existing
21 industry or industries. Provided, however, that new industrial
22 property shall be limited to industries that manufacture, mill,
23 mine, produce, process or fabricate materials, or do similar work
24 in which capital and labor are employed and in which materials un-
25 serviceable in their natural state are extracted, processed or made
26 fit for use or are substantially altered or treated so as to create
27 commercial products or materials; and in no event shall the term
28 new industrial property be included to mean property used by retail
29 or wholesale merchants, commercial services of any type, agriculture,
30 trades or professions. And provided further, that new industrial
31 property shall not be included to mean property which is used or
32 employed in any industrial plant which has been in operation in this

1 state for three (3) years or longer. Any person, corporation,
2 firm, partnership, association or other group seeking to qualify
3 its property for inclusion in this class shall make application to
4 the state board of equalization in such manner and form as may be
5 required by said board.

6 (b) Freeport merchandise. Freeport merchandise means those
7 stocks of merchandise manufactured or produced outside this state
8 which are in transit through this state and consigned to a warehouse
9 or other storage facility, public or private, within this state,
10 for storage in transit prior to shipment to a final destination
11 outside the state, and which have acquired a taxable situs within
12 the state.

13 Stocks of merchandise do not lose their status as freeport
14 merchandise because while in the storage facility they are assembled,
15 bound, joined, processed, disassembled, divided, cut, broken in
16 bulk, relabeled or repackaged.

17 Any person, corporation, firm, partnership, association, or
18 other group seeking to qualify its property for inclusion in this
19 class shall make application to the state board of equalization in
20 such manner or form as may be required by said board.

21 The state board of equalization shall establish standards, rules
22 and regulations for the guidance of county assessors and assessing
23 freeport merchandise.

24 Class Eight. Any improvement on real property valued at not
25 more than fifteen thousand dollars (\$15,000), which is owned and
26 actually occupied by a widow, with or without minor or dependent
27 children, or by:

28 (1) a widow sixty-two (62) years of age or older, whether with
29 or without minor dependent children, or

30 (2) a widower sixty-five (65) years of age or older, whether with
31 or without minor dependent children, or

32 (3) a widow with minor or dependent children regardless of age, or

1 (4) a recipient of retirement benefits not exceeding one hundred
2 fifty dollars (\$150) per month, if single, or two hundred fifty
3 dollars (\$250) per month if married. Provided such owner and
4 occupier is not gainfully employed to such an extent as would render
5 him or her ineligible for social security benefits, should he or
6 she be otherwise eligible for such benefits, and does not have in-
7 come from all sources, excluding retirement benefits as mentioned
8 in (4) hereinaabove, in excess of one thousand five hundred dollars
9 (\$1,500) per year. Provided, further, that one who applies for
10 classification of property under this class must make an affidavit
11 before the county assessor of the county in which said property
12 is located, on a form as may be provided by the state board of
13 equalization supplied without cost to the applicant, as to his in-
14 come, if applicable, as to his retirement benefits, if applicable,
15 or, as to his marital status, if applicable, and to the fact that
16 he or she actually occupies such improvements with right of the
17 county welfare board to investigate the applicant, on the completion
18 of the form, as to answers given on the form. Provided, further,
19 that the value of said property shall not increase during the life
20 of the recipient of retirement benefits or widow or widower covered
21 under this class.

22 Class Nine. All property not included in the eight (8) preced-
23 ing classes.

24 Section 2. Repealing all acts or parts of acts in conflict
25 herewith.

26 Section 3. This act is effective on its passage and approval.

SOUTH CAROLINA LEGISLATIVE SERVICE

HOUSE: McLeod, Fendley, Harwell
 Date: 2-19-69
 No. H-1276
 Referred to Ways and Means Committee.

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO SECTION 29 OF ARTICLE III OF THE CONSTITUTION OF SOUTH CAROLINA, 1895, RELATING TO TAXATION BASED ON THE ACTUAL ASSESSED VALUE OF LAND, SO AS TO PROVIDE THAT THE GENERAL ASSEMBLY MAY AUTHORIZE ASSESSMENT BASED ON THE USE TO WHICH LAND IS DEVOTED.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. There is proposed the following amendment to Section 29 of Article III of the Constitution of this State: add the following at the end of the section: "Provided, however, that the General Assembly may authorize the assessment of real property for taxation purposes based on the use to which such property is devoted and prescribe conditions for such assessment." so that, when so amended, the section shall read:

"Section 29. All taxes upon property, real and personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax. Provided, however, that the General Assembly may authorize the assessment of real property for taxation purposes based on the use to which such property is devoted and prescribe conditions for such assessment."

SECTION 2. The proposed amendment shall be submitted to the qualified electors at the next general election for representatives. Ballots shall be provided at the various precincts with the following words printed or written thereon: "Shall Section 29, Article III of the Constitution of South Carolina, 1895, be amended so as to provide that the General Assembly may authorize assessment of land for tax purposes based on the use to which such land is devoted?"

In favor of the amendment

Opposed to the amendment

Those voting in favor of the amendment shall deposit a ballot with a check or cross mark in the square after the words 'In favor of the amendment' and those voting against the amendment shall deposit a ballot with a check or cross mark in the square after the words 'Opposed to the amendment.'"

TENNESSEE

A QUESTION SUBMITTED TO THE PEOPLE IN
NOVEMBER, 1968, AND PASSED BY THEM

Question 3. Shall a convention be called to alter and reform Article II, Section 28 of the Constitution so as to require the classification of property into three classes for purposes of taxation, to wit:

Real Property
Intangible Personal Property
Tangible Personal Property

Provided that said Convention shall classify Real Property only into four (4) subclassifications, to wit:

(a) Public Utility Property, to be assessed at not less than 45 per cent or more than 55 per cent of its value, the exact percentage to be fixed by the convention;

(b) Industrial and Commercial Property, to be assessed at not less than 35 per cent or more than 45 per cent of its value, the exact percentage to be fixed by the convention;

(c) Residential Property, to be assessed at not less than 25 per cent or more than 35 per cent of its value, the exact percentage to be fixed by the convention; and

(d) Farm Property, to be assessed at not less than 20 per cent or more than 25 per cent of its value, the exact percentage to be fixed by the convention.

Exemption of tangible Personal Property. Said Convention shall further provide and establish an exemption, which shall cover a taxpayer's personal household goods and furnishings, wearing apparel and other such tangible property, the total of which exemption shall not be less than \$5,000 or more than \$7,500, as shall be determined by the Convention.

Exemption of Intangible Personal Property. The Convention shall further provide that money deposited in an individual's personal or family checking or savings account shall be exempt from taxes, in an amount to be determined by the convention.

No exemptions other than those specified herein shall be authorized by the Convention in the case of either tangible personal property or intangible personal property.

The ratio of assessment to value of property in each class or sub-class, as shall be established by the convention, shall be equal and uniform throughout the State, and each respective taxing authority shall apply the same tax rate to all property within its jurisdiction.

Said Constitutional Convention, if called, shall not be authorized to amend the Constitution so as to permit a personal income tax, except as already authorized under the present Constitution; and the said Convention, if called, may consider the further provision of Article II, Section 28, but no action taken shall be in conflict with the provisions hereof.

FOR THE CONVENTION
AGAINST THE CONVENTION

Voters will indicate their choice by placing a cross mark (x) opposite one or the other of the above expressions.

Mr. LANIER. I was to be followed by Dr. Rolf Weil, president of Roosevelt University. Dr. Weil, however, must respond to calls of his board of trustees and they called him to meet with them today. He regretted he could not be here. He, too, has testified before this subcommittee and the House committee on other occasions on this bill.

I would like to submit in his behalf, however, Mr. Chairman, a statement which simply says and illustrates that there are accurate ways in which to measure this discrimination and in which to determine what actions must be taken, and to what degree, to eliminate it. If I may submit that for Dr. Weil, I should appreciate it.

Mr. FRIEDEL. Dr. Weil's statement will be included in the record. (The statement of Rolf A. Weil follows:)

STATEMENT OF ROLF A. WEIL, PRESIDENT, ROOSEVELT UNIVERSITY

My name is Rolf A. Weil. I am president of Roosevelt University. My professional field is economics with a specialty in public finance in which area I hold a doctorate from the University of Chicago. For about 25 years I have had a special interest in the field of property taxation and, more specifically, in property equalization. This academic interest resulted in by employment in 1944 as a research analyst for the Illinois Department of Revenue where, for a period of two years, I was responsible for the determination of the levels of assessment for various taxing jurisdictions by the assessment ratio method. Throughout my teaching career I continued to work in this field. In 1951, the National Tax Journal published by study of property tax equalization in Illinois. Subsequently I have participated in and directed many assessment ratio studies for private industry and for governmental units. In September 1968, I delivered a paper on "Sales Ratios Equalization and the Transportation Industry" before the National Tax Association convention in San Francisco. Because of my interest in this field, therefore, I am particularly pleased to have been invited by the Association of American Railroads to appear before you today to express my views on H.R. 16245 and identical bills and more specifically on the subject of the feasibility of measuring discrimination in ad valorem taxation.

Uniformity of assessments must be a major objective of good property tax administration. Equalization by the states does not *per se* result in the attainment of the *desideratum* because of the defects in initial assessments. However, equalization as between assessment jurisdictions and as between State assessed and locally assessed property provides "statistical" justice, i.e., it reduces inequities, on the average.

In order for equalization to take place, the following prerequisites are essential:

1. Legislative or constitutional authorization,
2. Statistical studies to determine the actual level of assessments for various jurisdictions and/or classes of property.
3. Determination of the equalization level relative to "full value" and
4. Administrative willingness to carry out the legislative mandate.

Of these prerequisites the first poses no serious problems. With regard to the second it must be noted that the state studies are often inadequate, are not conducted frequently enough, and are often not published in complete detail. The *level* at which equalization is to take place may not be *as* important as the fact of equalization. Unfortunately, the fourth requirement is often the insurmountable obstacle. Through inertia at best, through malice and forethought at the worst, states have frequently been unwilling to implement equalization recommendations based on their own research and advocated by their dedicated civil servants. It is for this reason, above all, that actual or threatened court action frequently remains as the only remedy for a large segment of industry. This remedy unfortunately is not only costly but painfully slow.

State equalization of assessments is designed to remove four major inequities:

1. Instability and lack of uniformity in the application of tax rate and debt rate limits which are expressed as a percentage of assessed valuations,
2. Preferential treatment for low assessment districts in the distribution of state grants such as equalization aid to schools,
3. Variations in effective tax rates within taxing units overlapping two or more assessment jurisdictions.

4. Unequal treatment for state assessed as against locally assessed property.

It is the last of these four inequities that must be of particular concern to the transportation industry, to taxpayers and to tax administrators as a weakness in the property tax structure.

In recent years, railroads have been successful in litigation claiming an overpayment of taxes by the carriers because of a failure of State agencies to equalize centrally assessed property with local assessments. In essence, this involves a recomputation of the carrier's tax bill on the assumption of lower rates which would have prevail if local property had been properly equalized. In this testimony I intend to summarize some observations based on my experience with studies and litigations in such cases in Illinois, Iowa, Alabama, and Tennessee. In every one of these states substantial measurable discrimination has existed in past periods. The claim is sometimes made that whereas state agencies may certify that centrally assessed property is valued at the statutory level, it *de facto* is under-valued by the state very much in the same manner as local property is undervalued by local assessing officials. Experts in railroad and utility valuation concede an element of truth in this statement but do not argue that the underassessment of railroad property, where it occurs, is of the same order of magnitude as the underassessment of locally assessed real estate, not to mention personal property. The fact that in 1957, according to Dick Netzer, in a Brookings Institution study,¹ state-assessed transportation and public utility property accounted for about eight percent of all property tax revenues is prima facie evidence of relative overassessment of centrally assessed property.

In order to determine the degree of discrimination between centrally assessed railroad operating property and locally assessed real estate the assessment ratio method is typically used. It can be stated unequivocally that among experts in the field of property tax administration there is consensus that the level of real estate assessments can be accurately determined by this method. There can always be small sampling errors, but if proper techniques are used, such statistical error is administratively insignificant. Many refinements in this method have been developed and confidence in the results has been general. Moreover, the method has been accepted in many court cases as the best approach to the determination of the level of assessment of local assessed property. In a nutshell, the method consists of comparing the assessed value of property with the "full fair cash" value as determined by selling price or market appraisal of a large number of properties.

It is possible, therefore, to equalize property as between assessment jurisdictions at an agreed level fixed by statute, constitutional requirement, or administrative policy. In many states such equalization is carried out with various degrees of success, although the *de facto* equalization can be expected to take place at a level lower than that which was set as the objective. This results from the following influences:

1. An unwillingness to recognize the impact of inflation on values. Whereas real estate price levels have generally risen in recent years, local real estate assessments have usually lagged way behind market values. Centrally assessed property, however, is regularly reassessed;

2. A desire to keep assessments lower and, therefore, to make tax rate and debt rate limits more restrictive;

3. Attempts to make it easier for local school districts to levy the qualifying rates necessary to get State equalization aid, etc.

It is my observation, and I am certain that other experts would concur, that equalization as between assessment jurisdictions probably never occurs at the "announced" or "prescribed" level.

Railroad operating property, by contrast, is usually centrally assessed by state agencies. Typically, they are better staffed and more sophisticated than local assessors' offices. They value railroad systems under the "unit rule", that is in their entirety, allocate by formula what they consider the "fair" portion of system value to the particular state, equalize the state assessment at the "announced" or "prescribed" level, and then distribute these valuations to the taxing units so that they can be "spread" for tax purposes. It is my contention, based on extensive observation, that whereas state agencies are in a position to equalize railroad property at the "required" level they never seem to be prepared to go as far in their equalization attempts where local property is concerned. A couple

¹ Economics of the Property Tax. The Brookings Institution, 1966.

of years ago, for example, I helped direct a study of assessment levels in the State of Alabama for 1964. The evidence showed that real estate was assessed at about 16 percent whereas railroad operating property was valued at 40 percent.

For over twenty years, I have observed the terribly wasteful litigation necessary to get relief from property tax discrimination against railroads and other centrally assessed utilities in many states. Such litigation is unfairly time-consuming and slow in producing remedies. As an economist, however, I must point out that court action by the carriers, in fact, serves the public interest and should be streamlined by permitting the carriers prompt access to the federal courts to combat gross discrimination. The taxing units, and, particularly, hard pressed school systems, may, of course, in the short run lose much needed revenue if large refunds have to be paid to centrally assessed railroads and utilities as a result of litigation. In the long run, however, the following developments may actually improve their fiscal problems.

1. Equalization at a higher level of assessment may result from legislative or administrative action, thus broadening the tax base and reducing the restrictiveness of tax rate limits.

2. Sole or primary reliance on the property tax may decline, resulting in a more diversified and healthier tax base.

3. Local expenditures may, to a larger extent, become financed by state tax sources via shared taxes or grants-in-aid.

In conclusion, I would like to state that whereas litigation resulting from the lack of equalization has provided some relief for the transportation industry, the remedy is too costly and too slow. Moreover, it must be recognized that the shifting of the burden of taxation to the centrally assessed railroad or utility is often based on short-sighted self-interest. In the long run the impact of discrimination on the cost of doing business, and subsequently on prices and rates of return, may interfere with an efficient allocation of the nation's resources, and, therefore, with the nation's economic welfare.

My research on cases in Alabama, Illinois, Tennessee, Florida, Iowa, etc., indicates clearly that severe discrimination can be measured through the use of assessment ratio studies. Effective remedies must be found in the public interest. In my judgment, legislation such as proposed in H.R. 16245 providing for recourse to the federal courts in case of discrimination and avoiding the arduous process of drawn-out state litigation should be forcefully pushed towards enactment.

Mr. FRIEDEL. I want to thank you, Mr. Lanier. There is no question in my mind you did your homework and gave us some good examples of why this law is needed.

I have no other questions. Mr. Pickle?

Mr. PICKLE. Are there any groups opposing this legislation?

Mr. FRIEDEL. The next witness will answer that.

Mr. LANIER. There is one witness here in opposition.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. No questions.

Mr. FRIEDEL. Our next witness will be Mr. Charles Otterman, chief counsel for the State Board of Equalization in California.

Do you have a prepared statement?

STATEMENT OF CHARLES OTTERMAN, CHIEF COUNSEL, CALIFORNIA STATE BOARD OF EQUALIZATION

Mr. OTTERMAN. I do not have a prepared statement. I must apologize for this, but the notice of hearing reached our office just yesterday. I knew that the committee was going to meet, but there was no opportunity to prepare a statement.

Mr. FRIEDEL. How long do you think you would want to take?

Mr. OTTERMAN. Not more than 15 or 20 minutes, Mr. Chairman, if that is permissible. I want to ask the indulgence of the committee on another point, Mr. Chairman.

Mr. Charles Conlon, on behalf of the 27 tax administrators, 27 States, the National Association of Tax Administrators, has a statement that he has given to me and I have given it to the clerk. I would ask that his statement on behalf of NATA with the accompanying documents be made part of the record.

Mr. FRIEDEL. That will be included in the record following your testimony, Mr. Otterman.

Mr. OTTERMAN. Now, specifically on behalf of the California State Board of Equalization—and I am chief counsel of that board, which is a constitutional agency in California charged with assessing of utility and railroad properties—Mr. Chairman, I would like to file, not for the record, but for the file, a document entitled "Assessment Practices of the State Board of Equalization," which I have here, which fully and forthrightly sets forth the assessment practices of the State of California with respect to utility and railroad properties.

I think that if this document is referred to, it will show very clearly that there is no discrimination against railroad properties in the manner in which we value them. I particularly want to call attention to pages 23, 24, 25 of this report in which our State board of equalization adopted a resolution in 1968 which recognized that there was still a very small difference in the assessment ratios between utility properties and local properties assessed by local assessors.

This is a historical situation that came about for economic reasons and not for reasons of pointing discrimination at railroads or utilities. However, the board has taken positive steps to remove and by the year 1973, if we proceed at the same speed we are now, all indication is under this resolution that there will be absolute equality between the utility properties and the common properties.

We are reducing at 2 percentage points each year. This year our utility properties are 31 percent ratio. The common properties are required under State law in 1971 all to be assessed at 25 percent. So in just a very few years there will be absolute equalization.

Mr. FRIEDEL. You say you are reducing discrimination by 2 percent each year.

Mr. OTTERMAN. That is 2 percentage points. That is much more than 2 percent.

Mr. FRIEDEL. What is the discrimination?

Mr. OTTERMAN. The extent of nonequality is the difference between a present ratio of utility properties at 31 percent of market value versus a percentage for the locally assessed properties, which is a statewide average of 23 percent but are required to be assessed at 25 percent.

The actual announced ratios do vary from achieved ratios because of the difficulty of achieving an absolute fine point, but the extent is 31 versus 25 and will be removed.

Mr. Chairman, the State board of equalization joins with the tax administrators in opposing the bills. We feel that the bills do several things that are very bad for the States and that is in the way they are drafted. They actually interfere with the proper classification of property by a State and I will be quite specific in this in relation to California.

For example, the bill requires that the property of the carriers be compared with all other property. In California we have classifica-

tion of property for open-space land by a constitutional amendment. This is not all agricultural property, so it would not come all within the 2(c) provision previously mentioned. We also for purposes of State policy have an assessment ratio for tuna vessels at 1 percent of full cash value. We have a homeowners' exemption of \$750 of assessed value for homeowners; veterans' exemption of \$1,000 for certain veterans.

We have a 50-percent exemption for business inventories, and we have other things that I won't mention in detail, but all these things are done for policy reasons aside from discrimination against railroads. They are to help other segments of business or other taxpayers.

For example, the homeowners' exemption is to balance the tax-loads, looking at the whole California tax structure, between income taxes, sales taxes, and property taxes. Now, under the bill and the bills, the transportation property would have to be compared with all other property. And that means the type of property I am talking about, if you read the bill in its plain language.

Now, the committee report from the Senate—

Mr. FRIEDEL. If, for instance, a railroad has a big office building and there is another office building right alongside it, properly comparable, are they both assessed the same?

Mr. OTTERMAN. The railroad office building in California would be identical to the other building, because in California the only differential in assessment is on the operating property. The office building would be at 25 percent, the same as any other office building. All non-operating properties of railroads are at 25 percent right now.

Mr. FRIEDEL. Is the discrimination on the moving property, the rolling stock?

The operating property is the tracks, the cars, and such. But the non-operating property—and there is a lot of it in California—there are land-grant railroads in California and the nonoperating properties are all at 25 percent. And, Mr. Chairman and members, I think that if the intention is to compare, so that the railroads get equal treatment, some amendment to these bills is necessary to get around the 2(c) provision which only allows to take out agricultural and growing timber. In other words, I think that the comparison should be, if the bill is going to be put out, between transportation property and all other general property—in other words, not a comparison between railroad property and homeowners' property. There may be a homeowners' exemption. Or not a comparison between railroad property and our tuna boat property, because this is not the aim.

It is the general property rate or base that we should be talking about.

Then, secondly, there is another problem in this bill with respect to tax rate. The railroads under this bill would get the lowest tax rate in the taxing district. There is also a differential tax rate in some cases.

In our State, for example, Mr. Chairman, we tax baled cotton at one-tenth of 1 percent of its market value. This is quite different. So if you literally read this the railroads would be entitled to one-tenth of 1 percent because the bills refer to no higher tax than applicable to any other property in the taxing district.

Now I think that if changes were made, as I have suggested, to talk in terms of general property rather than all property, and to talk in

terms of tax rates on general property, we would be in a much better situation. It would not interfere with our legitimate types of classification that are not in any way aimed at interstate commerce carriers.

Mr. Chairman, I would like to make a request to the committee, on behalf of the 27 States who participated in Mr. Conlon's statement and on behalf of California also, because of the shortness of time and the notice here. I would request that the record might be held open a reasonable time and I would hope we might have 2 weeks. It takes a long while to get 27 States to come in and I am sure there are a number of States that would like to enter statements.

Mr. FRIEDEL. The record will be open for at least 10 days. Try to get it in within 10 days.

(See pp. 112-130 for the letters referred to.)

Mr. OTTERMAN. Thank you, Mr. Chairman. I greatly appreciate it. Thank you, gentlemen.

Mr. FRIEDEL. Does that conclude your statement?

Mr. OTTERMAN. That does at the moment.

Mr. FRIEDEL. Mr. Pickle, any questions?

Mr. PICKLE. Is my State, Texas, one of those that would be in your organization or which would join in protestation of this measure?

Mr. OTTERMAN. I can answer that in one second, Mr. Pickle.

Texas is not included in the list, Mr. Pickle.

Mr. FRIEDEL. Is Maryland included in the list?

Mr. OTTERMAN. Maryland is, Mr. Chairman.

Mr. FRIEDEL. Is Ohio included?

Mr. OTTERMAN. Ohio is, Mr. Chairman.

Mr. PICKLE. I would like to ask the gentleman a question. Your principal objection seems to be to the language, I assume, on page 2 of the bill which referred in line 14 to an assessed value of all other property. And your contention is the word "all" is too broad?

Mr. OTTERMAN. I suggest it is too broad, Mr. Pickle.

Mr. PICKLE. Do you have a more specific recommendation other than the use of the word "general property"?

Mr. OTTERMAN. Not other than—

Mr. PICKLE. Do you have a copy of a suggested amendment?

Mr. OTTERMAN. Yes. Mr. Conlon at page 14 of his statement has included specific language to take care of that problem.

Mr. PICKLE. That is the statement you are going to file with the committee?

Mr. OTTERMAN. That statement has already been filed.

Mr. PICKLE. We will make reference to that then.

Mr. OTTERMAN. On page 3 of the bill, at lines 8 and 10, there have to be some changes made there because this limits it to agricultural and growing timber. I will be happy to include specific language in the letter I will file with the committee in the open period.

Mr. PICKLE (presiding). I as one member would be glad for you to submit a suggested amendment that might more appropriately get at the problem you talk about.

Mr. OTTERMAN. We will do that, Mr. Pickle. (See letter dated June 12, 1970, p. 93, this hearing.)

Mr. PICKLE. You gave an example in California of an office building which would be assessed at the rate of 25 percent.

Mr. OTTERMAN. It would be just like any other office building.

An office building owned by a railroad which houses its own business offices would be considered operating a unitary property and hence the State assessment ratio of 31 percent for 1970 is used. However, a building owned by a railroad but leased out to others would not be assessed as part of the unitary property and the 25-percent ratio would be applied.

Mr. PICKLE. What property do you assess at 31 percent, or the high figure?

Mr. OTTERMAN. The operating properties—which would be the rights-of-way—the rolling stock, and the general equipment that you need to run the railroad.

Mr. PICKLE. For my information why tax them at a higher rate than the office building?

Mr. OTTERMAN. It was historical. Back 30 some years ago all property in our State was 50 percent of value. Then we had a constitutional amendment which made the State board of equalization as assessing agency of utility properties. But other properties remained with county assessors.

Now, the State continued to hold the 50-percent level fairly well, but during the war periods when property was going up very fast, the local assessors lagged in bringing up their assessment ratios. Our own legislature made a study and found there was a discrepancy in 1959 and we began bringing the State assessed properties and locally assessed properties together gradually.

This has been done and has been done steadily. We brought them down from 50 to 31 and we will now within 3 years hit 25.

Mr. PICKLE. If this discrepancy applies to the office building, shouldn't it also apply to rolling stock and other equipment?

Mr. OTTERMAN. The rolling stock is just part of the unitary—we assess as a unitary operation. We do not separately assess each railroad car or each piece of track. We take the whole, the railroad as a whole, and then allocate portions of it. We do not separately consider the cars in the unitary value.

Mr. PICKLE. Your reason is it is just a historical development?

Mr. OTTERMAN. Yes, sir. The discrepancy, sir.

Mr. PICKLE. If it is historically developed in one instance, why isn't it historically true in the other, in the office building case?

Mr. OTTERMAN. The cars themselves are in the unitary assessment, so it is true that they are rather 31 percent as being a component of the whole operating railroad.

Mr. PICKLE. And you say you are closing the gap?

Mr. OTTERMAN. That gap is being closed.

Mr. PICKLE. Your objective is to have equalization to both types of property?

Mr. OTTERMAN. That has been our prime objective on all types of property.

Mr. PICKLE. That is the purpose now of the legislation.

Mr. OTTERMAN. Yes, sir.

Mr. PICKLE. You are within 6-percent discrimination in the instance you make. As I understand it, the bill passed by the Senate has a 5-percent discrimination, is that correct?

Mr. OTTERMAN. As I read the Senate bill, it is a 5-percent tolerance before injunction could be granted.

Mr. PICKLE. Then we are, in effect, within that bracket now, so why would you object, then, if we are within one point difference in what the bill would actually accomplish?

Mr. OTTERMAN. For several reasons we object. We feel the Federal courts should not be intruded into this area, for one thing.

Mr. PICKLE. Of course, the purpose of the bill is that we would be able to give some relief to the ICC Act and as such would use the Federal courts as a vehicle. There is no other way to have it done?

Mr. OTTERMAN. There is access to the Federal courts at the present time if the State remedies are not speedy, and adequate. If the Federal court finds this, that is.

Another witness mentioned this and mentioned difficulties he had in a particular case, but this bill allows access to the Federal courts even though the State remedies are efficient and speedy and adequate. And we think that this intrudes the Federal court into an area where it is going to build litigation.

It will just carry on for years, because you have to make a comparison between market value and assessed value. To get market value you need a bunch of expert witnesses.

Mr. PICKLE. Would it not follow that if you did have the measure and would provide this relief, that would probably decrease litigation, because that would hasten the equality of the tax?

Mr. OTTERMAN. We think it would lead to litigation in Federal courts because of some of the other things I mentioned—this all property bit. If the bill were straightened out technically, I think that maybe—California probably would not have any trouble with it.

Mr. PICKLE. You submit your version of the amendment you think it might take to correct this measure.

(The following letter was received for the record:)

STATE BOARD OF EQUALIZATION,
Sacramento, Calif., June 12, 1970.

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

DEAR MR. FRIEDEL: I greatly appreciate your courtesy extended to me during the June 9 hearings on S. 2289 and H.R. 16245 to submit further comments as well as to suggest clarifying amendments in line with Congressman Pickle's questions.

During the hearing I pointed out that there is a serious lack of congruity between the actual bill language and the expressed purpose that the bill was not intended to interfere with the rights of a state to establish separate classifications for such things as homesteads, churches, etc. It is respectfully submitted that S. 2289 as presently drafted expressly requires a comparison of transportation property with *all* other property and that the definition of "all other property" contained at page 3, lines 8 to 10, is so explicit as to prevent excluding from such comparison any property other than agricultural and timber property. The comparison, for the sake of equality, should be between transportation property and other commercial property and accordingly should exclude residential property and church property, etc., from comparison.

It also appeared to me that what the railroads were saying is that they wanted to have discriminatory assessment ratio practices struck down by the federal courts and that it was not their intention to intrude the federal courts into fact adjudication as to the true market value of railroad property and locally assessed property for the purpose of assessing. It is my view that the language of the bill as presently drafted could actually operate to give the railroads some preferential tax treatment arising from a state's preferential classification of non-business property, such as homesteads. This is occasioned by the bill's use and definition of the term "all other property" and the application of a tax rate for transportation property comparable to any other property, i.e., the *lowest* rate.

There are enclosed suggested amendments to S. 2289 which are intended to give more precision to the bill and clearly make the comparison of transportation property, including railroad property, to other commercial property and to make it clear that the federal courts would not be involved with actually fixing market or assessed values. They would simply be concerned with discrimination in the use of ratios established from values already determined by the state and local assessing officers. There is also suggested language to make available to the courts the published ratios of value promulgated by a state agency.

For inclusion in the record and the use of the Subcommittee there are also enclosed five copies of this letter with attachments and a letter dated May 15, 1970, from Mr. H. F. Freeman, Executive Secretary, California State Board of Equalization to Congressman Harley O. Staggers which further explains our position.

Sincerely,

CHARLES H. OTTERMAN,
Chief Counsel.

SUGGESTED AMENDMENTS TO S. 2289 AS PRINTED FEBRUARY 2, 1970

AMENDMENT NO. 1

On page 2, strike out lines 12 to 17, inclusive, and insert :

Interstate Commerce Act on the basis of an assessment ratio which is higher than the general average assessment ratio prevailing in the assessment jurisdiction for other commercial property subject to a property tax levy in proportion to its value; (b) the collection of any

AMENDMENT NO. 2

On line 21, strike out "any other" and insert :

other commercial

AMENDMENT NO. 3

On page 3, strike out lines 8 to 10, inclusive, and insert :

"(c) The term 'other commercial property' means taxable property, real or personal, used primarily for business purposes other than for the purposes of agriculture or the growing of timber.

"(d) The term 'assessment ratio' means the ratio of assessed value to true market value of property, as those values are established by an assessing officer or agency in the process of assessing property for taxation according to value. Where a State agency periodically determines and promulgates general average assessment ratios for the several assessment districts of the State, those determinations shall be prima facie evidence of the general assessment ratios of the respective assessment districts.

STATE BOARD OF EQUALIZATION,
Sacramento, Calif., May 15, 1970.

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

DEAR MR. STAGGERS: The California State Board of Equalization wishes to make known to you its opposition to S. 2289, which is now pending before the House Interstate and Foreign Commerce Committee. Our Board is the constitutional agency of the State of California charged with the assessing of utility properties of the type that are owned or used by the class of carriers covered by the provisions of the bill.

In summary, our objections are :

(1) The bill provides for undue and direct federal interference with state and local property taxation, and would thereby deprive the several states of the legitimate exercise of policy considerations in the classification of property for tax purposes. Specifically, we would point out that although the report of the Senate Committee on Commerce (Report No. 91-630) states at Page 11 that it is not intended to abrogate the right of a state to establish separate rates for the different traditional classes of property, viz., real property, tangible personal property and intangible property, nor to restrict state action in extending total or partial exemption to property of a class such as churches, charitable institutions, homesteads, and the like, there is a serious lack of congruity between the bill language itself and this Committee statement. The bill by its express terms

declares unlawful the assessment of transportation property at a value which bears a higher ratio to the true market value of such property than the ratio with respect to all other taxable property. Under Sec. 25a(1)(c) the term "all other property" is defined to mean all property, real or personal, other than land used primarily for agricultural purposes or primarily for the purpose of growing timber. Thus, the bill language is quite express, and the construction of the Senate Committee would be open to serious question.

(2) Perhaps more importantly, we are concerned with the overriding of Section 1341 of the Judicial Code which would be accomplished by Sec. 25a(3) so as to allow the injunctive processes of the federal courts to interfere with state assessment and taxation of transportation property, even though there exist speedy and adequate remedies under existing law. Inevitably Sec. 25a(3) would get the federal courts deeply into the assessment field for which their proceedings are not suited. The section also raises a substantial constitutional issue. While the federal courts properly may deal with the question of whether a tax is valid or void in its entirety, the question of partial invalidity was proscribed in the case of *Moses Lake Homes, Inc. v. Grant County*, 365 U.S. 744 (1961). We believe that the letter of December 9 from Deputy Attorney General Richard G. Kleindienst to Senator Magnuson, contained at Page 19 of the Senate Committee report, rather clearly makes this point.

When and if S. 2289 is referred for hearing, we would appreciate the opportunity to submit further detailed testimony or statements respecting our objections to the bill.

Sincerely yours,

H. F. FREEMAN,
Executive Secretary.

Mr. PICKLE. Mr. Devine?

Mr. DEVINE. No questions.

Mr. PICKLE. Mr. Adams?

Mr. ADAMS. No questions.

Mr. PICKLE. We thank you.

(The statement of Charles T. Conlon, executive secretary, National Association of Tax Administration, with attachments, follows:)

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

Since this hearing on S. 2289 was scheduled on short notice, it was not feasible to contact the tax departments of the several states in time to permit the presentation of individual statements. However, the tax agencies of the 27 states subscribing below, which have jurisdiction over the assessment of railroad property, have previously expressed their opposition to S. 2289 in the joint statement which follows. This position is also endorsed by the resolution of the Southeastern Association of Tax Administrators of July 23, 1969, and by previous resolutions of the National Association of Tax Administrators and the Western States Association of Tax Administrators opposing substantially similar bills in previous congresses.

In opposing S. 2289, the state tax departments stress these points. First, state court remedies are adequate to deal effectively with assessment discrimination cases and state courts have in fact been widely utilized for that purpose. Second, legislation of this kind is unnecessary because the tax departments of the several states have made substantial progress in eliminating discriminatory assessments not only on carrier property but on all types of property, and they are continuing their programs to that end. Third, federal legislation of the type contemplated would restrict the power of state legislatures, in a practical sense, to classify property for assessment or taxation in order to carry out well-defined state legislative policies—for example, incentives for better land use, to encourage the location of industry, for homestead tax relief and for old-age property tax relief, to mention a few.

These points have been developed at some length in the statement submitted on an earlier bill, H.R. 4972, before the full committee and, since that statement appears in the printed record of the hearings on H.R. 4972, the comments that follow here are devoted to an updating of earlier reports on state programs to eliminate assessment discriminations, a review of the trend of railroad assessments in the states using the centralized assessment approach and a discussion

of the proposition that the remedial provisions of S. 2289 constitute an abrupt departure from existing federal policy in respect to the use of injunctive proceedings to challenge the validity of state and local taxes.

PROGRESS IN ELIMINATING DISCRIMINATION

In November 1968, the Committee on Railroad and Utility Valuation of the Western States Association of Tax Administrators submitted its report on the status of equalization programs in the eleven western states (exclusive of Alaska and Hawaii). This report, a copy of which is attached, shows the assessment ratios for railroad property and locally assessed property in the western states over an eleven-year period from 1957 to 1967. The trend indicated in this report is one of continuous improvement. The Western States Committee pointed out that in some cases the railroad assessment ratio is decreasing and in others the local assessment ratio is increasing, but in all states the two ratios are approaching equality. The Committee's assessment ratio table is supplemented by one appendix describing the actions taken by the state tax agencies of the western states in the course of their efforts to correct assessment disparities and by a second appendix describing the actions taken by state legislatures in the western states to improve assessment procedures and to achieve a higher degree of equalization of property tax assessments.

Two additional significant developments might be mentioned here: the authorization of funds in Idaho to conduct a broad reappraisal program and the declaration by the California Board of Equalization in respect to its official policy to continue to pursue equalized ratios between state-assessed and locally-assessed property.

In other parts of the country, court action has resulted recently in mandates to equalize property tax assessments in Alabama and Tennessee. In Kentucky, the assessment equalization program has now become fully effective.

The findings of the Western States Association's Committee are borne out on a national basis by the following data on trends in railroad assessments and new investment by railroads:

*Railroad property assessed by State agencies**

[Assessed value in millions]

Year:		
1956	-----	\$6, 546
1961	-----	5, 939
1966	-----	5, 102

*New investment in plant and equipment—Railroads**

[Amount in millions]

Year:		
1956-60	-----	\$5, 300
1962-66	-----	7, 070

*Source: Railroad assessment data—Census of Governments, 1957, 1962, 1967, *Taxable Property Values*, Table 2. Investment: Department of Commerce, *Survey of Current Business*, July 1959, September 1961, 1963, 1964, 1966, June 1968, 1969.

These figures show that in the period between the 1957 Census of Governments and the 1962 Census, assessments of railroad property by state agencies declined \$607 million while the railroads were investing \$5,300 million in new plant and equipment. In the next five years, between the 1962 Census of Governments and the 1967 Census, assessments of railroad property by state agencies declined another \$837 million while the railroads made new investments in plant and equipment in the amount of \$7,070 million.

Obviously, these figures do not tell the whole story. In several states railroads are subject to special taxes in lieu of ad valorem property taxes and in others railroad property is assessed locally rather than by a state agency. The assessed value figures shown in the table do not include these local assessments nor do they include any values for the rail properties in the in-lieu states. The figures on investment, on the other hand, represent the aggregate of new investments in railroad property in all the states. It must also be recognized that in the periods compared, the railroads had substantial write-offs of earlier investment through depreciation and retirements. Nevertheless, it is significant—in evaluating the trend of assessments on railroad property—that the new investment by railroads in plan and equipment (\$7,070 million) in the latest inter-censal

period was 40 percent higher than the total amount of railroad property assessments in the last year of the inter-censal period in those states where railroad property is state-assessed, that is, in about two-thirds of the states.

EXCESS TAXATION OF RAILROAD PROPERTY

The railroad industry has presented data showing the amount of alleged excess taxes paid by virtue of the fact that railroad property is assessed at a higher proportion of its true value than other property. The Western States Committee, in the report referred to previously, has analyzed these figures and concludes that these industry estimates of excess tax payments are substantially overstated. This is so because the estimates of excess payments appear to have been made by multiplying the alleged excess valuation by the applicable tax rate. But this procedure will not give the correct answer. If a substantial amount of valuation is removed from the assessment base of the taxing district, a new tax rate would have to be computed to produce the amount of property tax revenue originally levied by the taxing district. This rate will be a higher rate than the one computed previously and the result is a higher tax bill for that proportion of the railroad property assumed to be correctly assessed.

Another point that needs to be taken into account in estimating excess tax payments is the fact that some railroad property may be assessed locally. In that case it would be assessed at the local ratio. As an example of how the figures change when both these factors are considered, the Western States Committee estimates that the amount of alleged excess tax payments by the railroads in California is less than \$5 million and not the \$12.8 million cited in the railroad exhibit. And, as noted earlier, the California State Board of Equalization is on record officially to pursue equalized ratios for all property.

The matter of assessment levels cannot be considered apart from the basic valuations put on properties of all kinds including railroad property. In the discussions of this subject in previous hearings on identical or somewhat similar bills, there are many references to the findings in the Doyle Report¹ which are derived from a study made in 1957. Concededly, the Special Study Group did not make an independent appraisal of the validity of the data presented in this study. However, the group did regard the data as confirming its own judgment that state and local assessment procedures did in fact discriminate against railroad property. In his letter of January 21, 1969, responding to the invitation of the chairman of the Committee on Commerce, the Honorable Warren G. Magnuson, to comment on the Doyle Report, Mr. D. M. Fisher raised several important questions about the estimating procedures used by the Special Study Group in arriving at its conclusions.

One of these questions relates to the proportion of taxes chargeable to road and track properties. The figure for the division of taxes between roadway and equipment in Oregon was estimated at 54 percent by the Special Study Group. A careful study of the data by the Oregon Tax Commission suggests that 75 percent would be more accurate.

The Doyle Report states that the Class I railroads paid a tax of 9.3 percent on the assessed value of roadway properties whereas other similarly taxed property paid only 3 or 4 percent of assessed value. Mr. Fisher points out in his letter to the chairman that this estimate confuses assessed values with the value of railroad land and land rights reported by the Interstate Commerce Commission. The ICC values of land and land rights do not represent present values. Rather, they are based on values at various appraisal dates extending back to the period 1910-1914. Moreover, the ICC values relate only to land parcels and easements and do not include structures or improvements. If the amount of taxes paid is compared with only a portion of the value of railroad property, naturally these tax payments will appear to be very high when expressed as a percentage of such partial values. However, as Mr. Fisher demonstrates, when the railroad tax payments under study in the Doyle report are compared with the assessed value of all railroad operating property, railroad taxes as a percentage of value are quite comparable to the average rate of taxation on property generally. He concludes, therefore, that the grave disparity referred to at pages 459-461 of the Doyle Report does not in fact exist.

¹ *National Transportation Policy*, preliminary draft of a report by the Special Study Group on Transportation Policies in the United States, 87th Cong. 1st sess.

THE INJUNCTIVE PROCESS IN TAX LITIGATION

The remedial provisions of S. 2289 represent a sharp departure from existing policy which forbids the courts of the United States to entertain jurisdiction of suits to enjoin, suspend or restrain the assessment or levy of a state tax where a plain, speedy and efficient remedy may be had at law or in equity in the courts of the state. This is the essence of section 1341 of the Judicial Code (Title 28 United States Code), which stems back to the passage of S. 1551 in 1937. In its report on the bill,² the Senate Judiciary Committee made reference to the fact that it is common practice for the statutes of the various states to forbid actions in state courts to enjoin the collection of state and local taxes and that these statutes generally provide that taxpayers may contest their taxes only by suit for refund after payment under protest. This type of state legislation makes it possible for the states and their various agencies to survive while long-drawn-out tax litigation is in progress. The Judiciary Committee then went on to say:

If those to whom the Federal courts are open may secure injunctive relief against the collection of taxes, the highly unfair picture is presented of the citizen of the State being required to pay first and then litigate, while those privileged to sue in the Federal courts need only pay what they choose and withhold the balance during the period of litigation.³

The situation which S. 1551 in the 75th Congress was intended to remedy was described in the Committee report as follows:

The existing practice of the Federal courts in entertaining tax-injunction suits against State officers makes it possible for foreign corporations doing business in such States to withhold from them and their governmental subdivisions, taxes in such vast amounts and for such long periods of time as to seriously disrupt State and county finances. The pressing needs of these States for this tax money is so great that in many instances they have been compelled to compromise these suits, as a result of which substantial portions of the tax have been lost to the States without a judicial examination into the real merits of the controversy.⁴

This bill, which became the Act of August 21, 1937, the predecessor of the present section 1341 of the Judicial Code, applied to suits by any foreign corporation and to any type of tax.

It is by no means suggested that the use of injunctive procedures by the carrier industry, as provided in S. 2289, and even then only in respect to ad valorem property taxes, would have potentially disruptive effects on state and local finances of the magnitude described in the congressional committee report. In a particular tax district, it is possible, of course, that a substantial amount of the total property tax levy might be subject to restraint under the provisions of S. 2289. In general, though, the impact would be much less than in the case where all state taxes were vulnerable to suits for injunctions in the courts of the United States. Nevertheless, the remedy authorized by S. 2289 is in derogation of the principle underlying the present section 1341 of the Judicial Code. The fact that the injunctive remedy would be available to a limited class of taxpayers and to a single form of taxation does not change the principle.

It is important to recognize, as the Judiciary Committee report emphasized, that the Act of August 21, 1937, the present section 1341, does not take away any equitable right of the taxpayer or deprive him of his day in court. Jurisdiction to enjoin in tax controversies is not withdrawn from the courts of the United States except where there is a plain, speedy, and efficient remedy at law or in equity in the courts of the state. If there is no adequate remedy in the state courts, a full hearing and judicial determination of the controversy by the courts of the United States is assured. That was the law when the Act of August 21, 1937 was passed by Congress and it is still the law. The effect of S. 2289 is to allow a carrier taxpayer the option to litigate his tax controversy in the courts of the United States through the injunctive process rather than through the pay and sue process which other taxpayers must follow in state courts. Furthermore, the bill gives a carrier taxpayer this option even though a speedy and efficient remedy is available in the state courts.

S. 2289 also involves two legal questions which have been the subject of extended comment previously and a brief reference to them will suffice here. The first one involves the asserted simplicity of the S. 2289 remedy for disposing of

² S. Report No. 1035, 75th Congress, 1st Session.

³ S. Rep. No. 1035, pp. 1 2.

⁴ S. Rep. No. 1035, p. 2

controversies about the assessment level. If a carrier's property were assessed and taxed on a state-wide basis by reference to a single assessment and a single tax rate, the assertion would be tenable. But if this were the case, the remedy in the state court would be equally simplified.

In general, however, the issue in these controversies is the validity of the assessment in *each* assessment district in which the carrier's property is subject to taxation; and in such a proceeding all the factors bearing on the validity of the assessment in that assessment district have to be taken into consideration.

The second question is whether the form of the remedy—an injunction against the collection of tax on that portion of the assessment declared to be excessive—really involves the courts of the United States in the assessment process. Since tax assessment is not a judicial function, this presents a constitutional question. The Department of Justice has raised this objection in its comments on S. 2289 and on similar bills introduced in previous Congresses.

THE ISSUE OF CLASSIFICATION

A major objection to S. 2289 is that in practice it would either inhibit or frustrate the use of the power to classify property for tax purposes in those states where the legislature has the power to do so. Assuming for the moment that S. 2289 does not require carrier property to be assessed at the same percentage of its value as the percentage used for some special purpose property, say the residence of a senior citizen, yet the question does arise if broader, general classifications are authorized under state law. One example is the classification of owner-occupied residential property at, say, 40 percent of true value and all other property (including carrier property), at, say, 60 percent of true value. Another example is a classification based on business versus nonbusiness use. Another classification system might put regulated public utility property in one category and all other business property in a different category for assessment purposes. This is not to argue the merits of classification over uniformity as the basis for the taxation of property. That question is one that must be decided by reference to state constitutional provisions and legislative choice. The issue here is whether Congress should in effect declare that carrier property cannot be included along with comparable property in an otherwise valid classification for assessment or taxation made pursuant to the constitution and statutes of a state.

THE STANDARDS IN THE BILL

It has been suggested on several occasions that the language of the bill which defines a prohibited discrimination is ambiguous and that it is open to interpretations that are sharply at variance with the intent of the bill as described by its proponents. To meet this objection the report of the Senate Committee on Commerce on S. 2289 includes an appendix B which explains how the provisions of the bill are to be interpreted and how the fact and extent of discrimination are to be established. But these comments are sharply at variance with the language of the bill as amended from the floor during passage. As passed, the bill plainly states that "all other property" means *all* real and personal property except agricultural and timber lands.

Explanatory comments are in no sense a substitute for precise draftsmanship in the first instance. If the bill means what Appendix B says it means, why not say it in the bill?

For example, if the intended standard of comparison is the *general* average assessment ratio, the language of the bill might refer to—

. . . the assessment . . . of transportation property . . . on the basis of an assessment ratio which is higher than the general average assessment ratio prevailing in the assessment district for property subject to a property tax levy. . . .
or preferably—

. . . on the basis of an assessment ratio which is higher than the general average assessment ratio prevailing in the assessment district for comparable property subject to a property tax levy. . . .

The second alternative insures that where carrier property is included along with other types of business property in a separate classification for assessment purposes, the standard of comparison will be the assessment ratio prevailing in the assessment for business property.

The references to tax rates may be similarly clarified by stating the standard as follows:

. . . at a tax rate higher than the tax rate generally applicable to taxable property in the taxing district . . .
or, again preferably,

. . . at a tax rate higher than the generally applicable tax rate for comparable property in the taxing district.

The second alternative would serve the same purpose as that described above in respect to the prevailing assessment ratio applicable to comparable property.

More precision in the statement of the standards could be achieved by defining the general average assessment ratio as the ratio between the aggregates of the assessed values and the true market value of taxable property and by further providing that where a state tax agency periodically determines and promulgates general average assessment ratios for the several assessment districts of the state, those determinations shall be prima facie evidence of the prevailing general average assessment ratio in the respective assessment districts.

It is, in fact, this type of general average assessment ratio which has been accepted by state courts to establish proof of discrimination in cases where the taxpayer claims his property is assessed at a higher percentage of its value than other property. The procedures used in the determination of such an average assessment ratio are generally recognized and accepted by taxpayers and tax departments alike.

These comments on the drafting problem are not in any sense intended as a waiver of the objections to the bill based on principle and practical grounds. They are submitted with the thought that they will serve to clarify the objective of the bill and to put the basic issues in sharper focus before the Subcommittee.

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

Alabama : Department of Revenue.
Arkansas : Assessment Coordination Department, Public Service Commission.
California : State Board of Equalization.
Florida : Department of Revenue.
Georgia : Department of Revenue.
Idaho : State Tax Commission.
Illinois : Department of Revenue.
Indiana : State Board of Tax Commissioners.
Kentucky : Department of Revenue.
Maryland : State Department of Assessments and Taxation.
Michigan : State Tax Commission.
Mississippi : State Tax Commission.
Missouri : State Tax Commission.
Montana : Board of Equalization.
Nebraska : Tax Commissioner.
North Carolina : State Board of Assessment.
North Dakota : Office of State Tax Commissioner.
Ohio : Department of Taxation.
Oregon : Oregon State Department of Revenue.
South Carolina : South Carolina Tax Commission.
South Dakota : Department of Revenue.
Tennessee : Tennessee Public Service Commission.
Utah : State Tax Commission.
Virginia : State Corporation Commission.
West Virginia : State Tax Department of West Virginia.
Wisconsin : Department of Revenue.
Wyoming : State Board of Equalization and State Tax Commission.

RESOLUTION UNANIMOUSLY ADOPTED AT THE 19TH ANNUAL CONFERENCE OF THE
SOUTHEASTERN ASSOCIATION OF TAX ADMINISTRATORS, NEW ORLEANS, JULY 20-23,
1969

Whereas, legislation has been introduced into the United States Congress (S. 2289) which deals with the assessment of transportation property of common carriers, and more particularly the ratio of assessments of such property to the true market value of the property as compared to other property, and the tax rate applied to such properties as compared to the tax rates of other properties, and

Whereas, the several states have taken, and are taking, effective steps towards the equalization of property tax assessments of common carriers and other types of property; and

Whereas, the Southeastern Association of Tax Administrators has carefully reviewed these bills and is concerned with these proposals and their impact upon state and local administration of property taxes, and has concluded that such proposals, if enacted, would seriously jeopardize state and local authority to resolve tax problems at the local level, and state and local authority to classify property within the state, now, therefore, be it

Resolved, that the Southeastern Association of Tax Administrators at its 19th annual meeting in New Orleans, Louisiana, held July 20-23, 1969, does hereby adopt a policy in opposition to the federal legislation typified by S. 2289 and encouraging the states to take positive steps toward administrative and legislative solution to any existing problems in this area; and, be it further

Resolved, that the Secretary of this Association be directed to inform all congressional committees considering such legislation and congressional delegations of the respective states of the Southeastern Association of Tax Administrators of the position of this association and ask them to take action against this legislation.

RESOLUTION VII—UNANIMOUSLY ADOPTED AT THE 17TH ANNUAL CONFERENCE OF THE WESTERN STATES ASSOCIATION OF TAX ADMINISTRATORS, PHOENIX, ARIZ., NOVEMBER 12-15, 1968

Whereas, the Association instructed its Committee on Railroad and Utility Valuation in September 1967 in Resolution VI to study the problem and issues embraced by, Senate Bill 927 of the 90th Congress, and

Whereas, he said Committee has made such a study and has subsequently issued a report thereon, and

Whereas, the Executive Committee has approved said report;

Now, therefore, be it resolved, that the Western States Association of Tax Administrators at its closing session on November 15, 1968 adopt said report as the opinion of this Association and that the secretary forward copies of the Report and this Resolution to members of the Senate Commerce Committee of the 91st Congress, and to the Senators of the fourteen western states.

RESOLUTION 9—UNANIMOUSLY ADOPTED AT THE 35TH ANNUAL MEETING OF THE NATIONAL ASSOCIATION OF TAX ADMINISTRATORS, SAN FRANCISCO, CALIF., JUNE 11-15, 1967

Whereas, legislation has been introduced into the United States Congress (H.R. 7205 and H.R. 431) which deals with the assessment of transportation property of common carriers, and more particularly the ratio of assessments of such property to the true market value of the property as compared to other property, and the tax rate applied to such properties as compared to the tax rates of other properties, and

Whereas, the several states have taken, and are taking, effective steps towards the equalization of property tax assessment of common carriers and other types of property; and

Whereas, the National Association of Tax Administrators has carefully reviewed these bills and is concerned with these proposals and their impact upon state and local administration of property taxes, and has concluded that such proposals, if enacted, would seriously jeopardize state and local authority to resolve tax problems at the local level, and state and local authority to classify property within the state, now, therefore, be it

Resolved, that the National Association of Tax Administrators at its thirty-fifth annual meeting in San Francisco, California, held June 11-15, 1967, does hereby adopt a policy in opposition to the federal legislation typified by H.R. 7205 and H.R. 431 and encouraging the states to take positive steps toward administrative and legislative solution to any existing problems in this area; and, be it further

Resolved, that the Executive Secretary of this Association be directed to inform all Congressional committees considering such legislation of the position of this Association.

OREGON STATE TAX COMMISSION,
Salem, Oreg., January 21, 1969.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: Mr. Stanton P. Sender's letter of December 19, 1968 invited inquiry and comment about the contents of the Doyle Report. The questions to be posed are intended to clarify the facts and not to debate the judgment of the Report.

TAXES CHARGEABLE TO ROAD AND TRACK PROPERTIES

In the bold type on page 459 and on pages 460 and 461 of the printed Report there is discussed the ad valorem tax attributed to roadway and track structures. Request is made for the formula used in making the segregation of taxes applicable to each roadway property and equipment where the unit value made by the assessing agency is not divided between roadway properties and equipment. My only first hand experience involves the taxes in Oregon and it is not possible from records in this Commission's files to approximate the same division that is shown in the table on page 461. If the formula were known or explained, possibly the resulting division could be accepted as being reasonable. The table on page 461 indicates in Oregon about 54% of the total tax is attributable to roadway and our method suggests about 75%.

PROPERTY TAXES AS A PERCENT OF ASSESSED VALUES

Assuming, but not conceding, that the \$182,698,670 (page 461) are the taxes paid on roadway and track properties, it is absolutely wrong (as I understand the data) to compare such taxes with \$1,959,387,000 which is the ICC present value of land and land rights only and which is *not* the assessed value of roadway properties. First, such ICC value is for land parcels and easements only and does not include any structures or improvements. To say that the railroads pay property taxes at a rate of 9.3% of assessed value (page 461) is wrong. Secondly, ICC present value of land and land rights are based on varying appraisal dates ranging from 1910-14 and 1917 in some cases to dates in the 1920's, 1930's and 1940's. They are called present value by ICC but in fact they are not so. Thirdly, if a rate of taxation is being sought, the taxes paid should be related to the assessed values found by the assessing agency and not some ICC value alleged to be present value.

Experience in Oregon, and I am sure it is so in many other states, is that because railroads have much property in rural areas their average tax rate is lower than the average of general property, not three times the normal maximum rate as is stated on page 461 of the Report. In some states of the Eastern U.S., the railroads may be located more in urban areas than in rural areas and hence might have a tax rate approaching the average local tax rate. It is inconceivable though that a railroad could pay much above the average rate unless substantially all its properties were in urban tax areas.

Statistics out of the 1957 Bureau of Census Report show that all property was valued at 272 billion dollars and had a tax levy of 12.86 billion dollars which results in a 4.74% average tax rate. Now using the 6.5 billion dollars in that same report as state assessed railroad value (and the schedule concedes that not all railroad property is included in this figure because some is assessed locally) and a tax levy of 348 million dollars (including levies on both centrally and locally assessed railroad property) shown on page 461 of the Doyle Report, there results an average tax rate of 5.35%. The total railroad value would need be only 7.3 billion dollars to produce a 4.74% average tax rate, using 348 million dollars as the tax levy. Or, if only the taxes for those states which have values included in the Bureau of Census Report's 6.5 billion dollars of railroad value are used, then the tax rate is 297.5 million divided by 6.5 billion or 4.6%. The point seems clear that the average rate of taxation on railroads is comparable to the average rate of taxation on all property and the grave disparity purportedly documented on pages 459, 460 and 461 does not in fact exist.

RAILROAD VALUES VS. ICC ELEMENTS OF VALUE

Railroad values have been subject to continual litigation within the States for many years. Some courts have reduced railroad values and the mere frequency of litigation has brought the attention of many States to the need for realistic

valuations. Maybe it is futile to attempt to make a nationwide analysis of railroad assessments because of peculiarities of state tax structures but it is believed that (at least in the West) the railroad valuations are quite realistic. The tone on pages 460 and 480 implies that railroad values are not fair. Assuming that the railroads in 1956-57 had an assessed value of 6.5 to 7.5 billion dollars and assuming the average assessment level on a national basis was 40% (somewhere in the statutory range of 25% to 50%), then the full or true cash value would approximate 7-40 or 18 billion dollars. Comparison of this \$18 billion figure with data of the 1956 ICC Elements of Value, as shown below, strongly suggests that assessing agencies have given substantial consideration to the adverse earnings position of the railroads in developing their valuations.

ICC ELEMENTS OF VALUE, 1956—CLASS I RAILROADS

	Reproduction cost new	Reproduction cost depreciated	Original cost new
Road.....	\$42,061,806,000	\$28,526,104,000	\$18,407,970,380
Equipment.....	16,297,447,000	9,358,765,000	11,487,744,130
Land values.....	1,983,497,511	1,983,497,511	1,983,497,511
Total.....	60,342,750,511	39,868,366,511	31,879,212,021

Though the Doyle Report is voluminous, covers many aspects of the nation's transportation and obviously is the result of much labor, it is unfortunate that a report whose very "focus" (page 480) was on land and right-of-way values should have erred so badly in depicting assessed values, ICC present values, taxes and their interrelationship. The Report of course is documented and widely circulated so it is impossible to correct errors in it. In any event, I would be very interested in learning if my observations made herein are accurate. If they are not, an explanation would be especially appreciated. If discrepancies do exist in the Report, then hopefully all members of the Senate Commerce Committee will be so advised.

IMPROVEMENT IN VALUATION AND EQUALIZATION SINCE 1957

Mindful that these comparisons of assessed values to ICC Elements of Value are for the 1956-57 era, it must be remembered that since then New York enacted its Railroad Tax Relief Act in 1959, railroads have been successful in Illinois litigations involving both valuation and equalization, California has moved a considerable way toward equalization of railroad property values with local property values, and Idaho has enacted legislation to accomplish equalization in about seven years. There are no doubt other examples of substantial corrective actions accomplished since 1957, making in 1968 an even more favorable comparison of assessed or true cash values with ICC values.

PERSONAL COMMENTS ON PRESENT DAY SITUATION

Mr. Sender indicated that the Committee would be interested in my views on the present day situation. The Western States Association of Tax Administrators report on S. 927 which is surely in your hands by now reflects my views on the present situation. (My interest in and exposure to S. 927 are the result of serving as the Chairman of the Committee on Railroad and Utility Valuation of Western States Association of Tax Administrators which Committee did draft the S. 927 report.) Probably the most disturbing aspect of S. 927 is the "intrusion" of the federal government into an already crowded field of administration in property taxation. Hopefully, the states can get their houses in order through state action in the areas of legislation, court cases and education thus obviating the need for a law such as S. 927. Everyone will concede that much progress toward equalization has been made in the past decade and very possibly the railroads can continue to tolerate some isolated inequities and consider the picture of taxation of railroads on an industry-wide basis. Secondly, the provision in S. 927 of equalization by taxing districts though possibly necessary in certain states would require severe and burdensome additions to administrative detail work in Oregon and many, many other states where the county is the assessing jurisdiction. In Oregon, it is recognized that the equalization program is in good shape and we would not fear attack under S. 927. Notwithstanding, S. 927 would require that equalization for those certain carriers would have

to be instituted for each individual taxing district within the county rather than equalization across the county as a whole.

This would be most burdensome and it is not believed that the railroads or the Senate Commerce Committee members appreciate the additional work that would be involved, even for a state that supposedly and admittedly now has equalization between carrier property and local property. Thirdly, on an industry-wide basis, it is felt that the railroads have experienced quite fair treatment on a valuation basis when full or true cash values are compared with reproduction cost less depreciation or original cost less depreciation. Railroad values should reflect an adverse earnings position and the values generally do. But valuation, especially in railroads, is not an exact science. A true answer to valuation sometimes defies solution. So all things become relative. The thing that lurks in the background (and this has been openly discussed with several important railroad men) is that if S. 927 is enacted there is a genuine possibility that state legislatures will move railroads out of the property tax field and use alternative methods of taxation such as a gross revenue tax. The end result then can very realistically be more burdensome on carriers than the present less than perfect property tax system.

Last but not least, my personal opinion is that discrimination in valuation and equalization of certain carriers does exist in certain places. I do not believe that it is right. As stated earlier, genuine improvement has been made in many states and further improvement is to be expected. It is recognized that the Congress has a duty to protect interstate commerce. However, it is firmly believed that the requirements in S. 927 are too severe and in the long run would be a disservice to industry and the public.

This letter has been quite long, but I appreciate the opportunity to write to you and your kind invitation to express my views.

Very truly yours,

D. M. FISHER,
Assistant Director, Property Tax Division.

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., December 19, 1968.

Mr. D. M. FISHER,
*Assistant Director, Property Tax Division, Oregon State Tax Commission,
Salem, Oreg.*

DEAR MR. FISHER: Senator Warren G. Magnuson, Chairman of the Senate Commerce Committee, asked me to reply to your recent letter concerning the Doyle Report and the data therein on railroad taxation.

The January 1961 draft report is the final report of that special group. As explained in the forward to the report, the special group's views were not adopted by the Senate Commerce Committee, but instead, were circulated for the views of interested groups.

The Doyle Report was an ad hoc committee which has been disbanded. Major General Doyle who headed the study is on the faculty at Texas A & M. Rather than updating the statistics, it would seem preferable for you to bring this information directly to the attention of the Chairman and the other members of the Senate Commerce Committee. The Commerce Committee members would, of course, be interested in having your views on the present day situation. Hearings were held on this subject in the last Congress, and I am enclosing a copy for your information.

Sincerely yours,

STANTON P. SENDER,
Transportation Counsel.

REPORT OF THE WSATA COMMITTEE ON RAILROAD AND UTILITY VALUATIONS ON
S. 927, NOVEMBER 9, 1968

INTRODUCTION

The following Resolution was adopted unanimously at the annual meeting of the Western States Association of Tax Administrators in Salt Lake City September 8, 1967:

"RESOLUTION VI

"Whereas, Senate Bill 927 is presently being considered by the United States Congress which deals with the assessment of transportation property of common carriers, and more particularly the ratio of assessments of such property to the true market value of the property as compared to other property, and the tax rate applied to such properties as compared to the tax rates of other properties; and

"Whereas, the several states have taken, and are taking effective legislative and judicial steps towards the equalization of property tax assessments of common carriers and other types of property; and

"Whereas, the Western States Association of Tax Administrators has a special Committee on Railroad and Utility Valuation studying and investigating solutions to the problem in this field of taxation and this Committee, after diligent study, has presented to the Association Part I of its recommendations for action by the several states; and

"Whereas, the Western States Association of Tax Administrators is concerned with the impact of Senate Bill 927 upon state and local administration of property taxes, and has concluded that such proposals, if enacted, would seriously jeopardize state and local authority to resolve tax problems at the local level, and state and local authority to classify property within the state.

"Now, therefore, be it resolved, that the Western States Association of Tax Administrators at its Sixteenth Annual Conference in Salt Lake City, Utah held September 5-8, 1967, does hereby adopt a policy in opposition to the Federal legislation typified by Senate Bill 927 and encourages the states individually and cooperatively to take positive steps toward administrative and legislative solution of any existing problem in this area as recommended by studies of the Committee on Railroad and Utility Valuation of the Association and directs this standing committee to expand its studies to include the problems and issues covered by this bill.

"Be it further resolved, that the Secretary of this Association be directed to send copies of this resolution to United States Senators, Warren Magnusson of Washington and Frank Lausche, of Ohio, and to the members of the Senate Commerce Committee, accompanied by copies of the report from the Committee on Railroad and Utility Valuation."

Pursuant to this Resolution the WSATA¹ Committee on Railroad and Utility Valuation makes this report covering the following subjects pertinent to legislation proposed in S. 927:

1. Past progress and present status of equalization between the assessed value of transportation property of certain common carriers and the assessed value of locally assessed property in the Western States.
 2. An evaluation of the effectiveness of state courts in equalizing assessment ratios between certain transportation property and locally assessed property.
 3. Some examples of the untenable impact of S. 927 on the states' property tax laws.
 4. Some legal inequities embodied in S. 927.
 5. An evaluation of the alleged excess taxation of railroads.
 6. Past and future programs by the NATA² and WSATA to promote validity and uniformity in the assessment of certain transportation property.
- If time and financial support were available much more research could be done on a nation-wide basis to document the allegations both for and against S. 927. The Committee presents this report because it believes that time is of the essence and that sufficient evidence has been assembled to raise serious questions concerning the validity of the assumptions underlying S. 927.

1. PROGRESS AND PRESENT STATUS OF EQUALIZATION PROGRAMS IN THE WESTERN STATES

It must be recognized that before any court or the Congress can conclude that a lack of equalization exists between property tax valuations of certain common carrier property and so-called locally assessed property (common property), an analysis must be made as to what in fact are the appraised (true market) values of these two types of property. Though this would be a Herculean task for any

¹ Western States Association of Tax Administrators.

² National Association of Tax Administrators.

court or committee, it is an essential prerequisite to drawing a valid conclusion as to whether a disparity does in fact exist.

The Committee has gathered certain data from the Western States (Alaska and Hawaii excluded). It is intended to portray the status and progress of equalization programs in the Western States and to refute to some degree statements and implications that have been made in behalf of S. 927.

Table I shows the assessment ratios used by the several Western States during recent years. The trend is obviously toward one of improvement. In some cases, the railroad assessment ratio is decreasing; in others, the local assessment ratio is increasing, but in all states the ratios are approaching equality.

Appendix A briefly indicates action taken by tax administrations (State Tax Commissions or State Boards of Equalization) in their efforts to correct disparities.

Appendix B briefly indicates action taken by State Legislatures to achieve equalization. Incidentally, in 1956 Colorado amended its Constitution empowering the Legislature to exempt household furniture and personal effects that were nonrevenue producing.

2. STATE COURT ACTIONS TO EQUALIZE ASSESSMENTS

Litigation has taken place in the following state court cases of recent date indicating quite strongly that the state judicial process when utilized will grant relief if it is justified:

(1) In *Chicago & North Western Ry. Co. v. State Board of Equalization and Assessment*, 101 NW 2d 873 (1960), the Nebraska Supreme Court held that the assessment of railroad property at 47½ percent of true cash value, when all other tangible property in the state was assessed at 35 percent of true cash value, was arbitrary and discriminatory, and the court granted relief to the taxpayer.

(2) In *Union Pacific RR Co. v. State Board of Equalization and Assessment* 101 NW 2d 892 (Nebr., 1960), under the same facts as those of *Chicago & North Western Ry. Co.*, the Nebraska Supreme Court held that the assessment of railroad property at a higher ratio than all other tangible property in the state was arbitrary and discriminatory and that the plaintiff railroad was entitled to relief.

(3) In *Union Pacific RR Co. v. State Tax Commission*, 232 Or. 521, 376 P 2d 80 (1962), the Oregon Supreme Court held that utility and railroad property could not be assessed at 117% of true cash value while other property is assessed at 100%.

(4) In *Southern Pacific Co. v. Cochise County*, 92 Ariz. 395, 377 P 2d 770 (1963), the Arizona Supreme Court held that railroad property could not be assessed at a higher rate than other property.

(5) In *Addington v. Board of County Commissioners*, 382 P2d 315 (Kansas, 1963), it was held that a rate of assessment fixed by the county clerk at more than 30 percent of true cash value of plaintiff's grain elevator, as compared to a ratio of 12 percent for other property in the county subject to the same levy, was so arbitrary, oppressive and grossly discriminatory that it destroyed equality and uniformity, and the taxpayer was entitled to relief.

(6) In *Idaho Telephone Co. v. Baird et al.*, 423 P2d 337 (Idaho, 1967) the Idaho Supreme Court held that a statute purporting to classify operating property (power lines, tracks, pipelines(etc.) for the purpose of imposing a higher ratio for ad valorem assessment was unconstitutional.

(7) In *Louisville and Nashville RR Co. v. Public Service Commission and State Board of Equalization*, 389 F2d 247 (1968), the 6th Circuit held that a systematic, intentional and long-standing policy of assessing railroad property within a state at a much higher percentage of actual cash value than the local assessors' cash value violated the uniformity clause of the Tennessee constitution, and constituted a denial of equal protection under the Fourteenth Amendment.

(8) In *Civil Case No. 31,340, the Utah Fourth District Court* in 1968 held that the State Tax Commission has the power to adjust, equalize and reassess property for tax purposes within counties and throughout the state. It denies county boards of equalization the power to change such reassessments. This decision will enable the Tax Commission to proceed with its equalization program which will, when concluded, equalize railroad assessments with the assessments of locally assessed property. This decision also reaffirms the necessity for equalization in Utah Constitution and Statutes.

TABLE I.—RATIO OF ASSESSED VALUE TO MARKET VALUE FOR RAILROAD PROPERTY AND LOCALLY ASSESSED PROPERTY WESTERN STATES

	Ratio of assessed value to market value by years											
	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	
California: ¹												
Railroad	.50	.50	.48	.46	.45	.42	.42	.41	.395	.38	.36	
Local	.236	.24	.234	.226	.235	.238	.231	.221	.218	.221	.232	
Colorado: ²												
Railroad	.50	.40	.375	.375	.35	.35	.35	.35	.333	.316	.30	
Local	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	
Idaho:												
Railroad	.489	.472	.439	.414	.372	.347	.326	.308	.307	.32	.3175	
Local	.143	.148	.150	.148	.154	.150	.147	.143	.134	.139	.135	
Montana: ²												
Railroad							.61	.583	.575	.548	.527	
Local							.385	.385	.385	.385	.385	
Nevada:												
Railroad	.35	.35	.35	.35	.35	.35	.35	.35	.35	.35	.35	
Local	.2822	.2838	.2841	.2732	.2888	.2917	.3399	.3317	.3236	.3255	.33	
Oregon:												
Railroad	.31	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	
Local	.24	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	
Utah:												
Railroad							.28	.28	.28	.28	.28	
Local							.174		.178	.181	.198	
Washington:												
Railroad				.319	.306	.292	.283	.271	.246	.229	.202	
Local				.196	.197	.197	.201	.198	.188	.209	.202	
Wyoming:												
Railroad							.25	.25	.25	.25	.25	
Local							.20-.30	.20-.30	.20-.30	.20-.30	.20-.30	

¹ Estimate based on an individual board member's opinion; unofficial because of no published statistics.² Probable average.

3. EXAMPLES OF THE UNTENABLE IMPACT OF S. 927 ON STATE PROPERTY TAX LAWS.

Basic to the whole problem, possibly, is the question of whether the states have a right to classify property as to different shares of the cost government that different classes of property may legally be required to carry. Extreme examples are the exemption of certain properties from taxation. These exemptions may be for social, economic, or administrative reasons and include examples such as: senior citizen homesteads; disabled veterans' residences; ships under construction; manufacturing plants under construction; industrial plants; personal property; certain forest lands; cooperative water systems; deciduous trees; personal property in transit; goods in process of manufacture; literary, charitable and religious organization properties, etc. Less extreme examples include licensing fees in lieu of property taxation and include examples such as motor vehicles, trailers, aircraft and watercraft. (A very substantial proportion of these examples are acting as common carriers.) Still other deviations from pure property taxation are "in lieu taxes" measures by a fixed percent of the gross earnings or gross rent earned in the state. Examples include private railroad cars, electric cooperatives, certain rural telephone properties, public utility districts and *even common carrier railroads*. Taxes "in lieu" of property taxes have frequently been enacted because equitable assessment within the confines of the property tax was deemed administratively impossible for special purpose, peculiarly situated properties.

And, finally, there exist just plain variable ratios for different classes of property when it is permitted within the Constitution and laws of the state.

So, it would pose problems, no end, if a law such as S. 927 were passed. How far would it reach? How disruptive would it be in the whole scheme of taxation in the individual state? This may be purely a legal question, but such a law as S. 927 would create terrific economic, fiscal, and property tax administrative problems in probably every state in the Nation.

4. LEGAL INEQUITIES IN S. 927

Another aspect of S. 927 which would be very difficult to accommodate is the injunctive process whereby tax collections would be arrested or halted for the alleged excess taxation if litigation is in process. In many western states railroad values amount to at least $\frac{1}{2}$ of the total value in numerous taxing districts. If such a substantial portion of the taxes levied were subject to injunction and thus impounded, a severe burden would be placed on local government finances. For local taxing districts to be denied operating funds pending a court decision would be a serious disruption of orderly government. Many states require payment of the tax levied and provide for adjustment of taxes after the litigation is completed in the state court. In this way government continues to operate without undue financial burdens. Also, this procedure tends to equalize the bargaining position between large taxpayers and local government.

If S. 927 were enacted, a natural question arises as to why common carrier property, such as railroads, should be given avenues of recourse different than those available to other property. The theoretical reply is that the Congress is attempting to protect interstate commerce. Actually, interstate commerce already has protection in state courts which makes unnecessary recourse to initial Federal court action.

5. AN EVALUATION OF THE ALLEGED EXCESS TAXATION OF RAILROADS

The Association's attention is invited to certain statistics that have been published by advocates of S. 927. The statistics are believed to have come from the Association of American Railroads and appear in the Doyle Report at page 487 and in later presentations to Committees of the Congress. The alleged correct property taxes to be paid by the railroads is patently wrong if it is developed (as it appears to be) by multiplying the actual taxes paid by a simple proportion of the relation of local property assessed value ratio to the railroad property assessed value ratio. (The excess alleged is then stated to be the difference between the amount actually paid and the amount computed using the reduced ratio of assessed value.) The amount of excess tax claimed is the absolute maximum that could possibly exist. Actually, to calculate accurately the excess taxation, a new valuation base would have to be computed for each taxing district and then a new tax rate would have to be computed. The new tax rate which

would obviously be higher (if railroad values were reduced) must be applied against the new railroad values to estimate the new railroad tax. It is a tremendous task to recompute the new railroad tax; however, this Committee is of the opinion that the alleged excess property taxes are substantially overstated.

This opinion is supported by 1965 data submitted by the Railroad Association that in California the tax relief would have been \$12,852,045 if a ratio of 22% had been used instead of 40%. Mr. H. I. Flournoy, Controller of the State of California, submitted a schedule showing that the 1965 tax relief would have been \$9,025,819 in California if the ratio had been 25% instead of 40%. There must be a more careful analysis of excess tax dollars because tax rates change when the valuation base is changed. This example strongly suggests that 70% of the alleged excesses is more realistic. Also, in California much railroad property is assessed at the local property ratio and is not included in the unitary (operating property) value against which is applied a higher assessment ratio pending completion of the orderly equalization now underway. According to information from the California State Board of Equalization, when only the unitary value of railroads (which has the higher ratio applied to it) is considered, the excess tax allegedly paid by railroads in the 1965 period is less than \$5 million and is neither the \$12.8 million alleged by the Railroad Association nor the \$9 million as stated by Mr. Flournoy.

Further, any property tax savings would show as additional income on the federal and state income tax returns. For example, if the railroads actually were given a \$50,000,000 property tax relief and if the average effective income tax rate (federal and state) was 40%, then \$20,000,000 would be paid as income tax and only \$30,000,000 is the net savings to the railroad. This is not to beg the issue, but rather to point out that not all the savings would inure to the railroads, as the allegations imply. When the net tax savings are ultimately spread over the entire railroad industry and when it is recognized that market valuations are not an exact science (with railroad properties probably being one of the most difficult to value and having probably the least reliable indicators of value to make a judgment of value), it is the Committee's opinion that the possible disparity of tax burden carried by the railroads as alleged is exaggerated to a substantial degree. A disparity may exist in some of the 48 states but, in the overall picture of the railroad industry, the magnitude of excess taxation is not sufficient to warrant enactment of such drastic legislation as is contemplated in S. 927.

Actually, *within* the framework of common carrier traffic alone, with which the Congress is concerned because much of it is in interstate commerce, there now exists a disparity of taxation between and among types of carriers and between and among states that should be a greater concern to the Congress than just the equalization of railroad property with so-called local property. For example, some states tax interstate water transportation properties and other states do not. And even in states where interstate water transportation property is taxed, it is done so at variable rates. In the case of commercial airline transportation properties, some states tax such properties and some states exclude such properties from taxation.

In the case of railroad properties, some states exempt them, others exempt their personal properties, others tax them on a gross revenue basis and some on an *ad valorem* basis. In the case of privately owned railroad cars (as distinguished from carrier-owned cars), some states exempt the cars, some tax them on varying percents of car rental earned in the state and some tax them on an *ad valorem* basis. Again, not to beg the issue, the states have substantial issues of assessment and taxation that would have a greater effect on railroad taxation in general than just the equalization of railroad values with local values. So, in effect, the railroad industry's plea, though having some merit in certain states, is not considered by the Committee to be of the highest priority in local tax administration. Examples of high priority items in local tax administration include but are not limited to: (a) taxation of more of those properties in the states that enjoy exemption (Federal, state, other government subdivisions); (b) contributions by exempt bodies to the cost of government; (c) compliance with local budget laws; (d) accurate and realistic local budgets; (e) funds to properly administer local tax laws; (f) lack of competent appraisal personnel; (g) preferential tax treatment for certain classes of property; (h) accurate reporting of personal property where taxable; and (i) proper appraisal methods and technique. These are some aspects of taxation that are receiving attention.

The states are best equipped to resolve all of these inter-related taxation

problems, just one of which is the equalization of railroad values with other property values. Social and economic conditions vary from state to state and it is this Committee's opinion that these problems should be resolved by the States rather than imposing a federal law in the property tax field indiscriminately upon all the states. Further, this committee has grave doubts about the wisdom of the Federal government's movement into the property tax field, the only revenue source left exclusively to the states and local governments. Following the usual sequence of events, implementation of S. 927 would result in federal action in all facets of the property tax field.

6. EFFORTS OF NATA AND WSATA TO PROMOTE VALIDITY AND UNIFORMITY IN TRANSPORTATION PROPERTY ASSESSMENTS

Finally, the Congress should have their attention invited to the continuing efforts made toward uniformity of assessments of railroad and utility properties through the technical committees of tax associations. Publications that summarize the studies and deliberations of these committees include:

- (1) 1945 National Association of Tax Administrators Report on Taxation of Airlines.
- (2) 1949 National Association of Tax Administrators Report on Allocation of Railroads.
- (3) 1954 National Association of Tax Administrators Report on Unit Valuation.
- (4) 1960 Western States Association of Tax Administrators Report on Allocation of Utilities and Airlines.
- (5) 1967 Western States Association of Tax Administrators Report (Part I) on Railroad and Utility Valuation.

These are not the only reports that have been made by tax associations, but they are listed to illustrate that the states through their Association are diligently and continuously improving the valuation and allocation of the far-flung properties such as air, water and rail transportation and utilities. Progress in raising the standards of assessment and taxation of these properties has been quite substantial and there is every reason to expect this pattern to continue without any imposition of federal legislation such as is contemplated in S. 927.

For example, the WSATA has directed its Committee on Railroad and Utility Valuation to pursue a continuing program of developing and promoting improved and more uniform valuation and allocation procedures through collaboration among the states' technical personnel. The Committee has firm plans to pursue such a program.

SUMMARY

In summary, it is the Committee's opinion that the states through their legislative, executive and judicial processes are taking progressively corrective measures to bring about equalization between assessments of common carrier properties (such as railroads) and locally assessed properties. For this reason, legislation such as S. 927 is not needed.

To implement a legislative act that would require immediate and exacting equalization would impose a severe shift in taxation that would be severely detrimental to orderly government operations. Many relatively small local taxing districts would have such a substantial reduction of their valuation base that they would be in a serious economic plight.

Also, the requirement of equalization within each taxing district would impose a very large and near impossible task in those states where the county, for example, is the basic assessment district and the individual subdivisions of government are the taxing districts.

Committee membership as of the date of this report includes:

V. L. Nielsen, Jr., Arizona	James J. Noel, Nevada
Richard Nevins, California	D. M. Fisher, Chairman, Oregon
A. A. Hall, Colorado	M. H. Kerr, Secretary, Utah
Harold Johnson, Vice-Chairman, Idaho	Clyde Rose, Washington
Howard H. Lord, Montana	Earl A. McKay, Wyoming

APPENDIX A

California—The State Board of Equalization began action in 1959 to bring about equalization of assessment ratios between "railroads and utilities" and "local property."

- Colorado—The Tax Commission has lowered railroad assessment ratio consistently toward uniformity with local property.
- Idaho—The Tax Commission has implemented an annual uniform adjustment of assessment ratios to insure that all property be assessed at 20% of full cash value by January 1, 1977.
- Montana—The State Board of Equalization has lowered railroad assessment ratios and raised the assessment ratio on locally assessed property in the implementation of the statewide reclassification and reappraisal program enacted by the Montana Legislature in 1957. These programs have improved the equality between railroads and locally assessed property.
- Nevada—The Tax Commission has assisted counties in reappraising local property and in 1967 the State Board of Equalization ordered new values of local property placed on the rolls when county officials refused to accept the new values.
- Oregon—The Tax Commission supervised a statewide reappraisal of local property beginning in 1951 and finishing in 1961. Sales ratio studies are performed annually to check on the standard of current appraisals.
- Utah—The Tax Commission has been engaged vigorously during the last five years in reappraisal of local property to raise the level of assessments.
- Washington—The Washington State Department of Revenue has vigorously pursued a program over the last several years to bring about equalization between "Railroad and Utility" and "local assessed property", achieving complete uniformity of assessment in 1967.
- Wyoming—The reappraisal by a professional appraisal firm of all railroads operating in the State has now been completed. The 1968 assessments were fixed by the Board at 25% of full value. All railroad assessments which were in excess of 25% of full value have been reduced to this percentage and any below 25% were increased to that figure.

APPENDIX B

- California—The 1957 Legislature ordered a study to be made of assessment practices in California. The published report is a very extensive one that is the basis of much of the action since taken by the State Board of Equalization. The 1966 Assessment Reform Law requires all locally assessed property to be at 25% ratio by 1971.
- Colorado—The Legislature appropriated funds in 1947 and 1950 for the Tax Commission to reappraise local property on a statewide basis. Further legislation was enacted in 1964 and 1967 that all property is to be assessed at 30% of actual value except oil and gas production, metalliferous mines and Freeport merchandise which are governed by separate statutes.
- Idaho—The Legislature in 1967 passed laws requiring all property to be assessed at 20% ratio by 1977. Also, an Interim Tax Study Committee was appointed to study and recommend valuation techniques, and many other facets of property tax administration.
- Montana—The Legislature in 1957 passed a Classification and Appraisal Act which is largely responsible for raising values of local property.
- Nevada—The Legislature has ordered all property to be assessed at 35% of full cash value and has given the Tax Commission specific authority over county officials to insure compliance.
- Oregon—The Legislature provided funds for one-half the cost of the statewide reappraisal program and through continuing legislation has supported a strong property tax program.
- Utah—The Legislature in 1953 passed an act which requires the State Tax Commission, on a continuous county by county rotation basis and in cooperation with the various county assessors, to make a valuation of all taxable property in each county at least once every five years. As a result, the State Tax Commission embarked on a reappraisal program which is continuing.
- Wyoming—Apparently no particular action has been required.

RESOLUTION VII

Whereas the Association instructed its Committee on Railroad and Utility Valuation in September 1967 in Resolution VI to study the problem and issues embraced by Senate Bill 927 of the 90th Congress, and

Whereas the said Committee has made such a study and has subsequently issued a report thereon, and

Whereas the Executive Committee has approved said report;

Now therefore, be it resolved, that the Western States Association of Tax Administrators at its closing session on November 15, 1968 adopt said report as the opinion of this Association and that the secretary forward copies of the Report and this Resolution to members of the Senate Commerce Committee of the 91st Congress, and to the Senators of the fourteen western states.

(The following letters from various State tax commissions were received for the record :)

MULTISTATE TAX COMMISSION,
EXECUTIVE OFFICES,
Denver, Colo., June 15, 1970.

HON. SAMUEL N. FRIEDEL,
Chairman, Subcommittee on Transportation and Aeronautics, House of Representatives, Rayburn Office Building, Washington, D.C.

DEAR CONGRESSMAN FRIEDEL: At the request of Mr. Roy E. Nickson, Secretary of the Nevada Tax Commission and Treasurer of the Multistate Tax Commission, I enclose herewith a copy of the Resolution which this Commission passed at our meeting on October 28, 1968, at Colorado Springs. A copy of this resolution was forwarded to the Surface Transportation Subcommittee of the Senate, Senator Vance Hartke, and the provisions of this resolution were taken into account at that time in the Senate. Three of our five recommendations were accepted by the Senate Committee and were incorporated into the bill prior to its passage into the Senate. We are, of course, very pleased that the Congress has thusly taken into account the strong efforts of this Commission's Property Tax Committee to find a middle ground satisfactory to the proponents of the bill and was acceptable to most of the states which it would affect.

We are concerned that your Subcommittee has not given similar consideration to the work of the Commission's Committee on Withholding for Non-Resident Employees in Interstate Commerce even though we have supplied it with the results of the study of the problem, a copy of which I also enclose herewith. Our committee has directed its efforts not only at the problem of withholding but also to the problem of taxation of the income of a carrier employee in more than one state. Our Commission at its recent meeting in Chicago adopted both of these provisions but your Subcommittee has not yet taken these actions into account.

We are most concerned about *withholding* provisions. As to the other matter of restricting the authority of the states to tax income earned within their borders, there is some question as to whether it is proper or even constitutionally possible for the Congress to do so. At our June 4 and 5 meeting in Chicago, New York raised strenuous objections to that portion of the committee's recommendation which would result in such a restriction.

I enclose for your consideration a draft copy of a proposed federal bill which reflects, at the federal level, the position which our Commission has taken at the state level and which would, we believe, produce the results which Congress desires by limiting to one the number of states for which an employer of a carrier employee must withhold. As the attached commentary indicates, however, this provision takes a different approach than do H.R. 1240, H.R. 11634, and S. 2044. We believe that the difference is important. We hope that you will agree and that the Congress will incorporate our proposed suggested changes into the legislation under consideration.

This Commission is attempting to help the Congress and the states in mutual efforts to attain solutions to problems which affect state and local taxation of interstate commerce. We hope that our efforts can be helpful to both the Congress and the states, and that the efforts of the states through this Commission will continue to receive from Congress the type of attention and consideration which have been extended to it with respect to its enclosed resolution pertaining to S. 2289.

Sincerely,

EUGENE F. CORRIGAN,
Executive Director.

By S. D.

Enclosures.

MULTISTATE TAX COMMISSION,
EXECUTIVE OFFICES,
Kansas City, Mo.

RESOLUTION

Whereas representatives of the Multistate Tax Commission have participated in extensive discussions with representatives of the railroad industry during the past several months for the purpose of seeking areas of agreement with respect to Senate Bill S. 2289; and

Whereas the Multistate Tax Commission could not support Senate Bill S. 2289 as now written, but does recognize that the purposes of the bill, as understood by the Multistate Tax Commission, have merit; and

Whereas it is felt that a statement of the principles to which both the Multistate Tax Commission and the railroad representatives can adhere would be helpful to the Congress in rewording said bill into a form acceptable to both;

Now therefore: The Multistate Tax Commission, in general session assembled this 28th day of October, 1969 at Colorado Springs, Colorado, adopts the following statement of principles for presentation to the Congress at this time with respect to Senate Bill S. 2289:

1. The uniform assessment between carrier property and other property generally should be within each local assessment jurisdiction (i.e. county, city, township, etc.) rather than within each taxing district.

2. The basis of comparison with respect to assessment ratios should be between transportation property and other taxable property generally, i.e., a policy decision by a state to grant such partial exemptions as those for veterans, senior citizens, homesteads, and "green belts", etc., should not be used to reduce the ratio derived for other taxable property generally.

3. The "tax rate" should be the rate of tax on taxable property generally levied by each taxing district, and not the combined levy of all taxing districts in which the property is located.

4. A reasonable area of deviation in the average assessment level for other taxable property generally be allowed before relief be granted under the bill.

5. In view of the stated position of the carriers that they have never supported the bill in the hopes of using it to bring a pure valuation case in the federal courts, the question of true market value of carrier property should not be a subject for federal court action under the bill.

* * *

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 wherein more than 50% of income is earned; and in order to exempt certain wages and salary of employees from taxation under the laws of States or subdivisions thereof other than the State wherein more than 50% of income is earned or the State of employee's residence, or both.

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 for other than State wherein more than 50% of income is earned; and exemption of such wages and salary from taxation by other than State wherein more than 50% of income is earned or the State of employee's residence."

"SEC. 26. (a) No part of the wages or salary paid by any railroad, express company, or sleeping car company, subject to the provisions of this part, to an employee who performs his regularly assigned duties as such an employee on a locomotive, car, or other track-borne vehicle in more than one State, shall be taxed pursuant to the laws of any State, or any subdivision thereof, other than the State or subdivision wherein more than 50% of said employee's income is earned or the state in which the employee resides; nor shall any part of said wages or salary be withheld for tax purposes pursuant to the laws of any State, or any subdivision thereof, other than the State or subdivision wherein more than 50% of said employee's income is earned, except as provided herein below. The percentage of each employee's income that is earned in any state shall be that percentage arrived at by taking a fraction, the numerator of which shall be the miles traveled by that employee in said State during the calendar year and the denominator of which shall be the total miles traveled everywhere by said employee while in the employ of the carrier for the calendar year. If the employee does not earn more than 50% of his compensation from said carrier in any one State during the calendar year, then withholding shall be required only for the State of the employee's residence.

"(b) The term "employee" shall mean only those persons whose primary responsibility is the operation of vehicles operated by any railroad, express company, or sleeping car company subject to the provisions of this part as a member of the crew or operational team on such vehicles.

"(c) Any employer subject to the provisions of this part shall furnish an information return to only: (1) the resident State of each employee and (2) the State for which withholding of tax has been required.

"(d) 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 for other than State wherein more than 50% of income is earned; and exemption of such wages and salary from taxation by other than State wherein more than 50% of income is earned or the State of employee's residence, or both."

"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 taxed pursuant to the laws of any State, or any subdivision thereof, other than the State or subdivision wherein more than 50 percent of said employee's income is earned or the state in which the employee resides; nor shall any part of said wages or salary be withheld for tax purposes pursuant to the laws of any state, or any subdivision thereof, other than the state or subdivision wherein more than 50 percent of said employee's income is earned, except as provided herein below. The percentage of each employee's income that is earned in any State shall be that percentage arrived by taking a fraction, the numerator of which shall be the miles traveled by that employee in said State during the calendar year and the denominator of which shall be the total miles traveled everywhere by said employee while in the employ of the carrier for the calendar year. If the employee does not earn more than 50 percent of his compensation from said carrier in any one State during the calendar year, then withholding shall be required only for the State of the employee's residence.

"(b) The term "employee" shall mean only those persons whose primary responsibility is the operation of vehicles operated by any motor carrier subject to the provisions of this part as a member of the crew or operational team on such vehicles.

"(c) Any employer subject to the provisions of this part shall furnish an information return to only: 1) the resident State of each employee and 2) the State for which withholding of tax has been required.

"(d) 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 said section a new section as follows: "Exemption of certain wages and salary of employees from withholding by other than State wherein more than 50% of income is earned; and exemption of such wages and salary from taxation by other than State wherein more than 50% of income is earned or the State of employee's residence, or both."

"Sec. 323. (a) 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 taxed pursuant to the laws of any State, or any subdivision thereof other than the State or subdivision wherein more than 50 percent of said employees' income is earned or the state in which the employee resides; nor shall any part of said wages or salary be withheld for tax purposes pursuant to the laws of any State or any subdivision thereof other than the State or subdivision wherein more than 50 percent of said employees' income is earned, except as provided herein below. The percentage of each employee's income that is earned in any state shall be that percentage arrived at by taking a fraction, the numerator of which shall be the actual time worked by said employee in said State during the calendar year and the denominator of which shall be the total time worked everywhere by said employee while in the employ of the carrier for the calendar year. If the employee does not earn more than 50 percent of his compensation from said carrier in any one State during

the calendar year, then withholding shall be required only for the State of the employee's 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 state wherein more than 50 percent of income is earned; and exemption of such wages and salary from taxation by other than state wherein more than 50 percent of income is earned or the state of employee's residence.

"Sec. 324. Separability of provisions."

"(b) The term 'employee' shall mean only those persons whose primary responsibility is the operation of vehicles operated by any water carrier subject to the provisions of this part as a member of the crew or operational team on such vehicles.

"(c) Any employer subject to the provisions of this part shall furnish an information return to only: 1) the resident State of each employee and 2) the State for which withholding of tax has been required.

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 State wherein more than 50 percent of income is earned; and exemption of such wages and salary from taxation by other than State wherein more than 50 percent of income is earned or the State of employee's residence."

"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 taxed pursuant to the laws of any State, or any subdivision thereof, other than the State or subdivision wherein more than 50% of said employee's income is earned or the state in which the employee resides; nor shall any part of said wages or salary be withheld for tax purposes pursuant to the laws of any State or any subdivision thereof other than the State or subdivision wherein more than 50% of said employee's income is earned, except as provided herein below. The percentage of each employee's income that is earned in any state shall be that percentage arrived at by taking a fraction, the numerator of which shall be the scheduled flight time of said employee in said State during the calendar year and the denominator of which shall be the total scheduled flight time of said employee everywhere while in the employ of the carrier for the calendar year. If the employee does not earn more than 50% of his compensation from said carrier in any one State during the calendar year, then withholding shall be required only for the State of the employee's residence.

"(b) The term "employee" shall mean only those persons whose primary responsibility is the operation of vehicles operated by any air carrier subject to the provisions of this part as a member of the crew or operational team on such vehicles.

"(c) Any employer subject to the provisions of this part shall furnish an information return to only: 1) the resident State of each employee and 2) the State for which withholding of tax has been required.

"(d) 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 State wherein more than 50% of income is earned; and exemption of such wages and salary from taxation by other than state wherein more than 50% of income is earned or the State of employee's residence, or both."

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.

* * *

COMMITTEE COMMENTS ON PROPOSED UNIFORM BILL FOR INCOME TAX
WITHHOLDING FOR EMPLOYEES OF INTERSTATE CARRIER

I.

The assumptions which the Committee made in pursuing its recommendations were:

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.

II.

Purpose: This model act has been arranged to allow inclusion in the appropriate portion of states' existing statutes. Thus:

1. Section A pertains to withholding and should be incorporated into the withholding portion of the adopting states' statute.

2. Section B pertains to the actual imposition of the tax and may be incorporated into that portion of the statute which imposes the tax; or, as an alternative, with modification it may be added to that portion of the states' statutes prescribing allocation of compensation.

3. Section C pertains to estimated returns when required and should be incorporated into that portion of the statute pertaining to that subject. Note that Subsection A(6) and Section C are identical. In some states' statutes, it may be that the inclusion of Section C in the estimated return portion of the statute may remove the need for including Subsection A(6) in the withholding portion of the statute.

III.

The Committee has considered the possibility that in some cases the employer will not know, early in the calendar year, in which if any state the employee will earn more than 50% of his compensation. In such cases, the employer is expected to withhold for that state in which he reasonably expects, the employee's performance of services to generate the employee's withholding liability under the provisions of paragraphs A(2)(a) and (b). Where the employer cannot reasonably predict that more than 50% of the employee's compensation will be earned in any one state, then the employer should withhold for the state of residence. If it subsequently becomes apparent or likely that 51% of the employee's compensation will have been earned in a different state than that for which withholding has been made to date, the employer should then start withholding for the former state and stop withholding for the latter state. Should he find it feasible and desirable to do so, at the end of the calendar year the employer may adjust his records and credit all of the withholding for the employee during that year to the state in which paragraphs A(2)(a) and (b) required the withholding to have been made. In such a case, the state which is ultimately credited with the withholding shall not claim any penalty if the withholding rates in the state for which withholding was initially made were lower than the rates in the state to which withholding was ultimately paid and if such lower rates produce a smaller total withholding than would have been the case had the withholding been made for the "ultimate" state from the start of the calendar year.

However, should the employer prefer to report to each state the amounts actually withheld by him from said employee during the calendar year, he may do so.

It is anticipated that the type of uncertainty which an employer might experience in such cases will be limited to very few cases and that in most instances withholding will be made for the resident state only.

IV

Subsection A(6) and Section C constitute an important protection for the employee against being required to have on deposit with two states money in the nature of withholdings on more than 100% of his wages. Thus, under Subsection A(2), if the employee resides in state X but earns more than 50% of his compensation in state Y, the employer should withhold on 100% of his earnings from state Y. But, if the employee knows that a portion of his compensation will have been earned in state X, then, without Subsection A(6) and Section C, he could be required to file an estimated (usually a quarterly) return and payment of tax during the year for the same income against 100% of which the employer

is already withholding tax for state Y. Subsection A(6) and Section C seek to eliminate this double withholding effect by removing the estimated return and payment requirement with respect to compensation against which withholdings are already being made for another state.

There still remains the possibility that at the end of the year the employee will be entitled to a refund from state Y which equals or exceeds the amount which he owes to state X in tax on earned compensation. In such instances he should file for his refund from state Y immediately after the end of the calendar year. It is hoped that he will then receive his refund from state Y before the deadline for filing his return with and paying his tax to state X. It is submitted, however, that state X should not assess any penalty on any late payment of tax occasioned by state Y's refund not being forthcoming prior to the payment deadline in state X, provided that the amount of tax protected against penalty in state X shall not exceed the actual amount of the refund. A photocopy of the refund check should be accepted as evidence of the time when the refund was issued; and the protection against penalty should continue through the 30th day after the date of issuance of the refund check.

SECTION ——. WITHHOLDING TAX ON PERCENTAGE BASIS—WITHHOLDING
COLLECTION AND PAYMENT OF TAX

Every employer, except employers excluded under subsection (A) of this section, who is required under the provisions of the Internal Revenue Code to withhold, collect and pay income taxes on wages or salaries paid by such employer to any employee shall, at the time of such payment of wages, salaries, bonus or other emolument to such employee deduct and retain there from an amount substantially equivalent to the tax reasonably calculated by the (agency) to be due from the employee under this act.

* * *

(A) *Employees of carriers engaged in the transportation of persons or property in interstate commerce operations.*

(A) (1) For purposes of this subsection, the following terms as defined below shall have the meaning respectively ascribed to them.

"Person" shall mean any individual, corporation, partnership, proprietorship, trust or estate.

"Carrier" shall mean a person engaged in transportation activities using motor vehicles, railcraft, aircraft or watercraft.

"Motor vehicle" shall mean any vehicle, machine, tractor, trailer or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof.

"Railcraft" shall mean any vehicle which is propelled or drawn by any means whatsoever upon rails or tracks above or below the surface of the earth in the transportation of persons or property, or any combination thereof.

"Aircraft" shall mean any vehicle or contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air for the transportation of persons or property, or any combination thereof.

"Watercraft" shall mean every species of boat, ship, barge or other vehicle which is drawn or propelled by whatsoever means upon water in the transportation of persons or property, or any combination thereof.

"Interstate commerce operations" shall mean commerce between any place in a state and any place in another state or between places in the same state through another state or between any place in the United States and any place in a foreign country, territory or possession, or between places in the United States through a foreign country, territory or possession, when such commerce moves by any of the carriers defined in this subsection.

The term "employee" shall mean only those persons whose primary responsibility while in this state is the operation of motor vehicles, railcraft, aircraft or watercraft as a member of the crew or operational team on such vehicles.

(A) (2) Any carrier operating in or through this state in interstate commerce operations shall not be required to withhold, any other provision of this act to the contrary notwithstanding, from the wages or salaries paid to an employee who operates any of the vehicles described in (a) (1) of this section unless:

(a) More than 50% of said employee's compensation or wages from said employer is earned in this state during the calendar year; or

(b) The employee is a resident of this state, but does not earn more than 50% of his compensation from said employer in any one state during the calendar year.

(A) (3) In the case of employees engaged in the operation of motor vehicles and railcraft, the percentage of each employee's compensation or wages that is attributable to any one state for purposes of applying subsection (A) (2) (a) above, shall be that percentage arrived at by taking a fraction the numerator of which shall be the miles worked by such employee in said state during the calendar year and the denominator of which shall be the total miles worked everywhere by said employee while in the employ of the carrier for the calendar year.

(A) (4) In the case of employees engaged in the operation of aircraft, the percentage of each employee's compensation or wages that is attributable to any one state for the purpose of applying subsection (A) (2) (a) above, shall be that percentage arrived at by taking a fraction the numerator of which shall be the scheduled flight time of said employee in said state during the calendar year and the denominator of which shall be the total scheduled flight time of said employee everywhere while in the employ of the carrier for the calendar year.

(A) (5) In the case of employees engaged in the operation of watercraft, the percentage of the employee's compensation that is attributable to any one state for the purposes of applying subsection (A) (2) (a) above, shall be that percentage arrived at by taking a fraction the numerator of which shall be the actual time worked by said employee in said state during the calendar year.

(A) (6) Anything in this Act to the contrary notwithstanding, no person shall be required to file an estimated return with respect to tax on compensation upon which tax is being withheld for another state pursuant to Section (A) (2) through (5) during the calendar year.

(A) (7) The employer-carriers shall furnish an information return to only the resident state of each employee and the state for which withholding of tax has been required.

SECTION —. PERSONS REQUIRED TO MAKE RETURNS OF INCOME

"Returns with respect to taxes imposed by this act shall be made by the following: * * *

(2) Any non-resident except those persons excluded under (B) below, or part-year individuals shall be required to make a return if he has income derived from any source within this state and filing requirements are not in conflict with any other sections of this Act.

* * *

(B) *Employees of carriers engaged in the transportation of persons or property in interstate commerce operations.*

(B) (1) For purposes of this subsection, the following terms as defined below shall have the meaning respectively ascribed to them.

"Person" shall mean a person engaged in transportation activities using motor vehicles, railcraft, aircraft or watercraft.

"Motor vehicle" shall mean any vehicle, machine, tractor, trailer or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof.

"Railcraft" shall mean any vehicle which is propelled or drawn by any means whatsoever upon rails or tracks above or below the surface of the earth in the transportation of persons or property, or any combination thereof.

"Aircraft" shall mean any vehicle or contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air for the transportation of persons or property, or any combination thereof.

"Watercraft" shall mean every species of boat, ship, barge or other vehicle which is drawn or propelled by whatsoever means upon water in the transportation of persons or property, or any combination thereof.

"Interstate commerce operations" shall mean commerce between any place in a state and any place in another state or between places in the same state through another state or between any place in the United States and any place in a foreign country, territory or possession, or between places in the United States through a foreign country, territory or possession, when such commerce moves by any of the carriers defined in this subsection.

The term "employee" shall mean only those persons whose primary responsibility while in this state is the operation of motor vehicles, railcraft, aircraft or watercraft as a member of the crew or operation team on such vehicles.

(B) (2) Any employee of a carrier operating in or through this state in interstate commerce operations shall not be required to report or file returns or pay tax with respect to compensation or wages paid for his operation of any of the vehicles defined in (B) (1) of this subsection unless:

(a) More than 50% of the employee's total compensation or wages is earned in this state during the calendar year, or

(b) Such employee is a resident of this state during the calendar year.

(B) (3) In the case of employees engaged in the operation of motor vehicles and railcraft, the percentage of the employee's compensation or wages that is earned in this state for purposes of applying subsection (B) (2) (a) above, shall be that percentage arrived at by taking a fraction, the numerator of which shall be the miles traveled by such employee in this state during the calendar year and the denominator of which shall be the miles traveled everywhere by such employee while in the employ of the carrier for the calendar year.

(B) (4) In the case of employees engaged in the operation of aircraft, the percentage of each employee's compensation or wages that is attributable to any one state for the purpose of applying subsection (B) (2) (a) above, shall be that percentage arrived at by taking a fraction the numerator of which shall be the scheduled flight time of said employee in said state during the calendar year and the denominator of which shall be the total flight time of said employee everywhere while in the employ of the carrier for the calendar year.

(B) (5) In the case of employees engaged in the operation of watercraft, the percentage of the employee's compensation that is attributable to any one state for the purposes of applying subsection (B) (2) (a) above, shall be that percentage arrived at by taking a fraction the numerator of which shall be the actual time worked by said employee in said state during the calendar year and the denominator of which shall be the total time worked everywhere by said employee while in the employ of the carrier for the calendar year.

SECTION ——. ESTIMATED RETURN FILING ON INCOME FOR WHICH INCOME TAX IS BEING WITHHELD IN ANOTHER STATE

(C) Anything in this Act to the contrary notwithstanding, no person shall be required to file an estimated return with respect to tax on compensation upon which tax is being withheld for another state pursuant to section (A) (2) through (5) during the calendar year.

DEPARTMENT OF REVENUE,
PROPERTY TAX DIVISION,
Salem, Oreg., June 16, 1970.

Re S. 2289.

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

DEAR MR. FRIEDEL: The Idaho State Tax Commission and the Montana State Board of Equalization join the Oregon Department of Revenue in this statement opposing S. 2289.

Progress toward equalization of transportation property values with locally assessed property values has been made on a nationwide basis as a result of states' action (legislative and administrative).

Relief through state courts has been productive and efficient. There is no assurance that the federal court system will be more efficient.

Alleged excess property taxes claimed by the railroad industry are grossly inaccurate and the Congress has not challenged their statements. In the Western States Association of Tax Administrators Report on S. 927 (predecessor to S. 2289) it is estimated that the excess tax is only about 70% of what is claimed. See pages 8, 9 and 10 of the attached report. Further, any property taxes "saved" must be shared with the income tax collectors as additional income. So on an industry-wide basis, the tax plight is exaggerated.

In the very sensitive area of State's rights, federal entry into the local property tax field would be most unfortunate. State legislators have a most difficult problem to face and their decision to distribute the state's tax load is based upon political, economic and social conditions as well as the fiscal resources of the state. To add a federal authority on top and above an already heavily administered local property tax would not be wise.

The futility of legislation such as S. 2289 lies in the fact that state legislatures, if truly inclined, can circumvent the effects of S. 2289 by removing railroads from the ad valorem tax field and taxing them in an alternate manner. For example, railroads could be taxed as they are now taxed in Minnesota on a gross revenue basis. Such a tax could be more burdensome than the present ad valorem tax and there would be little equalization relief available through the courts or federal legislation. This is not a threat but a cold statement of fact that transportation properties can be removed from the property tax field where reasonable or relative equalization is generally available. Policies in some states are not defended but in the fifty states as a whole, transportation property may be treated far more equitably now than in a post S. 2289 era.

If the Congress deems S. 2289 to be in the public interest, the following amendment is highly desirable. The Senate committee report 91-630, 91st Congress 1st Session dated December 20, 1969, contains a statement of policy that for clarity should be included in the bill itself. Since S. 2289 was amended on the floor of the Senate subsequent to the committee report, it is especially desirable that this amendment be made. From page 11 of the committee report, it is strongly recommended that the following quotation be added to Section (2) of Section 25a of the Bill: "The phrase 'any other property in the taxing district' is not intended to interfere or restrict State action in extending total or partial exemption to property of a class, such as churches, charitable institutions, homesteads, and the like. In other words, property totally or partially exempted is not intended to be taken as a measure of 'any other property' for tax rate purposes."

Yours very truly,

C. H. MACK, *Director.*

REPORT OF THE WSATA COMMITTEE ON RAILROAD AND UTILITY VALUATIONS ON
S. 927, NOVEMBER 9, 1968

INTRODUCTION

The following Resolution was adopted unanimously at the annual meeting of the Western States Association of Tax Administrators in Salt Lake City September 8, 1967:

"RESOLUTION VI

"Whereas, Senate Bill 927 is presently being considered by the United States Congress which deals with the assessment of transportation property of common carriers, and more particularly the ratio of assessments of such property to the true market value of the property as compared to other property, and the tax rate applied to such properties as compared to the tax rates of other properties; and

"Whereas, the several states have taken, and are taking effective legislative and judicial steps towards the equalization of property tax assessments of common carriers and other types of property; and

"Whereas, the Western States Association of Tax Administrators has a special Committee on Railroad and Utility Valuation studying and investigating solutions to the problem in this field of taxation and this Committee, after diligent study, has presented to the Association Part I of its recommendations for action by the several states; and

"Whereas, the Western States Association of Tax Administrators is concerned with the impact of Senate Bill 927 upon state and local administration of property taxes, and has concluded that such proposals, if enacted, would seriously jeopardize state and local authority to resolve tax problems at the local level, and state and local authority to classify property within the state;

"Now, therefore, be it resolved, that the Western States Association of Tax Administrators at its Sixteenth Annual Conference in Salt Lake City, Utah held September 5-8, 1967, does hereby adopt a policy in opposition to the Federal legislation typified by Senate Bill 927 and encourages the states individually and cooperatively to take positive steps toward administrative and legislative solution of any existing problem in this area as recommended by studies of the Committee on Railroad and Utility Valuation of the Association and directs this

standing committee to expand its studies to include the problems and issues covered by this bill.

"Be it further resolved, that the Secretary of this Association be directed to send copies of this resolution to United States Senators, Warren Magnuson of Washington and Frank Lausche, of Ohio, and to the members of the Senate Commerce Committee, accompanied by copies of the report from the Committee on Railroad and Utility Valuation."

Pursuant to this Resolution the WSATA¹ Committee on Railroad and Utility Valuation makes this report covering the following subjects pertinent to legislation proposed in S. 927:

1. Past progress and present status of equalization between the assessed value of transportation property of certain common carriers and the assessed value of locally assessed property in the Western States.
2. An evaluation of the effectiveness of state courts in equalizing assessment ratios between certain transportation property and locally assessed property.
3. Some examples of the untenable impact of S. 927 on the states' property tax laws.
4. Some legal inequities embodied in S. 927.
5. An evaluation of the alleged excess taxation of railroads.
6. Past and future programs by the NATA² and WSATA to promote validity and uniformity in the assessment of certain transportation property.

If time and financial support were available much more research could be done on a nation-wide basis to document the allegations both for and against S. 927. The Committee presents this report because it believes that time is of the essence and that sufficient evidence has been assembled to raise serious questions concerning the validity of the assumptions underlying S. 927.

1. PROGRESS AND PRESENT STATUS OF EQUALIZATION PROGRAMS IN THE WESTERN STATES

It must be recognized that before any court or the Congress can conclude that a lack of equalization exists between property tax valuations of certain common carrier property and so-called locally assessed property (common property), an analysis must be made as to what in fact are the appraised (true market) values of these two types of property. Though this would be a Herculean task for any court or committee, it is an essential prerequisite to drawing a valid conclusion as to whether a disparity does in fact exist.

The Committee has gathered certain data from the Western States (Alaska and Hawaii excluded). It is intended to portray the status and progress of equalization programs in the Western States and to refute to some degree statements and implications that have been made in behalf of S. 927.

Table I shows the assessment ratios used by the several Western States during recent years. The trend is obviously toward one of improvement. In some cases, the railroad assessment ratio is decreasing; in others, the local assessment ratio is increasing, but in all states the ratios are approaching equality.

Appendix A briefly indicates action taken by tax administrations (State Tax Commissions or State Boards of Equalization) in their efforts to correct disparities.

Appendix B briefly indicates action taken by State Legislatures to achieve equalization. Incidentally, in 1956 Colorado amended its Constitution empowering the Legislature to exempt household furniture and personal effects that were nonrevenue producing.

¹ Western States Association of Tax Administrators.

² National Association of Tax Administrators.

TABLE 1.—RATIO OF ASSESSED VALUE TO MARKET VALUE FOR RAILROAD PROPERTY AND LOCALLY ASSESSED PROPERTY, WESTERN STATES

	Ratio of assessed value to market value by years											
	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966	1967	
California: 1												
Railroad	0.50	0.50	0.48	0.46	0.45	0.42	0.42	0.41	0.395	0.38	0.36	
Local	.236	.24	.234	.226	.235	.238	.231	.221	.218	.221	.232	
Colorado: 2												
Railroad	.50	.40	.375	.375	.35	.35	.35	.35	.333	.316	.30	
Local	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	
Idaho:												
Railroad	.489	.472	.439	.414	.372	.347	.326	.308	.307	.32	.3175	
Local	.143	.148	.150	.148	.154	.150	.147	.143	.134	.139	.135	
Montana: 2												
Railroad							.61	.583	.575	.548	.527	
Local							.385	.385	.385	.385	.385	
Nevada:												
Railroad	.35	.35	.35	.35	.35	.35	.35	.35	.35	.35	.35	
Local	.2822	.2838	.2841	.2732	.2888	.2917	.3399	.3317	.3236	.3255	.33	
Oregon:												
Railroad	.31	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	
Local	.24	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	
Utah:												
Railroad							.28	.28	.28	.28	.28	
Local							.174	.174	.178	.181	.198	
Washington:												
Railroad				.319	.306	.292	.283	.271	.246	.229	.202	
Local				.196	.197	.197	.201	.198	.188	.209	.202	
Wyoming:												
Railroad							.25	.25	.25	.25	.25	
Local							.20-.30	.20-.30	.20-.30	.20-.30	.20-.30	

¹ Estimate based on an individual board member's opinion; unofficial because of no published statistics.

² Probable average.

2. STATE COURT ACTIONS TO EQUALIZE ASSESSMENTS

Litigation has taken place in the following state court cases of recent date indicating quite strongly that the state judicial process when utilized will grant relief if it is justified:

(1) In *Chicago & North Western Ry. Co. v. State Board of Equalization and Assessment*, 101 NW 2d 873 (1960), the Nebraska Supreme Court held that the assessment of railroad property at 47½ percent of true cash value, when all other tangible property in the state was assessed at 35 percent of true cash value, was arbitrary and discriminatory, and the court granted relief to the taxpayer.

2. In *Union Pacific RR Co. v. State Board of Equalization and Assessment* 101 NW 2d 892 (Nebr., 1960), under the same facts as those of *Chicago & North Western Ry. Co.*, the Nebraska Supreme Court held that the assessment of railroad property at a higher ratio than all other tangible property in the state was arbitrary and discriminatory and that the plaintiff railroad was entitled to relief.

(3) In *Union Pacific RR Co. v. State Tax Commission*, 232 Or. 521, 376 P 2d 80 (1962), the Oregon Supreme Court held that utility and railroad property could not be assessed at 117% of true cash value while other property is assessed at 100%.

(4) In *Southern Pacific Co. v. Cochise County*, 92 Ariz. 395, 377 P 2d 770 (1963), the Arizona Supreme Court held that railroad property could not be assessed at a higher rate than other property.

(5) In *Addington v. Board of County Commissioners*, 382 P2d 315 (Kansas, 1963), it was held that a rate of assessment fixed by the county clerk at more than 30 percent of true cash value of plaintiff's grain elevator, as compared to a ratio of 12 percent for other property in the county subject to the same levy, was so arbitrary, oppressive and grossly discriminatory that it destroyed equality and uniformity, and the taxpayer was entitled to relief.

(6) In *Idaho Telephone Co. v. Baird et al.*, 423 P2d 337 (Idaho, 1967) the Idaho Supreme Court held that a statute purporting to classify operating (power lines, tracks, pipelines, etc.) for the purpose of imposing a higher ratio for ad valorem assessment was unconstitutional.

(7) In *Louisville and Nashville RR Co. v. Public Service Commission and State Board of Equalization*, 389 F2d 247 (1968), the 6th Circuit held that a systematic, intentional and long-standing policy of assessing railroad property within a state at a much higher percentage of actual cash value than the local assessors' custom of assessing other property at a lower fraction of true cash violated the uniformity clause of the Tennessee constitution, and constituted a denial of equal protection under the Fourteenth Amendment.

(8) In *Civil Case No. 31,340, the Utah Fourth District Court* in 1968 held that the State Tax Commission has the power to adjust, equalize and reassess property for tax purposes within counties and throughout the state. It denies county boards of equalization the power to change such reassessments. This decision will enable the Tax Commission to proceed with its equalization program which will, when concluded, equalize railroad assessments with the assessments of locally assessed property. This decision also reaffirms the necessity for equalization in Utah Constitution and Statutes.

3. EXAMPLES OF THE UNTENABLE IMPACT OF S. 927 ON STATE PROPERTY TAX LAWS.

Basic to the whole problem, possibly, is the question of whether the states have a right to classify property as to different shares of the cost government that different classes of property may legally be required to carry. Extreme examples are the exemption of certain properties from taxation. These exemptions may be for social, economic, or administrative reasons and include examples such as: senior citizen homesteads; disabled veteran's residence; ships under construction; manufacturing plants under construction; industrial plants; personal property; certain forest lands; cooperative water systems; deciduous trees; personal property in transit; goods in process of manufacture; literary, charitable and religious organization properties, etc. Less extreme examples include licensing fees in lieu of property taxation and include examples such as motor vehicles, trailers, aircraft and watercraft. (A very substantial proportion of these examples are acting as common carriers.) Still other deviations from pure property taxation are "in lieu taxes" measured by a fixed percent of the gross earnings or gross rent earned in the state. Examples include private railroad cars, electric cooperatives, certain rural telephone properties, public utility districts and *even common carrier railroads*. Taxes "in lieu" of property taxes have

frequently been enacted because equitable assessment within the confines of the property tax was deemed administratively impossible for special purpose, peculiarly situated properties.

And, finally, there exist just plain variable ratios for different classes of property when it is permitted within the Constitution and laws of the state.

So, it would pose problems, no end, if a law such as S. 927 were passed. How far would it reach? How disruptive would it be in the whole scheme of taxation in the individual state? This may be purely a legal question, but such a law as S. 927 would create terrific economic, fiscal, and property tax administrative problems in probably every state in the Nation.

4. LEGAL INEQUITIES IN S. 927

Another aspect of S. 927 which would be very difficult to accommodate is the injunctive process whereby tax collections would be arrested or halted for the alleged excess taxation if litigation is in process. In many western states railroad values amount to at least 1/3 of the total value in numerous taxing districts. If such a substantial portion * of the taxes levied were subject to injunction and thus impounded, a severe burden would be placed on local government finances. For local taxing districts to be denied operating funds pending a court decision would be a serious disruption of orderly government. Many states require payment of the tax levied and provided for adjustment of taxes after the litigation is completed in the state court. In this way government continues to operate without undue financial burdens. Also, this procedure tends to equalize the bargaining position between large taxpayers and local government.

If S. 927 were enacted, a natural question arises as to why common carrier property, such as railroads, should be given avenues of recourse different than those available to other property. The theoretical reply is that the Congress is attempting to protect interstate commerce. Actually, interstate commerce already has protection in state courts which makes unnecessary recourse to initial Federal court action.

5. AN EVALUATION OF THE ALLEGED EXCESS TAXATION OF RAILROADS

The Association's attention is invited to certain statistics that have been published by advocates of S. 927. The statistics are believed to have come from the Association of American Railroads and appear in the Doyle Report at page 487 and in later presentations to Committees of the Congress. The alleged correct property taxes to be paid by the railroads is patently wrong if it is developed (as it appears to be) by multiplying the actual taxes paid by a simple proportion of the relation of local property assessed value ratio to the railroad property assessed value ratio. (The excess alleged is then stated to be the difference between the amount actually paid and the amount computed using the reduced ratio of assessed value.) The amount of excess tax claimed is the absolute maximum that could possibly exist. Actually, to calculate accurately the excess taxation, a new valuation base would have to be computed for each taxing district and then a new tax rate would have to be computed. The new tax rate which would obviously be higher (if railroad values were reduced) must be applied against the new railroad values to estimate the new railroad tax. It is a tremendous task to recompute the new railroad tax; however, this Committee is of the opinion that the alleged excess property taxes are substantially overstated.

This opinion is supported by 1965 data submitted by the Railroad Association that in California the tax relief would have been \$12,852,045 if a ratio of 22 percent had been used instead of 40 percent. Mr. H. I. Flournoy, Controller of the State of California, submitted a schedule showing that the 1965 tax relief would have been \$9,025,819 in California if the ratio had been 25 percent instead of 40 percent. There must be a more careful analysis of excess tax dollars because tax rates change when the valuation base is changed. This example strongly suggests that 70 percent of the alleged excesses is more realistic. Also, in California much railroad property is assessed at the local property ratio and is not included in the unitary (operating property) value against which is applied a higher assessment ratio pending completion of the orderly equalization now underway. According to information from the California State Board of Equalization, when only the unitary value of railroads (which has the higher ratio

*The alleged excess tax, not 1/3 of tax in district.

applied to it) is considered, the excess tax allegedly paid by railroads in the 1965 period is less than \$5 million and is neither the \$12.8 million alleged by the Railroad Association nor the \$9 million as stated by Mr. Flournoy.

Further, any property tax savings would show as additional income on the federal and state income tax returns. For example, if the railroads actually were given a \$50,000,000 property tax relief and if the average effective income tax rate (federal and state) was 40 percent, then \$20,000,000 would be paid as income tax and only \$30,000,000 is the net saving to the railroad. This is not to beg the issue, but rather to point out that not all the savings would inure to the railroads, as the allegations imply. When the net tax savings are ultimately spread over the entire railroad industry and when it is recognized that market valuations are not an exact science (with railroad properties probably being one of the most difficult to value and having probably the least reliable indicators of value to make a judgment of value), it is the Committee's opinion that the possible disparity of tax burden carried by the railroads as alleged is exaggerated to a substantial degree. A disparity may exist in some of the 48 states but, in the overall picture of the railroad industry, the magnitude of excess taxation is not sufficient to warrant enactment of such drastic legislation as is contemplated in S. 927.

Actually, *within* the framework of common carrier traffic alone, with which the Congress is concerned because much of it is in interstate commerce, there now exists a disparity of taxation between and among types of carriers and between and among states that should be a greater concern to the Congress than just the equalization of railroad property with so-called local property. For example, some states tax interstate water transportation properties and other states do not. And even in states where interstate water transportation property is taxed, it is done so at variable rates. In the case of commercial airline transportation properties, some states tax such properties and some states exclude such properties from taxation.

In the case of railroad properties, some states exempt them, others exempt their personal properties, others tax them on a gross revenue basis and some on an ad valorem basis. In the case of privately owned railroad cars (as distinguished from carrier-owned cars), some states exempt the cars, some tax them on varying percents of car rental earned in the state and some tax them on an ad valorem basis. Again, not to beg the issue, the states have substantial issues of assessment and taxation that would have a greater effect on railroad taxation in general than just the equalization of railroad values with local values. So, in effect, the railroad industry's plea, though having some merit in certain states, is not considered by the Committee to be of the highest priority in local tax administration. Examples of high priority items in local tax administration include but are not limited to: (a) taxation of more of those properties in the states that enjoy exemption (Federal, state, other government subdivisions); (b) contributions by exempt bodies to the cost of government; (c) compliance with local budget laws; (d) accurate and realistic local budgets; (e) funds to properly administer local tax laws; (f) lack of competent appraisal personnel; (g) preferential tax treatment for certain classes of property; (h) accurate reporting of personal property where taxable; and (i) proper appraisal methods and technique. These are some aspects of taxation that are receiving attention.

The states are best equipped to resolve all of these inter-related taxation problems, just one of which is the equalization of railroad values with other property values. Social and economic conditions vary from state to state and it is this Committee's opinion that these problems should be resolved by the States rather than imposing a federal law in the property tax field indiscriminately upon all the states. Further, this committee has grave doubts about the wisdom of the Federal government's movement into the property tax field, the only revenue source left exclusively to the states and local governments. Following the usual sequence of events, implementation of S. 927 would result in federal action in all facets of the property tax field.

6. EFFORTS OF NATA AND WSATA TO PROMOTE VALIDITY AND UNIFORMITY IN TRANSPORTATION PROPERTY ASSESSMENTS

Finally, the Congress should have their attention invited to the continuing efforts made toward uniformity of assessments of railroad and utility properties through the technical committees of tax associations. Publications that summarize the studies and deliberations of these committees include:

(1) 1945 National Association of Tax Administrators Report on Taxation of Airlines.

(2) 1949 National Association of Tax Administrators Report on Allocation of Railroads.

(3) 1954 National Association of Tax Administrators Report on Unit Valuation.

(4) 1960 Western States Association of Tax Administrators Report on Allocation of Utilities and Airlines.

(5) 1967 Western States Association of Tax Administrators Report (Part I) on Railroad and Utility Valuation.

These are not the only reports that have been made by tax associations, but they are listed to illustrate that the states through their Associations are diligently and continuously improving the valuation and allocation of the far-flung properties such as air, water and rail transportation and utilities. Progress in raising the standards of assessment and taxation of these properties has been quite substantial and there is every reason to expect this pattern to continue without any imposition of federal legislation such as is contemplated in S. 927.

For example, the WSATA has directed its Committee on Railroad and Utility Valuation to pursue a continuing program of developing and promoting improved and more uniform valuation and allocation procedures through collaboration among the states' technical personnel. The Committee has firm plans to pursue such a program.

SUMMARY

In summary, it is the Committee's opinion that the states through their legislative, executive and judicial processes are taking progressively corrective measures to bring about equalization between assessments of common carrier properties (such as railroads) and locally assessed properties. For this reason, legislation such as S. 927 is not needed.

To implement a legislative act that would require immediate and exacting equalization would impose a severe shift in taxation that would be severely detrimental to orderly government operations. Many relatively small local taxing districts would have such a substantial reduction of their valuation base that they would be in a serious economic plight.

Also, the requirement of equalization within each taxing district would impose a very large and near impossible task in those states where the county, for example, is the basic assessment district and the individual subdivisions of government are the taxing districts.

Committee membership as of the date of this report includes:

V. L. Nielsen, Jr., Arizona	James J. Noel, Nevada
Richard Nevins, California	D. M. Fisher, Chairman, Oregon
A. A. Hall, Colorado	M. H. Kerr, Secretary, Utah
Harold Johnson, Vice-Chairman, Idaho	Clyde Rose, Washington
Howard H. Lord, Montana	Earl A. McKay, Wyoming

APPENDIX A

California—The State Board of Equalization began action in 1959 to bring about equalization of assessment ratios between "railroads and utilities" and "local property."

Colorado—The Tax Commission has lowered railroad assessment ratio consistently toward uniformity with local property.

Idaho—The Tax Commission has implemented an annual uniform adjustment of assessment ratios to insure that all property be assessed at 20% of full cash value by January 1, 1977.

Montana—The State Board of Equalization has lowered railroad assessment ratios and raised the assessment ratio on locally assessed property in the implementation of the statewide reclassification and reappraisal program enacted by the Montana Legislature in 1957. These programs have improved the equality between railroads and locally assessed property.

Nevada—The Tax Commission has assisted counties in reappraising local property and in 1967 the State Board of Equalization ordered new values of local property placed on the rolls when county officials refused to accept the new values.

Oregon—The Tax Commission supervised a statewide reappraisal of local property beginning in 1951 and finishing in 1961. Sales ratio studies are performed annually to check on the standard of current appraisals.

- Utah—The Tax Commission has been engaged vigorously during the last five years in reappraisal of local property to raise the level of assessments.
- Washington—The Washington State Department of Revenue has vigorously pursued a program over the last several years to bring about equalization between "Railroad and Utility" and "local assessed property", achieving complete uniformity of assessment in 1967.
- Wyoming—The reappraisal by a professional appraisal firm of all railroads operating in the State has now been completed. The 1968 assessments were fixed by the Board at 25% of full value. All railroad assessments which were in excess of 25% of full value have been reduced to this percentage and any below 25% were increased to that figure.

APPENDIX B

- California—The 1957 Legislature ordered a study to be made of assessment practices in California. The published report is a very extensive one that is the basis of much of the action since taken by the State Board of Equalization. The 1966 Assessment Reform Law requires all locally assessed property to be at 25% ratio by 1971.
- Colorado—The Legislature appropriated funds in 1947 and 1950 for the Tax Commission to reappraise local property on a statewide basis. Further legislation was enacted in 1964 and 1967 that all property is to be assessed at 30% of actual value except oil and gas production, metalliferous mines and Freeport merchandise which are governed by separate statutes.
- Idaho—The Legislature in 1967 passed laws requiring all property to be assessed at 20% ratio by 1977. Also, an Interim Tax Study Committee was appointed to study and recommend valuation techniques, and many other facets of property tax administration.
- Montana—The Legislature in 1957 passed a Classification and Appraisal Act which is largely responsible for raising values of local property.
- Nevada—The Legislature has ordered all property to be assessed at 35% of full cash value and has given the Tax Commission specific authority over county officials to insure compliance.
- Oregon—The Legislature provided funds for one-half the cost of the statewide reappraisal program and through continuing legislation has supported a strong property tax program.
- Utah—The Legislature in 1953 passed an act which requires the State Tax Commission, on a continuous county by county rotation basis and in cooperation with the various county assessors, to make a valuation of all taxable property in each county at least once every five years. As a result, the State Tax Commission embarked on a reappraisal program which is continuing.
- Wyoming—Apparently no particular action has been required.

IDAHO STATE TAX COMMISSION,
Boise, Idaho, June 17, 1970.

Re Senate bill 2289

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

DEAR MR. CHAIRMAN: Idaho is vitally concerned with the above reference Bill which we understand is presently before your committee for final consideration. We recognize the problem that S. 2289 purports to correct. We in Idaho have been working toward correction of this problem for the past several years. It is our understanding from railroads operating within our state that they concur with Idaho's existing corrective program to equalize all ratios at 20% by 1981. To compliment this effort Idaho has recently passed a reappraisal program which requires all properties within the state to be appraised at least once every five years. This reappraisal program is just getting underway in 1970. Its impact will begin in 1971.

We are enclosing the history of ratios that have been applied since 1957, as well as reflecting the total tax base and the impact of the ratio upon the tax base. In most instances the railroads within our state have grown substantially; however, due to the lowering of the ratio, their assessed values have shown a decrease.

It is our position that our state courts are capable and willing to handle any litigation that might arise without resorting to the use of Federal courts.

We would also like to apprise you of our affiliation with the Western States Association of Tax Administrators. This organization passed a resolution in opposition to Federal legislation as typified by Senate Bill 2289. We are particularly concerned with S. 2289 in its treatment of the tax rate question.

Basic to the whole problem, possibly, is the question of whether the states have a right to classify property as to different shares of the government cost that different classes of property may legally be required to carry. Extreme examples are the exemption of certain properties from taxation. These exemptions may be of social, economic, or administrative reasons and include examples such as, senior citizen homesteads, disabled veterans residence, personal property, certain forested lands, personal property in transit, goods in process of manufacture, literary, charitable and religious organization properties, etc. Less extreme examples include licensing fees in lieu of property taxation and include exemptions such as motor vehicles and aircraft. Still other deviations from pure property taxation are "in lieu taxes" measured by fixed percent of a gross earnings or gross rent earned in the state—examples include private railroad cars, electric cooperatives. Taxes "in lieu" of property taxes have frequently been enacted because equitable assessment within the confines of the property tax laws deemed administratively impossible for special purposes, particularly situated properties.

So, it would pose problems, no end, if a law such as S. 2289 were passed. How far would it reach? How disruptive would it be in the whole scheme of taxation in the individual state? This may be purely a legal question but such a law as S. 2289 would create terrific economic, fiscal and property tax administrative problems in possibly every state in the nation.

Railroad valuation in the state of Idaho is apportioned to all 44 counties except Lemhi County. The assessed valuation of railroad properties in Lincoln and Clark Counties in Idaho exceeded 33% of their total assessed valuation for the county for 1968.

Litigation has taken place in many state court cases of recent date indicating quite strongly that the state judicial process when utilized will grant relief if it is justified. This would include the Idaho Supreme Court case, *Idaho Telephone Company vs. Baird et al*, wherein the Court held that a statute purporting to classify real and personal property at a ratio of 20% to estimated full cash value and operating property (railroads and utility properties) be assessed at 40% of the full cash value was held to be unconstitutional.

The attached table with respect to ratios of assessment and assessed values for the state of Idaho shows an obvious trend toward one of improvement. The ratio of assessment on locally assessed property in 1957 of 14.3% compared to 1969 of 12.7% is a reduction of 10% whereas the ratio of assessment with regard to railroad properties in 1957 of 48.9% to 28.42% in 1970 represents a 40% reduction. The assessed valuation of railroad property in 1957 of \$62,602,300 to \$51,053,316 for 1970 results in a 20% reduction as compared to a 36% increase on locally assessed property during the same period.

This particular legislation would be giving preferential appeal procedure to transportation companies under I.C.C. jurisdiction as contrasted to electrical power companies under the Federal Power Commission and Telephone and Telegraph Companies under the Federal Communication Commission.

In summary, it is our opinion that the State of Idaho through their legislative, executive and judicial processes are taking progressively corrective measures to bring about equalization between assessments of common carrier properties (such as railroads) and locally assessed properties. For this reason, legislation such as S. 2289 is not needed.

To implement a legislative act that would require immediate and exacting equalization would impose a severe shift in taxation that would be severely detrimental to orderly government operations. Many relatively small taxing districts would have such a substantial reduction of their valuation base that they would be in a serious economic plight.

Consideration given this matter will be greatly appreciated.

Sincerely,

L. I. PASSMORE, M.A.I.,
Chairman.

Attachment.

RAILROAD PROPERTY TAX ASSESSMENT, STATE OF IDAHO

Tax year	Percent of assessment to market value for assessment purposes		Assessed values	
	Local property	Railroad property	Local property	Railroad property
1957	14.3	48.90	464,545,126	62,602,300
1958	14.8	47.20	469,898,081	61,875,700
1959	15.0	43.90	487,580,953	59,975,600
1960	14.8	41.40	503,430,017	58,774,200
1961	15.4	37.20	517,863,649	55,685,800
1962	15.0	34.70	530,027,617	54,112,250
1963	14.7	32.60	548,352,534	52,070,960
1964	14.3	30.80	560,795,752	51,623,970
1965	13.4	30.70	574,094,002	50,857,379
1966 ¹	13.9	31.75	661,761,746	53,038,054
1967	13.5	31.75	687,237,809	55,962,864
1968	13.0	30.44	691,362,509	50,595,016
1969	12.7	29.13	726,912,595	48,764,988
1970		28.42		51,053,316

¹ Ratio of assessment and assessed values brought about by legislation passed in 1965 providing for local property to be assessed at 20 percent and railroad and utilities at 40 percent of full cash value by Dec. 31, 1969. In 1967 legislation relating to ratio of assessment was held to be unconstitutional by Idaho Supreme Court case "Idaho Telephone Co. v. Baird et al."

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Olympia, June 19, 1970.

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

DEAR REPRESENTATIVE FRIEDEL: I wish to express for the record concurrence in the position of the Oregon Department of Revenue in opposition to S. 2289, as set forth in the letter of Director C. H. Mack dated June 16, 1970.

In addition to the points made by Mr. Mack, I wish to express one further thought. I am not certain whether you have been previously advised of the amendments of this bill proposed by the Multistate Tax Commission (a copy of these proposed amendments is enclosed herewith). The most vital of these proposed amendments were not adopted by the United States Senate. I believe them to be vital if legislation of this nature is to be enacted by Congress.

Sincerely,

GEORGE KINNEAR, *Director.*

Enclosure.

MULTISTATE TAX COMMISSION, EXECUTIVE OFFICES, KANSAS CITY, MO.

RESOLUTION

Whereas representatives of the Multistate Tax Commission have participated in extensive discussions with representatives of the railroad industry during the past several months for the purpose of seeking areas of agreement with respect to Senate Bill S. 2289; and

Whereas the Multistate Tax Commission could not support Senate Bill S. 2289 as now written, but does recognize that the purposes of the bill, as understood by the Multistate Tax Commission, have merit; and

Whereas it is felt that a statement of the principles to which both the Multistate Tax Commission and the railroad representatives can adhere would be helpful to the Congress in rewording said bill into a form acceptable to both:

Now Therefore: The Multistate Tax Commission, in general session assembled this 28th day of October, 1969 at Colorado Springs, Colorado, adopts the following statement of principles for presentation to the Congress at this time with respect to Senate Bill S. 2289:

1. The uniform assessment between carrier property and other property generally should be within each local assessment jurisdiction (i.e. county, city, township, etc.) rather than within each taxing district.

2. The basis of comparison with respect to assessment ratios should be between transportation property and other taxable property generally, i.e., a policy decision by a state to grant such partial exemptions as those for veterans, senior citizens, homesteads, and "green belts", etc., should not be used to reduce the ratio derived for other taxable property generally.

3. The "tax rate" should be the rate of tax on taxable property generally levied by each taxing district, and not the combined levy of all taxing districts in which the property is located.

4. A reasonable area of deviation in the average assessment level for other taxable property generally be allowed before relief be granted under the bill.

5. In view of the stated position of the carriers that they have never supported the bill in the hopes of using it to bring a pure valuation case in the federal courts, the question of true market value of carrier property should not be a subject for federal court action under the bill.

STATE OF FLORIDA,
DEPARTMENT OF REVENUE,
Tallahassee, Fla., June 19, 1970.

Re railroad assessment bill, S. 2289.

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

DEAR MR. FRIEDEL: I am in receipt of a copy of a letter from Charles H. Otterman, Chief Counsel, State Board of Equalization of California to you as Chairman of the Subcommittee on Transportation and Aeronautics of the House Committee on Interstate and Foreign Commerce dated June 12, 1970.

In this letter he emphasized several points relative to the above bill and suggests some amendatory language to deal with the problems outlined.

This is to advise that the Department of Revenue concurs in Mr. Otterman's objections and urges the inclusion of the suggested amendatory language to correct those objections.

Sincerely,

J. ED STRAUGHN,
Executive Director.

PUBLIC SERVICE COMMISSION,
TAX DIVISION,
Little Rock, Ark., June 22, 1970.

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

DEAR MR. FRIEDEL: As Director of the Tax Division of the Arkansas Public Service Commission, charged with the responsibility of assessing at the State level all utility and carrier property, including railroads, motor carriers, and air lines, I wish to recommend and endorse the amendments, Amendment No. 1, Amendment No. 2, and Amendment No. 3 of S. 2289, as proposed by Mr. Charles Otterman, Chief Counsel, State Board of Equalization, State of California.

I am in complete agreement with the idea expressed in paragraphs two and three of Mr. Otterman's letter to you dated June 12, 1970.

It appears to me that the language suggested in the amendments proposed by Mr. Otterman clarifies the expressed purpose of the Bill, and we sincerely hope that these amendments will be adopted by your Subcommittee and approved by the Congress.

Sincerely,

EARL BERRY,
Director, Tax Division.

MR. PICKLE. The next witness is to be Mr. Nils Lennartson, president of Railway Progress Institute. I understand that statement is to be given by Mr. Ardon Judd. Is Mr. Judd here?

We welcome you to the committee. Are you prepared to give Mr. Lennartson's statement.

STATEMENT OF ARDON JUDD, JR., IN BEHALF OF RAILWAY PROGRESS INSTITUTE; ACCOMPANIED BY JOHN KOENIG, JR., DIRECTOR OF PUBLIC AFFAIRS, RAILWAY PROGRESS INSTITUTE

Mr. JUDD. Mr. Chairman and subcommittee members, my name is Ardon Judd. With me today is John Koenig, director of public affairs of Railway Progress Institute. I am the Washington counsel for Dresser Industries, Inc. of Dallas, Tex., a division of which is Dresser Transportation Equipment, whose president Frank Bredimus is currently chairman of the Railway Progress Institute.

It is therefore with pleasure that I am here today to present the statement of Nils A. Lennartson, president of Railway Progress Institute, representing the views of that association on the legislation pending before this subcommittee. I am appearing inasmuch as Mr. Lennartson was unable to avoid a conflict with a previously scheduled meeting of the governing board of Railway Progress Institute in Chicago this morning.

STATEMENT OF NILS A. LENNARTSON, PRESIDENT, RAILWAY PROGRESS INSTITUTE, PRESENTED BY ARDON JUDD, JR.

Mr. JUDD. The statement of Mr. Lennartson represents the views of the national association of railway equipment and supply industry and is as follows:

The Railway Progress Institute is comprised of nearly 200 member companies of all sizes, located throughout the United States. Our members provide railroads with locomotives, freight cars, components, tracks, signals and many other kinds of equipment and services.

At RPI we wholeheartedly support the objective of your bill H.R. 16245, and other proposals to prohibit discriminatory property tax assessments on the property of common and contract carriers, as an undue burden upon interstate commerce. We urge approval in your committee and in the House of Representatives of such legislation, which is similar to that passed by the Senate on January 30.

As railway suppliers we are particularly aware of the substantial damage which discriminatory property taxes have inflicted on the Nation's railroads in recent years. Such taxes have siphoned off millions of dollars which should and would have been spent on further modernization and improvement of rolling stock, roadbeds, and other railroad facilities.

Figures compiled by the Association of American Railroads show that in the last 9 years alone, the railroads have been assessed more than \$900 million in excess local taxes. In one year, 1968, the overcharge was \$69 million.

This \$69 million would have built five modern push-button electronic classification yards, each capable of classifying eight 100-car trains every hour. Or it would have provided the customary down payment on 23,000 new freight cars or 1,400 locomotives. It would have bought nearly 5,000 new freight cars outright in these days of a freight car shortage.

This tax load was a heavy blow to an industry which had a net return on investment after depreciation in 1969 of only 2.38 percent. This compared with 2.44 percent in 1968 and 2.46 percent in 1967.

These unfair taxes also hurt, as can readily be seen, the railroads' customers—the Nation's shippers—and their customers, too, the manufacturers, mining companies, farmers, wholesalers, retailers, and consumers everywhere.

By reducing the funds available for modernization, these discriminatory taxes greatly hampered the railroads in their efforts to improve efficiency and cut costs. Many capital improvements—which certainly are needed if the railroads are to fulfill their vital role in the future—have had to be scaled down or delayed.

Shippers are made to suffer in several ways. Freight car shortages have continued to plague farmers and manufacturers at various times of the year. And day-to-day service has not improved as much as it might have, if the railroads had been able to buy all the new and improved, modern equipment that they need.

It is evident that discriminatory property tax assessments truly constitute an undue burden upon interstate commerce as well as on the railroads themselves.

We believe that the railroads should pay their proper share of property taxes in the municipalities where they operate. State, county, and municipal governments are hard-pressed for tax revenue sources, we know. But we feel strongly that the burden should be spread fairly among all taxpayers and railroads not be assessed what the traffic will bear.

Certainly Congress should not stand idly by while local taxing authorities bleed the railroads with a double standard of taxation.

Passage by Congress of relief legislation will go a long way toward remedying this inequity. The railroads are needed in the Nation's transportation future. They should be given a fair tax break in order to apply their resources in the best possible manner for that future—in capital improvements and modern and efficient equipment. In the long run, this will help all elements of the public and the Nation.

Mr. FRIEDEL. Thank you, Mr. Judd.

In your statement you mention freight cars and freight. I imagine the same thing would apply to passenger service, wouldn't it?

Mr. JUDD. Yes, sir.

Mr. FRIEDEL. Mr. Pickle?

Mr. PICKLE. I don't have any questions. I appreciate the gentleman's testimony. I thought he gave a good statement and I am glad to have him before the committee.

Mr. FRIEDEL. Mr. Adams?

Mr. ADAMS. If railroad tracks are built through the middle of a small town what is the basis for taxation that should be used? Should it be evaluation of the strip of property that goes through the middle of the town or is there more burden than that involved?

Mr. JUDD. I think such tax would have to be valued on a unitary basis, taking into account stock and bond value and investment. But if you would like a more detailed answer to that question, we will be more than happy to submit one for the record.

Mr. ADAMS. I would. I would appreciate it. I don't know the basis, but it seems to me there might be some different basis between a strip of houses on 60-foot lots going through the middle of a town and a strip of rail property 60 feet wide that goes through the middle of the town.

Mr. FRIEDEL. Mr. Lanier, would you like to answer that question?

Mr. LANIER. I might give an immediate answer rather than a delayed one.

The answer, Congressman, is that in almost every instance railroads are valued on a unitary basis. That is instead of taking a summary of values of each parcel of land and each locomotive and each car and so forth, the assessor's value the whole system, and they do it usually by reference to the stock and bond value, market values, the net railway operating income capitalized at an appropriate percentage, and an investment figure.

They sum all these and then divide by the number of factors. This gives the value of the whole railroad as a going concern. This is then allocated to the States through which the railroad operates on factors that differ from State to State. That value then is distributed throughout the taxing units.

Mr. ADAMS. Within the State?

Mr. LANIER. Within the State.

Mr. ADAMS. In other words, a little town that has a railroad through it is just given so much from a State allocation formula?

Mr. LANIER. That is correct.

Mr. ADAMS. On, say, its property tax?

Mr. LANIER. That is correct. In almost every State—I think Texas is an exception where the property is locally assessed. But this, you see, enables you to take into account the going concern value of the railroad and put it in. Now how that will compare with the adjoining property depends on the adjoining property. Sometimes it may be more, sometimes less.

But that is the method that is used.

Mr. FRIEDEL. We have a letter from Mr. J. Donald Durand, general counsel for the Association of Oil Pipe Lines, Washington, D.C. I would like to have that letter put in the record.

(The letter referred to follows:)

ASSOCIATION OF OIL PIPE LINES,
Washington, D.C., June 8, 1970.

HON. SAMUEL N. FRIEDEL,

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

DEAR MR. CHAIRMAN: Reference is made to H.R. 16245, which you introduced on March 3, 1970, and to S. 2289, which has passed the Senate, both of which are identical bills, on which your Subcommittee will hold hearings June 9, 1970. These two bills would make it unlawful, as an unjust discrimination against and an undue burden upon interstate commerce, for a state or subdivision thereof to assess property owned or used by a carrier subject to economic regulation pursuant to the provisions of the Interstate Commerce Act, at a higher rate than all other property in the jurisdiction is assessed.

The Association of Oil Pipe Lines (AOPL), which is composed of substantially all of the interstate common carrier oil pipelines in the United States subject to economic regulation by the ICC under Part I of the Interstate Commerce Act, supports this proposed legislation because we believe it is based on considerations of fairness and justice and that it is needed to protect against inequitable taxation of the property of interstate carriers as compared with the taxation of locally owned property. Responses from our membership indicate an ever increasing interest in and support for this legislation. Accordingly, AOPL urges your Subcommittee to act favorably on H.R. 16245 and S. 2289.

It is respectfully requested that this letter be included in the printed record of the hearing on this legislation.

Sincerely,

J. DONALD DURAND,
General Counsel.

Mr. FRIEDEL. Our next witness is Mr. Frank A. Smith, vice president of research, Transportation Association of America. Mr. Smith.

**STATEMENT OF FRANK A. SMITH, VICE PRESIDENT—RESEARCH,
TRANSPORTATION ASSOCIATION OF AMERICA**

Mr. SMITH. Mr. Chairman, I have a relatively short statement, but I would like to submit it for the record and just hit a couple highlights that I feel may add to or supplement the views of others.

Mr. FRIEDEL. The full statement will be included in the record.

Mr. SMITH. My name is Frank A. Smith. I am vice president of research of the Transportation Association of America. I am appearing today in support of S. 2289 and H.R. 16245.

The TAA is a national transportation policy organization composed of transportation interests of all types, which includes users, investors, and carriers of all modes. I want to stress this point because this particular legislation—while on the surface it may appear to be and is predominantly of impact on the railroads—is of considerable interest to all other transportation interests. They are in agreement in support of this legislation.

We have in TAA gone through formal policy consideration of the basic principle behind this legislation and I can say that our investors, our users, and all six carrier modes are unanimous in its support.

Moving over the bottom of page 2, I just want to stress again that while the main impact has been shown to be on railroads, this is of concern to oil pipelines, as a previous statement from Mr. Durand brings out. Common and contract motor carriers—I understand the American Trucking Association will submit a supporting letter—and other carriers, are also concerned.

We feel that unless legislation such as this is made into Federal law, there will be a steadily growing pressure at the State and local level for more tax revenues, which will result in far more widespread tax discrimination against transportation property of interstate carriers. This could carry over to other modes.

On page 4, second paragraph: We believe that S. 2289 represents a reasonable solution for all parties. Interstate carriers would be given a direct, simpler, and far less costly means of obtaining relief through the Federal courts from discriminatory property taxation. While such carriers stand to gain initially from such legislation, the savings should eventually be passed along to their customers in the form of better service or lower rates, and to their financial supporters through more profitable operations.

In conclusion, on the last page, TAA believes that the States have had ample time to eliminate discriminatory treatment in this tax area. The passage of S. 2289 should expedite correction State action and provide a means of relief if such action is not taken promptly.

The many interests within TAA are thus united in their support of this bill and we urge favorable action on it by your subcommittee at the earliest possible date.

Thank you, Mr. Chairman.

(Mr. Smith's prepared statement follows:)

STATEMENT OF FRANK A. SMITH, VICE PRESIDENT-RESEARCH,
TRANSPORTATION ASSOCIATION OF AMERICA

My name is Frank A. Smith. I am Vice President-Research of the Transportation Association of America and am appearing before your Subcommittee today on behalf of the TAA Board of Directors in support of S. 2289, and H.R. 16245. These identical bills make it unlawful—as an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce—for a state to assess or tax on a discriminatory basis the transportation property of common and contract carriers subject to economic regulation under the Interstate Commerce Act. S. 2289 would prohibit the assessing or taxing of such property on a higher basis than other real property in the same taxing districts. It would also provide a means by which such carriers could go into the Federal district courts, if necessary, to seek relief against such discriminatory practices.

The Transportation Association of America is a national transportation policy organization composed of transportation interests of all types who work together to help develop and maintain sound national policies in the transportation field. Policy positions, prior to final vote by the 115-member TAA Board of Directors, are first studied carefully by eight permanent Panels composed of approximately 350 leaders from user, investor, air, freight forwarder, highway, oil pipeline, rail, and water carrier fields respectively.

It should be emphasized that all eight of these TAA Panels recommended favorable action by the TAA Board on a policy proposal that covers the two basic principles incorporated into S. 2289, which are as follows:

"The discriminatory taxation of property of interstate common carriers should be declared unlawful by the Congress as an unreasonable and unjust burden on interstate commerce."

"Provision should be made whereby an interstate common carrier can seek relief through the Federal district courts from any such discriminatory tax practices at the state or local level."

The above policy statement has been formally approved by the TAA Board, and while it refers to interstate common carriers only, we recognize that ICC-regulated contract carriers are faced with a similar problem and thus support the inclusion of such carriers, as has been done in S. 2289.

This long-needed legislation should correct a problem that has been recognized by impartial researchers over a period of at least 25 years. As far back as 1944, the Board of Investigation and Research labeled discriminatory property taxation practices as "probably the most significant of the railroad tax grievances". The special national transportation policy study group for the Senate Commerce Committee reported, in 1961, that no noticeable improvement had taken place and called the discriminatory practices "studied and deliberate".

Periodic studies during more recent years show that these discriminatory taxation practices have continued, despite repeated attempts by affected carriers to seek relief at all levels of government—local, state, and Federal.

While interstate transport carriers with fixed rights-of-way—such as railroads and pipelines—are particularly vulnerable to the application of such discriminatory taxation practices, other interstate carriers are likewise seeing their terminals and operating equipment assessed or rated at levels higher than other real property in the same taxing districts.

As brought out in hearings held before the Senate Commerce Committee, the railroads alone were assessed more than \$800 million in discriminatory property taxes over a recent seven-year period. It was shown further that 21 states were discriminatorily taxing railroad property to the amount of more than \$71 million a year and that this exceeded by 44 percent the amount the railroads would have had to pay if their transportation property had been assessed on the same basis as other real property.

While similar statistics for other carriers are not readily available, it has been estimated that the seven-year total could have approached \$1 billion if discriminatory taxation of property of oil pipelines, common and contract motor carriers, motor bus companies, water carriers, and freight forwarders were added.

We sincerely believe that unless legislation such as S. 2289 becomes Federal law, the steadily growing pressures at the state and local levels for more tax revenues will result in far more widespread tax discrimination against transportation property of interstate carriers. We feel this will take place because of the greater vulnerability of interstate carriers to such practices, as opposed to businesses more closely associated with the local tax districts. Moreover, the inter-

state carriers cannot abandon their rights-of-way and terminal facilities without serious hardship and considerable cost, and some may even be prevented from taking such action without specific clearance from regulatory authorities.

Even though some relief has been obtained at the state level, the over-all results have been very disappointing. At present, Federal statutes prohibit U.S. district courts from enjoining, suspending, or restraining the assessment, levy, or collection of any tax under state law where a "plain, speedy, and efficient remedy" may be had in the state courts. This means that interstate carriers must usually first seek relief at the state, and possibly local, level before appealing to the Federal courts. Procedures currently followed at the state and local levels—despite the "plain, speedy, and efficient" criterion—can be described more accurately as difficult, time consuming, and generally unproductive.

Carriers often have to take legal action in separate county or city courts. In many states, carriers must bring suit against the tax-collecting, rather than tax-assessing, body, which means they must bring suit in every county of the state in which they have property that is being unfairly assessed or rated. As could be expected, state courts are very reluctant to overturn the action of the local or state assessing body, and these courts usually exert every effort to sustain the tax administrators.

Even where state courts have voided discriminatory tax assessments on interstate carriers' transportation property—usually because they conflict with applicable state laws or constitutional provisions—such action is often overcome by the state legislators. This is accomplished by classifying carrier property in a separate category from other taxable property and applying a higher tax rate, a practice that has been upheld by the U.S. Supreme Court. There is a definite trend toward this practice.

We believe that S. 2289 represents a reasonable solution for all parties. Interstate carriers would be given a direct, simpler, and far less costly means of obtaining relief through the Federal courts from discriminatory property taxation. While such carriers stand to gain initially from such legislation, the savings should eventually be passed along to their customers in the form of better service or lower rates, and to their financial supporters through more profitable operations.

While state and local tax authorities would be faced with possible losses in tax revenues, these should not be excessive—no higher than 2 percent based on estimates made at previous congressional hearings on similar legislation. It should be emphasized that interstate carriers are not asking for relief from their fair share of the property tax burden, but only for relief from discriminatory property taxes.

S. 2289 would outlaw only the excessive portion of any property tax based on discriminatory assessments or tax rates. It also would apply only to the transportation property of interstate carriers, and not general real estate holdings, hotels, mines, oil fields, or any other non-transport property. This bill provides remedial relief only; that is, it may result in the removal of the discriminatory portion of the tax provided the carriers prove their case in the Federal court. The basic taxation powers of the states will not be affected so long as the states accord equal tax treatment to interstate carriers. Finally, the states will still be permitted to classify property for tax purposes—such as real and personal—but will no longer be permitted to apply different tax rates within the same classification. In other words, they would no longer be allowed to apply a 60 percent tax rate on railroad real property assessments while applying 40 percent or less on other real property assessments in the same taxing districts.

As to the constitutionality of S. 2289, we believe this has been clearly supported by the detailed analyses of Professors Paul H. Sanders and Paul J. Hartman of Vanderbilt University, both recognized experts in this field of law.

We believe the states have had ample time to eliminate discriminatory treatment in this tax area. Passage of S. 2289 should expedite corrective state action and provide a means of relief if such action is not taken promptly. The many interests within TAA are united in their support of this bill and we urge favorable action on it by your Subcommittee at the earliest possible date.

Mr. FRIEDEL. I want to thank you, Mr. Smith. On page 2 in your third paragraph you said, "Periodic studies during more recent years show that discriminatory taxation practices have continued despite

repeated attempts by affected carriers to seek relief at all levels of government—local, State and Federal.”

Can you elaborate just a little on that?

Mr. SMITH. One of the major studies made on this was in the Doyle report back in 1960 and, of course, this legislation has been considered on numerous instances and in each case the Association of American Railroads has submitted a revised analysis of the States' practices in this area.

So basically that is what I was referring to.

Mr. FRIEDEL. Have any of the States come around?

Mr. SMITH. My understanding is that a number of the States, are coming around, as the gentleman from California indicates. In several other States, I am certain the trend is at least in the right direction. But there still are obviously many States that still are not on what we consider the right track.

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

Mr. ADAMS?

Mr. ADAMS. Mr. Smith, the previous gentleman just described a unitary taxing system under which tax revenues are allocated to the various components of State government. Are you opposed to that?

Mr. SMITH. I would not feel qualified to answer a question on the technicalities of the taxing method. If it is on an equitable and fair basis, I would say we would support it.

Mr. ADAMS. The difference, of course, is that in your statement—you mention in here several times real property taxes or personal property taxes. And Mr. Lanier indicated to me that what you have is that a railroad running through a small town is taxed on the basis of its value, which would be different than any other house or barn or anything else that is in the area, and then you allocate down.

As long as that is fair, do you have any objection to that system? Because I do not know how a local tax assessor would otherwise place a value on a right-of-way that is, say, 60 feet wide and runs through the middle of a small town as compared to the other houses around.

Mr. SMITH. The way I understand, there is a distinctive difference between real property and personal property, and as I understand it, what we are trying to do is say in the real property category that there would be equalization of treatment.

Now, within that category I would say we would support any type of equalization, but I do not feel qualified as a tax man to say whether it is unequal treatment in that particular area.

Mr. ADAMS. In other words, the fact that nobody else has a right-of-way 60 feet wide that will divide a city in half, you are not—I am just trying to get from you what you think, what type of valuation should be put on that piece of real property as opposed to a strip of houses that are 60 feet wide that go through a whole city, but both don't break it up and have certain rights-of-way through it.

Mr. SMITH. I can personally see a difference. All I can say, as a broad policy group we would not get into the details, the technicalities of assessing practices.

Mr. ADAMS. You mention in your statement that you have some questions as to whether or not it would be right to place transportation property in a separate category by the State and then apply a tax on it.

Mr. SMITH. That is correct.

Mr. ADAMS. What I am asking you is, isn't that necessary? I am in agreement with the idea of let's get this equal, but I do not quite see what you have in mind if you do not put it in a separate category. I can't think of anything else that a local tax assessor, city, county or State, could do with a railroad, particularly I mention a railroad. I am sure this distinction would apply to other modes of transportation, and they should be placed in a different category than the other real property.

Mr. SMITH. It would be different in valuation method, but not from the constitutionality of the uniformity of taxation. I say I would be glad to look into this, because I am certainly not qualified to answer.

Mr. ADAMS. I have read these statements and I am trying to get at what it is that you want to do. I will give you a very simple example. You have a railroad track that runs through the middle of three small towns in my area. And it goes right through the middle of town stopping the traffic and everything at various points.

I cannot remember the width of the right-of-way, but let's say that it is 100 feet wide. And it has two tracks, four tracks and it has the siding on it and there it sits. It goes through the town.

On each side of it are a series of houses on 100 feet wide lots which go across the town. There are streets which go across the town and into the business district and there are a series of four or five business houses which are on 100 feet wide lots and go across the town.

Now, on those squares of property I just don't know how you propose to assess that piece of railroad property which is vacant except for the rails that are on it, gravel that is at the side, but it is continuous. It splits the town. It is invaluable for railroad purposes and nobody else is going to have the right to such an unrestricted section going through the town.

I want to know is there some right for the city to say that the 100-foot wide by 100-foot section of that is worth more than 100 feet of residential property by 100 feet that a man has his little house on?

Mr. SMITH. I would be happy for Mr. Lanier to take a crack at it.

Mr. ADAMS. I don't know whether he favored this unitary system or not. That sounded pretty good to me.

Mr. LANIER. You are talking about valuation.

Mr. ADAMS. His statement is all directed toward real property taxation. And if you get into personal property taxation, you and I both know you have an immense problem, because you have locomotives and cars all over the Nation and trying to tax this thing is pretty hard.

Mr. LANIER. On the valuation—this bill would not deal with valuation being standard. The standards and methods of valuation that any State wishes to use would be totally unaffected by this legislation.

The short answer, if I may give it this way, and I think it will be clear, is that for valuation purposes different kinds of property put to different uses do require different methods of valuation. And the method of valuation applied to a railroad is quite different from that which is applied to a residence, a farm, factory, whatever it may be.

And that is appropriate because it is the way to get at the real value. There is nothing in this legislation—and we have no brief here to alter that—it is only in the area of equalization of the computed value that this legislation speaks. That is where our problem is.

Mr. ADAMS. On page 2 of the bill it says, "The assessment"—which is what the tax collector comes in on—"for purposes of a property tax"—and that is all I am talking about here now—"owned or used by a common carrier at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all other such property."

That appears to me that you are taking into account both valuation and assessment.

Mr. LANIER. I think I can answer it this way.

Without regard to this legislation, assuming it is enacted, without regard to it the assessing authority for the railroads puts a value—a fair market value, true market value, the words means the same—on that railroad property and the local assessor in the towns you refer to puts a true market value on the residences. After that is done, this bill would come into play.

Mr. ADAMS. But that help could not—if, for example, vacant property in that area with no buildings on it was assessed at, we will say, 100 by 100 lot, would be assessed at \$5,000—with a building on it, of course, valuation is going up—so then if your railroad property was assessed at more than that, under this bill—this is what I am asking you—I think you probably would have an automatic lawsuit that would say the value of a piece of real property with two rails on it and no other improvements should not be any higher than either vacant property plus the value of the rails.

Unless, of course, you are using this unitary system that you mentioned which would take into account a lot of other factors, and since Mr. Smith is talking about real property and assessment and the bill, I am just asking you how it works.

Mr. LANIER. Let us assume that the vacant lot is assessed at \$5,000. That is the fair market value of that lot. Now, in Washington the equalization ratio is 50 percent.

Mr. ADAMS. In Washington it is 50 percent. There is a fight going on because nobody is assessing at 50 percent. In some counties it is 20 and in others it is 32 and in others it is 56. If you have a lot of lumber in a particular county, a lot of trees, you get a low assessment rate—

Mr. LANIER. Let's take the 50 percent then, so that that vacant lot actually carries a tax on \$2,500. Now let us assume that a portion of the right-of-way of the railroad equivalent in area in that town to the vacant lot carries a value, fair market value determined by the State assessing authority of \$20,000, if it is equalized at 50 percent, the tax goes against only \$10,000. That is all this bill requires, and that is all we ask for.

Because we are speaking in terms of uniformity of the equalization ratio, not uniformity of the result in dollars of value or in dollars of tax, but only that once the fair market value is determined, the equalization ratio will be the same. And since you would have a 50-percent ratio in each instance, we would have absolutely no complaint and no grounds for complaint.

Mr. PICKLE. I am concerned about this assessment jurisdiction problem and values also. You had mentioned earlier that my State of Texas taxed this property on a local basis rather than on a State basis.

Mr. LANIER. That is my understanding, Congressman.

Mr. PICKLE. I am reading here in the report of S. 2289. Maybe this answers our question.

Mr. LANIER. What page?

Mr. PICKLE. On page 4 about line 12 or 15. "In most States the property is assessed by State agencies while property of others is assessed by local agency"—as in my case in Texas. "As a result, any given piece of property may be located in two assessment jurisdictions." That is State and locally. The fact raises the question of which assessment jurisdiction shall be used for the purpose of comparing assessed value of carrier property with that of other property.

"The committee believes that the resolution of that question is a function properly to be performed by courts upon consideration presented to it in the case before it."

Then it goes on to talk in terms of assessment jurisdiction. I assume what the Senate was attempting to say was that when they talk about assessment jurisdiction, they had hoped that the language listed on page 2, line 22, in terms of definition of "transportation property, assessment jurisdiction" and "all other property" would be a means of determining this problem.

Now, does this answer the problem or is there still a question? Do I have a problem in my own State about taxation locally?

Mr. LANIER. No, sir; you do not. The problem this language refers to would be one in which railroads were—unlike in Texas—assessed by the State Department of Revenue, whereas your individually owned property was assessed by your local assessor.

Now, let us assume that throughout the State the average of all of the equalization ratios are prevailing in the State. Take Mr. Adams' example of differing ratios from county to county. Let us assume that average was 50 percent whereas the equalization ratio in one county was 25 percent.

Each one of those, the county and the State, is an assessment jurisdiction because the county assesses local property and the State assesses railroad property. This is intended to say that which of those ratios is used, the statewide average or the county ratio only, is a matter that the Senate committee at least felt could not and should not be resolved in the bill. In fact, you get into it in litigation and even conversation and negotiations with the administration, whether to use a county-by-county ratio or to use a statewide ratio.

And there are arguments that are in favor and against either one.

Mr. PICKLE. But under the Senate measure in most instances if litigation came about, the suit would be against a State for the assessment of whatever value they might put on it?

Mr. LANIER. That is correct.

Mr. PICKLE. But in my particular case if litigation was brought about, it would be a suit by the railroad company against X county or city. So in a lot of States it would just be a State action. In my case it might be hundreds of different places where these suits could be brought.

Mr. LANIER. But the only assessment jurisdiction in your case would be the county. There would not be any problem about any conflict because you only have the one assessment jurisdiction relative to that particular property.

Mr. FRIEDEL. I want to thank you very much, Mr. Smith and Mr. Lanier.

The committee now stands adjourned.
(The following letters were received for the record:)

MID-WEST ADVISORY BOARD,
Chicago, Ill., April 7, 1970.

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

DEAR MR. STAGGERS: The industry and carrier members of the Midwest Advisory Board supported wholeheartedly the intentions of Senate Bill 2289, prohibiting Discriminatory Taxation of Transportation Property, and now under consideration by the House of Representatives (HR 16245, HR 16251, and HR 16316). Laws and taxation must be applied without discrimination.

In reviewing records of past considerations by Congress, it is a shock to learn of the discriminatory practices of the various state taxation bodies. It is a further financial drain on the railroads to file thousands of little legal actions.

The imperfections of human nature would make it difficult to remedy the situation at local levels, and we feel that there must be national guidelines to prescribe equality.

This then is our appeal, help our transportation agencies in their efforts to attain fair and equitable taxation of their properties.

Sincerely yours,

HAROLD S. DALZELL,
Second Vice President and Legislative Chairman.

AMERICAN TRUCKING ASSOCIATIONS, INC.,
Washington, D.C., June 8, 1970.

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

DEAR MR. CHAIRMAN: On behalf of the nation's trucking industry we wish to express our support for the legislation on H.R. 16245 and S. 2289, which would declare unlawful, and an undue burden upon interstate commerce, the assessment of property of any common or contract carrier subject to economic regulation by the Interstate Commerce Commission which bears a higher ratio to its true market value than the assessed value of other property subject to the same property levy.

The expanding demands for transportation services, by all modes, are requiring growing investments in terminal and other properties. This legislation is essential to assure the regulated transportation industries of fair and impartial treatment in the taxation of these properties.

During the 89th Congress legislation similar to H.R. 16245 and S. 2289 was introduced but it covered only the property of common carriers. This, of course, was highly inequitable as it ignored the existence of the contract carriers and the similar problems they would have in this area. The current bills, of course, cover both common and contract carriers and we wish to reiterate our position that the language "common of contract carriers subject to economic regulations pursuant to the provisions of the Interstate Commerce Act" remain in the bills as an indication of the carriers to be covered.

We respectfully request that this letter, setting forth our position, be made a permanent part of the record.

Very truly yours,

W. A. BRESNAHAN,
Managing Director.

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,
OFFICE OF THE EXECUTIVE VICE PRESIDENT,
Washington, D.C., June 8, 1970.

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

DEAR CHAIRMAN FRIEDEL: Your Committee is presently holding hearings on H.R. 16245 and similar bills, to amend the Interstate Commerce Act, as amended,

in order to make unlawful, as unreasonable and unjust discrimination against and an undue burden upon interstate commerce, certain property tax assessments of common and contract carrier property. The National Industrial Traffic League strongly supports H.R. 16245 and urges early and favorable consideration.

The National Industrial Traffic League is a voluntary organization of shippers, shippers' associations, boards of trade, chambers of commerce, and other entities concerned with rates, traffic and transportation. The members of The National Industrial Traffic League are located throughout the United States, consist of enterprises, large, medium, and small, and use of all modes of transportation by land, sea and air. Carriers are ineligible for membership in the League.

The League has long advocated legislation which would prohibit discriminatory assessment of carrier property for purposes of state and local taxation, in the same manner that Federal laws now limit the power of states to burden interstate commerce indefinitely by the imposition of unremunerative rate levels in interstate freight rates.

The League wholeheartedly supports the purpose of the pending bills which would eliminate the long standing burden on our national transportation system, arising out of discriminatory state and local taxation of interstate carrier property.

The League is opposed to discriminatory taxation against interstate carriers by the several states both as a matter of principle and as a matter of practical economics. Were the carriers to continue to be burdened by discriminatory taxation, ultimately the brunt of this will be borne by the shippers and consumers of the Nation. The League has been deeply concerned at the increases in rates and charges for carrier services with which the shippers and consumers have been confronted in recent years. We see no justification for imposing upon the carriers, and ultimately upon the shippers and receivers of the Nation, the burden of discriminatory taxation.

This has been the subject of discussion, both in the Congress and elsewhere, in past years. The time has come to take action to solve this problem and bring about equality of taxation by the states of the property of interstate carriers and all other tax payers.

We appreciate this opportunity to present the views of The National Industrial Traffic League on this important legislation and urge the Subcommittee on Transportation and Aeronautics to take favorable action on H.R. 16245.

Respectfully submitted.

L. J. DORR,
Executive Vice President.

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,
Washington, D.C., June 9, 1970.

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

DEAR MR. CHAIRMAN: H.R. 16245 and related bills now being considered by the Transportation and Aeronautics Subcommittee of the House Interstate and Foreign Commerce Committee would make it unlawful for a State or subdivision thereof to assess property owned or used by interstate carriers at a higher rate than other property in the taxing district.

The National Association of Motor Bus Owners represents motor carries of passengers which provide over 90 percent of the intercity bus transportation in the United States. Our industry has not been materially and adversely affected by discriminatory State and local property tax assessments. Such discrimination, in our opinion, is not fair, equitable, or justifiable. Accordingly, this Association wishes to be shown as favoring the objectives of H.R. 16245.

It is respectfully requested that this letter be included in the printed record of the hearings on the bill.

Sincerely yours,

CHARLES A. WEBB,
President.

CONGRESS OF RAILWAY UNIONS,
Washington, D.C., June 12, 1970.

HON. SAMUEL N. FRIEDEL,
Chairman, Committee on House Administration,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Speaking in behalf of the Congress of Railway Unions I respectfully request that we be recorded in support of your bill H.R. 16245 and similar measures on which the subcommittee held hearing on Tuesday, June 9, 1970.

The railway employees whom we represent strongly favor elimination of the discriminatory taxing policies followed by certain state governments and subdivisions of state governments to the disadvantage of railroads and other common carriers. These discriminatory taxing policies constitute an undue burden on interstate commerce, and in our view are properly subject to corrective action by federal legislation.

We urge that your committee take favorable action on the pending bills at an early date.

Respectfully yours,

DONALD S. BEATTIE,
Executive Secretary.

STATE OF MARYLAND,
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION,
Baltimore, Md., June 17, 1970.

Re S. 2289.

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

DEAR SAM: I tried to reach you this afternoon by telephone and was told by your Miss Justice that you were on the floor of the House, but that she would give you a message to call me at your first opportunity.

I am very much interested in S. 2289 as it relates to requiring a comparison of transportation property with *all* other property, and that the definition of "all other property" contained at page 3, lines 8 to 10, is so explicit as to prevent excluding from such comparison any property other than agricultural and timber property. As you know, the Maryland Constitution permits classification of property for tax purposes, and our Legislature pursuant to this authority, has created many different classifications of property. If the comparison is to be made, then for the sake of equality it should be between transportation property and all other commercial or business property. I don't think the tax on a transportation property should be compared to a tax on a bank, trust company, or financial institution, or an ad valorem tax on intangibles, because the properties are unrelated, and are not susceptible to comparison. To accomplish the above, I am enclosing suggested Amendments to S. 2289.

I sincerely hope that you and your Subcommittee will give serious consideration to making S. 2289 more explicit in this respect, thereby avoiding the possibility of creating a tax preferential treatment for transportation property.

I know you are tremendously busy at this time, taking care of your duties in Washington, and conducting the usual biennial campaign for reelection, but I do hope you will find time to discuss this matter with me briefly on the telephone.

Very truly yours,

ALBERT W. WARD,
Director.

SUGGESTED AMENDMENTS TO S. 2289 AS PRINTED FEBRUARY 2, 1970

AMENDMENT NO. 1

On page 3, strike out lines 8 to 10, inclusive, and insert:
Interstate Commerce Act on the basis of an assessment ratio which is higher than the general average assessment ratio prevailing in the assessment jurisdiction for other commercial property subject to a property tax levy in proportion to its value; (b) the collection of any

AMENDMENT NO. 2

On line 21, strike out "any other" and insert: other commercial

AMENDMENT NO. 3

On page 3, strike out lines 8 to 10, inclusive, and insert:

"(c) The term 'other commercial property' means taxable property, real or personal, used primarily for business purposes other than for the purposes of agriculture or the growing of timber.

"(d) the term 'assessment ratio' means the ratio of assessed value to true market value of property, as those values are established by an assessing officer or agency in the process of assessing property for taxation according to value. Where a State agency periodically determines and promulgates general average assessment ratios for the several assessment districts of the State, those determinations shall be prima facie evidence of the general average assessment ratios of the respective assessment districts.

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

