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91-66 EXEMPTION OF CERTAIN WAGES AND SALARIES

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BEFORE THE

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COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

S. 2044

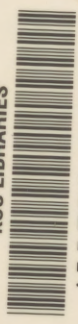
TO AMEND THE INTERSTATE COMMERCE ACT AND THE FEDERAL
AVIATION ACT OF 1958 IN ORDER TO EXEMPT CERTAIN WAGES AND
SALARY OF EMPLOYEES FROM WITHHOLDING FOR TAX PURPOSES
UNDER THE LAWS OF STATES OR SUBDIVISIONS THEREOF OTHER
THAN THE STATE OR SUBDIVISION OF THE EMPLOYEE'S RESIDENCE

MARCH 3 AND 4, 1970

Serial 91-66

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EXEMPT CERTAIN WAGES AND SALARY OF EMPLOYEES FROM WITHHOLDING FOR TAX PURPOSES

TUESDAY, MARCH 3, 1970

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 6202, New Senate Office Building, Hon. Warren G. Magnuson, (chairman of the committee) presiding.

Present: Senators Magnuson, Hartke, and Pearson.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The chair has a short opening statement this morning. The hearings today and tomorrow are for the purpose of obtaining testimony on S. 2044, a bill to amend the Interstate Commerce Act and the Federal Aviation Act of 1958, in order to exempt certain wages and salaries of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence. A copy of the bill and agency comment will be placed in the record.

(The bill and the agency comment follow:)

Staff member assigned to this hearing: A. Daniel O'Neal.

91ST CONGRESS
1ST SESSION

S. 2044

IN THE SENATE OF THE UNITED STATES

MAY 1, 1969

Mr. MAGNUSON (for himself and Mr. JACKSON) introduced the following bill;
which was read twice and referred to the Committee on Commerce

A BILL

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

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That part I of the Interstate Commerce Act is amended by
4 redesignating section 26 as section 27 and by inserting before
5 such section a new section as follows:

II—O

1 "EXEMPTION OF CERTAIN WAGES AND SALARY OF EM-
2 PLOYEES FROM WITHHOLDING BY OTHER THAN RESI-
3 DENCE STATE

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

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

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

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

3 "EXEMPTION OF CERTAIN WAGES AND SALARY OF EM-
4 PLOYEES FROM WITHHOLDING BY OTHER THAN RESI-
5 DENCE STATE

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

18 "(b) For the purposes of this section, the term 'State'
19 also means any possession of the United States or the Com-
20 monwealth of Puerto Rico."

21 SEC. 3. (a) Part III of the Interstate Commerce Act is

1 amended by redesignating section 323 as section 324 and by
2 inserting before such section a new section as follows:

3 "EXEMPTION OF CERTAIN WAGES AND SALARY OF EM-
4 PLOYEES FROM WITHHOLDING BY OTHER THAN RESI-
5 DENCE STATE

6 "SEC. 323. No part of the wages or salary paid by any
7 water carrier subject to the provisions of this part to an em-
8 ployee who performs his regularly assigned duties as such
9 an employee on a vessel in more than one State, shall be
10 withheld for tax purposes pursuant to the laws of any State
11 or subdivision thereof other than the State or subdivision of
12 such employee's residence, as shown on the employment
13 records of such carrier; nor shall such carrier file any in-
14 formation return or other report for tax purposes with re-
15 spect to such wages or salary with any State or subdivision
16 thereof other than such State or subdivision of residence."

17 (b) The table of contents contained in section 301 of
18 the Interstate Commerce Act is amended by striking out
"Sec. 323. Separability of provisions."

19 and inserting in lieu thereof:

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

"Sec. 324. Separability of provisions."

1 SEC. 4. (a) Title XI of the Federal Aviation Act of
2 1958 is amended by inserting after section 1111 the follow-
3 ing new section:

4 "EXEMPTION OF CERTAIN WAGES AND SALARY OF EM-
5 PLOYEES FROM WITHHOLDING BY OTHER THAN RESI-
6 DENCE STATE

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

18 " (b) For the purposes of this section, the term 'State'
19 also means the District of Columbia and any of the posses-
20 sions of the United States."

21 (b) That portion of the table of contents contained in

1 the first section of the Federal Aviation Act of 1958 which
2 appears under the heading "TITLE XI—MISCELLANEOUS" is
3 amended by adding at the end thereof the following:

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

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

Interstate Commerce Commission
Washington, D. C. 20423

OFFICE OF THE CHAIRMAN

August 8, 1969

Honorable Warren G. Magnuson
Chairman
Committee on Commerce
United States Senate
Washington, D. C. 20510

Dear Chairman Magnuson:

This replies to your request for the comments of the Commission on S. 2044, a bill, "To amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence". This matter has been referred to our Committee on Legislation. After consideration by that Committee, I am authorized to submit the following comments in its behalf:

Section 1 of S. 2044 would amend the Interstate Commerce Act by adding a new section 26A which would, in effect, provide that wages of a person employed by a carrier, subject to Part I of the Interstate Commerce Act, and who works in two or more States, shall be subject to withholding for State or local income tax purposes in the States in which such person resides. Sections 2 and 3 of the bill provide for a similar exemption from

multiple State or local income tax withholding for employees of interstate regulated motor carriers and water carriers by inserting new provisions in Parts II and III of the Act, designated as section 226A and section 323 respectively. Section 4 makes a similar change in the Federal Aviation Act for employees of regulated air carriers.

Although we have no specific information as to the need for this legislation, it is our understanding that its basic purpose is twofold. First, it would exempt employees of the regulated carriers covered by it from income tax withholding by two or more State or local taxing authorities on the same income. Second, it would relieve the carriers themselves of the record-keeping and other requirements necessary to comply with the requirements of the income tax laws except in the taxing jurisdiction in which the employee in question resides, as shown in the carrier's employment records. S. 2044 does not, however, change any existing State or local tax liability that may be imposed on a carrier employee.*

Since it involves State and local tax policies, rather than economic regulation, we question whether it is desirable to consider this legislation

*CF. Sen. Report No. 1076 on S. 1719 (88th Congress, 2nd Sess. (1964)) pp. 1-2 for a further discussion of the purposes of this legislation.

in terms of amendments to the Interstate Commerce Act and the Federal Aviation Act. If S. 2044 is given favorable consideration, we believe that it would be more appropriate for it to be enacted as a separate statute.

Subject to this observation, we would not be opposed to the enactment of S. 2044, based on the very limited information available to us.

Sincerely,

Virginia Mae Brown

VIRGINIA MAE BROWN

Chairman, Committee on Legislation

George M. Stafford

Dale W. Hardin

The CHAIRMAN. This legislation is addressed to a situation which has been creating hardships for both employees and employers involved in interstate transportation. The problem has been created by the tendency in recent years for States and local governments in broadening their tax base, to impose income taxes on nonresidents who in their employment pass through the State. Persons who fly aircraft, work for railroads, drive trucks or buses, or who operate tugs are vulnerable to this kind of tax.

The bill does not affect Federal withholding taxes and does not in any way affect the right of a State to tax. It only limits in one respect the procedure a State uses to collect those taxes.

The bill merely prohibits State and local governments from withholding on the wages of interstate employees of railroads, motor carriers, air carriers, and some water carriers.

This legislation is identical to a bill which was reported by the Senate Commerce Committee in 1964 and approved by the Senate that same year. But it died in the House. Our first witness today is Jess Rosenberg, who is the executive director of the Western Highway Institute, San Francisco, Calif.

**STATEMENT OF JESS N. ROSENBERG, EXECUTIVE DIRECTOR,
WESTERN HIGHWAY INSTITUTE, SAN FRANCISCO, CALIF.**

The CHAIRMAN. Jess, I suppose you have sufficiently established your residence in California after moving from the State of Washington, so you are taxed only in California. Is that correct.

Mr. ROSENBERG. Yes, but several times, Mr. Chairman.

The CHAIRMAN. All right, Jess, we will be glad to hear from you.

Mr. ROSENBERG. Mr. Chairman, I have appended to my statement a summary of my qualifications and the work which I have done over a period of years in the field of State taxation of interstate business.

The CHAIRMAN. The chairman will vouch for that and put it in the record.

(The material follows:)

**BACKGROUND INFORMATION OF JESS N. ROSENBERG, EXECUTIVE DIRECTOR,
WESTERN HIGHWAY INSTITUTE**

Graduate of University of Washington, 1933, J.D.

Member of the Washington State Bar.

Assistant Attorney General and Chief Counsel, Washington State Tax Commission, 1942-1947.

Chairman, Attorneys' Section, National Association of Tax Administrators, 1946-1947.

Chief Counsel, Washington Department of Public Utilities, 1947-1949.

Attorney, Atomic Energy Commission, 1949-1951.

General Counsel, Western Highway Institute, 1951-1964.

Executive Director, Western Highway Institute, 1964 to date.

Member, American Bar Association Tax Section, Committee on State and Local Taxes, 1948 to date.

Chairman, American Bar Association subcommittee on Multistate Taxation of the Transportation Industry, 1957-1962.

Group chairman, Particular Industries Subcommittees, American Bar Association State and Local Tax Committee, 1963-1967.

Chairman, Committee on State and Local Taxes, Tax Section, American Bar Association, 1967-1969.

Special Advisor, Committee on State and Local Taxes, American Bar Association, 1969 to date.

Author: "Future of Gross Receipts Taxes"—Revenue Administration, 1947, National Association of Tax Administrators.

"Licensing Interstate Vehicles: State Cooperation or Federal Intervention?"—11 Vanderbilt Law Review 1007, 1958.

"State Taxation of Interstate Motor Carriers"—46 Virginia Law Review 1221, 1960.

Mr. ROSENBERG. In addition to my work which I have noted it might be of special interest to the committee that during the past 10 or 12 years I have been very active in the State and local tax committee of the section of taxation of the American Bar Association. Not because this committee has authorized me to represent them, which I do not, but because that committee is a group of about 120 lawyers from all over the country representing both State and local governments as well as many large corporations and lawyers in general practice.

I was chairman of that committee for the years 1967-69. I am now its special adviser. The Western Highway Institute, which I represent, is a research organization engaged in economic, legal, and engineering research in the Western United States and Canada for the past 23 years. By joint agreement of the executive committees of American Trucking Associations, Inc., and Western Highway Institute, the institute is recognized as the research arm of the industry in the West.

Western Highway Institute, being a research organization has not adopted any action either favoring or disapproving S. 2044. My sole purpose in today's appearance is to indicate the legal background giving rise to the need for congressional action to solve problems of the type presented by this legislation. Any opinions expressed are therefore mine, as an individual.

Since much of the material which I would ordinarily place before this committee is contained in the record of S. 1719, 88th Congress, 2d session, and available to the committee staff and, since very little has changed in this regard since 1964 when this measure was approved by the Senate—

The CHAIRMAN. Well now, Jess, I suspect organizations such as the American Trucking Association and others will testify on their own about this bill.

Mr. ROSENBERG. That is correct.

The CHAIRMAN. All right.

Mr. ROSENBERG. As I say, very little has changed except that the problem has become more acute.

For instance, there are three more States today which impose income taxes which did not in 1964, and which do require withholding on nonresidents. The thing that is interesting about this particular question is the constant query as to whether or not this type of matter should be considered by the Congress of the United States and whether it is not an impingement upon the sovereignty of the individual States.

Here I think it ought to be made clear that the commerce clause

gives the Congress the power to regulate commerce among the several States. And the commerce clause is there—

The CHAIRMAN. Before you leave that, you say categorically the prevailing view of the Supreme Court was that the commerce clause, even without implementing legislation by Congress, acted as a limitation upon the power of the States, and you cite the case. What is the limitation?

Mr. ROSENBERG. Well, of course, this had been the question for many, many years and many decisions of the court. The problem has been that the court construed the commerce clause to be an automatic limitation on the States from the earliest time. Thus the court's decisions permitted Congress to regulate State taxing of interstate commerce by merely acquiescing in court announced rules.

In other words, the Federal Government has been controlling this subject—

The CHAIRMAN. I understand that. But the basis for authority would be that the action complained of would be an impediment to interstate commerce.

Mr. ROSENBERG. This is correct.

The CHAIRMAN. And you contend that taxing would be one of those cases?

Mr. ROSENBERG. This is right. But up to 30 years ago or 35 years ago the prevailing view of the court was that interstate commerce must not be burdened and that States must—

The CHAIRMAN. Burdened is the word used all the time.

Mr. ROSENBERG. This is correct. And that the commerce clause itself was self-executing, so there was an area in which the States were automatically proscribed, without any action by Congress. Now, that view—

The CHAIRMAN. Put the decision *Freeman v. Hewit* 329 U.S. 249 (1946) in the record, will you? Or we can get it and put it in the record at this point. Because I think this is important.

If you have any other cases you think bear on it we can put them in too—not too many—don't clutter up the record.

(The information follows:)

FREEMAN, TRUSTEE *v.* HEWIT, DIRECTOR OF GROSS INCOME TAX DIVISION

APPEAL FROM THE SUPREME COURT OF INDIANA

(No. 3. Argued November 8, 1944. Reargued October 14, 1946.—

Decided December 16, 1946)

A trustee of an estate created by the will of a decedent domiciled in Indiana at the time of his death instructed his Indiana broker to arrange for the sale of certain securities at stated prices. They were offered for sale on the New York Stock Exchange through the Indiana broker's New York correspondents. When a purchaser was found, the trustee delivered the securities in Indiana to his Indiana broker, who mailed them to New York. The New York brokers made delivery, received the purchase price, and remitted the proceeds (less expense and commission) to the Indiana broker, who delivered the proceeds (less commission) to the trustee in Indiana. *Held*:

1. The Indiana Gross Income Tax Act of 1933 cannot constitutionally be applied to the gross receipts from these sales, since it would constitute a direct burden on interstate commerce in violation of the Commerce Clause. Pp. 252-259.

2. *McGoldrick v. Berwind-White Co.*, 309 U.S. 33; *American Mfg. Co. v. St. Louis*, 250 U.S. 459; *Harvester Co. v. Department of Treasury*, 322 U.S. 340, differentiated. Pp. 257, 258.

3. The Commerce Clause protects interstate sales of intangibles as well as interstate sales of tangibles. P. 258.

221 Ind. 675, 51 N. E. 2d 6, reversed.

Appeal from a decision of the Supreme Court of Indiana sustaining application of the Indiana Gross Income Tax Act of 1933 to gross receipts from interstate sales of securities. 221 Ind. 675, 51 N. E. 2d 6. *Reversed*, p. 259.

Gath P. Freeman argued the cause for appellant and filed a brief on the original argument, and also filed a brief on the reargument.

Harry T. Ice reargued the cause and filed a brief for appellant.

Winslow Van Horne, Deputy Attorney General of Indiana, argued the cause on the original argument for appellee. With him on the brief were *James A. Emmert*, Attorney General, *John J. McShane*, Deputy Attorney General, *Robert Hollowell, Jr.*, *Cleon H. Foust*, *John H. Fetterhoff* and *Fred C. McClurg*.

John J. McShane, Deputy Attorney General, reargued the cause for appellee. With him on the brief were *James A. Emmert*, Attorney General, *John H. Fetterhoff* and *Fred C. McClurg*, Deputy Attorneys General.

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

This case presents another phase of the Indiana Gross Income Tax Act of 1933, which has been before this Court in a series of cases beginning with *Adams Mfg. Co. v. Storn*, 304 U.S. 307. The Act imposes a tax upon "the receipt of the entire gross income" of residents and domiciliaries of Indiana but excepts from its scope "such gross income as is derived from business conducted in commerce between this state and other states of the United States . . . to the extent to which the State of Indiana is prohibited from taxing such gross income by the Constitution of the United States." Indiana Laws 1933, pp. 388, 392, as amended, Laws 1937, pp. 611, 615, Burns' Ind. Stat. Anno. § 64-2601 *et seq.*

Appellant's predecessor, domiciled in Indiana, was trustee of an estate created by the will of a decedent domiciled in Indiana at the time of his death. During 1940, the trustee instructed his Indiana broker to arrange for the sale at stated prices of securities forming part of the trust estate. Through the broker's New York correspondents the securities were offered for sale on the New York Stock Exchange. When a purchaser was found, the New York brokers notified the Indiana broker who in turn informed the trustee, and the latter brought the securities to his broker for mailing to New York. Upon their delivery to the purchasers, the New York brokers received the purchase price, which, after deducting expenses and commission, they transmitted to the Indiana broker. The latter delivered the proceeds less his commission to the trustee. On the gross receipts of these sales amounting to \$65,214.20, Indiana, under the Act of 1933, imposed a tax of 1%. Having paid the tax under protest, the trustee brought this suit for its recovery. The Supreme Court of Indiana, reversing a court of first instance, sustained the tax on the ground that the *situs* of the securities was in Indiana. 221 Ind. 675, 51 N. E. 2d 6. The case is here on appeal under § 237(a) of the Judicial Code, 28 U.S.C. § 344(a), and has had the consideration which two arguments afford.

The power of the States to tax and the limitations upon that power imposed by the Commerce Clause have necessitated a long, continuous process of judicial adjustment. The need for such adjustment is inherent in a federal government like ours, where the same transaction has aspects that may concern the interests and involve the authority of both the central government and the constituent States.¹

The history of this problem is spread over hundreds of volumes of our Reports. To attempt to harmonize all that has been said in the past would neither clarify what has gone before nor guide the future. Suffice it to say

¹ Compare Report of the (Australian) Royal Commission on the Constitution (1929) pp. 260, 322-24, and Report of the (Canadian) Royal Commission on Dominion-Provincial Relations (1940), bk. II, pp. 62-67, 111-21, 150-62, 216-19. See *Australia*, Act No. 1, 1946, repealing Act No. 20 1942 and Act No. 43 1942; *South Australia v. Commonwealth*, 65 C. L. R. 373; also Proposals of the Government of Canada, Dominion-Provincial Conference on Reconstruction, pp. 47-49; Proceedings of the Dominion-Provincial Conference (1945) *passim*, particularly the statement of Prime Minister Mackenzie King, p. 388, and the discussion following. And see Maxwell, *The Fiscal Impact of Federalism in the United States* (1946) cc. II, XIII, XIV.

that especially in this field opinions must be read in the setting of the particular cases and as the product of preoccupation with their special facts.

Our starting point is clear. In two recent cases we applied the principle that the Commerce Clause was not merely an authorization to Congress to enact laws for the protection and encouragement of commerce among the States, but by its own force created an area of trade free from interference by the States. In short, the Commerce Clause even without implementing legislation by Congress is a limitation upon the power of the States. *Southern Pacific Co. v. Arizona*, 325 U.S. 761; *Morgan v. Virginia*, 328 U.S. 373. In so deciding we reaffirmed, upon fullest consideration, the course of adjudication unbroken through the Nation's history. This limitation on State power, as the *Morgan* case so well illustrates, does not merely forbid a State to single out interstate commerce for hostile action. A State is also precluded from taking any action which may fairly be deemed to have the effect of impeding the free flow of trade between States. It is immaterial that local commerce is subjected to a similar encumbrance. It may commend itself to a State to encourage a pastoral instead of an industrial society. That is its concern and its privilege. But to compare a State's treatment of its local trade with the exertion of its authority against commerce in the national domain is to compare incomparables.

These principles of limitation on State power apply to all State policy no matter what State interest gives rise to its legislation. A burden on interstate commerce is none the lighter and no less objectionable because it is imposed by a State under the taxing power rather than under manifestations of police power in the conventional sense. But, in the necessary accommodation between local needs and the overriding requirement of freedom for the national commerce, the incidence of a particular type of State action may throw the balance in support of the local need because interference with the national interest is remote or unsubstantial. A police regulation of local aspects of interstate commerce is a power often essential to a State in safeguarding vital local interests. At least until Congress chooses to enact a nation-wide rule the power will not be denied to the State. *The Minnesota Rate Cases*, 230 U.S. 352, 402 *et seq.*; *S. C. Hwy. Dept. v. Barnicell Bros.*, 303 U.S. 177; *Union Brokerage Co. v. Jensen*, 322 U.S. 202, 209-12. State taxation falling on interstate commerce, on the other hand, can only be justified as designed to make such commerce bear a fair share of the cost of the local government whose protection it enjoys. But revenue serves as well no matter what its source. To deny to a State a particular source of income because it taxes the very process of interstate commerce does not impose a crippling limitation on a State's ability to carry on its local function. Moreover, the burden on interstate commerce involved in a direct tax upon it is inherently greater, certainly less uncertain in its consequences, than results from the usual police regulations. The power to tax is a dominant power over commerce. Because the greater or more threatening burden of a direct tax on commerce is coupled with the lesser need to a State of a particular source of revenue, attempts at such taxation have always been more carefully scrutinized and more consistently resisted than police power regulations of aspects of such commerce. The task of scrutinizing is a task of drawing lines. This is the historic duty of the Court so long as Congress does not undertake to make specific arrangements between the National Government and the States in regard to revenues from interstate commerce. See Act of July 3, 1944, 58 Stat. 723; H. Doc. 141, 79th Cong., 1st Sess., "Multiple Taxation of Air Commerce"; and compare 54 Stat. 1059, 4 U.S.C. § 13 *et seq.* (permission to States to extend taxing power to Federal areas). Considerations of proximity and degree are here, as so often in the law, decisive.

It has been suggested that such a tax is valid when a similar tax is placed on local trade, and a specious appearance of fairness is sought to be imparted by the argument that interstate commerce should not be favored at the expense of local trade. So to argue is to disregard the life of the Commerce Clause. Of course a State is not required to give active advantage to interstate trade. But it cannot aim to control that trade even though it desires to control its own. I cannot justify what amounts to a levy upon the very process of commerce across State lines by pointing to a similar hobble on its local trade. It is true that the existence of a tax on its local commerce detracts from the deterrent effect of a tax on interstate commerce to the extent that it removes the temptation to sell the goods locally. But the fact of such a tax, in any event, puts impediments upon the

currents of commerce across the State line, while the aim of the Commerce Clause was precisely to prevent States from exacting toll from those engaged in national commerce. The Commerce Clause does not involve an exercise in the logic of empty categories. It operates within the framework of our federal scheme and with due regard to the national experience reflected by the decisions of this Court, even though the terms in which these decisions have been cast may have varied. Language alters, and there is a fashion in judicial writing as in other things.

This case, like *Adams Mfg. Co. v. Storen*, *supra*, involves a tax imposed by the State of the seller on the proceeds of interstate sales. To extract a fair title from interstate commerce for the local protection afforded to it, a seller State need not impose the kind of tax which Indiana here levied. As a practical matter, it can make such commerce pay its way, as the phrase runs, apart from taxing the very sale. Thus, it can tax local manufacture even if the products are destined for other States. For some purposes, manufacture and the shipment of its products beyond a State may be looked upon as an integral transaction. But when accommodation must be made between state and national interests, manufacture within a State, though destined for shipment outside, is not a seamless web so as to prevent a State from giving the manufacturing part detached relevance for purposes of local taxation. *American Mfg. Co. v. St. Louis*, 250 U.S. 459; *Utah Power & L. Co. v. Pfof*, 286 U.S. 165. It can impose license taxes on domestic and foreign corporations who would do business in the State, *Cheney Brothers Co. v. Massachusetts*, 246 U.S. 147; *St. Louis S. W. Ry. v. Arkansas*, 235 U.S. 350, 364, though it cannot, even under the guise of such exercises, "hamper" interstate commerce. *Western Union Tel. Co. v. Kansas*, 216 U.S. 1; *Pullman Co. v. Kansas*, 216 U.S. 56 (particularly White, J. concurring at p. 63); Henderson, *The Position of Foreign Corporations in American Constitutional Law* (1918) 118-23, 128-31. It can tax the privilege of residence in the State and measure the privilege by net income, including that derived from interstate commerce. *U.S. Glue Co. v. Oak Creek*, 247 U.S. 321; cf. *Atlantic Coast Line v. Daughton*, 262 U.S. 413. And where, as in this case, the commodities subsequently sold interstate are securities, they can be reached by a property tax by the State of domicile of the owner. *Virginia v. Imperial Sales Co.*, 203 U.S. 15, 19; and see *Citizens National Bank v. Durr*, 257 U.S. 99.

These illustrative instances show that a seller State has various means of obtaining legitimate contribution to the costs of its government, without imposing a direct tax on interstate sales. While these permitted taxes may, in an ultimate sense, come out of interstate commerce, they are not, as would be a tax on gross receipts, a direct imposition on that very freedom of commercial flow which for more than a hundred and fifty years has been the ward of the Commerce Clause.

It is suggested, however, that the validity of a gross sales tax should depend on whether another State has also sought to impose its burden on the transactions. If another State has taxed the same interstate transaction, the burdensome consequences to interstate trade are undeniable. But that, for the time being, only one State has taxed is irrelevant to the kind of freedom of trade which the Commerce Clause generated. The immunities implicit in the Commerce Clause and the potential taxing power of a State can hardly be made to depend, in the world of practical affairs, on the shifting incidence of the varying tax laws of the various States at a particular moment. Courts are not possessed of instruments of determination so delicate as to enable them to weigh the various factors in a complicated economic setting which, as to an isolated application of a State tax, might mitigate the obvious burden generally created by a direct tax on commerce. Nor is there any warrant in the constitutional principles heretofore applied by this Court to support the notion that a State may be allowed one single-tax-worth of direct interference with the free flow of commerce. An exaction by a State from interstate commerce falls not because of a proven increase in the cost of the product. What makes the tax invalid is the fact that there is interference by a State with the freedom of interstate commerce. Such a tax by the seller State alone must be judged burdensome in the context of the circumstances in which the tax takes effect. Trade being a sensitive plant, a direct tax upon it to some extent at least deters trade even if its effect is not precisely calculable. Many States, for instance, impose taxes on the consumption of goods, and such taxes have been sustained regardless of the extra-State origin of the goods, or whether a tax on their sale had been imposed by the seller State. Such potential taxation by consumer States is but

one factor pointing to the deterrent effect on commerce by a superimposed gross receipts tax.

It has been urged that the force of the decision in the *Adams* case has been sapped by *McGoldrick v. Berwind-White Co.*, 309 U.S. 33. The decision in *McGoldrick v. Berwind-White* was found not to impinge upon "the rationale of the *Adams Manufacturing Co. case*," and the tax was sustained because it was "conditioned upon a local activity, delivery of goods within the state upon their purchase for consumption." 309 U.S. at 58. Compare *McLeod v. Dilworth Co.*, 322 U.S. 327. Taxes which have the same effect as consumption taxes are properly differentiated from a direct imposition on interstate commerce, such as was before the Court in the *Adams* case and is now before us. The tax on the sale itself cannot be differentiated from a direct unapportioned tax on gross receipts which has been definitely held beyond the State taxing power ever since *Fargo v. Michigan*, 121 U.S. 230 and *Philadelphia Steamship Co. v. Pennsylvania*, 122 U.S. 326. See also, e.g., *Galveston, H. & S. A. R. Co. v. Texas*, 210 U.S. 217; *Kansas City, Ft. S. & M. R. Co. v. Kansas*, 240 U.S. 227, 231; *Puget Sound Co. v. Tar Commission*, 302 U.S. 90, 94; and compare *Wallace v. Hines*, 253 U.S. 66. For not even an "internal regulation" by a State will be allowed if it directly affects interstate commerce. *Robbins v. Shelby Taxing District*, 120 U.S. 489, 494.

Nor is *American Mfg. Co. v. St. Louis*, 250 U.S. 459, or *Harvester Co. v. Dept. of Treasury*, 322 U.S. 340, any justification for the present tax. The *American Mfg. Co.* case involved an imposition by St. Louis of a license fee upon the conduct of manufacturing within that city. It has long been settled that a State can levy such an occupation tax graduated according to the volume of manufacture. In that case, to lighten the manufacturer's burden, the imposition of the occupation tax was made contingent upon the actual sale of the goods locally manufactured. Sales in St. Louis of goods made elsewhere were not taken into account in measuring the license fee. That tax, then, unlike this, was not in fact a tax on gross receipts. Cf. *Cornell v. Coyne*, 192 U.S. 418. And, if words are to correspond to things, the tax now here is not "a tax on the transfer of property" within the State, which was the basis for sustaining the tax in *Harvester Co. v. Dept. of Treasury*, *supra*, at 348.

There remains only the claim that an interstate sale of intangibles differs from an interstate sale of tangibles in respects material to the issue in this case. It was by this distinction that the Supreme Court of Indiana sought to escape the authority of *Adams Mfg. Co. v. St. Louis*, *supra*. Latin tags like *mobilia sequuntur personam* often do service for legal analysis, but they ought not to confound constitutional issues. What Mr. Justice Holmes said about that phrase is relevant here. "It is a fiction, the historical origin of which is familiar to scholars, and it is this fiction that gives whatever meaning it has to the saying *mobilia sequuntur personam*. But being a fiction it is not allowable to obscure the facts, when the facts become important." *Blackstone v. Miller*, 188 U.S. 189, 204. Of course this is an interstate sale. And constitutionally it is commerce no less and no different because the subject was pieces of paper worth \$65,214.20, rather than machines.

Reversed.

MR. JUSTICE BLACK dissents.

MR. JUSTICE RUTLEDGE, concurring.

This is a case in which the grounding of the decision is more important than the decision itself. Whether the Court now intends simply to qualify or to repudiate entirely, except in result, *Adams Mfg. v. St. Louis*, 304 U.S. 307, I am unable to determine from its opinion. But that one or the other consequence is intended seems obvious from its refusal to rest the present decision squarely on that case, together with the wholly different foundation on which it now relies. In either event, the matter is important and calls for discussion.

I.

The *Adams* case held the Indiana tax now in issue to be invalid when applied, *without apportionment*, to gross receipts derived from interstate sales of goods made by Indiana manufacturers who sold and shipped them to purchasers in other states. "The vice of the statute" as thus applied, it was held, was "that the tax includes in its measure, *without apportionment*, receipts derived from activities in interstate commerce; and that the exaction is of such a character that if lawful may in substance be laid to the fullest extent by States in which the goods are sold as well as those in which they are manufactured. Interstate commerce

would thus be subject to *the risk of a double tax burden* to which intrastate commerce is not exposed, and which the commerce clause forbids." (Emphasis added.) 304 U.S. 307, 311.¹

Today's opinion refuses to rest squarely on the *Adams* case, although that case would be completely controlling if no change in the law were intended. No basis for distinguishing the cases on the facts or the ultimate questions is found or stated. The Court takes them as identical.² Yet it places no emphasis upon apportionment, the absence of which the *Adams* opinion held crucial. The Court also puts to one side as irrelevant the factor there most stressed, namely, the danger of multiple taxation, that is, of similar taxation by other states, if the Indiana tax should be upheld in the attempted application.

Those matters were the very essence of the *Adams* decision. They were in its words "the vice" of the statute as applied. The *Adams* opinion gives no reason for believing that the application of the tax would not have been sustained if either of the two elements vitiating it had been absent. On the contrary, the fair, indeed the necessary, inference from the language and reasons given is that the tax would not have been voided if there had been no danger of multiple state taxation or if the tax had been apportioned so as to eliminate that risk. Moreover those groundings were strictly in accord with long lines of previous decisions rendered here,³ were intended to conform to them and to preserve them unimpaired.

Yet now they are put to one side, either as irrelevant or as not controlling and therefore presumably as insufficient,⁴ in favor of another rationalization which ignores them completely. Shortly, this is, in reiterated forms, that the tax as applied is laid "directly on" interstate commerce, is a levy "on the every sale" or "the very process" of such commerce, is therefore and solely thereby a "burden" on it, and consequently is an exaction the commerce clause forbids. What outlaws it is neither comparative with local trade nor any actual or probable clogging or impeding effect in the fact.⁵ It is simply the "direct" bearing and "incidence" of the tax on interstate commerce and this alone. Stripped of any discriminatory element and of any actual or probable tendency to block or impede the commerce in fact, this "direct incidence is itself enough without more to invalidate the tax, although it is one of general application singling out the commerce neither for separate nor for distinct or invidious treatment.

If this ever was the law, it has not been such for many years. In a sense it is a reversion to ideas once prevalent, but long since repudiated,⁶ about the "exclusiveness" of Congress' power over interstate commerce which, if now resurrected for general application, will strike down state taxes in a great variety of forms sustained consistently of late. Not since *Coolcy v. Board of Wardens*, 12 How. 299, has the notion prevailed that the mere existence of power in Congress to regulate commerce excludes the states from exacting revenue from it through exercise of their powers of taxation.⁷ Yet if a general tax, applying to all commerce

¹ The Court added: "We have repeatedly held that such a tax is a regulation of, and a burden upon, interstate commerce prohibited by Article I, § 8 of the Constitution. The opinion of the State Supreme Court stresses the generality and nondiscriminatory character of the exaction, but it is settled that this will not save the tax if it directly burdens interstate commerce." 304 U.S. 307, 311-312. Cf. notes 5 and 16.

² The only factual difference is that here the sales were of securities, there of goods. It was this upon which Indiana has relied to distinguish the *Adams* case, asserting originally that it gave domiciliary foundation for sustaining the tax. The claim disappeared, in effect, at the second oral argument, and the Court does not rest on it. I agree that, for present purposes, sales of intangibles should be treated identically with sales of goods.

³ See, e.g., *Pullman's Palace Car Co. v. Pennsylvania*, 141 U.S. 18; *Cudahy Packing Co. v. Minnesota*, 246 U.S. 450; *U.S. Express Co. v. Minnesota*, 223 U.S. 335. And see especially discussion in *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, 255-257.

⁴ Compare the opinion of MR. JUSTICE FRANKFURTER in *Northwest Airlines v. Minnesota*, 322 U.S. 292.

⁵ As the Court says, "An exaction by a State from interstate commerce fails not because of a proven increase in the cost of the product. What makes the tax invalid is the fact that here is interference by a State with the freedom of interstate commerce." The only "interference" held to be important is the direct incidence of the tax on the commerce, not the double burden or risk of it. Cf. notes 1 and 16.

⁶ See, e.g., Ribble, *State and National Power Over Commerce* (1937) 204; Dowling, *Interstate Commerce and State Power* (1940) 27 Va. L. Rev. 1, 3-10. See also Frankfurter, *The Commerce Clause* (1937) 53: "Had Marshall's theory of the 'dominant' commerce power prevailed, the taxable resources of the states would have been greatly confined. The full implications of his theory, if logically pursued, might well have profoundly altered the relations between the states and the central government."

⁷ See note 6. See also Wechsler, *Stone and the Constitution* (1946) 46 Col. L. Rev. 764, 785, quoted in note 10 *infra*.

alike, is to be outlawed, regardless of discriminatory consequences or actual or probable impeding effect in fact, simply because it bears "directly" on the commerce and for no other reason, not only will there be a resurrection of Marshall's "exclusive" idea, never prevailing after the *Coolley* case. The effect will be to knock down many types of state taxes held valid since that landmark decision.⁸

That consequence must follow if the presently asserted basis for decision is to be taken as a principle fit for general application and intended to be so used. We cannot assume that the Court intends it to be used otherwise, for that would be to make of it an arbitrary formula applied to dispose of the present case alone and having no validity for any other situation. But the ground relied upon is broad enough to include many other types of situation and of tax, and cannot be restricted logically or in reason to these narrow facts. If discrimination and real risk, in the sense of practical effect to clog or impede trade, are irrelevant to the validity of this type of tax, they are equally irrelevant to many others, unless sheer fiction and arbitrary distinction based on inconsequential factors are to be controlling. If the grounding which disregards them is adequate for disposing of this case, it is adequate also for disposing of many others involving it in which the Court has been at great pains to rest on other factors, unnecessarily it now would seem.

It will be appropriate, before turning to further consideration of the more pertinent decisions, to note the only basis upon which the Court grounds its ruling that "direct" state taxes on "the very process" of interstate commerce are void. This is because, in the words of the opinion, the commerce clause "by its own force created an area of trade free from interference by the States." Although this is stated as grounding for the long-established conclusion that even without implementing legislation by Congress the clause is a limitation upon state power, it also is quite obviously the foundation of the further conclusion that "direct" taxes laid by the states within that area are outlawed regardless of any other factor than their direct incidence upon it.

II.

I agree that the commerce clause "of its own force" places restrictions upon state power to tax, as well as to regulate, interstate commerce. This has been held through various lines of decision extending back to *Gibbons v. Ogden*, 9 Wheat. 1, some of them unbroken.⁹ I also agree that this construction is consonant with the great purpose of the commerce clause to maintain our distinctively national trade free from state restrictions and barriers against it which the clause was adopted to prevent. But, at any rate since *Coolley v. Board of Wardens*, *supra*, this has not meant that the clause was intended to or could secure "by its own force" that vast area of commercial activity wholly free from "interference," that is, from taxation and regulation, by the states.¹⁰ Nor for many years has it meant that the field of interstate commerce is to be free from such "interference," simply because it is "direct" or has immediate incidence upon it.¹¹ True, language frequently appears in the cases, especially the earlier ones, to the effect that "direct" taxation and regulation by the states are forbidden. But apart from its inconsistency with both language and results in other cases,¹² in most of those where it has appeared there were other invalidating factors, such as singling

⁸ Cf. text *infra* at notes 14 to 16, also 21, and authorities cited.

⁹ See e.g., *Robbins v. Shelby County Towing District*, 120 U.S. 489; *Real Silk Hosiery Mills v. Portland*, 268 U.S. 325; *Nippert v. Richmond*, 327 U.S. 416, and authorities cited.

¹⁰ See Ribble, *supra*, at 72 ff.; Frankfurter; *supra*, at 24, 56; Wechsler, Stone and the Constitution (1946) 46 Col. L. Rev. 764, 785; "It will summarize his basic conception to say that as the issues were framed in the long debate the position taken by the Court in *Coolley v. Board of Wardens* comes closest to according with his thought."

¹¹ "Experience has taught that the opposing demands that the commerce shall bear its share of local taxation, and that it shall not, on the other hand, be subjected to multiple tax burdens merely because it is interstate commerce, are not capable of reconciliation by resort to the syllogism. Practical rather than logical distinctions must be sought." *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, 259. See also the dissenting opinion of Mr. Justice Stone in *DiSanto v. Pennsylvania*, 273 U.S. 34, 44 (overruled by *California v. Thompson*, 313 U.S. 109), "In thus making use of the expressions, 'direct' and 'indirect interference' with commerce, we are doing little more than using labels to describe a result rather than any trustworthy formula by which it is reached."

¹² See, e.g., *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33; *Gwin, White & Prince v. Henneford*, 305 U.S. 434; *Nippert v. Richmond*, 327 U.S. 416.

out the commerce for special treatment, other types of discrimination, or failure to apportion where multiple state taxation could result if the tax were sustained.¹³

The fact is that "direct incidence" of a state tax or regulation, apart from the presence of such a factor, has long since been discarded as being in itself sufficient to outlaw state legislation. "Local" regulations, under the *Coolley* formula, bear directly on the commerce itself.¹⁴ But they are not outlawed for that reason. Calling them "incidental," where this is done, does not make them "indirect," except in judicial perspective. Police regulations bear no more indirectly or remotely upon the interstate commerce which must observe them than upon the local commerce falling equally within their incidence.

Again, an apportioned tax on interstate commerce is a "direct" tax bearing immediately upon it in incidence. But such a tax is not for that reason invalid. Decisions have sustained such taxes repeatedly, regardless of their direct bearing, provided the apportionment were fairly made and no other vitiating element were present, such as those above mentioned.¹⁵ It was this fact, without question, which the Court had in mind in the *Adams* case, when it carefully saved from its ban any question concerning such a tax as Indiana's if properly apportioned in a situation like the ones presented there and now.¹⁶

III.

The language purporting to outlaw "direct" taxes because they are direct has appeared more frequently perhaps in relation to gross receipts taxes than any other, including both "direct" taxes, apportioned and unapportioned, and others considered "indirect" because purporting to be laid not "on the commerce itself"

¹³ Gross receipts taxes which have been sustained fall into the following groups: (a) Those which were fairly apportioned. See, e.g., *Illinois Cent. R. v. Minnesota*, 309 U.S. 157; *Pullman's Palace Car Co. v. Pennsylvania*, 141 U.S. 18; *Wisconsin & Michigan Ry. v. Powers*, 191 U.S. 379; *U.S. Express Co. v. Minnesota*, 223 U.S. 335; *Ficklen v. Tazewell District*, 145 U.S. 1. (b) Those which have been justified on a "local incidence" theory. See, e.g., *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, with which compare *Fisher's Blend Station v. Tax Comm'n*, 297 U.S. 650; *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33; *American Mfg. Co. v. St. Louis*, 250 U.S. 459. See also cases cited in note 21. In many cases apportioned gross receipts taxes have been sustained not on the ground that they were apportioned but that they were local in nature. See, e.g., *Maine v. Grand Trunk Ry.*, 142 U.S. 217; *New York, L.E. & W.R. Co. v. Pennsylvania*, 158 U.S. 431; *Wisconsin & Michigan Ry. v. Powers*, *supra*; *U.S. Express Co. v. Minnesota*, *supra*.

Gross receipts taxes which have not been sustained fall into the following groups: (a) Those which were not fairly apportioned. See, e.g., *Oklahoma v. Wells Fargo Co.*, 223 U.S. 298. (b) Those which were not apportioned and subjected interstate commerce to the risk of multiple taxation. *Philadelphia & So. S.S. Co. v. Pennsylvania*, 122 U.S. 326; *Ratterman v. Western Union Telegraph Co.*, 127 U.S. 411; *Western Union Telegraph Co. v. Alabama*, 132 U.S. 472; *Adams Mfg. Co. v. Stoen*, 304 U.S. 307; *Gwin, White & Prince v. Henneford*, 305 U.S. 434, 439. Cf. *Fargo v. Michigan*, 121 U.S. 230, as explained in *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, 256. (c) Those in which there was a discriminatory element in that they were directed exclusively "at transportation and communication." Lockhart, *Gross Receipts Taxes on Transportation* (1943) 57 Harv. L. Rev. 40, 65-66. *Galveston, H. & S.A. Ry. v. Texas*, 210 U.S. 217, and cf. *New Jersey Tel. Co. v. Tax Board*, 280 U.S. 338. But see *Nashville, C. & St. L. Ry. v. Browning*, 310 U.S. 362. In both the *Galveston* and *New Jersey Telephone Company* cases, although the taxable events all occurred within the taxing state, the possibility of multiple taxation was nevertheless present. (d) Those in which there was no discrimination but a possible multiple burden. *Fisher's Blend Station v. Tax Comm'n*, *supra*, as explained in *Western Live Stock v. Bureau of Revenue*, 303 U.S. at 260-261. (e) Those in which there was no discrimination, no apportionment and no possibility of multiple burden. *Puget Sound Stevedoring Co. v. Tax Commission*, 302 U.S. 90. This decision, it may be noted, might have been rested upon the clause of the Constitution forbidding the states to tax exports. Cf. *Richfield Oil Corp. v. State Board*, 329 U.S. 69.

¹⁴ Cf. *California v. Thompson*, 313 U.S. 109; *Union Brokerage Co. v. Jensen*, 322 U.S. 202; *Robertson v. California*, 328 U.S. 440. Indeed, sometimes police regulations bear more heavily on interstate commerce. Cf. *Robertson v. California*, *supra*, and cases cited at note 28 therein.

¹⁵ See cases cited in note 13, *supra*.

¹⁶ The Court said, in answer to the Indiana Supreme Court's emphasis upon the "generality and nondiscriminatory character" of the levy, "but it is settled that this will not save the tax if it directly burdens interstate commerce." 304 U.S. at 312; cf. note 1, *supra*. The same statement is now made in this case not to support the conclusion that these features cannot save a tax where the risk of multiple state taxation would outlaw it, as in the *Adams* case, but to support the vastly broader grounding that the tax is invalid simply because it is "direct" in its incidence. The quoted *Adams* statement had no such significance, as appears not only from its immediate context but also from the further statement made apropos of *American Mfg. Co. v. St. Louis*, 250 U.S. 459, in an effort to distinguish it: "It is because the tax, forbidden as to interstate commerce, reaches indiscriminately and without apportionment, the gross compensation for both interstate commerce and intrastate activities that it must fall in its entirety so far as applied to receipts from sales interstate." (Emphasis added.) 304 U.S. at 314. Not "direct" taxation simply, but taxing the entire proceeds without apportionment in the face of threatened or possible multiple state taxation was the "direct burden" found and outlawed in the *Adams* case.

but upon some "local incident." We have recently held that a tax having effects forbidden by the commerce clause will not be saved merely because it is cast in terms of bearing upon some "local incident."¹⁷ As we then said, all interstate commerce takes place within the states and the consequences forbidden by the commerce clause cannot be achieved legally simply by the device of hooking the tax or other forbidden regulation to some selected "local incident." That such a factor may be chosen for bearing the "direct" incidence of the tax may be a consideration to be taken into account in determining its validity. But it cannot validate a tax or regulation which produces the forbidden consequences, any more than a "direct tax" which does not produce them can be outlawed because it is direct. Not "directness" or "immediacy" of incidence *per se*, whether "upon the commerce itself" or upon a "local incident," is the outlawing factor, but whether the tax, regardless of the special point of incidence, has the consequences for interstate trade intended to be outlawed by the commerce clause.

The difficulty of any other rule or approach is disclosed most clearly perhaps by contrasting the decision in *American Mfg. Co. v. St. Louis*, 250 U.S. 459, with the *Adams* decision and this one, in both of which efforts are made, unsuccessfully in my opinion, to distinguish the *American* case. There the tax was laid upon the manufacture, locally done, of goods sold locally and out of state. But the tax was "measured by" the gross receipts from sales of the goods manufactured, including those sold interstate.¹⁸

A tax upon a local privilege *measured by* the volume of gross receipts from both local and interstate trade¹⁹ would seem to have, in practical effect, the same consequences for blocking or impeding the commerce as one laid "directly" upon it, in any situation where no multiple levy is made, likewise in any where more than one state might find such a local privilege for pegging the tax.²⁰ And a tax upon gross receipts "in lieu of" property or other taxes,²¹ cannot be said either to be less "direct" in its incidence upon the commerce than the application of the Indiana tax now in issue or to afford protection against multiple levies the risk of which was held in *Adams Mfg. Co. v. Storen* to make the Indiana tax inherently vicious in that application.²²

Unless we are to return to the formalism of another day, neither the "directness" of the incidence of a tax "upon the commerce itself" nor the fact that its incidence is manipulated to rest upon some "local incident" of the interstate transaction can be used as a criterion or, many times, as a consideration of first importance in determining the validity of a state tax bearing upon or affecting interstate commerce. Not the words "direct" and "indirect" or "local incident" can fulfill the function of judgment in deciding whether the tax brings the forbidden results. See the dissenting opinion of Mr. Justice Stone in *Di Santo v. Pennsylvania*, 273 U.S. 34, 44, quoted in note 11. That can be done only by taking

¹⁷ "If the only thing necessary to sustain a state tax bearing upon interstate commerce were to discover some local incident which might be regarded as separate and distinct from the transportation or intercourse which is the commerce itself and then to lay the tax on that incident, all interstate commerce could be subjected to state taxation and without regard to the substantial economic effects of the tax upon the commerce." *Nippert v. Richmond*, 327 U.S. 416, 423.

¹⁸ To say that this was not in substance a tax on gross receipts, because sales in St. Louis of goods made elsewhere were not taken into account in measuring the tax, is simply to ignore the fact that the tax did include all interstate sales of goods manufactured and all returns from them. That the local sales of goods brought in from other states were excepted does not mean either that those sales were interstate transactions (which it was not necessary to decide in view of their exemption) or that the sales out of state included in the measure were not interstate transactions; or that they were not, in substantial effect, taxed upon their gross returns by the measure, notwithstanding the tax was made legally to fall upon the privilege of manufacturing.

The *Adams* decision purported to distinguish *American Mfg. Co. v. St. Louis* simply on the ground that the tax was not one laid on the taxpayer's sales or the income derived from them, but was a license fee for engaging in the manufacture which could be measured "by the sales price of the goods produced rather than by their value at the date of manufacture."

¹⁹ In addition to *American Mfg. Co. v. St. Louis*, 250 U.S. 459, see *Oliver Iron Co. v. Lord*, 262 U.S. 172; *Hope Natural Gas Co. v. Hall*, 274 U.S. 284; *Utah Power & Light Co. v. Pfoff*, 286 U.S. 165.

²⁰ Cf. *Galveston, H. & S. A. R. Co. v. Texas*, 210 U.S. 217, 227; *Morrison*, State Taxation of Interstate Commerce (1942) 36 Ill. L. Rev. 727, 738.

²¹ See *Postal Telegraph Cable Co. v. Adams*, 155 U.S. 688; *U.S. Express Co. v. Minnesota*, 223 U.S. 335; *Pullman Co. v. Richardson*, 261 U.S. 330. See also discussion in *Galveston, H. & S. A. R. Co. v. Texas*, 210 U.S. 217, 226-227.

²² This is true, though concededly such a tax might work to prevent cumulative or higher tax burdens imposed by a single taxing state. Cf. Lockhart, Gross Receipts Taxes on Interstate Transportation and Communication (1943) 57 Harv. L. Rev. 40.

account of the specific effects of state legislation the clause was intended to outlaw, and of the consequences actual or probable of the legislation called in question to create them.

IV.

Judgments of this character and magnitude cannot be made by labels or formulae. They require much more than pointing to a word. It is for this reason that increasingly with the years emphasis has been placed upon practical consequences and effects, either actual or threatened, of questioned legislation to block or impede interstate commerce or place it at practical disadvantage with the local trade.²³ Formulae and adjectives have been retained at times in intermixture with the effective practical considerations. But proportionately the stress upon them has been greatly reduced, until the present decision; and the trend of recent decisions to sustain state taxes formerly regarded as invalid has been due in large part to this fact.

The commerce clause was not designed or intended to outlaw all state taxes bearing "directly" on interstate commerce. Its design was only to exclude those having the effects to block or impede it which called it and the Constitution itself into being. Not all state taxes, nor indeed all *direct* state taxes, can be said to produce those effects. On the other hand, many "indirect" forms of state taxation, that is, "indirect" as related to "incidence," do in fact produce such consequences and for that reason are invalid.

It is for this reason that selection of a "local incident" for hanging the tax will not save it, if also the exaction does not in fact avoid the outlawed interferences with the free flow of commerce. Selection of a local incident for pegging the tax has two functions relevant to determination of its validity. One is to make plain that the state has sufficient factual connections with the transaction to comply with due process requirements.²⁴ The other is to act as a safeguard, to some extent, against repetition of the same or a similar tax by another state.²⁵ These matters are often interrelated, cf. *Western Union Telegraph Co. v. Kansas*, 216 U.S. 1, though in other situations they may be entirely separate. The important difference is between situations where it is essential to show minimal factual connections of the transaction with the taxing state in order to sustain the levy as against due process objections for "want of justification to tax";²⁶ and other situations where, although such connections clearly are present, the necessity is for showing that the tax, if sustained, will create a multiple tax load or other consequences having the forbidden effects.

This case is not one of the former sort. The transactions were as closely connected in fact with Indiana as with any other state.²⁷ But the case is one of the latter type, that is, where, despite those connections, there were equally close and important ones in another state, New York; and therefore, as the *Adams* case declared, the risk of multiple state taxation would be incurred, unless one or the other or both states were forbidden to tax the transactions as such, or were required to apportion the tax. Not the "directness" of the tax in its bearing upon the commerce, but this danger is the crucial issue in this case, as it was in the *Adams* case. In other words, but for the possibility that more states than one would levy the same or a similar tax, such an application as was made of Indiana's tax in the *Adams* case and here would be no more burdensome or objectionable

²³ See *Nippert v. Richmond*, 327 U.S. 416; *Best & Co. v. Maxwell*, 311 U.S. 454. Cf. *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408. See also Wechsler, Stone and the Constitution (1946) 46 Col. L. Rev. 764, 785-787.

²⁴ See dissenting opinion in *McLeod v. Dilworth Co.*, 322 U.S. 327, at 356-357. See also *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, 444-445.

²⁵ See McNamara, Jurisdictional and Interstate Commerce Problems in the Imposition of Excises on Sales (1941) 8 Law & Contemp. Prob. 482, 491. Compare the discussion of a proposed federal statute to give the buyer's state the right to impose nondiscriminatory sales taxes. Proc. 27th Ann. Conf. Nat. Tax Assn. (1934) 136-160. See also Perkins, The Sales Tax and Transactions in Interstate Commerce (1934) 12 N.C.L. Rev. 99.

²⁶ Cf. note 25.

²⁷ Indiana was the state by whose law the trust was created. It was the *situs* of the trusts administration. It was the place where the securities were kept prior to mailing for delivery in accordance with the terms of their sale. Cf. *Curry v. McCannless*, 307 U.S. 357. The directions for sale were given there. The proceeds were forwarded to Indiana and there received into the corpus of the trust. The state's connections with the trust, and with the property which was the subject of the sale, more than satisfy any due process requirement for exercise of the power to tax either the property or transactions relating to its disposition taking place as largely within Indiana's borders as did the sales in this case.

than other applications of the same tax this Court has sustained or of other taxes likewise held valid.²⁸

V.

This Court in recent years has gone far in sustaining state taxes laid upon local incidents of interstate transactions by both the state of origin and the state of market.²⁹ Perhaps it may be said, in view of such decisions, that it has more clearly sustained such taxes at the marketing end than by the state of origin,³⁰ although this may be matter for debate. In any event, the factual connections of the taxing state with the interstate transactions in the cases where the tax has been sustained hardly can be regarded as greater or more important than those of Indiana with the transactions involved in the *Adams* case and here. Nor could it be shown in fact that in some of them, at any rate, the danger of multiple state taxation was appreciably less, if it be assumed that the forwarding state has the same power to tax the transaction, by pegging the tax upon a local incident, as has been recognized for the state of market.

Such taxes, whether in one state or the other, may in fact block or impede interstate commerce as much as, or more than, one placed directly upon the commerce itself. They have been sustained, nevertheless, not simply because of their bearing upon a local incident, but because in the circumstances of their application they were considered to have neither discriminatory effects upon interstate trade as compared with local commerce nor to impose upon it the blocking or impeding effects which the commerce clause was taken to forbid.³¹

This in my judgment is the appropriate criterion to be applied, rather than any mere question of "direct" or "indirect" incidence upon a "local incident." The absence of any such connection with the taxing state is highly material.³² Its presence cannot be the controlling consideration for validating the tax. *Nippert v. Richmond*, 327 U.S. 416. In this view it would seem clear that the validity of such a tax as Indiana's, applied to situations like those presented in the *Adams* case and now, should be determined by reference not merely to the "direct incidence" of the tax, but by whether those forbidden consequences would be produced, either through the actual incidence of multiple taxes laid by different states or by the threat of them, with resulting uncertainties producing the same impeding consequences.³³

Thus, it is highly doubtful that the levy in this case, or in the *Adams* case, actually had any impeding effect whatever upon the transactions or the free flow interstate of such commerce.³⁴ But the *Adams* case found the impediment in the assumption that if one state could tax, so also could the other, and in that event, a double burden would result for interstate commerce not borne by local trade. This danger, it was said, was inherent in the type of the tax, since it was not apportioned, and in consequence the tax as applied must fall.

The basic assumption was not true as a universally or even a generally resulting consequence, for two reasons. One is that it would not follow necessarily as a matter of fact that both states would tax or, if they did so, that the combined

²⁸ The cases, aside from *Adams Mfg. Co. v. Storen*, 304 U.S. 307, which involve the Indiana gross receipts tax are: *Department of Treasury v. Wood Preserving Corp.*, 313 U.S. 62; *Department of Treasury v. Ingram-Richardson Mfg. Co.*, 313 U.S. 252; *International Harvester Co. v. Dept. of Treasury*, 322 U.S. 340; *Ford Motor Co. v. Dept. of Treasury*, 323 U.S. 459. See also *General Trading Co. v. State Tax Commission*, 322 U.S. 355; cf. *Northwest Airlines v. Minnesota*, 322 U.S. 292.

²⁹ See, e.g., *McGoldrick v. Berwind-White Co.*, 309 U.S. 33; *Nelson v. Sears, Roebuck & Co.*, 312 U.S. 359; *General Trading Co. v. Tax Commission*, 322 U.S. 335; *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250; *Coverdale v. Arkansas-Louisiana Pipe Line Co.*, 303 U.S. 604; *Department of Treasury v. Ingram-Richardson Mfg. Co.*, 313 U.S. 252.

³⁰ Compare *McGoldrick v. Berwind-White Co.*, 309 U.S. 33, with *McLeod v. Dilworth Co.*, 322 U.S. See Powell, *New Light on Gross Receipts Taxes* (1940) 53 Harv. L. Rev. 909.

³¹ See *McGoldrick v. Berwind-White Co.*, 309 U.S. 33, 58, quoted *infra* Part VI.

³² As a matter of minimal due process requirements. Cf. text *infra* at notes 24 to 27.

³³ The danger of an impending burden or barrier from multiple state taxation could be real and substantial in a particular case if the threat of such taxation were actual or probable or if its threatened incidence were involved in such actual uncertainty that this uncertainty itself would constitute, in practical effect, a substantial clog.

³⁴ The Indiana tax was only one percent of the proceeds of the sales. The record indicates, too, that the New York Stock Transfer tax was collected from the proceeds of the sale in New York. The amount of the tax was three cents per share sold for less than twenty dollars, and four cents per share sold for more than twenty dollars. Tax Law §§ 270, 270a: *O'Kane v. New York*, 283 N.Y. 439, 28 N.E. 2d 905. The tax did not apply to the transfer of bonds. Cf. Op. Atty. Gen. N.Y. 1939, p. 208.

effects of the taxes would be either to clog or to impede the commerce.³⁵ The other, it no more follows, as a matter of law, that because one state may tax the other may do likewise.

The *Adams* decision did not take account of any difference, as regards the risk of multiple state taxation, between situations where the multiple burden would actually or probably be incurred in fact and others in which no such risk would be involved. It rather disregarded such differences, so that "the risk of a double tax burden" on which the Court relied to invalidate the levy was not one actually, probably, or even doubtfully imposed in fact by another state.³⁶ It rather was one which resulted only from an assumed, and an unexercised, power in that state to impose a similar tax.

The Court was not concerned with whether the forbidden consequences had been incurred in the particular situation or might not be incurred in others covered by its ruling. The motivating fear was more general. The ultimate risk which the Court sought to avoid was the danger that gross income or gross receipts tax legislation, without apportionment, might be widely adopted if the door were once opened and, if adopted and applied to interstate sales by all or many of the states, would result generally in bringing such sales within the incidence of multiple state taxation of that nature. Rather than incur this risk, with the anticipated consequent widespread creation of multiple levies, the Court in effect forestalled them at the source. Its action was prophylactic and the prophylaxis was made absolute.

By thus relieving interstate commerce from liability to pay taxes in either state, without any showing that both had laid them, the effect was, not simply to relieve that commerce from multiple burden, but to give it exemption from taxes all other trade must bear.³⁷ Local trade was thus placed at disadvantage with interstate trade, by the amount of the tax, and the commerce clause thereby became a refuge for tax exemption, not simply a means of protection against unequal or undue taxation. Certainly its object was not to create for interstate trade such a specially privileged position.

But the alternatives to such a ruling were not themselves free from difficulty. They may be stated shortly. But preliminary I accept the view, frequently declared,³⁸ that a state runs afoul the commerce clause when it singles out interstate commerce for special taxation not applied to other trade or otherwise discriminates against it or treats it invidiously. Moreover, all other things being equal, multiple state taxation of gross receipts, although by non-discriminatory taxes of general applicability, does compel the latter to bear a heavier tax burden than local trade in either state. The cumulative tax burden is in effect discriminatory, involving in any practical view the exact effects of a single discriminatory tax. Although the difference in total tax load may not be sufficient actually to block or impede the free flow of interstate trade,³⁹ discrimination alone, without regard to showing of further consequences, has been held consistently to be sufficient for outlawing the tax.

This too I accept. For discrimination not only is ordinarily itself invidious treatment, but has an obvious tendency toward blocking or impeding the commerce, if not always the actual effect of doing so. Nor is the discriminatory tendency or effect lessened because it results from cumulation of tax burdens rather than from a single tax producing the same consequences. To allow both states to tax "to the fullest extent" would produce the invidious sort of barrier or impeding the commerce clause was designed to stop. But the bare unexercised power of another state to tax does not produce such results. It only opens the

³⁵ Cf. note 31. Whether such a tax would in fact produce the forbidden results or not would depend upon the incidence or likelihood of the incidence of a like tax in the other, or another jurisdiction having similar power. Frequently this likelihood will be, in fact, either nil or small.

³⁶ The opinion discloses no consideration of any question or suggestion whether a like or other tax had been or was likely to be imposed by the state of destination, or even that such a tax by that state was doubtfully incident. Such an inquiry would have been inconsistent with the Court's thesis.

³⁷ It is assumed, of course, that a nondiscriminatory tax of general applicability laid by the taxing state would be involved.

³⁸ See *Best & Co. v. Maevell*, 311 U.S. 454; *Hale v. Bimco Trading Co.*, 306 U.S. 375; *Guy v. Baltimore*, 100 U.S. 434; *Webber v. Virginia*, 103 U.S. 344; *Welton v. Missouri*, 91 U.S. 275; *Voight v. Wright*, 141 U.S. 62; *Brimmer v. Rehman*, 138 U.S. 78.

³⁹ For a variety of reasons, among which might be the larger capacity of such trade to absorb the difference, by reason of greater volume, without sustaining loss of profit, in the particular sort of commerce or type of transaction. See also note 34.

way for them to be produced. This danger is not fanciful but real, more especially in a time when new sources of revenue constantly are being sought. Accordingly, I agree that this door should not be opened.

But it is not necessary to go as far as the *Adams* case went, or as the decision now rendered goes, in order to prevent the anticipated deluge. There is no need to give interstate commerce a haven of refuge from taxation, albeit of gross receipts or from "direct" incidence, in order to safeguard it from evils against which the commerce clause is designedly protective. Less broad and absolute alternatives are available and are adequate for the purpose of protection without creating the evils of total exemption.

The alternative methods available for avoiding the multiple state tax burden may now be stated. They are: (1) To apply the *Adams* ruling, stopping such taxes at the source, unless the tax is apportioned, thus eliminating the cumulative burdens;⁴⁰ (2) To rule that either the state of origin or the state of market, but not both, can levy the exaction; (3) To determine factually in each case whether application of the tax can be made by one state without incurring actual danger of its being made in another or the risk of real uncertainty whether in fact it will be so made.

The *Adams* solution is not unobjectionable, for reasons already set forth. To deprive either state, whether of origin or of market, of the power to lay the tax, permitting the other to do so, has the vice of allowing one state to tax but denying this power to the other when neither may be as much affected by the deprivation as would be the one allowed to tax and, in any event, both may have equal or substantial due process connections with the transaction. The solution by factual determination in particular cases of the actual or probable incidence of both taxes is open to two objections. One is that to some extent it would make the taxing power of one or both states depend upon whether the other had exercised, or probably would exercise, the same power. The other would lie in the volume of litigation such a rule would incite and the difficulties, in some cases at least, of making the factual determination.

VI.

The problem of multiple state taxation, absent other factors making for prohibition, is therefore one of choosing among evils. There is no ideal solution. To leave the matter to Congress, allowing both states to tax "to the fullest extent" until it intervenes, would run counter not only to the long-established rules requiring apportionment where incidence of multiple taxes would be likely, but also in substance and effect to those forbidding discrimination, without the consent of Congress, cf. *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408, as well as the long-settled rule that the clause is "of its own force" a prohibition upon the states. To require factual determination of forbidden effects in each case would be to invite costly litigation, make decision turn in some cases, perhaps many, on doubtful facts or conclusions, and encourage the enactment of legislation involving those consequences. The *Adams* ruling, as I have said, creates for many situations a tax refuge for interstate commerce and does this in both states.

As among the various possibilities, I think the solution most nearly in accord with the commerce clause, at once most consistent with its purpose and least objectionable for producing either evils it had no design to bring or practical difficulties in administration, would be to vest the power to tax in the state of the market, subject to power in the forwarding state also to tax by allowing credit to the full amount of any tax paid or due at the destination. This too is more nearly consonant with what the more recent decisions have allowed, if full account is taken of their effects.

In *McLeod v. Dilworth Co.*, 322 U.S. 327, 361. I have set forth the reasons leading to this conclusion.⁴¹ It may be added that such a result would avoid al-

⁴⁰ The *Adams* decision, of course, made no direct ruling upon an actual tax laid by the state of destination. But the basic premise of its rationalization would be altogether without substance if it were taken to mean that such a tax could be levied there without meeting the same barrier, and for the same reason, as the tax levied by Indiana, the state of origin, encountered.

⁴¹ "If in this case it were necessary to choose between the state of origin and that of market for the exercise of exclusive power to tax, or for requiring allowance of credit in order to avoid the cumulative burden, in my opinion the choice should lie in favor of the state of market rather than the state of origin. The former is the state where the goods must come in competition with those sold locally. It is the one where the burden of the tax necessarily will fall equally on both classes of trade. To choose the tax of the state of origin presents at least some possibilities that the burden it imposes on its local trade, with which the interstate traffic does not compete, at any rate directly, will be heavier than that placed by the consuming state on its local business of the same character."

together the undesirable features of factual determination in each case; would prevent the multiple and, in effect, discriminatory burden which would follow from allowing both states to tax until Congress should intervene; and would reduce by half, at least, the tax refuge created by the *Adams* ruling, without incurring other outlawed effects.

It is true this view logically would deny the state of origin power to tax, notwithstanding its adequate due process connections, except by giving credit for taxes due at the destination.⁴² But the forwarding state has no greater power under the *Adams* ruling and none at all under the present one if it is to be applied consistently and, as I think, this can be taken to outlaw both unapportioned and apportioned taxes.

I have no doubt that under the law prevailing until now this tax would have been sustained, if apportioned, under the *Adams* decision and others.⁴³ Nor have I any question that such a tax laid by New York would be upheld under those decisions. Indeed, in my opinion, the necessary effect of *McGoldrick v. Berwind-White Co.*, 309 U.S. 33, as appellee asserts, is to sustain power in the state of the market to tax "to the fullest extent" without apportionment by nondiscriminatory taxes of general applicability, transactions essentially no different from the ones involved in his case and in the *Adams* case.

It is true the *Berwind-White* case purported to distinguish the *Adams* case. But it did so by pointing out that the *New York* tax was "conditioned upon a local activity, delivery of goods within the state upon their purchase for consumption" and that "the effect of the tax, even though measured by the sales price, as has been shown, neither discriminates against nor obstructs interstate commerce more than numerous other state taxes which have repeatedly been sustained as involving no prohibited regulation of interstate commerce." 309 U.S. 33, 58.

This comes down to sustaining the tax, as was done in *American Mfg. Co. v. St. Louis*, *supra*, relied upon to distinguish the *Adams* case, simply because the tax was pegged upon the "local incident" of delivery. Apart from the reasons I have set forth above for regarding this as not being controlling, that basis was flatly repudiated in *Nippert v. Richmond*, 327 U.S. 416, as adequate for sustaining a tax having otherwise the forbidden effects and features. So here, in my opinion, it is hardly adequate to distinguish the *Adams* case, leaving it unimpaired, or to differentiate consistently the broader ruling made in this case.

I therefore agree with the appellee that the effect of the *Berwind-White* ruling was in substance, though not in words, to qualify the *Adams* decision, and that the combined effect of the two cases, taken together, was to permit the state of the market to tax the interstate transaction, but to deny this power to the forwarding state, unless by credit or otherwise it should make provision for apportionment. See Powell, *New Light on Gross Receipts Taxes* (1940) 53 Harv. L. Rev. 909, 939. Whether or not such a provision would save the Indiana tax as now applied, in view of what I think was the effect of *Berwind-White* on any basis other than sheer formalism, need not now be considered.⁴⁴

Whether or not acknowledgment of this effect of the *Berwind-White* decision would require reconsideration of the validity of apportioned taxes otherwise than by full credit, laid by the forwarding state,⁴⁵ neither that fact nor the effect of *Berwind-White* in qualifying the *Adams* ruling justifies the broader ruling now made to reach the same result as the *Adams* case reached. The trend of recent decisions has been toward sustaining state taxes formerly regarded as outlawed by the commerce clause. The present decision, by its reversion to the formal and discarded grounding in the "direct incidence" of the tax, is a reversal of that trend. It is one, moreover, unnecessary for sustaining the result the Court has reached. Its consequence, if followed in logical

⁴² Credit allowed for taxes paid elsewhere. See *Henneford v. Silas' Mason Co.*, 300 U.S. 577; *General Trading Co. v. Tax Commission*, 322 U.S. 335, is a form of apportionment, though not the only one.

⁴³ See also *Gwin, White & Prince v. Henneford*, 305 U.S. 434.

⁴⁴ It is obvious that an apportioned tax laid by the forwarding state, taken in conjunction with an unapportioned one levied by the state of the market, would produce the effect of multiple burden in the sense forbidden by the rule requiring apportionment and sustaining properly apportioned taxes. In the absence of a credit to the full amount of the marketing state's tax, the apportioned tax of the forwarding state, although making a cumulative burden, would impose only a reduced one as compared with an unapportioned tax by that state.

⁴⁵ Cf. note 44.

application to apportioned taxes, will be to outlaw them, for they bear as "directly" on "the commerce itself" as does the tax now stricken down in its present application. So also does the type of tax sustained in the *Berwind-White* case, in everything but verbalism.

I think the result now reached is justified, as necessary to prevent the cumulative and therefore discriminatory tax burden which would rest on or seriously threaten interstate commerce if more than one state is allowed to impose the tax, as does Indiana, upon the gross receipts from the sale without apportionment or credit for taxes validly imposed elsewhere. This result would follow in view of the *Berwind-White* decision and others like it,⁴⁶ if not only the state of the market but also the forwarding state could tax the sale "to the fullest extent" upon the gross receipts. For this reason I concur in the result.

But in doing so I dissent from grounding the decision upon a foundation which not only will outlaw properly apportioned taxes, thus going beyond the *Adams* decision, unless the Court is merely to reiterate the rule forbidding "direct" taxation of interstate sales only to recall it when a case involving a properly apportioned tax shall arise; but also will require outlawing many other types of tax heretofore sustained, unless a similar retreat is made.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE MURPHY concurs, dissenting.

I think the Court confuses a gross receipts tax on the Indiana broker with a gross receipts tax on his Indiana customer. *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434, would hold invalid a gross receipts tax, unapportioned, on the broker. In that case the taxpayer was a marketing agent for fruit growers in the State of Washington. The agent made sales and deliveries of the fruit in other States and in foreign countries, collected the sales prices, and remitted the proceeds, less charges, to the customers. The Court held that the gross receipts tax, being unapportioned, was invalid. There are two reasons why that result followed. In the first place, as the Court stated at p. 437, "the entire service for which the compensation is paid is in aid of the shipment and sale of merchandise" in interstate or foreign commerce. "Such services are within the protection of the commerce clause." In the second place, as the Court stated at p. 439, "If Washington is free to exact such a tax, other states to which the commerce extends may, with equal right, lay a tax similarly measured for the privilege of conducting within their respective territorial limits the activities there which contribute to the service. The present tax, though nominally local, thus in its practical operation discriminates against interstate commerce, since it imposes upon it, merely because interstate commerce is being done, the risk of a multiple burden to which local commerce is not exposed."

Under that view a tax on the commissions of the Indiana broker would be invalid. But I see no more reason for giving the customer immunity than I would for giving immunity to the fruit growers who sold their fruit through the broker in *Gwin, White & Prince, Inc. v. Henneford*, *supra*.

Concededly almost any local activity could, if integrated with earlier or subsequent transactions, be treated as parts of an interstate whole. In that view *American Mfg. Co. v. St. Louis*, 250 U.S. 459, would find survival difficult. For in that case a state tax on a manufacturer was upheld though the tax was measured by the value of the goods manufactured within the state and thereafter sold in interstate commerce. In *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, a tax laid on the gross receipts of a trade journal published in New Mexico was sustained although out-of-state advertisements were included in the journal and there was interstate distribution of it. The Court treated the local business as separate and distinct from the transportation and intercourse which are interstate commerce and which were employed to conduct the business.

I think the least that can be said is that the local transactions or activities of this taxpayer can be as easily untangled from the interstate activities of his broker.

Any receipt of income in Indiana from out-of-state sources involves, of course, the use of interstate agencies of communication. That alone, however, is no barrier to its taxation by Indiana. *Western Live Stock v. Bureau of Revenue*, *supra*. Cf. *New York ex rel. Cohn v. Graves*, 300 U.S. 308. The receipt of income

⁴⁶ See the "use" tax cases: *General Trading Co. v. Tax Commission*, 322 U.S. 335; *Felt & Tarrant Mfg. Co. v. Gallagher*, 306 U.S. 62; *Nelson v. Sears, Roebuck & Co.*, 312 U.S. 359; *Nelson v. Montgomery Ward & Co.*, 312 U.S. 373. See also *Jagels v. Taylor*, 309 U.S. 619, discussed in *McNamara*, *supra*, note 25, at 487.

in Indiana, like delivery of property there, *International Harvester Co. v. Dept. of Treasury*, 322 U.S. 340, is a local transaction which constitutionally can be made a taxable event. For a local activity which is separate and distinct from interstate commerce may be taxed though interstate activity is induced or occasioned by it. *Western Live Stock v. Bureau of Revenue*, *supra*, p. 253. The management of an investment portfolio with income from out-of-state sources is as much local activity as the manufacture of goods destined for interstate commerce, *American Mfg. Co. v. St. Louis*, *supra*, the publication of a trade journal with interstate revenues, *Western Live Stock v. Bureau of Revenue*, *supra*, or the growing of fruit for interstate markets, *Gwin, White & Prince, Inc. v. Henneford*, *supra*. All such taxes affect in some measure interstate commerce or increase the cost of doing it. But, as we pointed out in *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33, 48, that is no constitutional obstacle.

Adams Mfg. Co. v. Storen, 304 U.S. 307, is different. In that case the taxpayer had its factory and place of business in Indiana and sold its products in other States on orders taken subject to approval at the home office. The Court thought the risk of multiple taxation was real, because of the interstate reach of the taxpayer's business activities. The fact is that the incidence of that tax was comparable to the incidence of an unapportioned tax on interstate freight revenues.

The present tax is not aimed at interstate commerce and does not discriminate against it. It is not imposed as a levy for the privilege of doing it. It is not a tax on interstate transportation or communication. It is not an exaction on property in its interstate journey. It is not a tax on interstate selling. The tax is on the proceeds of the sales less the brokerage commissions and therefore does not reach the revenues from the only interstate activities involved in these transactions. It is therefore essentially no different, so far as the Commerce Clause is concerned, from a tax by Indiana on the proceeds of the sale of a farm or other property in New York where the mails are used to authorize it, to transmit the deed, and to receive the proceeds.

I would adhere to the philosophy of our recent cases¹ and affirm the judgment below.

MR. ROSENBERG. Well, they are legion. The case that is pretty much a landmark for Congress getting into the actual control of State taxation of interstate business—

THE CHAIRMAN. Go right ahead with your statement.

MR. ROSENBERG. Yes. This I get from the 1959 cases and some later, that the commerce clause authorizes Congress to regulate commerce among the States, so that States may tax interstate commerce subject only to guidelines furnished by Congress.

Now that has been the attitude expressed by the court more recently. More particularly, a five to four decision, *General Motors v. the State of Washington*, decided about 4 or 5 years ago, pretty much takes this view.

In other words, the States' power may be exercised as to interstate business so long as the Congress does not proscribe it. Now, these statements that I am making are very broad generalizations. But they describe what has taken place.

The important thing here to remember is that although those who emotionally consider this problem feel that Congress may be impinging upon the States' rights, the fact is that the Federal branch of our Government has had control of these problems since 1789. Until recently, however, this control was exercised by the Supreme Court, the judicial branch.

In 1959 the judicial branch said to the legislative branch—

¹ Of which *Gwin, White & Prince, Inc. v. Henneford*, *supra*, *Western Live Stock v. Bureau of Revenue*, *supra*, and *McGoldrick v. Berwind-White Coal Mining Co.*, *supra*, are illustrative.

The CHAIRMAN. Well, there must have been many cases brought by the complainants in this field. And there must be several decisions on it.

Mr. ROSENBERG. Well, I would have to answer that in this particular field of withholding on individuals, the record is singularly blank, largely because the States have been very gingerly testing their power. And we have a situation——

The CHAIRMAN. To a fellow who has part of his wages withheld, it is not very gingerly, is it?

Mr. ROSENBERG. No, this is right.

The CHAIRMAN. For him it isn't.

Mr. ROSENBERG. But the situation under which it is accepted that income is earned merely by passing through a State is a fairly novel one and the power of the States to reach that can be said to pretty much stem from decisions which the Court handed down in 1959. And the actual hardship that is taking place here today——

The CHAIRMAN. That poses another question. Supposing you own a truckline, and operate between your residence, the State of Washington, Seattle and San Francisco. Say the company has its main headquarters in Seattle. When the guy gets to San Francisco, they pay him down there; is that a typical case?

Mr. ROSENBERG. It could be, yes. I don't know that it is, but it could be.

The CHAIRMAN. They have a branch office down there, an accounting department, and they pay him down there. California might require withholding of a portion of the driver's wages.

Mr. ROSENBERG. Curiously enough California does not require withholding on its own residents, but under California law that employer would be required to withhold California income tax from the wages of the Washington resident, yes.

The CHAIRMAN. So that would be a typical case?

Mr. ROSENBERG. This is right.

The CHAIRMAN. All right. You may proceed.

Mr. ROSENBERG. This legislation is limited in scope and effect to persons and businesses actually engaged in interstate transportation. The legislation is designed to protect the instrumentalities of commerce, and the commerce itself, from undue burdensome and duplicating tax compliance procedures of States and their local subdivisions. If passed, it will prevent application of collection procedures which create difficulties for the taxed persons and for their employers, all of which involve potential expense to them out of all proportion to the potential benefits which might otherwise accrue to the taxing jurisdictions.

The CHAIRMAN. I want to get this straight. Take the same person and we don't have in the State of Washington an income tax, but assuming we did, then he would report, because he lives up there, how much he earned and we would tax him.

Mr. ROSENBERG. This is right.

The CHAIRMAN. Even though he might have been paid in California.

Mr. ROSENBERG. The withholding would be made in the State of Washington.

The CHAIRMAN. Take a person between two income tax States, that would be a better example.

Mr. ROSENBERG. This proposal will not impair the general tax authority of the States or their subdivisions in any way, nor will it relieve the affected employees of their liability to pay taxes properly due.

Here I might comment the idea of withholding is fairly recent. Early in World War II an executive of Macy's Department Store who was quite a tax man, Mr. Beardsly Ruml thought up the idea and presented it to the Roosevelt administration as a way to reach the expanded income tax, Federal tax, at that time—the liability for which was being accrued by many workers all over the country in a very transitory situation. And it was very effective. But it is a collection device. That is all it is.

So, we are saying here in this legislation, the Congress is saying, that that collection device is going to be limited to the one jurisdiction of the residence. There are serious problems of administration and equity as well as constitutionality involved in attempts by States and their subdivisions to tax individuals wherever they may happen to be, even for brief periods of time, and to impose responsibility for collection of such imposts upon their carrier employers.

Contrary to popular conception, the activities of airline pilots and interstate truck and bus drivers and railroad operating personnel do not fall into set patterns of designated routes, customarily traveled.

Their employment in interstate service is governed, among other things, by diverse operating requirements of carriers and by union work rules. The result is that many of these individuals will be assigned to a succession of operations, each of which may involve different States.

Their exposure to multiple taxation by a large number of States and municipalities is obvious. The costly and complex burdens imposed on them by the necessity of making tax reports to these multiple jurisdictions which, under withholding provisions, would receive deductions from their wages is likewise obvious. It would be impossible for them to handle these tax compliance problems without employing professional help.

Similarly, the accounting detail which multiple withholding will require of employers would create an expense which, in many cases, would exceed the actual amounts to be withheld for local governments.

The magnitude of the problem is apparent when it is realized that of 43 States imposing income taxes, 38 impose net income taxes on individuals. All 38 require withholding on amounts earned by non-residents within their borders. The three States which do not require withholding from their own residents do require it as to earnings by nonresidents. In addition, a number of cities impose income taxes and require withholding as to both residents and nonresidents.

One of the things that is not generally understood even by employers, as I find it, is that withholding statutes do place an absolute burden on them, as employers. Here is the California provision and it is typical:

Any persons required to withhold and transmit any amount pursuant to this article shall comply with the requirement without resort to any legal or equitable action in a court of law or equity. Any person paying to the Franchise Tax Board any amount required by him to be withheld is not liable therefor to the person from whom withheld unless the amount withheld is refunded to the withholding agent.

In simplest terms that statute means that the employer is not in a position to raise any questions about the legality of the imposition with respect to this person to whom he owes these wages. The employer stands as a garnishee defendant. He must answer for money due, he cannot raise any question to the legality of the tax as a valid debt of his employee. And as a garnishee defendant, he has absolute liability if he fails to comply. He can't legally question the validity of this imposition of the tax upon his employee.

The employee has to do that himself. The practical effect is that the employees are without remedy to question this State tax except through costly litigation involving minimal amounts. Just put it this way: The employer who might have legal counsel retained and be in a position to represent all of the employees, might institute a legal action, but under this type of statute, the employer has no standing in court, so that each employee would have to do his own questioning. This is an unjust burden to place on employees and equity would seem to indicate that the burden should, instead, be upon the local agencies seeking to collect their taxes.

In the final analysis, State and local income tax withholding requirements upon these employees and their employers create a very real burden on interstate commerce which the Congress is empowered to, and should, prevent. The provisions of the proposed law will place interstate business on exactly the same footing as local businesses and, clearly, no more than that should be required of interstate commerce.

The problem upon which Congress' action is requested in the present legislation is a relatively minor one at present. A number of jurisdictions have been reluctant to proceed with this type of withholding even though authorized to do so under present laws.

I might say here parenthetically that this nonaction by States and administrators who have, what is the word, treated this with "benign neglect," if I may paraphrase, creates a contingent liability for these employers, which to my way of thinking as a lawyer is an extremely unfair situation.

But if this problem is left unchecked, it can be expected to multiply in the future, however, with consequently greater hardships on the parties concerned.

For this reason it is imperative that action be taken now to simplify the burdens of these instrumentalities of interstate commerce at a time when it can be done with minimal effect upon State fiscal policies and with clarification as to State tax procedures in the future.

The CHAIRMAN. Thank you, Jess. As you say we passed a similar bill out of the Senate committee in 1964. And you say the situation hasn't eased. Is that correct?

Mr. ROSENBERG. That is correct.

The CHAIRMAN. One more question and I will be through. How does this affect another problem that doesn't involve particularly interstate commerce, but is the same situation, where a man works in one State but is a resident of another?

This could happen, this happens all over. I guess they move across the river from your town, as they go across the Columbia River down to the Portland-Vancouver area. There aren't many rivers in Kansas, so they are not too concerned about that there.

Senator PEARSON. Kansas City, Mo., and Kansas City, Kans., it could create a great problem.

The CHAIRMAN. Yes. What does your research show on that? Where are they taxed?

Mr. ROSENBERG. First of all this legislation would only touch—

The CHAIRMAN. I understand that. But I am just asking you, if this should pass, these people are going to come in, because there are problems, such as these between Washington and Oregon. We had a case that has been around for years where the people that worked in Bonneville lived in the State of Washington but were taxed by Oregon.

If Washington had an income tax, it would probably try to tax them too, I would think.

Mr. ROSENBERG. Yes. This situation exists in many places in the country.

The CHAIRMAN. How does New Jersey and New York handle it?

Mr. ROSENBERG. New York and New Jersey have, in effect, an agreement.

The CHAIRMAN. All right. That is all I wanted to know.

Mr. ROSENBERG. But this situation exists all over. For instance, just to give you a hypothetical case, I am a State of Washington lawyer and an outstanding expert on certain appeals. Litigation has gone all the way up through the Washington courts and now the client says he needs an expert to represent him before the circuit court of appeals in San Francisco, so he retains me.

Now under pure theory, California is entitled to income tax on that portion which I have earned down there by appearing before the circuit court of appeals. However, they haven't yet been there with the sheriff, at the courtroom door to get the money.

The CHAIRMAN. You have the same argument going on regarding State taxation on the sale of goods.

Mr. ROSENBERG. Oh, yes.

The CHAIRMAN. The question there is sometimes how much business are you doing in one State as against another, and to what extent can that be taxed. There was a time when there was another real problem involving airline operators and where their planes should be taxed, should it be the home port or where? Sometimes it is the tail wagging the dog, the home port is not the primary center for the business, maybe they started there, but the big business is some place else. So, the problem of State taxation problems involve a great spectrum of things.

Mr. ROSENBERG. This is right.

The CHAIRMAN. But we are dealing here only with people who move in interstate commerce.

Mr. ROSENBERG. This is correct. Employees of regulated carriers.
The CHAIRMAN. Yes.

Mr. ROSENBERG. Yes, and that is all.

The CHAIRMAN. Senator Hartke.

Senator HARTKE. I have no questions.

The CHAIRMAN. Senator Pearson.

Senator PEARSON. My only question was the one the chairman raised, and that is this is good legislation, I am surprised it hasn't been passed, but I do live in that Kansas City, Mo., area, over on the Kansas side. It happens to be the headquarters of TWA, a great number of their employees live on the Kansas side, it is sort of a bedroom of Kansas City, Mo., that is the case with so many people, they work in one jurisdiction, they live in the other. They are taxed both at their domicile and I guess there is still a difference between domicile and residence, isn't there?

Mr. ROSENBERG. There still is.

Senator PEARSON. Then they are taxed at the place they earn their money too. They have to offset one against the other on the tax. But the only question I have, and the reason I think it may be relevant, is that an enormous number of multijurisdictional metropolitan areas exist in this country. I didn't realize there were so many until I worked on a piece of legislation that dealt with regional planning, and we found out how many places there are—St. Louis, Kansas City—you can go on and name them forever. We may run into a problem of these other people wanting to be treated like this. I guess the distinction is the continental transportation systems.

Mr. ROSENBERG. This legislation deals with a very small part of the total problem. The total problem starts with exposure to tax liability. This legislation does not deal with that. This deals with—the withholding deals simply with the collection process of regulated carriers.

Senator PEARSON. I see.

Mr. ROSENBERG. And that is all. It is a significant thing to those affected, but it is a very insignificant thing in terms of the total problem which does need treatment.

Senator PEARSON. Thank you, sir.

The CHAIRMAN. Thank you, Jess. We have to move along.

Bill Martin and Mr. Baker.

STATEMENT OF WILLIAM MARTIN, CHAIRMAN, INTERSTATE COMMERCE TAX REFORM COMMITTEE, LOCAL 741, INTERNATIONAL BROTHERHOOD OF TEAMSTERS; ACCOMPANIED BY HERBERT BAKER, RETIRED MEMBER, MARINE COOKS AND STEWARDS, VICE CHAIRMAN OF INTERSTATE COMMERCE TAX REFORM COMMITTEE

The CHAIRMAN. Mr. William Martin, chairman of the Interstate Commerce Tax Reform Committee. He happens to come from Seattle and I have known him for years.

And Mr. Baker is going to speak for the Marine Cooks and Stewards who are also involved.

Go right ahead, Mr. Martin.

Mr. MARTIN. My name is William H. Martin, and I am a business representative for Teamsters Local 741 in Seattle Wash. I am also chairman of the ad hoc committee, known as the Interstate Commerce Tax Reform Committee, composed of maritime unions, airline pilots, flight engineers and railroad employees. Our purpose is to effect and support any legislation that would prevent any State or Possession, other than the State of residence, to impose income tax, head tax, or any other form of tax, upon any employee employed on a vehicle operating in interstate commerce.

I might add, Mr. Chairman, that I speak for those people that belong to our committee, not necessarily for the international unions who are here. The combined total of the people we speak for will run well over 1 million, and composes the nucleus of the entire regulated transportation industry.

The State of Alaska has opened up a Pandora's box in view of a Washington State Supreme Court decision in the case of *The State of Alaska v. Petronia*, No. 38086, October 6, 1966. This case was decided on the constitutionality of any State being able to tax a nonresident, "under certain circumstances." The Washington Supreme Court upheld the trial court on the grounds that the Alaska net income tax did not violate the commerce clause and the 14th amendment. This case was subsequently sent to the Ninth Circuit Court, where certiorari was denied.

If the above decision was applied to every employee on vehicles operating into the other States it will result in complete chaos in the regulated transportation field. The legislation we seek and support deals only with employees on vehicles operating in interstate commerce. Nothing else is intended.

As chairman of the tax reform committee, it has been delegated to me and two other members to do some extensive research and travel in the course of pursuing our objective. We first were in Juneau, Alaska, in February of last year, where we met with representatives of the Governor's office with respect to the very problem we have before you gentlemen, namely the withholding, billing or threatened withholding or billing of tax on income of employees in interstate commerce. Our meeting accomplished nothing with respect to our position. We were granted an extension of filing; however this does nothing for the airline personnel who are presently being withheld on, nor for 5 years retroactive tax on all other interstate commerce employees.

Our next meeting was in New York City with some union officials, and was then followed by a meeting with certain Members of the House and Senate here in this city. These meetings were in April of last year.

In June of last year we were invited to a meeting of the Multi-State Tax Compact, held in Houston, Tex. While we have due respect for Mr. George Kinnear, and appreciate his invitation to the compact, it seems apparent to us that while their compact may correct certain inequitable and perhaps unjust situations, it will do nothing for those people we represent. The member States of this compact are few, and those associate members are not bound by their decisions.

I submit, gentlemen, why we are here to begin with, and now, as briefly as possible, justification for your consideration of our position.

(1) All the people we represent do perform a necessary service in the free flow of commerce itself because they move at some point, during their tour of duty, all the goods, transport most of the people, and perform the other services that without them, would render our day-to-day lives untenable. Further, these employees do all these duties faster, safer, and at less cost than any other country in the world. I believe we all must take pride in our American transportation system. It has been built by efficient management, competent employees, and a system of regulations that tend to enhance its growth, rather than detract from it. If the several States are to impose upon management, tax withholding, it will tend to raise their costs and result in more redtape, that in my opinion, is entirely unnecessary and unjustified.

(2) The people we speak for in opposition to unfair taxation are, in the main, responsible citizens who have worked for many years to achieve a decent standard of living and are reluctant to pay more taxes than they feel is justifiable under the circumstances. Most of these people are buying their own homes, raising families, and, in general, contribute to their environment. They know that to provide services takes money, and they are willing to pay for these services in their own State and community. However, because their employment requires them to pass over or operate vehicles in other States, they do not feel that those other States have the right to impose any tax upon them. They feel that this is taxation without proper representation. The employers are now paying fuel tax, highway tax, landing fees, business tax, profits tax, sales tax and port fees, et cetera, of which the States already participate.

The CHAIRMAN. You ought to add one thing to help clarify the extent of this problem. When employees get taxed in another State they have no right to vote in that State for or against their representatives, or referendums on taxation. So it is taxation without representation. They could not vote in that other State.

Mr. MARTIN. That is right. We brought the same thing up to the revenue collector in Alaska.

The CHAIRMAN. Right.

Mr. MARTIN. It is true in some cases those people we speak for have only paid small amounts to another State, and while this may be labeled "small" in dollars and cents, it contributes an unnecessary burden on him. It is also true that in other cases the dollar amounts are large, as in the case of some of our seamen and airline pilots, and is also the case where Alaska threatens to charge the truckdrivers 5 years retroactive tax.

(3) Our people, in some cases, operate in as many as 34 States. Ironically, our information shows that the same number of States have enabling legislation to collect income or other tax from nonresidents. While only several may be so doing now, it is apparent that unless legislation is enacted to prevent it, that all 50 States will get in the act.

(4) It may be true that the courts have upheld as a States right the levying of taxes on nonresidents, if there were no undue restraint on trade, or restriction in the flow of commerce. However, we submit to you gentlemen, that if our people are to be taxed in any State other than that of their residence, that it is now and will be one of the most restrictive actions on the flow of commerce that could come about.

I represent a large group of people that happen to be intelligent individuals. I know the other labor representatives do the same. These people are not going to be burdened with multistate taxes without doing something about it. They are either going to cease operating in other States that insist on taxing them, or they are going to demand that we, as representatives of theirs, seek the necessary monetary relief at the bargaining table. If we must, as a last resort, seek our relief at the bargaining table, then that cost is passed on to the consumer in a multitude of forms of which you are all aware.

These multistate taxes, whether it be income tax, head tax, occupational tax or other that has been imposed or is threatened to be imposed on interstate commerce employees creates more inflationary trends that are a threat to our national economy and our way of life.

It not only burdens the already overburdened taxpayer with an encroachment of his take-home pay, it also burdens him with a myriad of tax forms to comply with at the end of the year. There seems to be no continuity in the apportionment formula of the various States. Our people are constantly on the horns of a dilemma at each year's end.

I ask you gentlemen, on behalf of the people we represent in this testimony, and on behalf of the economy of our country, to consider what we all have invested in the transportation industry and to support legislation that will enhance it rather than revert it back to the days of the DC-3, the Model T, the Clipper ship, or the narrow gauge.

I trust your judgment to prevail.

If there are any questions, I will be happy to respond.

I respectfully thank you for the opportunity to submit my views on behalf of the people I represent.

The CHAIRMAN. Again, there is another controversy ranging in many places that if you work in the city and live outside, the question is whether they should tax you, impose city taxes on you.

That is a different set of facts, because generally they are not in interstate commerce.

But here I want it clear this bill only deals with those people that are literally and absolutely working in interstate commerce. Now I guess we are going to have to meet those other problems sooner or later as we move along. But this is only dealing with people in interstate commerce.

Now, when you mentioned 34 States, are they the States that have exercised this authority on occasion?

Mr. MARTIN. Well, Mr. Chairman—

The CHAIRMAN. Or exercised this procedure?

Mr. MARTIN. This was the information available to us at the time. I believe there are more States than that that have enabling legislation to allow them to do what some States are doing.

The CHAIRMAN. Now, we had some discussion here not over a month ago with the people involved, of which it happens Mr. Kinneer was one. I guess he is the chairman of the group on multistate compacts. Now they would not cover, as I understand it, what we are talking about. There could be a voluntary agreement between States, but I don't see how a State that has passed a law, such as California, how anyone, a Governor or anyone, could make a voluntary agreement in an interstate compact to do or not do this, unless the legislature changed the law.

Mr. MARTIN. The apportionment formula of the various States makes it almost impossible.

The CHAIRMAN. Yes.

Although I think their general objectives were good.

Mr. MARTIN. True.

The CHAIRMAN. But they were dealing more with the sale of goods, the sales tax.

Mr. MARTIN. That is true also.

The CHAIRMAN. I think there is a General Motors case on this.

Any questions?

Senator PEARSON. I take it from the comments you made in the lead paragraph on the last page, that there is just a general opposition to multitaxes from the various jurisdictions and various States and the *Alaskan* case you referred to.

Does the right to do business within a State, or the benefits received within a State, whether it be a seaman sailing into a port in Alaska, or a teamster driving a truck through another State and so forth, aren't the benefits received as one goes from State to State, a proper and a fair justification for taxation?

Mr. MARTIN. In answer to your question, I would say no. Our people don't feel it is, because if they eat a meal in any one of the States that they pass through, they pay for it. If they get sick there, they pay very dearly for it. Or any other services they get there, they are putting money out of their pocket for it.

They feel very strongly that the State of their residence, where they send their kids to school and so forth, that is the place they want to pay their taxes.

The very same thing applies in Alaska. It is a prime example of our truck drivers going up there; 95 percent of the revenue derived by the companies, that operate into Alaska, is derived from the northbound leg, 5 percent of their revenue is operated on the southbound leg, which means that they are coming out of there empty most of the time.

So I don't, in my opinion, in our committee's opinion, feel that you are really getting much out of anyone of those States you pass through. You are not there very long.

As the gentleman that preceded me said, we do have diverse routes that our drivers take. They may take the northern tier of States one time coming over here, they may go back the southern tier, it depends on where they wind up under the union rules.

The CHAIRMAN. What does Canada do when you go through there, anything?

Mr. MARTIN. So far they haven't done anything, but if you stop—in Canada—you pay, too. They are looking at some of this, too.

The CHAIRMAN. Yes, on the highway. And we built the highway. We paid for it all.

Senator PEARSON. The reason I raised the question was that your comment really conflicted with one of the basic theories and concepts of multijurisdiction taxation.

There is some merit in what you say, but there is merit on the other side, too.

Maybe in the case of a truckdriver going through it is a little hard to find benefits received. But those people who live in multi-state and metropolitan areas who are subject to this, they may live in Kansas and work in Missouri. The right to work, the right to an economic endeavor in Missouri is a justification for their taxation there.

I won't ask you to comment further.

Mr. MARTIN. In our case I believe our people in the main travel on interstate highways, and probably land their airplanes on an airport that was built with Federal funds. I don't feel that—our people don't feel that State is contributing very much to this situation. They are in and out, and certainly in the case of a jet pilot, he is not there very long.

Senator PEARSON. We could have used this witness last week, couldn't we?

The CHAIRMAN. Yes.

Senator PEARSON. Thank you very much.

The CHAIRMAN. Now you mentioned you would have to take some of this to the bargaining table which would merely add to the cost.

But if I am a truckdriver working out of Seattle, I get so much pay, which is agreed to by the contract. But when I get to California, if they start to take something away from me, I am going to have to ask the employer to make up that difference, am I not?

Mr. MARTIN. You have to get him indemnified for it someplace.

The CHAIRMAN. That is right.

It will just add something else to the bargaining table.

Mr. MARTIN. That is right.

The CHAIRMAN. And it has to be passed along.

Mr. MARTIN. To the consumer.

The CHAIRMAN. Yes.

All right. Thank you.

Now Mr. Baker, you have a short statement?

Mr. Baker represents the Marine Cooks and Stewards.

Mr. BAKER. And the maritime unions, the firemen and the sailors also—in fact the whole Pacific coast.

Honorable gentlemen, my name is Herbert L. Baker. I am a member of the Marine Cooks & Stewards Union, vice chairman of the Interstate Tax Reform Committee, representing approximately 10,000 to 12,000 west coast seamen. I have worked as a seaman in the Alaska trade for the past 35 years, with the last 25 years as chief steward for the Alaska Steamship Co. The State of Alaska has

levied not only what we consider a discriminatory tax on seamen, but a tax without representation and confiscatory in nature.

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

The States of California and Oregon also have State income taxes—

The CHAIRMAN. I might say all of the maritime groups on the coast have expressed concern about this, east coast, west coast and gulf, and the St. Lawrence Seaway too.

Mr. BAKER. Yes. The States of California and Oregon also have State income taxes, and have in the past, billed transit nonresident seamen on their gross income. A resident Seattle seaman could be dispatched from Seattle, but by virtue of the company being California and/or Oregon based, imposes taxes, although he is a nonresident. In addition, they pay local property and school taxes; and the gasoline taxes and auto license fees are the highest in the Nation today. The temper of the employees involved in this situation has risen to a point where they may soon demand that their representatives negotiate with their employers for some form of financial relief. In a good many cases, seamen do not even put ashore in Alaskan ports, yet as transient, when they do go ashore, they are spending money rather than removing money from the State.

Also, we have no representation in Alaska, we can't even buy a fishing license to go fishing if we want while we are laying in port there.

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

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

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

The CHAIRMAN. Now it has been mentioned here twice that Alaska has a 5-year retroactive tax.

Mr. BAKER. That is right.

The CHAIRMAN. Does that mean that if the seaman had been on that run or the maritime workers had been on that run for 5 years

prior to the imposition of the first tax they could withhold from them if they wanted to for the 5 years?

Mr. BAKER. They can go back 5 years. I have a bill at home that I have received from the State of Alaska for the last 5 years I worked. I retired. I am not sailing any more. But the 5 years back, I have bills for a tax the State of Alaska taxed based on my salary, wages aboard the ship. Not only for the time in Alaska, but for the entire voyage, some of them.

Now in 1953 and 1954, before the State of Alaska became a State, we were taxed and the wages, the money was taken out of our salary at the end of the year. It was computed to the time actually spent in Alaskan waters. We turned our report over from the Federal to the State of Alaska, which they assessed 15 percent at the time for the exact time spent in Alaskan waters. It was considered from Dickson's entrance to Dickson's entrance. And that is what we were taxed, for the whole year.

As I say, it was based on the whole time from the time we left Seattle until we got back to Seattle. But we turned our slips over to a port purser in the Alaska Steamship Co. and they worked it out on a basis where we paid a percentage of it and the rest we got back from the State of Alaska. It wasn't a State then, it was a Territory.

The CHAIRMAN. I don't know, I am not going to pass on the judgment of the Alaskan Legislature, but any Member of the U.S. Senate can tell you that Alaska's perennial problem has been high transportation costs and by passing this bill they have just added to them: haven't they?

Mr. BAKER. That is what it has done, sir.

As I say, just like Mr. Martin said a minute ago, most of our cargo is for Alaska people that goes up there. The only time we bring much cargo out of there is when the fishing season is on, we do bring a lot of fish out of there. But that is about the only thing. It is mostly one-way cargo.

The CHAIRMAN. What do they do with the cannery workers?

Mr. BAKER. The cannery workers, when they are working in Alaska, they get taxed. The only ones that are not taxed now are the halibut fishermen. They were going to tax them, so that halibut fishermen got up in arms and they said they would take their fish into British Columbia instead of taking them to Alaska. So right away Alaska got busy and scratched them off the tax all together. So they don't pay any taxes at all.

The only ones that pay are the truckdrivers, airplane pilots and the men on the ships. We don't spend a lot of money in Alaska, but we do spend money. If we are sick, we go to a hospital, either our union pays for it, or we pay for it.

The CHAIRMAN. Senator Hartke?

Senator HARTKE. I have no questions.

The CHAIRMAN. Senator Pearson?

Senator PEARSON. I have no questions.

The CHAIRMAN. Thank you, Mr. Baker.

We will hear now from the motor bus owners, Mr. Charles Webb, president, National Association of Motor Bus Owners.

STATEMENT OF CHARLES WEBB, PRESIDENT, NATIONAL ASSOCIATION OF MOTOR BUS OWNERS, WASHINGTON, D.C.

Mr. WEBB. Mr. Chairman and members of the committee, NAMBO is the national trade association for the intercity motor bus industry. Our members include the Greyhound Lines, all of the companies affiliated with the National Trailways Bus System and more than 400 carriers not affiliated with either of those systems.

Collectively these carriers provide over 90 percent of the intercity motor bus transportation in the United States.

We appreciate this opportunity to appear in support of S. 2044. Section 2 of the bill would exempt from withholding for tax purposes under the laws of any State or subdivision thereof, other than the State of the employee's residence, wages paid to any employee "who performs his regularly assigned duties as such an employee on a motor vehicle in more than one State."

Section 2 of the bill further provides that no carrier subject to the provisions of part II of the Interstate Commerce Act shall file an information return with respect to such wages with any State or subdivision thereof other than the State or subdivision in which the employee resides.

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

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

At the present time, 13 States are enforcing, or have attempted to enforce, withholding on nonresident drivers employed by one or more interstate motor carriers of passengers. These are the States of Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, and Wisconsin.

I understand that motor carriers of property have been subjected to withholding requirements for nonresident truckdrivers by the following additional States: Alaska, Montana, North Carolina, and West Virginia.

Despite the improvement in data processing equipment, the accounting burden imposed by these laws on the carriers which have such equipment is substantial. Earnings of affected busdrivers are usually allocated to a State on the basis of a mileage prorate. However, it is not necessary for a carrier to maintain records on the miles driven by a driver in a particular State except for the purpose of complying with State laws on withholding of nonresident drivers' wages for tax purposes.

This burden is intensified by the wide variance in State laws and regulations. For example, withholding is not required by some

States unless the earnings of a driver in that State reasonably may be expected to be sufficient to incur some tax liability. This means that the wages of some drivers operating buses in a State are subject to withholding while the wages of other drivers earned in the same State while working for the same employer are exempt.

And, in the case of drivers engaged in charter work rather than in regular route service, it is not possible to make even a rough approximation of the number of miles they will drive in any particular State.

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

In addition to the paperwork burden on the carrier, the drivers, of course, are inconvenienced by being deprived of part of their wages and by the necessity of filing for a refund at the end of the year.

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

The latest example in Mississippi was for a charter operation that was only in the State less than 1 day. It was operated interstate but we are still assessed withholding tax on driver's wages. Since the amount was less than \$2, we simply paid from company funds rather than get involved in the vast book-keeping required to collect from an employee and reimburse for home state tax taken out on these wages. If this problem becomes multiplied by 50 States, many of which we operate much more service than in Mississippi, then our problem becomes horrendous.

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

Many of our small carriers are not now complying with State income tax withholding laws and regulations applicable to nonresident drivers because the States involved have made no effort to enforce them with respect to drivers who merely pass through the State.

This lack of enforcement is not likely to continue. First, disregard of the requirements by tax officials and by carriers breeds a disrespect for law which cannot be condoned. And secondly, enforcement against carriers whose vehicles merely pass through the State is not difficult because most States—all States I think—require permits from charter bus operators using their highways.

In conclusion, I would like to emphasize that the proposed legislation does not encroach upon the taxing power of the States and their subdivisions. The bill would not affect, for example, the right of the State of Iowa to tax the income of busdrivers who live in

Rock Island, Ill., but who work out of a bus terminal in Davenport. The bill merely relieves motor carriers of passengers and their interstate bus drivers from cumbersome collection procedures which, in general, are far more costly than the taxes derived therefrom by the States and their subdivisions.

The intercity bus industry urges approval of S. 2044. We are in the process of conducting an industry-wide survey on the withholding of State income taxes from the wages of nonresident bus drivers. If the results of that survey are available before the record of this hearing is closed, we would like to submit it for your consideration.

Senator HARTKE. (Presiding.) You may do so. I have no questions.

Senator Pearson?

Senator PEARSON. I don't think I have any questions, Mr. Webb, except it just occurs to me that I think withholding is instituted not only to provide a means for the taxpayer to have enough money to pay his taxes and find his taxes more tolerable when he has to pay them, but I know in the State of Kansas they recently put in this withholding at the State level, and one of the reasons they did it was to insure the full collection of taxes.

They have an enormous number of people who had never been paying them before. But in this case here, any State that wants to go back and make sure it is getting all of the taxes it should get can easily do it by just checking the records of whatever company might be going through its jurisdiction I would think.

Mr. WEBB. I should think that in the case of a bus driver living in Kansas City, Mo., but working out of a terminal in Kansas City, Kans., and where all of his employment records are in Kansas, that even without withholding the State of Kansas would have too much difficulty collecting the tax.

Senator PEARSON. Well, my point was withholding serves to catch those who evade taxation.

Mr. WEBB. Quite true.

Senator PEARSON. There is no necessity for having withholding in these cases for that purpose. The records are all there, clearly available for anybody to see them.

Mr. WEBB. That is right.

Senator PEARSON. I have nothing further.

Senator HARTKE. Thank you, Mr. Webb.

(The information was subsequently received for the record.)

NATIONAL ASSOCIATION OF MOTOR BUS OWNERS,
NATIONAL HEADQUARTERS,
Washington, D.C., March 11, 1970.

HON. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Attached hereto is a letter I have received from Mr. J. M. Clarke, Vice President and Comptroller, Greyhound Lines—East, a division of Greyhound Lines, Inc. Mr. Clarke's letter supplements testimony I presented for this Association in support of S. 2044 and explains in considerable detail the burden of complying with State laws on withholding of income tax from the earnings of non-resident bus drivers.

If the record of hearings on S. 2044 has not been closed, I would appreciate it if Mr. Clarke's letter to me could be included in the printed record of the hearings.

Sincerely yours,

CHARLES A. WEBB.

Attachment.

GREYHOUND LINES—EAST,
Cleveland, Ohio, March 5, 1970.

Mr. CHARLES A. WEBB,
President, National Association of Motor Bus Owners,
Washington, D.C.

DEAR MR. WEBB: This will refer to your letter of February 12 requesting information pertinent to the problem of determining wages and withholding local taxes from nonresident employees, which would be resolved by passage of the legislation contemplated in S. 2044.

As I informed you in our telephone conversation last week, the only states in our area of operation which presently enforce the requirement that we withhold tax on non-resident drivers are:

Alabama	Kentucky
Arkansas	Mississippi
Georgia	Missouri
Indiana	

There is presently no such enforcement effort made by any of the cities or counties which have an income tax but it is unlikely that there would be enough wages earned in a small local jurisdiction like that to result in a tax liability anyway.

We also make a halfhearted withholding of the state income tax from non-resident drivers in New York. In this case, the employee must take the initiative and notify us of the amount or proportion of his wages which are allocable to New York State and we handle accordingly for compliance purposes.

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

There do not appear to be any significant variations in the requirements established by those states where the withholding of tax from the earnings of non-resident drivers is expected.

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

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

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

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

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

There have been no changes in the situation since 1964 which would materially alter the testimony presented by Mr. Pendleton on behalf of NAMBO at that time.

Yours very truly,

J. M. CLARKE,
Vice President and Comptroller.

Senator HARTKE. Mr. Francis O. McDermott, Tax Counsel for the Association of American Railroads.

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

Mr. McDERMOTT. Good morning Mr. Chairman.

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

The purpose of S. 2044 as eminently stated by the Chairman and by other witnesses is to exempt the wages and salary of certain employees of regulated interstate transportation carriers from the withholding-tax requirements of States and local subdivisions, except in the State or local subdivision of the employee's residence. It would also relieve these carriers of any duty to file information returns for tax purposes on the wages and salary of certain employees, except again in the State or local subdivision of such employee's residence.

In so doing, the bill would remove the substantial burden to interstate commerce which the imposition of withholding taxes on the nonresident employees of these carriers by States and local subdivisions has caused. However, the bill will not impair the general taxing authority of State and local governments, nor will it relieve employees of their liability to pay taxes properly due.

As the Chairman pointed out in his opening statement, these same objectives were the subject of an identical piece of legislation, S. 1719, during the 88th Congress. This committee conducted hearings on S. 1719 in February 1964. At that time the bill was limited to employees of certain airline and motor carriers. However, as suggested by the AAR and based on other testimony, this committee ordered the bill reported with amendments to include rail and water

carriers. Regrettably after Senate passage and House committee hearings the bill died with the adjournment of the 88th Congress.

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

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

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

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

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

In addition to the train- and engine-service personnel there is a substantial number of railroad employees who are engaged daily in maintaining roadway, signals, communications and structures, but are not clearly given relief under the present provisions of S. 2044. Just last year there were approximately 85,000 such employees. In the discharge of their duties, they frequently cross State lines, and more often municipal boundaries. This subjects them to any withholding provisions of such State or municipality. The services of these employees are essential to our railroads in the discharge of their obligation to maintain their road property at their own cost. Public crews do this for the highway users and the airlines obviously do not have this obligation.

The remainder of my statement goes into some rather striking examples of why the railroads support this relief asked for in 2044, graphically demonstrated by the type of operation in 1964 when the committee considered the identical bill, S. 1719.

Quite frankly, today I think they are just as graphic in the railroad industry as they were then, and we do seek the relief of this particular bill. Also, I think it is important for the committee to realize we would want the bill to be clarified to definitely cover the right-of-way maintenance people because they have the similar problems that our track and engine personnel have. Because of the fluidity of employment and their assignments throughout the different States by the railroads, a really difficult problem exists even though the industry has generally adopted automatic data processing.

I would like to add that the chairman did mention relief for seamen. Public Law 86-263 passed in 1959 prohibits withholding from the wages of seamen under the tax laws of the States. This law is applicable to officers and men of the vessel crew engaged in foreign, coastwise, intercoastal, interstate and noncontiguous trades.

I believe the basis on which the Congress gave relief to withholding of wages of seamen adequately supports and is a precedent for the passage of this particular piece of legislation on behalf of other interstate transportation corporations.

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

A graphic illustration was provided by the Wabash Railroad (now part of the Norfolk and Western Railway) during this committee's prior hearing on S. 1719. The Wabash then operated in 4 States which required withholding—New York, Indiana, Missouri, and Iowa. Of these, the first 3 required withholding regardless of whether the individual was a resident or nonresident; Iowa required withholding only in the case of a nonresident, but an information return in the case of a resident. Thus, withholding for State purposes was applicable in the case of 1,050 resident and nonresident

train and engine service personnel. The Wabash also operated in 5 cities which required withholding—Maumee, Defiance, and Toledo, Ohio; Detroit, Mich.; and St. Louis, Mo. This affected some 300 train and engine service personnel.

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

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

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

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

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

During the hearings on S. 1719 one of the most striking illustrations supporting the need for the enactment of this legislation was provided by another member of our association, the Pullman Co. This sleeping car company operated in all the States except Alaska and Hawaii. It had an employee on each of its cars and a conductor on every train where more than one of its cars was used. Generally, these sleeping-car employees worked through to destination and, thus, in a single trip crossed several States. Also these employees received sleep time en route for which they were not paid. Similarly, at the end of each trip they also had their layovers of various duration. While these operations were regular and on a fixed schedule, the company had a number of special movements and seasonal operations of short duration. Extra employees would be used to operate in a number of States in the course of a year.

Pullman was primarily concerned with the problem of withholding on nonresidents for State income tax purposes. The period of time such a nonresident employee is in the state determines, where proration is used, the percent of his salary or wages subject to withholding, as well as the amount of his exemption. This was true in 16 of the States in which the company operated. Consequently, any employee whose base annual salary exceeded the State's annual exemption was subject to withholding even though his time in the State may have been limited to a single trip. Prorating the salaries of these employees presented a problem since their rate of pay was not based on miles but on hours of the basic month. Furthermore, if time in the State was used as a basis for proration the company was

confronted with the problem of unpaid sleep periods and layover time. To these problems was added additional complexity resulting from a constant turnover in personnel and employee substitutions for vacation periods. The problems were such that no practical method of machine accounting could do the job.

There are cases where the cost of collecting a tax is greater than the amount collected and therefore of no apparent benefit to the State or city. For example, Pullman made a study of this matter in 1962 in relation to its 1961 operations in just one State. It had 172 nonresident employees on regular lines in this State during that year. Of these, 43 had less than 5 percent of their time in the State; 66 more that 5 percent and less than 10 percent; and only seven over 30 percent. Withholding on a semimonthly basis under the State withholding table resulted in less than 25 cents per pay day for each of these 172 employees. Extending this for a year on the assumption that the same number of exemptions and the same proportion of earnings in the State would remain constant resulted in a total withholding of \$1,200 for State tax purposes. However, the total amount due the State on an annual basis was \$900, so that a refund of \$300 was due the group, or less than \$2 each. For the \$900 involved, the State had to process each of these returns and risk processing 172 claims for refund. It seems clear that the State would not net anything in this situation. For this company to make the computations and the payroll deductions, each man's time sheet had to be checked each pay day. Since no formula method would have been accurate, the work had to be done manually. The result to this company for this one State alone was a cost in excess of \$5,000 per year; \$5,000 to collect \$1,200 when only \$900 was due!

This particular company no longer faces these complex problems for it no longer operates as a sleeping car company nor engages in interstate railroad transportation. As of January 1, 1969 the Pullman Co. terminated such operations. However, these operations were absorbed by railroads and the problems faced by Pullman are now spread throughout the industry. Recourse to litigation in this area is not a suitable answer. The rules governing the right of the taxing authorities to impose and collect taxes on nonresidents are clear and the possibility of successful litigation is remote. If this were not the case, the widespread operations of the railroads or any one railroad would require a multiplicity of suits which would be costly to undertake.

The enactment of S. 2044, amended to clearly cover all railroad and sleeping car employees engaged in interstate transportation services and crossing State lines in their duty would be a simple means of alleviating this difficult and costly problem. Thus, to provide total and adequate relief, we urge its extension to employees of railroads and sleeping-car companies subject to Part I of the Interstate Commerce Act whose regularly assigned duties require them to cross State lines or municipal boundaries thereof.

There is no logical reason why a segment of railroad labor force, so important to railroad operation, should be deprived of the benefits of S. 2044. Neither is there a basis for distinguishing, either log-

ically or in practice, between such an employee and one who discharges his duties "on a locomotive, car or other track-borne vehicle" as S. 2044 presently does.

In addition to maintenance-of-way personnel there is another group of railroad employees who would be prejudiced by S. 2044. This is a relatively small group of employees who operate out of railroad terminals on motor trucks, who are under the provisions of Part I of the Interstate Commerce Act, and who may, in the course of discharging their duties, cross State lines or municipal boundaries. The relative smallness of the size of this segment of the railroad labor force or the fact that they are not on a locomotive, car or other track-borne vehicle in the discharge of their interstate duties should not justify loss of the protection provided by S. 2044.

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

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

Senator HARTKE. Thank you Mr. McDermott.

I have hesitated to comment on this bill this morning. It is not my usual approach, as you well know. I wonder whether this is the legislation we should pass.

There is no question about this taxation, the jurisdictional question presents some serious problems to not alone the Congress, but to the local municipalities and the States. They are hard-pressed for money, too. They are seeking not alone tax revenue, but methods of collection.

I think we ought to really draw a sharp distinction between the two. It has been drawn here. But I have seen where each of these statements talk about benefits to employees.

Now if I am wrong on this, you correct me, but as I understand it, we are dealing here with procedure, not substantive law. Is that correct?

Mr. McDERMOTT. That is correct, Mr. Chairman.

Senator HARTKE. We are dealing here not with the authority to levy or collect the taxes, but merely as to a method of collection?

Mr. McDERMOTT. Correct.

Senator HARTKE. In other words, as far as any benefits are concerned to an employee, all you are saying in substance is you may be violating the law, but we are not going to help you avoid violating the law?

Mr. McDERMOTT. If you look at it from an employer's viewpoint—

Senator HARTKE. I said from an employee's viewpoint.

Mr. McDERMOTT. From an employee's viewpoint, he has the present obligation, as a citizen earning his wages in a State to pay to that State a tax.

Senator HARTKE. I would be hesitant to support this legislation on that ground. I would think it would be rather presumptuous of the Congress to pass a law in which it would increase the possibilities of tax avoidance and still provide for the imposition of liability.

In other words, what you are encouraging here is really greater efforts toward evasion, are you not?

Mr. McDERMOTT. Well, Mr. Chairman, I believe the basic tenet of our method of taxation, federally and statewise is a self-assessment system.

Senator HARTKE. No, it is not. The withholding of taxes on the Federal level is not that basically. The lack of such was the reason for the imposition, as Senator Pearson indicated before.

Mr. McDERMOTT. As I recall the Current Tax Payment Act of 1943 referred to by Mr. Rosenberg in his testimony, was actually a two-pronged attack on the problem, brought on by the increased wages due to the activity of the war. Basically it had the concept of collection, but it also, as Senator Pearson pointed out very well, had the concept of making the final tax bite a little less. It was a current tax payment act.

In other words, when the individual sat down to pay his bill to the government of the United States, he would not have to take two, three, or four thousand out of his back pocket or elsewhere in order to make payment of that tax.

Senator HARTKE. Let's assume a fact of life here though. Here is a man who is a truck driver, or in your case a railroad employee. What if he gets an assessment? Doesn't he get exactly the same assessment? What is he going to do about it? How does this bill help him? It doesn't help him a bit.

He finds himself in a position where he has not paid the tax as his income was paid, but if they levy a judgment against him, if this tax was in fact legal in the first place under the law, he then is subjected to paying that in a lump sum, is he not, plus all of the penalties that would be involved for failure to pay it on time.

Mr. McDERMOTT. I believe the examples in my testimony graphically illustrates what we are really talking about here. Where a resident is involved generally full withholding is imposed on him, so you don't have the problem. Where the problem exists is, as we have in the example of the Wabash Railroad, or the Pullman Co., the cost of collection for the nonresident traveling in a State exceeds, the tax to the employee. Here I think it is minimal as an example—

Senator HARTKE. I am not talking of the difficulties of your association at the moment. When you make a blank statement that this is of benefit to the employee, I will be honest with you, as of this moment, no one has convinced me of that.

The fact of the matter is I see nothing except detriment to the employee and lessening the responsibility of the employer. Now I am very much disturbed about the fact that you are going to have multiple taxation. That is the thing that is disturbing me very much. I am very concerned about that. I think a man should not

have to pay several times on his wages, that he should have to pay once and only once. He should not be required, merely because he operates in interstate commerce or across State lines, to bear an additional burden over and beyond those people who by circumstances only pay once. That is a different question. That is a substantive question.

Mr. McDERMOTT. That is correct.

Senator HARTKE. That is why I am surprised at all of these statements not dealing with the substantive question, which is really the heart of the matter, and that is who should pay the tax. That is the question.

Mr. McDERMOTT. Well, Mr. Chairman, as I recall a subcommittee in the House considered that question for a lengthy time.

Senator HARTKE. Do you have an answer? If you don't have, it is all right. But I am not sure this bill does anything except great harm, and creates none of the benefits, except that it temporarily wipes out some of the responsibility of the employer and puts a greater burden on the employee.

If I am wrong, I will be glad to stand corrected?

Mr. McDERMOTT. From the viewpoint of the basic relief granted by the bill we do have the prior relief to the seamen, Mr. Chairman.

Senator HARTKE. How does the seaman get relieved, except the fact they don't catch him in time. In other words, if they don't catch him he doesn't have to pay. But if they catch him 5 years retroactively, they come with a court order, they can come and sell his house, collect the tax plus penalties.

So, tell me how he gets benefitted under this bill?

Mr. McDERMOTT. Under this bill it doesn't give him any benefit, he already has it.

Senator HARTKE. In fact it subjects him to an additional responsibility of making sure he makes an interpretation of what tax is due. That is all I am saying.

Mr. McDERMOTT. In that regard, Mr. Chairman, inasmuch as the Seaman's law has been on the books some 12 years, I would feel the seaman probably have been complying, where necessary, with regard to the State laws.

Senator HARTKE. All I am saying is we are not dealing with the real problem. This to me is sort of like Murine it cleans up the eye, but doesn't do much to cure the trouble.

Mr. McDERMOTT. I think the Senate Finance Committee will probably direct itself to the problem to which you refer when it considers H.R. 7906.

Senator HARTKE. I have waited patiently for someone to come forward with a statement—I will admit this, that in this day and age to merely state a conclusion is the best way, if you don't explain your conclusion, the best way to convince people. That is truth by assertion. This is the going standard of operation today. Never give the details. That is to say this gives benefit to the employee, here. How? Don't bother me with the details. And we haven't been bothered

with a detail yet in my opinion. But that is only one Senator's opinion.

I don't think you are dealing with the real problem here. The real problem is who should levy the tax, who should pay the tax. A man should not be required to pay more than his fair share, and he shouldn't complain if he pays his fair share. That is the problem.

Let me say how to cure that is certainly a very complicated question in all of the various tax jurisdictions we have in this country. But I do think it begs the question to say this really does anything to provide anything except some bookkeeping relief for the employers. I think that is the full extent of this bill.

To that extent I think the employers do benefit. I don't think, I cannot see one iota of help to any employee except the fact that he can avoid paying the tax. That is my concern.

Senator PEARSON?

Senator PEARSON. Mr. McDermott, if I am a flagman on the Sante Fe and leave one point and go to another point and pass through two States, how is my income tax liability measured? Is it the time I spent in each jurisdiction?

Mr. McDERMOTT. Generally, Senator, the mileage spent in that State on an allocation basis is it.

Senator PEARSON. Mileage rather than time?

Mr. McDERMOTT. Yes, sir. But that is not universally true, but generally true.

Senator PEARSON. One of the problems in passing a state withholding provision is that the State income tax is normally so much less than the Federal income tax that the employer withholding, all of the way down for all of his employees, sometimes will be withholding a very small amount. Is that right?

Mr. McDERMOTT. It can range from one penny to 75 cents to \$10.

Senator PEARSON. Yes. And if you are going to withhold at the State rates, measured by the number of miles of track in the State, you may be getting down to withholding, as an exaggeration, 3, 5, 7, or 10 cents. Is that an exaggeration?

Mr. McDERMOTT. No, it is not an exaggeration, it is an actuality that occurs.

Senator PEARSON. That may be on a railroad, trucking line or an airline that goes through four or five States, is that right?

Mr. McDERMOTT. Yes, sir.

Senator PEARSON. I don't know about the point Senator Hartke raised, about benefit to the employees, but it seems to me there is great merit in this bill about benefit to the employer, and employers and employees are sort of in the same boat every once in a while I am sure. Can you give me an example—don't do it now—but pick out an example from one of your railroads and show the wages of any employee you want to, going through a long string of jurisdictions, with the precise withholding for each jurisdiction.

Mr. McDERMOTT. We would be happy to supply that for the record.

(The information follows.)

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

Individual job	Residence	Period	Gross earnings	Jurisdictions involved	Tax withheld
NORFOLK & WESTERN RAILWAY—1969					
1. Cook/maintenance-of-way.....	Missouri.....	Annual.....	\$7,081.10	Indiana.....	\$32.34
				Illinois.....	21.24
				Missouri.....	75.12
2. Foreman/maintenance-of-way.....	do.....	do.....	13,152.89	Indiana.....	54.77
				Illinois.....	31.27
				Missouri.....	147.45
3. Road engineer.....	Ohio.....	do.....	10,540.45	Indiana.....	68.56
				Illinois.....	2.72
				Michigan.....	.05
				Montpelier, Ohio.....	31.21
SOUTHERN RAILWAY—1969					
1. Train service.....	Indiana.....	Semimonthly	353.00	Indiana.....	8.21
				Illinois.....	2.24
				Louisville, Ky.....	.02
2. Train service.....	do.....	do.....	228.27	Indiana.....	6.17
				Illinois.....	3.33
				Louisville, Ky.....	.01
3. Train service.....	Illinois.....	Annual.....	10,771.95	Louisville, Ky.....	.01
				Jefferson County, Ky.....	.33
				Kentucky 1.....	.00
				Illinois.....	93.63
4. Train service.....	Virginia.....	do.....	5,899.83	North Carolina.....	39.45
				South Carolina.....	39.66
				Virginia.....	112.67

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

Senator HARTKE. Thank you, Mr. McDermott.

Our last witness this morning is Mr. E. L. McCulloch, National Legislative Representative, Brotherhood of Locomotive Engineers.

STATEMENT OF E. L. McCULLOCH, ASSISTANT GRAND CHIEF ENGINEER, NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF LOCOMOTIVE ENGINEERS, WASHINGTON, D.C.

Mr. McCULLOCH. Thank you, Senator.

I am E. L. McCulloch, National Legislative Representative for the Brotherhood of Locomotive Engineers with offices at 814 Railway Labor Building, 400 First Street, N.W., Washington, D.C.

I come before this committee not as a tax expert but as an elected representative of a National and International Railway Labor Organization who has been representing locomotive engineers and firemen employed in interstate commerce for in excess of 100 years.

In behalf of our Chief Executive Officer, C. J. Coughlin, Grand Chief Engineers, and the membership, I wish to express to chairman Magnuson and the members of the Commerce Committee our appreciation for conducting hearings on S. 2044.

There has been no time in memory when public opinion has been so unanimous in protest of high and inequitable taxes at all levels of government. There is no relief in sight. Instead, virtually every taxing jurisdiction in the nation is persistently seeking new sources of tax revenues. When the voters have had the opportunity to express themselves by referendum or representation, the trend has

been to reject new taxes. With this rejection of new taxes, some of the 50 States have been left to deal with the taxing of nonresidents as it has seen fit; a situation which certainly warrants legislation to protect the public against taxation without representation, or double taxation in the sense that regardless of the primary revenue source, be it property or income taxes or a combination thereof, there is a class of individual taxpayers working in interstate commerce that pays a high property tax in the absence of State or local income taxes while at the same time, paying an income tax at the full rate in and out-of-State taxing jurisdiction without the benefit of an offsetting credit, and this applies particularly to those employees residing in States where they do not have an income tax.

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

In this context, membership of the Brotherhood of Locomotive Engineers are adamantly opposed to these double standards of taxation and favor legislation to prohibit any State or subdivision from levying income taxes on nonresidents of the State.

Addressing ourselves to the legislation before the committee, S. 2044, it should first be emphasized that the proposed legislation is limited to persons and businesses actually engaged in interstate transportation. My limited remarks concern the individuals engaged in operating the conveyances by which transportation is conducted in interstate commerce and for whom this legislation was designed to protect from unduly burdensome and duplicating tax procedures by States and their local subdivisions.

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

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

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

Again, we wish to express our appreciation for being invited to testify and encourage the immediate enactment of S. 2044.

We encourage more consideration of the legislation I addressed myself to in the first of the statement, but S. 2044 is a stop-gap measure in the right direction.

Senator HARTKE. Thank you, Mr. McCulloch.

Let me say again, I do not want to be misunderstood. There is pending before the finance committee a bill, H.R. 7906, which I understand is referred to as the Rodino bill——

Mr. McCULLOCH. With the Smith amendment on it?

Senator HARTKE. I don't know about that. What about the Smith amendment?

Mr. McCULLOCH. Well, it addresses itself to the problem. It establishes a domicile for employees working in interstate commerce.

Senator HARTKE. All I am talking about is that is title V, section 501 on page 12 of that bill, which deals with the substantive question of multiple taxability, and which provides that there shall be no power to levy, impose an income tax on the income where it is earned or derived during any period while the individual is not domiciled in the State except to the extent that income was earned from sources within the State. This provides for some other problem.

The only question I raise, and the one that bothers me is twofold. One of them is that there isn't any question about it that as far as the local taxing authorities, they are hard pressed to meet their obligations. And yet we are constantly saying more should be done on the local and State level and they already find themselves to the point where they are utilizing practically every tax gadget they have in order to raise money.

It is a whole lot easier in a way to raise money from people who do not have a vote, probably, than those who do have a vote. That is probably why they are making an effort to tax people outside of the State.

On the other hand, similarly, in the same fashion, many jurisdictions feel they provide general services to people who in turn take advantage of the services in their totality which are paid for on a local or State level and therefore they feel they are entitled to make some type of assessment against those people who earn their money in those places.

I would think that this matter deserves more attention than just this mere bookkeeping procedure which does relieve possibly some of the responsibility on carriers. I would hope that those who are here today would urge that the finance committee, of which I am a member, proceed to conduct hearings in the finance committee upon this whole question of the actual tax problem itself, rather than the procedural question of collection.

My own opinion is that we would be well advised to follow some of the recommendations which have been made concerning tax sharing. I have long been an advocate of tax sharing. We have some forms of tax sharing, it is not a novel approach. Hill-Burton funds are a form of tax sharing; the highway funds are a form of tax sharing. There is no reason why we couldn't move in that field. Just

merely because it has been approached in different areas as something new, it is not really that new or novel.

I have introduced a bill with Senator Javits providing for a percentage tax sharing. President Nixon, during his campaign in 1968, pledged to immediately, as soon as elected President, to institute a form of tax sharing. But I would be less than candid if I really expressed a belief that this bill provides anything like real relief to employees. I think it does provide for some relief to employers, to which they may be entitled, don't misunderstand me. But I notice the whole thrust of your statement really does not deal with the question of collection.

As you say, the membership of the Brotherhood of Locomotive Engineers are adamantly opposed to these double standards of taxation not methods of collection, and favor legislation to prohibit any State or subdivision from levying income taxes on nonresidents of the State.

That doesn't deal with the question of collection, because the levy can still be there.

Well, I hope I have made my point clear. I am not saying I am opposed to this legislation, I am just not what you would call overly enthused at the moment.

Senator Pearson?

Senator PEARSON. Thank you very much for a helpful statement. Off the record.

(Discussion off the record.)

Senator PEARSON. Thank you very much.

Senator HARTKE. Thank you gentlemen for coming. We will proceed with these hearings tomorrow with some other distinguished people. I hope someone will address themselves to this question tomorrow.

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

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EXEMPT CERTAIN WAGES AND SALARY OF EMPLOYEES FROM WITHHOLDING FOR TAX PURPOSES

WEDNESDAY, MARCH 4, 1970

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 6202, New Senate Office Building, Hon. Vance Hartke, presiding.

Present: Senators Hartke and Pearson.

Senator HARTKE. Good morning, gentlemen.

We will continue hearings on S. 2044, a bill to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence.

The first witness this morning is Eugene F. Corrigan, executive director, Multistate Tax Commission, Denver Colo.

Mr. CORRIGAN. May I ask the Chair's indulgence, and delay my testimony?

Senator HARTKE. Yes, sir. Fine. We will hear from Mr. John M. Kinnaird, assistant chief counsel, public affairs, American Trucking Associations, Inc.

STATEMENT OF JOHN M. KINNAIRD, ASSISTANT CHIEF COUNSEL,
PUBLIC AFFAIRS, AMERICAN TRUCKING ASSOCIATIONS, INC.,
WASHINGTON, D.C., ACCOMPANIED BY LAWRENCE ANDERSON,
SENIOR VICE PRESIDENT, ADMINISTRATION, AND SECRETARY,
T.I.M.E.-DC, INC., LUBBOCK, TEX.

Senator HARTKE. Good morning, sir. Good to see you again.

Mr. KINNAIRD. Thank you sir.

As the Senator said, my name is John M. Kinnaird, and I am assistant chief counsel, public affairs, American Trucking Associations, Inc.

ATA is the national trade association of the motor carrier industry. It represents all types of motor carriers and has affiliated associations in every State and in the District of Columbia.

The purpose of S. 2044 is to exempt certain transportation companies from State income tax withholding provisions as they

relate to nonresident employees of such companies. It does not in any manner affect the power of the State to tax.

Included in the scope of the bill are motor carriers, railroads, airlines, buslines, water carriers, and express companies.

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

We appear here today, Senator Hartke, to affirm our support of S. 2044. This is not a new position for ATA since we testified 6 years ago, practically to the day, before this same committee on an identical bill, S. 1719. The reasons for our support of the legislation then remain valid today. The only change is that with the passage of 6 years, the problem of motor carriers being required by state law to withhold income taxes from the wages of nonresident truckdrivers has become even more burdensome due to additional States imposing and enforcing such requirements.

I might add here, Senator, that since the bill is the same as was before the committee 6 years ago, and due to the fact that there have been certain technical amendments in the laws enacted by Congress since that time, we may have a technical amendment we would like to offer later to the staff, with your permission.

Senator HARTKE. That is perfectly all right.

Mr. KINNAIRD. Thank you, sir. As the Senator well knows, the trucking industry, by virtue of its inherent nature, operates from, into and through various States and political subdivisions. As an industry, it is subject to a variety of taxes ranging from the usual property and income taxes on our corporate entities, to those of a more special nature, involving highway use taxes.

It also withholds income taxes from its employees' wages for both the Federal Government and where required, for the State of residence of the employee. However, as we pointed out in 1964, beginning in approximately 1960, several States imposed an additional requirement on our industry—the requirement of income tax withholding for States other than the State of residence of the employee—States through which the employee drove his truck in the normal course of his employer's business.

Due to an increasing number of complaints from various trucking companies, the ATA Reciprocity and Taxation Committee in 1968 initiated a survey of the problem. The membership of this ATA Committee consists of both State trucking association managers and executives of various trucking companies throughout the United

States. At about the same time, another group within the ATA framework, the National Accounting and Finance Council of ATA, began to explore the same situation.

The membership of this council consists of motor carrier executives whose duties involve the accounting and administrative functions of their employer. Based upon the conclusion reached by these two groups, the ATA Executive Committee, approximately 1 year ago, unanimously voted to have the ATA staff seek enactment of S. 2044.

Among the findings of the two groups within the ATA framework are the following:

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

(2) Determination of the exact amount to be withheld was very difficult, due to lack of uniformity among the State withholding laws.

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

(4) The cost of administering the nonresident withholding requirements is extensive.

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

Before I go further, Senator, and introduce Mr. Anderson, who is the senior vice president for administration, and secretary of T. I. M. E.—DC, Inc., which is one of our largest carriers, I wanted to briefly refer to your comments yesterday. You raised one interesting point that this bill was procedural, rather than substantive in nature. And you pointed out that the bill did not, in your opinion, go to the real issue; namely, the power of the jurisdiction to impose the income tax on its nonresidents. You said the tax liability was still there.

Well, as I have noted in my statement, both in the initial phase of it and in the last paragraph, we have indicated that we are not challenging the power of the state to tax. So in essence I have been saying, perhaps, the same thing that you are saying; only I didn't state it as specifically as you did.

We realize that the problem remains even with the passage of this legislation; that is, the problem of the tax liability of the employee. And I realize that our purpose in seeking the legislation may seem rather selfish in that light. But frankly, we are seeking relief from the very procedural problem that you raised yesterday. And we agree, the bills is procedural rather than substantive.

But we want that procedural relief.

One other point. You indicated that this bill held no benefit for the employee, and it possibly could be detrimental to the employee.

And I gather in the light that the tax liability would still remain, but he wouldn't have the dollars withheld with which to pay it.

And you asked further witnesses if possible to direct themselves to that point.

Frankly, I am a witness for the motor carrier industry, and as such I represent management more than the employee. But we in the trucking industry have always had a direct interest in the welfare of our employees.

So, in casting about in my mind, it occurred to me that there are some benefits in this bill for the employee. I may not be able to represent them as well as some of their advocates, so I qualify myself in advance.

Senator, I think one of the benefits is that the driver would not be subject to what one might term 100 percent or over 100 percent withholding. In other words, the driver's State of residence—let's say he resides in your State of Indiana, and it has withholding—his entire income is subject to withholding in the State of Indiana—100 percent withholding. Then, if he drives his truck in the course of his business through other States, one or more States, that require withholding, he is automatically subject to what one would say was greater than 100 percent withholding.

Certain of those dollars that he earns and has a right to, and the right to enjoy throughout the year, are withheld from him. Now, I realize that this State tax liability that you mentioned would still exist. But on that point—I am no tax expert in this field; I will attempt to answer any questions on the tax liabilities of the employer, but with the employee I can't qualify. In our survey of this matter we find that these other States in their withholding practices exercise various formulas and rules that I referred to that complicate the matter. But the actual amount withheld is normally returned to the employee at the end of the tax year, because of certain exemptions in the State laws relative to the amount where you start paying income tax.

Thus, you have to earn "X" number of dollars before you become subject to tax liability. Well, the State of nonresidence doesn't know how much that man is going to earn. The employer has difficulty, because the driver is not on a fixed wage or salary basis.

For example, I have a letter from one of our carriers who is having this problem in the great State of Mississippi. He says:

We are required to keep records on the time a driver spends in Mississippi, withhold and pay Mississippi income taxes on a proportionate share of the driver's wages.

But then he goes on to say:

Since Mississippi allows a \$4,000 income tax exemption, and since no driver would be in the State long enough to earn wages in that amount, the Mississippi bill would also have the following ridiculous results: The driver would be required to file for refund of taxes withheld, and the State of Mississippi would net nothing for its trouble in enforcing the law.

Now, in 1964 we had people tell us the same thing. I was not with the American Trucking Association at that time, but the carrier I

worked for had this problem. We had a number of States, and I can't give you the names of the jurisdictions at this time, but they did withhold. But in order for the nonresidents to get that money back, his State of residence had to have a reciprocity agreement with the nonresident State.

I won't take any more time. I appreciate you letting me extend my remarks to this degree. But I do think, sir, that there is a distinct benefit in this bill for the employee, and I can assure you there is a distinct benefit in it for the employer.

With that, I would like to introduce Mr. Anderson, who has had a lot of experience with this. He has a brief statement he would like to read in the record.

Senator HARTKE. We will be glad to hear from Mr. Anderson.

Mr. ANDERSON. Good morning, Mr. Chairman.

My name is Lawrence Anderson. I reside in Lubbock, Tex., where I am employed by T.I.M.E.-DC, Inc., as senior vice president—administration and secretary. I have been employed by the company or its immediate predecessor for a period exceeding 20 years. As senior vice president, I am familiar with the overall operations of the company and I am directly responsible for all administrative matters, including account functions.

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

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

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

As indicated by appendix A, numerous States have enacted income tax withholding requirements relative to nonresidents. However, the simple fact that there are numerous such withholding requirements is not by itself a correct picture of the scope of the problem. For in addition to the presence of the requirement, is the lack of uniformity among the various State laws. This lack of uniformity makes it exceedingly difficult for our company to effect compliance in every instance. Our legal department together with our accountants spend much time keeping current with the many rules, regulations and changes therein. We have to make every effort to comply since we are subject to auditing by each State and I want to point out that the cost of such audits is imposed by the States upon the carrier.

(The Appendix follows:)

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

Domicile	Number of drivers	States into which they drive
Atlanta, Ga.-----	50	Georgia, ¹ Alabama, ¹ Mississippi, ¹ Louisiana, ¹ Texas, Tennessee.
Chattanooga, Tenn.-----	11	Tennessee, Alabama, ¹ Georgia. ¹
Cincinnati, Ohio.-----	7	Ohio, ¹ Indiana, ¹ Kentucky. ¹
Chicago, Ill.-----	105	Illinois, Indiana, ¹ Ohio, ¹ Pennsylvania, New York, Massachusetts, ¹ Connecticut, Michigan, ¹ New Jersey. ¹
Dallas, Tex.-----	9	Texas, Oklahoma. ¹
Decatur, Ala.-----	1	Alabama, ¹ Tennessee, Georgia. ¹
Denver, Colo.-----	342	Colorado, Nebraska, ¹ Iowa, ¹ Illinois, Indiana, ¹ Ohio, ¹ Michigan, ¹ Kansas, ¹ Missouri, ¹ Kentucky, ¹ Wyoming, Idaho, Oregon, ¹ Washington, New Mexico, ¹ Arizona, California, ¹ Utah, Nevada.
Detroit, Mich.-----	2	Michigan, ¹ Canada, New York.
Evansville, Ind.-----	27	Indiana, ¹ Illinois, Kentucky, ¹ Missouri, ¹ Tennessee.
Kansas City, Mo.-----	9	Missouri, ¹ Kansas. ¹
Knoxville, Tenn.-----	94	Tennessee, Virginia. ¹
Little Rock, Ark.-----	3	Arkansas, ¹ Tennessee, Oklahoma. ¹
Los Angeles, Calif.-----	397	California, ¹ Arizona, New Mexico, ¹ Texas, Oklahoma, ¹ Kansas, ¹ Missouri, ¹ Illinois, Indiana, ¹ Ohio, ¹ Kentucky, ¹ Pennsylvania, New Jersey, ¹ New York, Oregon, ¹ Washington, West Virginia, ¹
Lubbock, Tex.-----	43	Texas, New Mexico, ¹ Oklahoma. ¹
Memphis, Tenn.-----	94	Tennessee, Mississippi, ¹ Alabama, ¹ Arkansas, ¹ Missouri, ¹ Kentucky, ¹ Illinois.
Nashville, Tenn.-----	70	Tennessee, Alabama, ¹ Kentucky, ¹ Illinois.
Oklahoma City, Okla.-----	105	Oklahoma, ¹ Texas, New Mexico, ¹ Arizona, California. ¹
Oakland, Calif.-----	33	California, ¹ Oregon, ¹ Washington.
Phoenix, Ariz.-----	52	Arizona, California, ¹ New Mexico. ¹
Paris, Tenn.-----	10	Tennessee, Kentucky, ¹ Illinois.
Portland, Oreg.-----	64	Oregon, ¹ Washington, California, ¹ Vancouver, British Columbia.
St. Louis, Mo.-----	32	Missouri, ¹ Illinois, Indiana. ¹
Salisbury, Okla.-----	33	Oklahoma. ¹
Seattle, Wash.-----	66	Washington, Vancouver, British Columbia, Oregon, ¹ California. ¹
Stockton, Calif.-----	8	California. ¹
Tulsa, Okla.-----	4	Oklahoma, Kansas, ¹ Missouri. ¹
Vancouver, British Columbia.-----	4	British Columbia, Washington.
Vinita, Okla.-----	9	Oklahoma, ¹ Missouri. ¹
Winchester, Va.-----	175	Virginia, ¹ Maryland, ¹ Pennsylvania, New Jersey, ¹ New York, Connecticut, Rhode Island, Massachusetts, ¹ District of Columbia, Tennessee, West Virginia. ¹

¹ Denotes states having withholding tax.

Mr. KINNAIRD. I have attempted to determine some estimate of the cost that T.I.M.E.-DC incurs as the result of State income tax withholding as it relates just to nonresidents. Such an estimate is most difficult to determine. However, I believe you will find the following example to be both pertinent and interesting. All payrolls for our company are processed and the records maintained in Lubbock, Tex. Our payroll system is computerized and each state that has or changes its withholding requirements necessitates additional computer programing time. This involves additional work on the part of our programmers, system personnel, test time, legal time, and computer time. We know that each computer instruction costs \$3. Some changes in the matter of State income tax withholding necessitate a minimum of 1,500 instructions or a cost of \$4,500. This may seem a rather startling figure but again it is due in many respects to the lack of uniformity I previously mentioned.

One major problem is that the basis for what constitutes taxable income differs in that some States require a determination on a mileage basis while others are on a day's work basis. Thus, T.I.M.E.-DC has to first determine the amount of pay earned when the employee was working in a given state. Then, the law of that State has to be applied to such earnings before a proper income tax deduction can be ascertained. Furthermore, since the withholding period ranges from weekly in some States to various periods in

others, another complicating factor enters the picture. Add to this the fact that an employee may operate in certain States for several weeks and then change to another area thereby requiring adjustments in his deductions should the change bring him into or through a State requiring us to withhold.

I sincerely hope that my testimony will be of assistance in your study of the problem and that you will conclude that enactment of S. 2044 be recommended.

Thank you for this opportunity to testify in support of S. 2044.

Senator HARTKE. Thank you both.

Senator PEARSON, do you have any questions?

Senator PEARSON. The withholding tax at the Federal level passed some years ago incidentally, was introduced in the House by former Senator Carlson of Kansas, when he was a Member of the House, and in the Senate by former Senator Arthur Capper, so Kansas has a big hand in this, for better or worse.

It passed the Congress way back when tax rates were much lower than they are now.

It is difficult to assign the precise reasons without going back and looking at the record. But the States withheld tax so they would be assured they would get all of the tax that was coming to them actually. And also because the spending of the tax funds, proceeding at a rather uniform rate, varies with the time of the payment of taxes, so it gives the States, in addition to collecting all that they feel is due to them under the law, it gives them a more uniform flow of revenues coming in and revenues going out.

I suspect the main reason is to make sure they get all of the tax monies they can.

I understand the procedural difficulties here. What about some sort of a system whereby any company doing business within a state that would normally be subject to this procedure of filing some sort of a commitment or bond with the State that had a given period at a single time that they would make a full report and at that time pay in withholding taxes in accordance with the State law, so that you do it one time rather than withhold from week to week, period to period, day to day.

Mr. KINNAIRD. Are you speaking of the State of residence of the driver or the State in which the trucking company is domiciled?

Senator PEARSON. I understood your problem was, no matter what State you were incorporated in, you had to pay withholding for the drivers who go through States A, B, C, and D?

Mr. KINNAIRD. Right.

Senator PEARSON. And this is a considerable burden.

Mr. KINNAIRD. Many of those States today, following your example of States A, B, C, and D, require the employer to post a bond.

Senator PEARSON. And in addition to that, pay in the withholding?

Mr. KINNAIRD. Yes, sir.

Senator PEARSON. What is the point of the bond if you are paying in the tax?

Mr. KINNAIRD. To make sure the employer comes up with the proper amount of money withheld. To assure that they send a team

of accountants from State A over to Kansas, let's say, to audit the Kansas motor carrier's books. The Kansas motor carrier has to pay State A for all expenses of that audit.

Senator PEARSON. As to withholdings in any given period?

Mr. KINNAIRD. Yes, sir.

But what I am saying to you is that we think it is a *de minimis* proposition. We don't think the States get enough money out of it to warrant them even doing it, because as I pointed out, many of the nonresident drivers actually end up not owing one red cent of income tax to that State they drove through. Yet during the year the moneys they would normally have had the use of have been paid by their employer to that State.

Frankly, I can't think—

Senator PEARSON. I am trying to think of some mechanism where we can take the States, take this burden off the carriers, transportation carriers, in interstate commerce.

But you are already required to file a bond.

Mr. KINNAIRD. Yes, sir.

What we are asking in this bill—

Senator PEARSON. Is that with specific reference to tax liability?

Mr. KINNAIRD. Yes, sir.

Senator PEARSON. Or is it a general bond for doing business in the State?

Mr. KINNAIRD. No, sir, it is usually specific for that law.

Senator PEARSON. Thank you very much.

Thank you, Mr. Chairman.

Senator HARTKE. I want to thank you gentlemen. You know the point I raise is a simple one. This business is not new.

Mr. KINNAIRD. No, sir.

Senator HARTKE. It is certainly not without some brains who ought to be able—after all any Nation that can get itself into a 7-year war without Congress declaring it, ought to be able to figure out how to get out of this mess. We have performed some great miracles in our times.

Now, according to your testimony this has been with us at least in substance since 1960. In 1964 you appeared here, the American Trucking Association appeared here.

I am sympathetic with your problem. I am not very sympathetic with your evidently lack of ability or interest in really attacking the disease. It is symptomatic of this country at the moment to do patchwork. I don't think this old house is going to be cured by this, this old house is not going to stand any longer, you won't get out of this problem by passing this legislation.

I can guarantee you if I vote for this, we pass this, it becomes the law of the land, that that will not solve the problem. I think your bookkeeping will be just as big and bad, you will be doing after the fact operations then, because it will be coming back to you.

That is what bothers me about every one of these statements. Let me say I am not picking on you. I think you have a problem, not just a little procedural difficulty. I think you have a real problem.

Mr. KINNAIRD. Yes, sir, we do.

Senator HARTKE. Let me say to you, I have talked to some of your people, I don't know how far you are pursuing the question of

assessments of tax liability on trucks. There are certain states in which certain trucking companies, although having authority under the ICC, legal authority to move through them, they are not moving through them because of the tax liability that would be imposed on them is so severe that the amount of business generated in that state is not enough to compensate them for moving through that state.

Mr. KINNAIRD. That is right, sir.

The Senate finally passed a bill on tax discrimination a few weeks ago, which I know has been before Congress for, I don't know how long.

Senator HARTKE. It looks to me like if you doctored a case for 10 years, and that is what you are telling me here, and you didn't get relief before, that you would go back and try to cure the disease.

Here is where I think your problem is. I think you people are leaning over backwards. I don't know why you fear these state authorities—where is your statement?

This is sort of surrender to the fear psychosis. "It does not in any manner affect the power of the state to tax," you say.

Mr. KINNAIRD. That is right.

Senator HARTKE. Why don't you challenge the power of the State to tax?

The Congress has the authority to set down the guidelines. Senator Pearson says this, and I think it would be difficult. But I think we ought to come up with guidelines on this problem, basic guidelines to deal with this specific problem, which would not alone eliminate this cumbersome procedural problem you have, but also the actual liability involved, not alone in this field, but in the whole field of related multiple tax assessments.

Mr. KINNAIRD. Yes, sir.

Senator HARTKE. Have you done any real work in this field?

Mr. KINNAIRD. Yes, sir.

We have had several standing committees of ATA over the years working on it. If you will recall, the Willis subcommittee on the House side did extensive work in this area. At the last hearing, when S. 1719 did not pass the House in 1964, we were told by the States then that if given 3 to 4 years, they would work the matter out through a series of reciprocity agreements.

Senator HARTKE. You ought to have known better than that. After all, that is the oldest stall I know. You know, as I used to say, I learned that in the second grade, maybe third grade, but it was way back there. "If you just leave me alone, give me 2 or 3 years," that is the same thing that got us into this mess in the rail strike that is in front of us right now. This thing wasn't very big, I will say that, until they neglected it and now we are faced with a midnight deadline, completely unnecessary.

Mr. KINNAIRD. The House didn't have the view that you have. They agreed with the States, the bill went no further and we have gotten no relief yet.

Senator HARTKE. As I say, it is the oldest stall under the sun, it has been used by every man who doesn't want to face up to a problem. He says, just let us study it.

We use it all of the time in the Senate, when we refer a matter back for study, it is a political way of saying, "we ain't going to do nothing now, maybe never."

Mr. KINNAIRD. In light of that philosophy, I am willing to settle now for S. 2044 and keep fighting for the rest.

Senator HARTKE. I am not ready to capitulate.

Mr. KINNAIRD. I am not either.

Senator HARTKE. I am saying if you get this bill passed, we will avoid for another 3, or 4 or 5 years this basic problem. I think it should be met.

I do not see any reason why, frankly, we could not meet that problem this year if we put our attention to it. I think you have a whole lot better chance of dealing with this problem that way. I would hope you would pursue that with as much vigor as you do this bill. Then I would help you.

I am not very sympathetic with this bill as you know. I am not saying I am not going to vote for it. I am just telling you how I feel.

Mr. KINNAIRD. As the Senator knows, I am not in a policymaking position. I am just a staff man.

Senator HARTKE. That is the trouble. I love to have the policy makers up here, but they always send the staff people. That is why you get staff results.

Mr. KINNAIRD. I will be glad to transmit the message—

Senator HARTKE. We get the same thing from the White House, they send the technicians up all the time. They don't establish the policies. This is a major policy decision.

Well, no use arguing that.

Let me ask you another question. I think the ICC raises the same question in their letter to us, and that is the question is this the proper place to put this? After all, the ICC is not basically in the tax field. They are in the regulation field.

Mr. KINNAIRD. We think it is, yes, sir.

Senator HARTKE. They think it is not, you know.

Mr. KINNAIRD. Yes, sir, they thought that way in 1964, too.

Senator HARTKE. That is what I say. This is a rerun. Sort of like the old movie, right?

Mr. KINNAIRD. The bill was drafted by the legislative counsel of the Senate in 1964 and we felt this was the proper vehicle. We think it works pretty well this way. Regardless of what vehicle you choose, we just want that relief.

Thank you.

Senator HARTKE. I wish you would submit to me any definitive material or any good studies you have, not for this record, but for me personally and for the benefit of the committee, not to be included in the record, on this big question as to the real heart of the taxing authority and basically if anything has been done in the field of guidelines or suggested solutions.

Mr. KINNAIRD. Yes, sir.

Senator HARTKE. All right.

Thank you.

Senator HARTKE. The next witness is the delayed witness, Mr. Corrigan, Executive Director of the Multistate Tax Commission, Denver, Colo.

STATEMENT OF ENGENE F. CORRIGAN, EXECUTIVE DIRECTOR
OF THE MULTISTATE TAX COMMISSION, DENVER, COLO.

Mr. CORRIGAN. I am Eugene F. Corrigan, executive director of the Multistate Tax Commission, an organization of 19 regular member and 13 associate member States. The heart of our organization is the Multistate Tax Compact, a piece of uniform legislation which is essentially a contract between the enacting States for the purpose of bringing uniformity and compatibility to the tax laws governing multistate business. The Multistate Tax Commission offers to taxpayers a vehicle through which to study and to confer with the Commission's 32 member States for the purposes of solving multistate tax problems. As the business world becomes more aware of the opportunity which is thus afforded, and the Commission demonstrates its ability and willingness to recognize existing problems, anticipates others and seeks solutions to all, we believe that the U.S. Congress will be troubled less and less with complaints of the type which has resulted in this hearing.

Federal legislation should not be the sole recourse for resolution of multistate tax problems. Reasonable approaches to such problems should produce reasonable results at the State level. Business' frustration in trying to obtain reasonable results from some States with respect to some problems has occasionally resulted in business' overreacting by tending to turn to Congress for help even when problems are only potential as is, in general, the case here.

I recognize some of the witnesses here have testified that the problems are more than potential at this point and I will discuss that further in a few minutes, with your permission. But until the creation of the Multistate Tax Commission 21½ years ago, business seemed to have nowhere else to turn. Today the picture is different. The Multistate Tax Commission stands ready, willing, and able to listen to business complaints, to examine them and, in each case where the problem merits it, to obtain action from the States.

Complaints such as those before you here should, if they have merit, find response from the States so that you would not be faced with them here. The Multistate Tax Commission is currently examining these particular complaints and is exploring reasonable approaches to them.

Less than 1 year ago, the Commission began to receive complaints from some of the organizations whose representatives have testified before you here and will testify before you here. Those complaints concerned problems which S. 2044 is apparently designed to eliminate. This was also about the same time that H.R. 1240, a similar Bill in the House of Representatives, was being considered by the House Committee on Interstate Commerce. The then chairman of our Commission, Mr. George Kinnear, Director of Revenue of the State of Washington, arranged for a formal hearing on the matter. That hearing was held June 18, 1969, in Houston, Tex., at a regular meeting of the Multistate Tax Commission. In conjunction with the meeting of that Commission, I should say.

Evidence was offered orally by Captain Gilje, representing the maritime unions; William Martin, representing the Western Team-

sters; Captain Woodward, representing the Airline Pilots Association; Robert Savelson, counsel for the Airline Pilots Association; Herbert O. Paul, representing the Brotherhood of Locomotive Engineers; Jack McGlothlin, representing the United Transportation Union; and Vernon Snow, the Deputy Commissioner of Revenue for Alaska. Many other State and business representatives were in attendance.

The testimony of those who favored passage of the then pending House Bill was:

(1) That there are some instances of employers in interstate commerce having to withhold income tax for several States other than their State of residence;

(2) That, if all States enforced their withholding laws to the fullest extent, this would be an unconscionable burden on both employees and employers;

(3) That the present withholding requirements of the States are causing a strain on labor relations; and

(4) That the States are unable to agree collectively on any solution.

I think that generally is the thrust of the testimony you have heard thus far. It is important to note again that most of these problems appear to be potential ones, although again, there appear to be some actual ones from the current testimony.

We are told that the fact that these problems are largely potential rather than actual was responsible for the failure of a similar bill in Congress in 1964. Nevertheless, these problems are of the type with which the Multistate Tax Commission is designed to cope.

Immediately after the hearing, at Houston on June 18, 1969, Chairman Kinnear appointed a committee comprised of William Harris, chairman, Chief Counsel, Kansas Department of Revenue; Thomas Frost, Assistant Attorney General of Idaho; Elmer Hermes, Assistant Tax Commissioner of Nebraska; Robert McDowell, attorney for the Legal Division of the Tax Commission; and Vernon Snow, Deputy Commissioner of Revenue of Alaska.

The committee subsequently decided to examine the problems of all interstate carrier employees whose employment required them to cross State lines. That has been done. The committee now appears to be nearing a proposal which may well result in a substantial resolution of the problems to which reference has been made here. The committee will meet again in Denver on March 13 and hopes to finalize its proposal at that time. We hope to move forward quickly to minimize even the potential problems which may exist.

The point is that our many member States are, through the Multistate Tax Commission, making a sustained effort to anticipate and to cope with taxpayers' problems. We believe that such efforts should be encouraged. If they are successful, we will not only have affected solutions to the instant problems, but will move forward even more confidently toward solution of others.

The possibilities which exist for discussion and resolution of interstate business tax problems through the commission are limited only by the degree of willingness of the participants. We feel that the appropriate forum for resolution of the problems inherent in the

income taxation of employees in interstate commerce in the Multistate Tax Commission. We are now asking the Senate Commerce Committee to defer making any recommendations, at least favorable recommendations, to the Senate, on S. 2044, pending the further efforts of the Multistate Tax Commission to effect resolution of the problem at hand by State-oriented, rather than by Federal activity.

Sir, in effect, I suppose we are saying just what you objected to a few moments ago, and that is, give us a little time. But this, as you have correctly pointed out, has been a ploy which has been used over the years in instances where no change or no improvement was intended, I suppose, or at least could be anticipated.

Now we are saying that we do need some time, because we think we are making progress. And it is important not only for this problem, but for the many problems in the field. You have pointed out correctly a while ago—

Senator HARTKE. Let me ask you, what suggestions do you have for national guidelines in this field?

Mr. CORRIGAN. Right now, the thing which appears to be appealing to the committee is to set up a situation wherein there would be withholding for no more than two States; namely, the State of residence and the State in which more than 50 percent of the person's income was earned. That's one approach.

Another approach might be the withholding for the State in which the employer is liable for the unemployment compensation.

Senator HARTKE. Do you think a man, just because he happens to be engaged in interstate commerce, should have withheld more from his wages than a person who, by good fortune in his working conditions, lives in one State and only has withholding from one State? Do you think that's fair?

Mr. CORRIGAN. I'm not saying it is fair, Senator. I think there is unfairness in this field.

Senator HARTKE. Do you think it is fair to say you can withhold from two States—one totally, and one 50 percent? Doesn't that sort of shock your feeling of what is right?

Mr. CORRIGAN. Ideally you would have—

Senator HARTKE. Not ideally—what is wrong with treating people fairly?

Mr. CORRIGAN. The problem is to treat both sides fairly. Senator Pearson has correctly pointed out, and I think you alluded to it too, that we have the problem here of protecting the State revenues at the same time that we have the problem of protecting the citizens against an unreasonable burden, whether it be a compliance burden in the case of employer, or a tax burden in the case of employee.

Now, the number one objectionable feature would be, I think, the double taxation of income of the employee. I'm talking about double taxation. That would be the ultimate inequity.

Now, the next inequity, but this is less of an inequity, is overwithholding, because at least in the latter situation, when he files a return the employee can get it back. I'm not saying that's good, but at least it is not as bad as double taxation.

So we are seeking to solve the problem. I'm not saying that there is going to be withholding in two States, even, but I think that

would be the situation about which witnesses have complained at this hearing.

Now, in most instances, the place of residence and the place from which more than 50 percent of the earnings are derived is going to be the resident's State. And so we are saying that, under this rule you would have limited it to one State, by and large.

There are other problems here that are fringe problems to a certain extent, and you have mentioned some of them. Number one is that there are people other than interstate carriers who have this problem. There are people who have employees going through several States.

So you have the question, is it really wise to make a distinction between those people? Maybe it is, I don't know.

First of all, we certainly oppose multiplicity of taxation on the same income. We are trying to do something about it. I would like to respond to a few other matters.

Senator HARTKE. Go right ahead.

Mr. CORRIGAN. I would like to refer to a couple of pieces of correspondence here, if I may. I have a letter here to our committee on this problem from Mr. Snow, who is also a member of the multi-state Tax Commission committee to which I have referred earlier. He is writing to the Chairman here. He says, in referring to this possible 50 percent rule:

It does raise certain constitutional questions in classification which I believe should now be considered. That is, the exclusion from taxation of income by States in which the worker might earn up to 50 percent of his income.

Also there is a problem of limiting the rule to employees of common carriers. What about the employees of private carriers for hire? What about the employees of companies which may have their own aircraft and haul goods between different States? Also, can the employees of the transportation industry be treated differently than other employees?

For example, supervisory personnel.

He says:

I wonder if there are reasonable differences in classifying (i.e., reasonable bases for differentiating between) pilots of airplanes, truck drivers, and seamen on common carriers from those same workers on transportation vehicles operated by private carriers for hire, or from those employed on vehicle operated by companies hauling their own goods or passengers?

The Governor of Alaska has introduced a bill which would go into this reciprocity situation which was discussed a few minutes ago in part. I would also like to read a portion of a letter which Mr. Kinnear of the Department of Revenue has sent to Senator Magnuson, the chairman of this Committee. I would like to excerpt a couple of paragraphs.

Senator PEARSON (presiding). We will put those letters in the record if you wish.

Mr. CORRIGAN. I would like to read into the record this portion. I don't know whether the entire letter should go in. This is dated February 28.

I have just been advised that the Senate Commerce Committee is holding hearings on 2044, commencing March 3. The subject matter of this legislation was brought to my attention first about a year and a half ago. Senator Percy of Illinois wrote me, in my then capacity as Chairman of the Multistate Tax

Commission, concerning the threat of double taxation of income of airline pilots who, in this instance, were residents of Illinois. I was able to be of some assistance in helping solve the problem which concerned Senator Percy.

At that time Mr. Kinnear convinced the State raising the question to stop seeking to impose the requirements upon the pilots which were being discussed at the time.

In January of 1969, the problem again was brought to me by representatives of the Teamsters Union, Masters-Mates, and Pilots Association, and the Airline Pilots Association, all, in this instance, residents of the State of Washington.

I would urge upon you and the committee that the States be given an opportunity and encouraged to complete the action which we in the Multistate Tax Commission have now undertaken. I appreciate that this is long overdue, but we are moving, and I do hope that you will concur that a test of the potential value of the Multistate Tax Commission be provided through giving it time to complete its efforts in this instance.

Time always seems to lag in development of legislation. I would point out to you that this situation was brought to the attention of the Commission scarcely over one year ago and the Commission, utilizing its regular proceedings, commenced action with the hearing only seven months ago, and we expect to finalize our proposal within another month. You must admit this is exceptionally fast action on newly proposed legislation. While the States may have been dilatory in the past, and all of us must now be held responsible for this fact, the Multistate Tax Commission is a new effort, created and organized for the very purpose of reversing the past tendencies of States to ignore or delay action when faced with problems of this nature.

I know I need not call your attention, Senator Pearson, to the fact that your own tax administrator, James McDonald, is now the chairman of our organization, that Senator Magnuson's tax administrator, George Kinnear, is the immediate past chairman of the organization. Senator Hartke's State is an associate member State of this organization. So we are receiving encouragement and much help from your member States.

There was some activity by Mr. Snow in recent months again to determine the extent of these problems. He told me last evening that he had written—I mention this because Alaska seems to have come up fairly often in complaints here—to four airlines which fly in and out of Alaska. One was Alaska Airlines which flies between Alaska and Seattle. Another was Western Air Lines. Through 1968 the pilots and crews of both of these airlines flew only in Washington and Alaska, and as far as I can determine, Alaska Airlines crews and pilots fly only between these two States. Since only Alaska has income tax, there can be withholding only for the one State there.

In 1969 Western Air Lines broadened its activities into some other of the Western States and we don't have statistics there.

Senator PEARSON. Let me interrupt you. What we are talking about is interstate commerce.

Mr. CORRIGAN. Yes, sir.

Senator PEARSON. It just seems to me that this is the office and responsibility of the Federal Government. You have an association of 19 members.

Mr. CORRIGAN. Yes, sir.

Senator PEARSON. What is an associate member? You have 13 associate members.

Mr. CORRIGAN. Yes, sir. An associate member is a State whose Governor has his administration working with us. He has asked—

Senator PEARSON. But the legislature hasn't passed the interstate compact?

Mr. CORRIGAN. That is right. Five of our current regular member States were associate members. We find that associate membership helps toward an understanding of our activities and tends to make a State more likely to come in.

Senator PEARSON. If you add the members and associate members you get 32 out of 50 States.

Mr. CORRIGAN. Yes, sir.

Senator PEARSON. This problem extends all over the United States.

Mr. CORRIGAN. That is right, sir.

Senator PEARSON. You say the only limit to your organization is the willingness of the participants?

Mr. CORRIGAN. Yes, sir.

Senator PEARSON. The State legislatures meet every 2 years in many cases.

Mr. CORRIGAN. Yes, sir.

Senator PEARSON. I have been a member of a State legislature. I know how it is to get something through.

Mr. CORRIGAN. Well, this is one of the remarkable things, really, about the Multistate Tax Commission. There was no——

Senator PEARSON. You say this was first directed to the Commission a year ago. How long has your Commission been in being? How long have you been operating?

Mr. CORRIGAN. The staff began operating on February 6 last year. The legislation was first introduced in 1967. Within 8 months we had the first seven members necessary to activate the Commission. By the end of that year we had 12. We have 19 now.

Senator PEARSON. Even if you get the States to act, how do you know they are going to act in a uniform way? Couldn't we compound this problem by having all of the States respond to this, and attempting to be responsive, and attempting to solve a situation, but come up with different answers? So you end up with a solution that may take us nowhere.

Mr. CORRIGAN. The advantage of the Commission is that you do get the tax commissioners and their staffs in the various States——

Senator PEARSON. That is great. But the State legislatures don't listen to them sometimes? Just like the Secretaries of the various Departments and the President of the United States comes to the Congress. What they get is strange to their original proposals.

Mr. CORRIGAN. Senator, as an example of the kind of effort that we can get, I would call your attention to Alaska. Alaska has been reluctant to move in this field. They have been quite strong in their position on it. Yet now the Deputy Commissioner has become most active with us in seeking a solution to the problem. Already his Governor has introduced legislation which, while it may not go quite as far yet as some of the witnesses would like, is a long way down the road from their position just 3 or 4 months ago. So I would say to you that the type of activity in which we are engaging is producing increasing cooperation among the States.

Senator PEARSON. I think this Commission is essential, this Multistate Tax Commission. I am glad Kansas is a part of it. I am very

pleased that our tax administrator has taken a leadership role in it. But, having said that, there are some things you can do very well and some things we can do better.

Mr. CORRIGAN. Yes, I realize that, Senator. There is another aspect of this, too: Admittedly this affects interstate commerce——

Senator PEARSON. There are a lot of things you can do better than we can do.

Mr. CORRIGAN. We hope so. One of the things we are concerned about, which the States are concerned about in general of course, is that every time a problem does come up, if it becomes a Federal problem, then sooner or later there is a question of "why the States?" So we would like to be able to try to cope with these problems at the State level wherever possible.

Admittedly we have really short notice here and the States have hung back for years and years. They have said no, we don't want the legislation to pass.

Senator PEARSON. Is there a possibility that the report of your committee would come forward with a proposal that says yes, this is interstate commerce, this is a proper office and responsibility of the Federal Government to enact some legislation?

Mr. CORRIGAN. I can't speak for our member States on that. I suppose it is possible. I think they would much prefer to try to settle it themselves, simply by becoming reasonable in those instances where they are not reasonable. There aren't too many States that have created this problem, I think. There is still, though, Senator, the question really of whether or not this is the proper legislation, as Senator Hartke has stated. Is it right to create a different situation for this employer simply because he is an interstate carrier than for another employer who may be even in the same business but is a private carrier or who may be in a different business with employees in similar situations?

Senator PEARSON. I have raised that point also.

Mr. CORRIGAN. Yes, sir. So the whole thing needs to be looked into, I believe, and this we intend to do.

Senator PEARSON. Thank you very much.

Mr. Woodward, captain for Western Airlines, representing the Air Line Pilots Association, accompanied by Mr. Kay McMurray, executive administrator for the Air Line Pilots Association with offices here in Washington, D.C.

STATEMENT OF LLOYD WOODWARD, CAPTAIN FOR WESTERN AIRLINES, REPRESENTING AIR LINE PILOTS ASSOCIATION; ACCOMPANIED BY KAY McMURRAY, EXECUTIVE ADMINISTRATOR FOR AIR LINE PILOTS ASSOCIATION

Mr. WOODWARD. Senator, I notice a good bit of my testimony has been covered already.

Senator PEARSON. Would you like to put it in the record and just talk about it?

Mr. WOODWARD. Yes, sir.

The Air Line Pilots Association——

Senator PEARSON. Let me just say your entire statement will be made a part of the record.

You may proceed, Captain.

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

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

We are pleased to appear before you today to state and discuss our views on S. 2044, a companion bill to S. 1719, which was passed by the Senate in 1964.

My name is Lloyd Woodward and I reside in Seattle, Wash. I am a pilot for Western Airlines, an interstate aircarrier serving most of the western States, plus Alaska, Canada, Mexico, and Hawaii.

The crew members represented by the Association operate aircraft through or over all of the 50 States. Consequently, any duplicating-tax compliance procedures among States and their local subdivisions quickly presents a problem of burdensome proportions. The magnitude of the problem is apparent when it is realized 38 States impose net income taxes on individuals. All of them require withholding on the full amount earned by residents, and 31 States require withholding on amounts earned by residents and nonresidents within their borders. In addition, numerous cities impose income taxes and require withholding as to both residents and nonresidents.

Under current conditions, with State governments and their subdivisions seeking methods of obtaining increased revenues to support their various programs, it is anticipated that the problem will increase rather than diminish. Of interest to our membership is the fact that the tax commission of at least one State several months ago took the position that the State has a right to tax flying personnel on income earned in flying over the State even though the plane does not touch down inside the State itself. When the foregoing is applied to schedules normally flown, the matter of compliance quickly becomes almost impossible. For example, with modern jet aircraft, a crew based in New York may fly the following schedule for a month: New York, Pittsburgh, Chicago, Omaha, Denver, Salt Lake City, and San Francisco.

The return to New York is flown nonstop and for purposes of wind advantage or to avoid storm areas, may be flown on routes as far north as the Canadian border and as far south as Texas. In a month's flying the crew will have flown over or through practically all the States of the Union with the exception of the extreme southeast States, Hawaii, and Alaska.

The next month may find the same crew operating a schedule as follows: New York, Cleveland, Miami, with a return—Miami,

Tampa, Pittsburgh, Cleveland, New York. (The foregoing schedules are actual examples with layover problems eliminated for brevity.)

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

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

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

Senator PEARSON. Let me interrupt you.

Are there any municipalities that have withholding provisions, do you know?

Mr. WOODWARD. To my knowledge Denver was introducing a so-called head tax about year and a half ago, and this was to residents as well as to transient pilots.

At the present time, although I believe the withholding, the head tax is still in the statutes, they are not withholding or collecting from nonresidents.

Senator PEARSON. Does this problem come up in international travel at all?

Mr. WOODWARD. To my knowledge, we are protected through treaties with various countries we fly into.

Senator PEARSON. Thank you.

You may proceed.

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

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

Weather conditions occasionally dictate the utilization of route Delta (D). This flight proceeds from Seattle, Wash., over Van-

couver Island and enters Alaska airspace in the vicinity of Ketchikan, Alaska, and is subject to Alaska tax regulation for the remainder of the flight. On route Delta 713 nautical miles of the 1,291 total are flown over Alaska air space—broken down into flying hours, this is approximately 1 hour and 40 minutes.

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

Possibly this may explain why in 1969 while flying a total of 760 hours, of which approximately 50 percent was spent south of Seattle, my Alaska income-tax withholding amounted to \$239 compared to \$127 in 1968 while flying exclusively north of Seattle. Total flying time and earnings were comparable in 1968 and 1969.

The majority of the 160 Western Airlines crewmembers domiciled in Seattle, Wash. in 1969 can substantiate more irregularities connected with nonresident Alaska income tax.

In expressing opposition to S. 1719 introduced in 1964, Alaska agreed that hardships attributable to the multiplicity of withholding requirements should be remedied by interstate cooperation through reciprocity agreements on withholding requirements. Six years later, Alaska still does not have reciprocity language written into its tax statutes.

While the situation just described applies to aircrewmembers, the same problems exist to a large degree among those employees in other interstate transportation media. Witnesses before this committee will testify with respect to those problems.

Consequently, we will not burden the committee unduly in this regard other than to state our support for this legislation which would ameliorate the burden imposed on other groups as well as our own.

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

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

We also wish to emphasize that the proposed legislation does not impair the tax authority of the States and their subdivisions. Nor does it relieve the employee of the liability to pay taxes which are properly due. It merely relieves the employee and employer from collection procedures which create difficulties out of proportion to

benefits which the taxing bodies might derive. In fact, as indicated, if the situation is not corrected, the individuals whom we represent will shortly be confronted with a problem of filing tax returns with which the individuals simply cannot cope.

We appreciate this opportunity to appear and present our views on S. 2044. We urge adoption of the bill and wish to assure you of our desire to assist in any manner possible to aid the subcommittee in its deliberations on this proposed legislation.

Senator PEARSON. Mr. McMurray, do you want to underscore or emphasize anything in the testimony?

Mr. McMURRAY. No, sir, I have nothing to add.

I was just here to help him with any questions that may be asked.

Senator PEARSON. If he got in trouble?

Mr. McMURRAY. If there were any questions he could not handle.

Senator PEARSON. Thank you, Captain.

I don't have any questions.

As we change from different modes of transportation, the problems seem to be about the same. We appreciate having the new dimensions that you have added with your testimony.

Mr. Woodward. Thank you.

Senator PEARSON. The next witness listed here—I want to emphasize that Senator Hartke, who is acting chairman today, was necessarily called out and he will be back soon.

The next witness is Mr. William A. Gill, Jr., president of the Flight Engineers' International Association, AFL-CIO. He has offices here in Washington, D.C., also.

Mr. Gill, you may proceed to summarize your statement, have it put in the record or whatever you desire.

STATEMENT OF WILLIAM A. GILL, JR., PRESIDENT, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO; ACCOMPANIED BY ROBERT H. MORROW, CHAIRMAN, SENATE LOCAL PAA CHAPTER, FEIA

Mr. GILL. Thank you, Senator.

I am William A. Gill, Jr., president of the Flight Engineers' International Association, AFL-CIO. FEIA represents flight engineers on certain U.S.-flat and domestic air carriers. FEIA also has affiliated with it members of flight engineer unions from 10 other countries of the free world.

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

The Flight Engineers' International Association supports and urges passage of S. 2044, a bill to amend the Interstate Commerce Act and the Federal Aviation Act of 1958 in order to exempt certain wages and salary of employees from withholding for tax purposes under the laws of States or subdivisions thereof other than the State or subdivision of the employee's residence.

We support this legislation because it will offer reasonable and just relief to many of our members who are now being taxed unfairly and arbitrarily by the State of Alaska, and because it will

prohibit these unfair tax practices from spreading to other States, some of which are already contemplating adopting the same unjustifiable practices.

FEIA is violently opposed to the action of the State of Alaska whereby employees, merely because their employer selects a route which carries them over or through a particular State, are taxed for carrying out their individual duties and responsibilities assigned to them by their employer on these routes.

These individuals receive absolutely no benefit from the State, and to require tax on their income merely because their duties require flying over the State, or making an occasional landing within it, is nothing more than exacting a tribute for being an airline flightcrew member.

The income of these individuals is no more dependent upon any incident of statehood than is the carrier's employee who scheduled him to fly over the State, or the dispatcher who routed his flight over it, or the passenger who saw fit to get where he was going by that flight.

Senator PEARSON. Mr. Gill, you testified that your wages, amounts of money, are withheld from your wages. Is it the amount of time that your plane is over a given jurisdiction or is it miles flown or what is the measurement?

Mr. GILL. It is the amount of time over the State, sir.

Mr. MORROW. Flight time over the State, whether we land there or not.

Senator PEARSON. Whether you land there or not?

Mr. MORROW. Yes, sir. I have a statement from Vernon Snow to this effect that this is the way they tax in Alaska.

Senator PEARSON. On trains, railroads, it is the amount of track. On airlines it is the amount of time.

Mr. MORROW. Right. We are paid by the flight-hour so we are taxed by the flight-hour.

Senator PEARSON. Is the trucking industry still here?

Mr. KINNAIRD. Yes, sir.

Senator PEARSON. What is the measurement on the trucks?

Mr. KINNAIRD. The miles traveled.

Senator PEARSON. All right, go ahead.

Mr. GILL. These persons I just listed are not taxed by the State nor should they be. These are the dispatchers, company managers, people who schedule the crews to fly over the State. They are not taxed nor the passengers. We don't think they should be. But why are flight crews more tax liable to the State than they? We think they are not.

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

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

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

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

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

Thank you, Mr. Chairman.

Senator PEARSON. Thank you very much.

There is a gentleman back there from the maritime industry. What is the measurement of your tax liability? Is it time in port or did you testify yesterday it was taxed from the time you left Seattle until you got to Alaska and back?

Mr. BAKER. Now it is based on the time; when you get the tax report it is from the time you leave Seattle until you get back to Seattle. But at one time before it became a State, they used the time you crossed the Canadian border, on the other side of the Canadian border until you got back over the border. That is the only thing that it was based on.

Senator PEARSON. You would be taxable even though you didn't leave the ship to go into port? Is that right?

Mr. BAKER. It doesn't matter if you went off the ship or not, you were still taxed for that time. Then it was taken out according to a certain percentage of your Federal tax, was to be paid to the State of Alaska.

But then it was, after you got it back, turned over. You turned it over to one of the purchasers, and they would set it out as to the exact time you spent in Alaska and you would get so much back each year from that tax.

Senator PEARSON. Thank you very much.

Mr. BAKER. But now I understand it is taken out, a certain percentage of the Federal tax, from the time you leave Seattle until you arrive back in Seattle. That is what it is based on now, if I understand it.

Senator PEARSON. Suppose I leave New York and go down through the Canal and up, New Orleans, is it the same measurement?

Mr. BAKER. We don't have anything to do with that. I am only speaking about the State of Alaska.

Senator PEARSON. All right, Mr. Gill. Thank you very much.

Mr. Donald S. Beattie, executive secretary, Congress of Railway Unions.

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

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

The organizations I represent are:

Brotherhood of Maintenance of Way Employees; Brotherhood of Railway, Airline and Steamship Clerks; freight handlers, express and station employees, which includes former Transportation-Communication Employees Union & Railway Patrolmen's International Union; Hotel & Restaurant Employees and Bartenders' Interna-

tional Union; Seafarers' International Union of North America; and United Transportation Union, the merged union of the former Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Firemen & Enginemen, Order of Railway Conductors & Brakemen & Switchmen's Union of North America.

We appreciate this opportunity to appear in support of S. 2044. We join with the Association of American Railroads and others in urging adoption of this legislation. The statement There is no good reason to burden employees with the maze of accounting and paperwork required to secure the refund of money unjustly withheld. In many instances the State and local taxing bodies are unjustly enriched at the worker's expense because the amount of refund does not justify the effort involved in supporting claim for recovery. This undue harassment of transport workers in interstate commerce is of major concern to the unions who are protecting their welfare.

Since Congress last considered this problem in 1964 more and more States and municipalities have adopted tax withholding legislation. It is only a matter of time before such practices will become almost universal.

The passage of this legislation will point up how Congress feels in this area of multiple tax withholding and will be a guideline for new legislation and for the amending of existing legislation. Any legislation which contributes to tax equality and uniformity of application deserves the support of the Congress.

Another concern of the railroad brotherhoods is the wasteful diversion of funds that might better be put to productive use. This legislation would stop unneeded and costly expenditures by the railroads. Wages, rules, working conditions and job security for railroad employees is dependent upon a healthy industry. While often we disagree with management we do not condone unjustified waste of railroad assets of Francis O. McDermott, tax counsel for the American Railroads outlines the general problem of multiple-tax accounting and its effect on the railroad industry and many railroad employees. Accordingly, I will avoid repetition of details already in the record.

The withholding of taxes by many States and political subdivisions poses an unreasonable and unfair burden on employees working in interstate commerce who because of the nature of their employment perform work in States and political subdivisions other than that in which they reside.

This legislation is not designed to relieve such employees of valid taxes where such are due, but the withholding of wages and the filing of multiple reports for several tax agencies in different States and other tax jurisdictions create undue hardship on those who perform transportation service. Then, too, transportation workers have great difficulty in determining the validity of taxes imposed by out-of-State taxing agencies.

The employee, because he has no control over taxes withheld from his check, is stuck with picking up the tab even though he may have no tax obligation.

Certainly if the taxes are valid for out-of-State residents for work performed away from home, then the collection burden should be on the agencies. The withholding of taxes which at the end of the year

proves specious deprives the employee of use of such monies during the course of the year that are so badly needed to rebuild a vibrant railroad industry. Thus, we urge the passage of S. 2044 now being considered by your Committee.

Thank you, Mr. Chairman.

Senator PEARSON. Well, you agree with management on this issue, don't you?

Mr. BEATTIE. Yes, sir, we certainly do.

Senator PEARSON. I think this is very helpful, Mr. Beattie. I appreciate you testifying.

I want to indicate to you also that Mr. Hartke was necessarily called away.

I don't have any questions. Is there anything else you would like to emphasize in relation to this?

Mr. BEATTIE. No. I wouldn't add anything except that in connection with the question raised by Senator Hartke yesterday, we feel that we have a real problem here, although it is a procedural problem.

Senator PEARSON. I think he raised the question as to what benefits are there to the employees.

Mr. BEATTIE. There will be real benefits, there is no question in my mind about it. If this bill is passed I think it would be an inducement to the States that withhold taxes from nonresidents and the municipalities that do so, an inducement to them to eliminate legislation that now exists.

I don't think it would be an inducement for tax avoidance to any great degree.

I think in many cases the cost of collection exceeds the amount of tax collected. In many cases the amount of tax collected for employees exceeds the time and effort required to claim a refund.

The amount of money here is not a tremendous amount, but the problems and time and effort for both the management and the employees is substantial enough to require relief from the federal level.

Senator PEARSON. Thank you, Mr. Beattie. That is a valuable contribution to our hearings.

Mr. BEATTIE. Thank you, Senator Pearson.

Senator PEARSON. The next witness is Mr. Carlos Moore, political and legislative director, International Brotherhood of Teamsters, accompanied by Dan Curlee, assistant legislative counsel, International Brotherhood of Teamsters.

STATEMENT OF CARLOS MOORE, POLITICAL AND LEGISLATIVE DIRECTOR, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WASHINGTON, D.C., ACCOMPANIED BY DAN CURLEE, ASSISTANT LEGISLATIVE COUNSEL, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AND EDWARD J. FILLENWARTH, ESQ., FILLENWARTH & FILLENWARTH, INDIANAPOLIS, IND.

Senator PEARSON. You are the anchor man here today, Mr. Moore.

Mr. MOORE. I hope so, Mr. Chairman. We also have present Mr. Ed Fillenwarth from the State of Indiana, who has a case pending over there and with your permission he would like to say a few words to the Committee also.

Senator PEARSON. Certainly.

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

On behalf of our General Vice President, Frank Fitzsimmons, the general executive board and our entire membership, I wish to express my appreciation for this opportunity to bring to this hearing the view of the International Brotherhood of Teamsters on the growing and persistent problem of State taxation of nonresident transportation employees.

The difficulties generated by this practice of an increasing number of States has special significance for us, because out of our 2 million plus membership approximately 150,000 are over-the-road drivers. It is these over-the-road drivers who move mountains of the Nation's products from State to State. It is these drivers whose duties carry them away from their home States into and through the States of their neighbors where the drivers are taxed. They are taxed not because they helped elect the officials who designed the tax policy; they are taxed not because they are a part of the community that will benefit from the programs financed with tax revenues. They are taxed because it is convenient to tax them, and their presence is visible. They are taxed because they are easy targets who have no representation within the bodies that levy the taxes. This is taxation without representation, a concept foreign to our American heritage.

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

THE SCOPE OF THE PROBLEM.

At this time 38 States have an income tax law, and of these 38 income tax States, at least 14 of them have announced policy of requiring withholding tax from nonresidents who are paid for personal services performed within their boundaries.

Direct evidence has been gathered concerning an active policy of nonresident transportation worker taxation in Alaska, Alabama, Arkansas, California, Indiana, Kansas, Hawaii, Louisiana, Missouri, Nebraska, and Wisconsin. The number of States that actively pursue a policy of requiring employers to withhold from the paycheck of nonresident is steadily growing. One can be sure that as the need for more State revenue grows, so also will grow the probability that States will turn to the policy of taxing nonresidents.

By shifting a part of the tax burden to nonresidents, a State administration can conceal that part of the tax burden from those who can vote them out of office. A nonresident has precious little chance of redress in a state where he is no one's constituent.

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

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

Mr. Chairman, documents will be introduced to the Committee and we will ask they be printed in the record, by Mr. Curlee at a later point.

Senator PEARSON. All right.

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

Under present practices, laws requiring withholding for state income tax from wages of nonresidents are enforced in a blatantly discriminatory manner. Many very visible individuals who are present within a State which is not their residence, performing services for which they are paid, are not required to report these earnings to that host state. As an example, the State of Maryland probably does not withhold taxes from salary of president Nixon when he worked at Camp David. This would have applied to the State of California at one time, but I understand the President has declared California his State of residence for the purpose of taxation and I am sure he will pay income taxes there. It could also apply to the District of Columbia. At this point we could include Congressmen and Senators or other outstanding Americans.

Senator PEARSON. That would be unreasonable, wouldn't it?

Mr. MOORE. I think it would be, yes, sir.

Baseball and football players and other professional athletes are not required to pay taxes to a State where they are visitors, and yet for these personal services they are earning much more than any trucker will ever earn for his labors in a State that is not his home. In short, the nonresident interstate transportation worker is held accountable while others are left untouched. This uneven enforcement of the law is discrimination.

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

Senator PEARSON. Do you know whether or not professional athletes have withholding from their salary?

Mr. MOORE. To my knowledge, I know of none.

Senator HARTKE. Yes, they do, they have this problem, too. As a matter of fact, the professional basketball association came to me on this matter sometime ago. They are faced with a real problem.

Senator PEARSON. So whenever the Washington Senators are going to play in 12 different cities, 12 different States they run into the same problem?

Mr. MOORE. I would assume so. But the information we had, we talked to several, and they told us no monies had been withheld from their checks. I can't answer for them.

AN IMPEDIMENT TO INTERSTATE COMMERCE

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

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

The imposition of these taxes interferes with and burdens the free flow of interstate commerce because the collection of the taxes increases the administrative burden of employers whose employees move products from one state to another. The detailed and duplicative reporting required of such an employer is monumental.

THIS IS A FEDERAL PROBLEM

The solution to this problem does not lie in the creation of 50 separate laws in our 50 separate States. Interstate commerce is an issue of national scope. And now is the time to act. Senate bill S. 2044 must be passed now before the problem grows into a giant "Frankenstein" with 50 independent parts. We must not wait until many States have a vested interest in a tax policy directed at nonresidents. A minimal number of States will be affected if S. 2044 is passed by this session of Congress.

SUMMARY

It is always a pleasure to be given the privilege of bringing our views to the attention of this committee, and we thank you for this opportunity.

The International Brotherhood of Teamsters urges that S. 2044 be favorably reported to the Senate as soon as possible, so that this onerous taxing policy may be stopped before it comes ingrained into the fiscal pattern of any more of our States.

Senator HARTKE (presiding). Thank you, Mr. Moore. I really have no new questions to ask. Again I do not think this answers the problem. I certainly hope that all the people who are concerned with this would direct their attention to at least coming forward with some type of recommendation which could solve the problem. I think there are ways to solve this problem.

Mr. MOORE. Mr. Chairman, we think that the question that you asked certainly is one that we respect and we know about, we have been knowing about it for years and we have been unable to really do anything about it, either before this Congress or even before any of the States.

We do have a problem and we have brought this problem before this Congress and it is before this committee at this time. We have identified the problem. This legislation will give us relief. We are asking you to pass this legislation.

Now if the total package, the total problem is to be done away with, it will require legislation like you are asking for. If you will pass this legislation, then introduce legislation curing the entire cancer, we would certainly support your legislation.

Senator HARTKE. Thank you. Senator Pearson?

Senator PEARSON. I just want to indicate, Mr. Chairman, that this gentleman with the witness has had a personal experience in this, and I think he is going to be asked to testify.

Mr. MOORE. Mr. Chairman, I have Mr. Dan Curlee with me, our legislation assistant and attorney, and he has some documents that he would like introduced into the record.

Mr. CURLEE. With your permission, Mr. Chairman, we would like to introduce into the record various letters and excerpts from the State laws which set out their policies for taxation of interstate transportation workers. Also it includes some of the formulas that are used for the taxation of interstate transportation workers, which may be able to shed some light on the processes that are included in this problem.

We also have the withholding records of two individuals that were mentioned in our testimony, that can demonstrate the minimal tax withholdings from the various States, and some of the complexities involved.

We hope that these two exhibits will help to expose the nature of the problem that is caused by allowing the myriad of authorities to require withholding tax.

We also have material from the State of Indiana—

Senator HARTKE. That is a great State.

Mr. CURLEE. Yes.

Mr. FILLLENWARTH. I agree, Senator.

Mr. CURLEE. The great State of Indiana, pardon me, which includes some circulars from the taxing authorities that tend to explain or to illuminate the processes that this one State uses to implement its program.

(The material referred to begins on p. 93.)

Mr. CURLEE. It sets out, first of all, a model for a reciprocal agreement. It also points out some of the States with which it has a credit agreement.

In connection with those two things, I would like to make some comments, if I may.

It should be noted that the reciprocal agreements amount to an agreement between one State and the other not to withhold. It doesn't change the character of their tax laws, it doesn't relieve the liability of nonresidents as written into the laws of the various States.

It accomplishes the very thing that this bill sets out to do, it relieves the responsibility of withholding only. And this is the approach that the States themselves have used. The credit approach can be very cumbersome, because say if you have State A and B and C, and we are dealing with State A, and it says State B allows credit for taxes paid in State A, therefore you cannot claim that as a credit here, but if in State C that does not, then you can.

In other words, it is very patchwork. You would have to know the exact law in all 50 States if there were taxes in effect in order to properly prepare your returns and to get what money you were entitled to.

Senator PEARSON. Do you have the Kansas procedures there?

Mr. CURLEE. No, I don't.

Senator PEARSON. They would be superior to Indiana, wouldn't they?

Senator HARTKE. That is probably true. That wasn't true prior to the last administration taking over in Indiana, but since the last administration took over, that might be true.

Mr. CURLEE. One other thing too that would lead into what Mr. Fillenwarth has to tell you is if you have two States, both of which have income tax laws, State income tax laws, then the reciprocal agreements are possible. These are the two types of States that do reach these common agreements.

However, when you have one State with and one State without, you have disequality between the two States and there is no agreement. Therefore the people that live in the nontax State pay their sales tax and property tax, et cetera, down the line, they go into the tax State and they are subjected to a State income tax with no reciprocal relief between the two States.

This I believe is a very cogent reason for getting into a comprehensive solution to the problem.

With that, with your permission, I will turn this over to Mr. Fillenwarth who will tell you about his problems in Indiana and with Illinois.

Mr. FILLLENWARTH. My name is Edward J. Fillenwarth, an attorney in the law firm of Fillenwarth & Fillenwarth, 607 Merchants Bank Building, Indianapolis, Ind.

We got into this problem *amicus curiae*, so to speak, back in 1964 when the teamster drivers in Chicago, Ill., were being taxed by the State of Indiana.

A lawsuit was filed by lawyers in Chicago and when we noticed it in the paper we asked leave to become involved as *amicus curiae*, because we realized that sooner or later our drivers in Indiana were likewise going to be involved in perhaps Illinois or any other State. Because the Indiana Conference of Teamsters has approximately 40,000 members in Indiana, many of whom are over-the-road drivers, who drive all over the United States. So by reason of that fact we did involve ourselves as *amicus curiae* in that litigation.

Now you say well, in 1964 you have the result now, so tell us what it is.

We are no further along in that litigation than when it was filed in 1964. There have been different administrations in Indiana, as Senator Hartke well knows, and of course we cannot sue the State of Indiana. We had to go the circuitous route, so said the lawyers in Chicago, and we agreed, by suing individuals as representatives of the various departments in the State.

Of course there have been changes in those individuals. As a result each time we had to file an amended complaint because at least up until January 1, 1970, we had what we called old procedures in Indiana—

Senator PEARSON. What court are you in? The District Court or the Circuit Court?

Mr. FILLINWARTH. We are in the Marion County Circuit Court in Marion County, Ind., of which Indianapolis is the capital and also the central city in Marion County.

Senator PEARSON. Couldn't you get into the Federal court?

Mr. FILLINWARTH. We maybe could have, but the lawsuit was originally filed by the lawyers in Chicago and we became involved as *amicus curiae*.

We thought we had the matter at issue any number of times and then we had a change of the person say in charge of the Department of Revenue and we had to file an amended complaint. So each time the then attorney general would go through all of the procedure of filing these dilatory motions and finally with the help of the judge we got the former attorney general, Attorney General Dillon—and that procedure has not been changed under the new attorney general—but he agreed when we filed the last amended complaint, he would file all of his motions at one and the same time and the court would overrule these as the court had on numerous other occasions.

So we finally had the case at issue, but it has not been set down for trial.

Now in the meantime the drivers in Indiana are going to be confronted with this very issue, because as of July 1, 1967, Illinois has adopted an income tax. Now up until Illinois adopted the income tax, we could not work out any problem with Illinois on a reciprocal basis. With Kentucky we have, with Michigan we have—I say we, the State of Indiana—and Wisconsin, because they have income tax laws. But Illinois had a sales tax, no income tax law. So there was no basis apparently upon which Indiana and Illinois could work out a reciprocity agreement. So the drivers in Illinois have literally been

raising Hades with us, representing the Teamsters in Indiana, to get some results in Indiana, and we have been able to get nothing.

Now as late as 1 o'clock Monday of this week we learned that representatives from the State of Illinois were having conferences with representatives of the Department of Revenue of the State of Indiana, attempting to ascertain whether or not they can work out a reciprocal agreement. But the latest word that we have from that, as published by the paper of Local 142 in Gary and Hammond, is that employers are deducting $4\frac{1}{2}$ percent, $2\frac{1}{2}$ percent according to the Illinois law and 2 percent according to the Indiana law.

So the drivers are paying $4\frac{1}{2}$ percent instead of the former 2 percent in Indiana.

Whether that situation will find some solution as a result of the conference, we do not know. But in the meantime we are having the problems of our members down in the trenches, the members are complaining to us because we have not gotten them some relief.

Now prior to 1963 we had no problem because Indiana made no effort to tax nonresidents under its gross income tax law. But in 1964 they adopted the adjust gross income tax, the legislature, and the Director of Revenue of Indiana, Mr. Cortly, who is now deceased, took the flat position that regardless of what we thought the law said, his interpretation was it did involve nonresidents, and we could do what we pleased, he was going to tax them.

We said well, how are you going to get that job done insofar as we are concerned—we were talking about the motor truck industry and our members in the industry. He said that each and every one of the motor truck carriers, interstate or otherwise, coming through the State of Indiana has to get authority from the PSCI and unless they conform to this regulation that we are issuing, we will revoke their authority.

Now if that doesn't come close to—in fact, right on the nail—to impeding interstate commerce and burdening the interstate commerce, I don't know.

But that was the position of Mr. Cortley. Mr. Cortley, let me say in all fairness, was most sincere. He was a fine upright gentleman. He thought he was doing the job for the State of Indiana, contrary to what we thought. And that is exactly what he did, he put the word out to every motor carrier coming through the State of Indiana that you either withhold or we will revoke your authority.

Mr. Cortley wasn't too long in that job, because he was involved in other matters and was appointed to the Supreme Court of Indiana, so we didn't have him as a problem in that area. Apparently the other directors have not taken that position, because many of the employers, outside of the State, who drive into the State, do not deduct, in fact more do not deduct and withhold than those who do.

Now the problem is that I pull out of a particular barn in Illinois, in Chicago, Ill., and Mr. Curlee working for another employer pulls out of the same barn, and Mr. Moore, working for another employer pulls out of the same barn. I pay taxes or at least my employer withholds from me, his employer, Mr. Curlee's employer, does not withhold from him, and neither does the employer for whom Mr. Moore works withhold from him. That really creates a problem with several hundred drivers pulling in and out of Chicago.

So that our clients working for Specter Motor Freight are constantly writing us, constantly harassing us, constantly harassing the local union in Chicago why don't we get some results.

When we got into this we found the former Senate bill, 1719, had passed the Senate. We said, we wrote our people in Chicago saying the matter is going to be resolved, because it has already passed the Senate.

Senator PEARSON. You should have known better than that.

Mr. FILLENWARTH. At least we wrote our clients accordingly. We then contacted every member of the House by letter, our office did, and we got very nice polite letters back from them saying they would look into the matter and consider it, and that was the last we heard from them.

Now the problem has been with us all of that time and the problem is still with us. We sincerely believe that this particular problem should be given some consideration. It is not fair, it is not working, it reminds me, in listening here for 2 days to the remarks of different people, it reminds me—I was a bit young in those days—of the prohibition law. It all depends on which State is attempting to enforce it as to whether or not it is going to be enforced. It is as haphazard and hodgepodge as anything could possibly be.

The only way in our belief and opinion that this can be resolved is by Congress.

Now I admit that Senator Hartke is correct that there is an overall tax problem. Sure, there is an overall tax problem. But this is a particular problem that we believe that if Congress would adopt S. 2044, the various States would get their heads together and get the job done as the gentleman who is a member of this conference who spoke said, the States are attempting voluntarily to get together, but they haven't gotten the job done. And I think they have some 33 members. But as Senator Pearson pointed out, what about the other States? I don't know how they are ever going to get the job done.

If Congress will say "You can not do this," the States then I think perhaps may call some kind of a legislative conference of the 50 States and get something done in this tax field. If not, Congress may have to act on the overall question. But I don't see how we as far as this particular committee is concerned, and as far as this particular legislation is concerned, can be expected to resolve the overall issue. We have got the problem down in the trenches and we have had it. Our people would like and sincerely request some relief.

Let me say this, I am not in the habit of appearing before committees, but in all due respect to the McClellan Committee, I have been given much more opportunity to address this committee than I did when I appeared before that committee.

Thank you very much. If there are any questions, I will be more than willing to answer them.

Senator HARTKE. Let me say, I want you to know that anyone now should be completely alert to the fact that we produce some exciting personalities from the State of Indiana. We have vigor and verve out there, don't we? We are a vigorous State, I will tell you.

I am not prepared to at this stage venture an opinion on this. I assure you we will certainly bring this matter to the attention of the full committee and give them a chance to work their will.

I would hope that in the meantime if you really have any hopes of passing a bill of this kind that you will get more polite letters from some of those House members.

Mr. FILLINWARTH. We will try again.

Senator HARTKE. Maybe in the meantime, I know Senator Pearson and I are both concerned about this matter from three viewpoints. One of them is the employees, and the employers, and the question of tax funds. I do think they all need attention. The revenue for the State and local governments, how the State and local governments are going to get their revenue, from whom, and how fair it is for the employers and the employees from whom they are to receive it.

Mr. FILLINWARTH. Let me say, Senator Hartke and Senator Pearson, I am here speaking for the employees and we are presenting our position on behalf of the employees. This is what the employees want. Now not in any derogatory manner at all, but as John L. Lewis once said "God bless all employers," sometimes we say something else about them, but they do have a problem. But we are not concerned with their problem. We are concerned about the problem of our members being taxed over and over again on this kind of basis. The worst problem is that some are and some aren't. It is just a complete hodgepodge mess. The only one who can straighten it out is Congress.

Senator HARTKE. All right. That concludes the testimony.

The hearings are adjourned subject to the call of the Chair.

(Thereupon, at 12:15 p.m. the hearing was adjourned subject to the call of the Chair.)

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS¹

(The following was referred to on p. 88.)

ARKANSAS-BEST FREIGHT SYSTEM, INC.
301 SOUTH 11TH STREET
PCRY SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444

Type or print EMPLOYEE'S Federal identification number, name, and address above

WAGE AND TAX STATEMENT—1968

1 Includes tips reported by employee. This amount is before payroll deductions or a 2.0% Social Security (FICA) rate of 4.4% includes .6% for hospital insurance benefits and 3.8% for old-age, survivors, and disability insurance.

EMPLOYEE'S STATE IDENTIFICATION NUMBER		Copy B—To be filed with Employee's Federal Tax Return	
SOCIAL SECURITY INFORMATION		GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL	
FICA EMPLOYEE TAX WITHHELD ²	TOTAL FICA WAGES PAID IN 1968	NO. OF OPEN DENTS	
343 20			68 03
NAME OF STATE		STATE FORM NO.	STATE TAX WITHHELD
INDIANA			1 36
NAME OF CITY		CITY FORM NO.	CITY TAX WITHHELD

FEDERAL INCOME TAX INFORMATION

FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1968	OTHER COMPENSATION ³ PAID IN 1968
2183 61	14503 46	

Type or print EMPLOYEE'S social security number → XXXX

M A QUENNEVILLE
119 LOCKWOOD CIRCLE

JACKSON MISSISSIPPI 39212
Type or print EMPLOYEE'S name and address (including ZIP code) above

*Excludable Sick Pay.
**Uncollected employee tax on tips.

FORM W-2—U. S. Treasury Department, Internal Revenue Service APP. 108 1-18-68 F22

ARKANSAS-BEST FREIGHT SYSTEM, INC.
301 SOUTH 11TH STREET
PCRY SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444

Type or print EMPLOYEE'S Federal identification number, name, and address above

WAGE AND TAX STATEMENT—1968

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EMPLOYEE'S STATE IDENTIFICATION NUMBER		Copy B—To be filed with Employee's Federal Tax Return	
SOCIAL SECURITY INFORMATION		GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL	
FICA EMPLOYEE TAX WITHHELD ²	TOTAL FICA WAGES PAID IN 1968	NO. OF OPEN DENTS	
343 20			1134 03
NAME OF STATE		STATE FORM NO.	STATE TAX WITHHELD
MISSOURI		MOBH-2	3 94
NAME OF CITY		CITY FORM NO.	CITY TAX WITHHELD

FEDERAL INCOME TAX INFORMATION

FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1968	OTHER COMPENSATION ³ PAID IN 1968
2183 61	14503 46	

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FORM W-2—U. S. Treasury Department, Internal Revenue Service APP. 108 1-18-68 F22

ARKANSAS-BEST FREIGHT SYSTEM, INC.
301 SOUTH 11TH STREET
PCRY SMITH, ARKANSAS 72901
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EMPLOYEE'S STATE IDENTIFICATION NUMBER		Copy B—To be filed with Employee's Federal Tax Return	
SOCIAL SECURITY INFORMATION		GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL	
FICA EMPLOYEE TAX WITHHELD ²	TOTAL FICA WAGES PAID IN 1968	NO. OF OPEN DENTS	
343 20			2 32
NAME OF STATE		STATE FORM NO.	STATE TAX WITHHELD
WISCONSIN			
NAME OF CITY		CITY FORM NO.	CITY TAX WITHHELD

FEDERAL INCOME TAX INFORMATION

FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1968	OTHER COMPENSATION ³ PAID IN 1968
2183 61	14503 46	

Type or print EMPLOYEE'S social security number → XXXX

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119 LOCKWOOD CIRCLE

JACKSON MISSISSIPPI 39212
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**Uncollected employee tax on tips.

FORM W-2—U. S. Treasury Department, Internal Revenue Service APP. 108 1-18-68 F22

¹Some of the material submitted was impossible to duplicate effectively but it was decided to go ahead in order to complete the presentation.

ARKANSAS-BEST FREIGHT SYSTEM, INC.
301 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444

Type or print EMPLOYER'S Federal Identification number, name, and address above

WAGE AND TAX STATEMENT—1968

1 Includes tips reported by employee. This amount is before payroll deductions or "pick pay" exclusion.
2 Add this item to wages in figuring the amount to be reported as wages and salaries.
3 On your income tax return.
4 The social security (F.I.C.A.) rate of 4.4% includes .6% for Hospital Insurance benefits and 3.8% for old-age, survivors, and disability insurance.

Copy B—To be filed with Employee's Federal Tax Return

FEDERAL INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION		GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL	
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1968	OTHER COMPENSATION ² PAID IN 1968	FICA EMPLOYEE TAX WITHHELD ³	TOTAL FICA WAGES PAID IN 1968	NO. OF DEPENDENTS	GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL
2183 61	14503 46		343 20			1595 49
Type or print EMPLOYEE'S social security number → XXXX			NAME OF STATE LOUISIANA		STATE FORM NO.	STATE TAX WITHHELD 23 12
M A CUENNEVILLE 119 LOCKWOOD CIRCLE JACKSON MISSISSIPPI 39212			NAME OF CITY		CITY FORM NO.	CITY TAX WITHHELD
Type or print EMPLOYEE'S name and address (including ZIP code) above			*Excludable Sick Pay. **Uncollected employee tax on tips.			

FORM W-2—U. S. Treasury Department, Internal Revenue Service APP. 105 1-10-68 732

ARKANSAS-BEST FREIGHT SYSTEM, INC.
301 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444

Type or print EMPLOYER'S Federal Identification number, name, and address above

WAGE AND TAX STATEMENT—1968

1 Includes tips reported by employee. This amount is before payroll deductions or "pick pay" exclusion.
2 Add this item to wages in figuring the amount to be reported as wages and salaries.
3 On your income tax return.
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Copy B—To be filed with Employee's Federal Tax Return

FEDERAL INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION		GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL	
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1968	OTHER COMPENSATION ² PAID IN 1968	FICA EMPLOYEE TAX WITHHELD ³	TOTAL FICA WAGES PAID IN 1968	NO. OF DEPENDENTS	GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL
2183 61	14503 46		343 20			2111 19
Type or print EMPLOYEE'S social security number → XXXX			NAME OF STATE ARKANSAS		STATE FORM NO.	STATE TAX WITHHELD 25 40
M A CUENNEVILLE 119 LOCKWOOD CIRCLE JACKSON MISSISSIPPI 39212			NAME OF CITY		CITY FORM NO.	CITY TAX WITHHELD
Type or print EMPLOYEE'S name and address (including ZIP code) above			*Excludable Sick Pay. **Uncollected employee tax on tips.			

FORM W-2—U. S. Treasury Department, Internal Revenue Service APP. 105 1-10-68 732

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT 1967
301 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444

Type or print EMPLOYER'S identification number, name, and address above.

Copy C - For Employee's Records

1 Includes tips reported by employee. This amount is before payroll deductions or "sick pay" exclusions.

2 Add this item to wages in figuring the amount to be reported as wages and salaries on your income tax return.

3 The social security (F.I.C.A.) rate of 4.4% includes .5% for Hospital Insurance Benefits and 3.9% for old-age, survivors, and disability insurance.

4 Includes tips reported by employee.

INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION			
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1967	OTHER COMPENSATION ² PAID IN 1967	STATE TAX WITHHELD	CITY TAX WITHHELD	TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL	TOTAL FICA WAGES PAID IN 1967 ³
1742.59	13375.14		20.90		290.40	1888.59
M A QUENNEVILLE XXXXXXX 119 LOCKWOOD CIRCLE JACKSON MISSISSIPPI 39212			STATE OF ARKANSAS 59 7288		FOR NON-RESIDENT EMPLOYEES ENTER STATE EARNINGS	
Type or print EMPLOYEE'S social security number, name, and address above			UNCOLLECTED EMPLOYEE TAX ON TIPS		* (SICK PAY) EXCLUDABLE UNDER SECTION 105 (d)	

FORM W-2 - U. S. Treasury Department, Internal Revenue Service

APP. 1, B 3, 11/16/66 F32

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ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT 1967
301 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444

Type or print EMPLOYER'S identification number, name, and address above

Copy C - For Employee's Records

1 Includes tips reported by employee. This amount is before payroll deductions or "sick pay" exclusions.

2 Add this item to wages in figuring the amount to be reported as wages and salaries on your income tax return.

3 The social security (F.I.C.A.) rate of 4.4% includes .5% for Hospital Insurance Benefits and 3.9% for old-age, survivors, and disability insurance.

4 Includes tips reported by employee.

INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION			
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1967	OTHER COMPENSATION ² PAID IN 1967	STATE TAX WITHHELD	CITY TAX WITHHELD	TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL	TOTAL FICA WAGES PAID IN 1967 ³
1742.59	13375.14		24.30		290.40	1900.02
M A QUENNEVILLE XXXX 119 LOCKWOOD CIRCLE JACKSON MISSISSIPPI 39212			STATE OF LOUISIANA 59 7288		FOR NON-RESIDENT EMPLOYEES ENTER STATE EARNINGS	
Type or print EMPLOYEE'S social security number, name, and address above			UNCOLLECTED EMPLOYEE TAX ON TIPS		* (SICK PAY) EXCLUDABLE UNDER SECTION 105 (d)	

FORM W-2 - U. S. Treasury Department, Internal Revenue Service

APP. 1, B 3, 11/16/66 F32

PRINTED BY THE STANDARD REGISTER COMPANY, U. S. A.

ARKANSAS-BEST FREIGHT SYSTEM, INC.

301 SOUTH 11TH STREET

FORT SMITH, ARKANSAS

72901

EMPLOYER'S NO. 71-0249444

WAGE AND TAX STATEMENT 1967

Copy B - to be filed with employee's tax return

* Includes tips reported by employee. This amount is before payroll deductions or "sick pay" exclusions.

* Add this item to wages in figuring the amount to be reported as wages and salaries on your income tax return.

* The social security (F.I.C.A.) rate of 4.4% includes .5% for Hospital Insurance, Benefits and 3.9% for old-age, survivors, and disability insurance.

* Includes tips reported by employee.

INCOME TAX INFORMATION				SOCIAL SECURITY INFORMATION			
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1967	OTHER COMPENSATION ² PAID IN 1967	NO. OF DEPENDENTS	FICA EMPLOYEE TAX WITHHELD ³	TOTAL FICA WAGES PAID IN 1967 ⁴		
1742.59	13375.14			290.40			
M A QUERNEVILLE		XXXX		STATE TAX WITHHELD	CITY TAX WITHHELD	TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL	FOR NON-RESIDENT EMPLOYEES ENTER STATE EARNINGS
119 LOCKWOOD CIRCLE							2 32
JACKSON MISSISSIPPI				NAME OF STATE		EMPLOYEE NUMBER	
				WISCONSIN		59 7288	
		39212		UNCOLLECTED EMPLOYEE TAX ON TIPS		DON'T FILE	* (SICK PAY) EXCLUDABLE UNDER SECTION 105(d)

Type or print EMPLOYEE's identification number, name, and address above

APP. I.R.S. 11/16/66 F32

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FORM W-2 - U. S. Treasury Department, Internal Revenue Service

ARKANSAS-BEST FREIGHT SYSTEM, INC.

301 SOUTH 11TH STREET

FORT SMITH, ARKANSAS

72901

EMPLOYER'S NO. 71-0249444

WAGE AND TAX STATEMENT 1967

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* Includes tips reported by employee.

INCOME TAX INFORMATION				SOCIAL SECURITY INFORMATION			
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1967	OTHER COMPENSATION ² PAID IN 1967	NO. OF DEPENDENTS	FICA EMPLOYEE TAX WITHHELD ³	TOTAL FICA WAGES PAID IN 1967 ⁴		
1742.59	13375.14			290.40			
M A QUERNEVILLE		XXXX		STATE TAX WITHHELD	CITY TAX WITHHELD	TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL	FOR NON-RESIDENT EMPLOYEES ENTER STATE EARNINGS
119 LOCKWOOD CIRCLE							1192.65
JACKSON MISSISSIPPI				NAME OF STATE		EMPLOYEE NUMBER	
				MISSOURI MOHM-2		59 7288	
		39212		UNCOLLECTED EMPLOYEE TAX ON TIPS		DON'T FILE	* (SICK PAY) EXCLUDABLE UNDER SECTION 105(d)

Type or print EMPLOYEE's identification number, name, and address above

APP. I.R.S. 11/16/66 F32

PRINTED BY THE STANDARD REPLYER COMPANY, U.S.A.

FORM W-2 - U. S. Treasury Department, Internal Revenue Service

ARKANSAS-BEST FREIGHT SYSTEM, INC.

301 SOUTH 11TH STREET

FORT SMITH, ARKANSAS

72901

EMPLOYER'S NO. 71-0249444

WAGE AND TAX STATEMENT 1967

Copy B - to be filed with employee's tax return

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* Includes tips reported by employee.

INCOME TAX INFORMATION				SOCIAL SECURITY INFORMATION			
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1967	OTHER COMPENSATION ² PAID IN 1967	NO. OF DEPENDENTS	FICA EMPLOYEE TAX WITHHELD ³	TOTAL FICA WAGES PAID IN 1967 ⁴		
1742.59	13375.14			290.40			
M A QUERNEVILLE		XXXX		STATE TAX WITHHELD	CITY TAX WITHHELD	TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL	FOR NON-RESIDENT EMPLOYEES ENTER STATE EARNINGS
119 LOCKWOOD CIRCLE							11.80
JACKSON MISSISSIPPI				NAME OF STATE		EMPLOYEE NUMBER	
				INDIANA		59 7288	
		39212		UNCOLLECTED EMPLOYEE TAX ON TIPS		DON'T FILE	* (SICK PAY) EXCLUDABLE UNDER SECTION 105(d)

Type or print EMPLOYEE's identification number, name, and address above

APP. I.R.S. 11/16/66 F32

PRINTED BY THE STANDARD REPLYER COMPANY, U.S.A.

FORM W-2 - U. S. Treasury Department, Internal Revenue Service

301 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444

Copy D - to be filed with employee's tax return

1 Includes tips reported by employee. This amount is before payroll deductions or "sick pay" exclusions.
2 This block is for use in reporting salary or other compensation which was not subject to withholding. See Circular E.
3 Add this item to wages in figuring the amount to be reported as wages and salaries on your income tax return.

* One-twelfth of this amount was withheld to finance the cost of Hospital Insurance Benefits. The remainder is for old-age, survivors, and disability insurance.

INCOME TAX INFORMATION				SOCIAL SECURITY INFORMATION			
FEDERAL INCOME TAX WITHHELD	WAGES PAID SUBJECT TO WITHHOLDING IN 1966	OTHER COMPENSATION PAID IN 1966	NO. OF DEPENDENTS	TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL	TOTAL FICA WAGES PAID IN 1966	FOR NON-RESIDENT EMPLOYEES ENTER STATE EARNINGS	
1655 43	13543 64			276 20			
NAME OF STATE				EMPLOYEE NUMBER			
MISSISSIPPI				99 7208			
NAME OF CITY				EMPLOYEE NUMBER			
JACKSON				99 7208			
NAME OF EMPLOYEE				EMPLOYEE NUMBER			
M A QUENNEVILLE				99 7208			
NAME OF ADDRESS				EMPLOYEE NUMBER			
119 LOCKWOOD CIRCLE				99 7208			
NAME OF ADDRESS				EMPLOYEE NUMBER			
JACKSON MISSISSIPPI				99 7208			
NAME OF ADDRESS				EMPLOYEE NUMBER			
JACKSON MISSISSIPPI				99 7208			

Type or print EMPLOYEE'S identification number, name, and address above

FORM W-2 - U. S. Treasury Department, Internal Revenue Service

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT 1966

301 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444

Copy C - For Employee's Records

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3 One-twelfth of this amount was withheld to finance the cost of Hospital Insurance Benefits. The remainder is for old-age, survivors, and disability insurance.
4 If your wages were subject to social security taxes, but are not shown in this block, use the amount as wages shown under "Income Tax Information," but not more than \$8,000.
Keep this copy as part of your tax records.

INCOME TAX INFORMATION				SOCIAL SECURITY INFORMATION			
FEDERAL INCOME TAX WITHHELD	WAGES PAID SUBJECT TO WITHHOLDING IN 1966	OTHER COMPENSATION PAID IN 1966	NO. OF DEPENDENTS	TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL	TOTAL FICA WAGES PAID IN 1966	FOR NON-RESIDENT EMPLOYEES ENTER STATE EARNINGS	
1655 43	13543 64			276 20			
NAME OF STATE				EMPLOYEE NUMBER			
MISSISSIPPI				99 7208			
NAME OF CITY				EMPLOYEE NUMBER			
JACKSON				99 7208			
NAME OF EMPLOYEE				EMPLOYEE NUMBER			
M A QUENNEVILLE				99 7208			
NAME OF ADDRESS				EMPLOYEE NUMBER			
119 LOCKWOOD CIRCLE				99 7208			
NAME OF ADDRESS				EMPLOYEE NUMBER			
JACKSON MISSISSIPPI				99 7208			
NAME OF ADDRESS				EMPLOYEE NUMBER			
JACKSON MISSISSIPPI				99 7208			

Type or print EMPLOYEE'S social security number, name, and address above

FORM W-2 - U. S. Treasury Department, Internal Revenue Service

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT 1966

301 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444

Copy B - to be filed with employee's tax return

1 Includes tips reported by employee. This amount is before payroll deductions or "sick pay" exclusions.
2 This block is for use in reporting salary or other compensation which was not subject to withholding. See Circular E.
3 Add this item to wages in figuring the amount to be reported as wages and salaries on your income tax return.
4 One-twelfth of this amount was withheld to finance the cost of Hospital Insurance Benefits. The remainder is for old-age, survivors, and disability insurance.

INCOME TAX INFORMATION				SOCIAL SECURITY INFORMATION			
FEDERAL INCOME TAX WITHHELD	WAGES PAID SUBJECT TO WITHHOLDING IN 1966	OTHER COMPENSATION PAID IN 1966	NO. OF DEPENDENTS	TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL	TOTAL FICA WAGES PAID IN 1966	FOR NON-RESIDENT EMPLOYEES ENTER STATE EARNINGS	
1655 43	13543 64			276 20			
NAME OF STATE				EMPLOYEE NUMBER			
MISSISSIPPI				99 7208			
NAME OF CITY				EMPLOYEE NUMBER			
JACKSON				99 7208			
NAME OF EMPLOYEE				EMPLOYEE NUMBER			
M A QUENNEVILLE				99 7208			
NAME OF ADDRESS				EMPLOYEE NUMBER			
119 LOCKWOOD CIRCLE				99 7208			
NAME OF ADDRESS				EMPLOYEE NUMBER			
JACKSON MISSISSIPPI				99 7208			
NAME OF ADDRESS				EMPLOYEE NUMBER			
JACKSON MISSISSIPPI				99 7208			

Type or print EMPLOYEE'S social security number, name, and address above

FORM W-2 - U. S. Treasury Department, Internal Revenue Service

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT 1966
301 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444
Copy B - to be filed with employer's tax return

This statement is to be filed with the employer's tax return. It is before payroll deductions or "sick pay" exclusions. This block is for use in reporting salary or other compensation which was not subject to withholding. See Circular E. Add this block to wages in figuring the amount to be reported on wages and salaries on your income tax return.

* One-twelfth of this amount was withheld to finance the cost of Hospital Insurance Benefits. The remainder is for old-age, survivors, and disability insurance.

Type or print EMPLOYER'S identification number, name, and address above		FEDERAL INCOME TAX WITHHELD		WAGES PAID SUBJECT TO WITHHOLDING IN 1966		OTHER COMPENSATION PAID IN 1966		SOCIAL SECURITY INFORMATION		TOTAL PICA WAGES PAID IN 1966	
1655 43		13543 64						NO. OF EMPLOYEES 2		217 20	
M A QUENNEVILLE		XXXX		STATE TAX WITHHELD		CITY TAX WITHHELD		TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL		FOR NON-RESIDENT EMPLOYEES ENTER STATE EARNINGS	
119 LOCKWOOD CIRCLE				20 72				59 7286		1455 00	
JACKSON MISSISSIPPI		39212		NAME OF STATE		EMPLOYEE NUMBER					
FOR USE OF INTERNAL REVENUE SERVICE		Employee's copy and employer's copy compared									

FORM W-2 - U. S. Treasury Department, Internal Revenue Service

APP. I. R. S. 11/18/65 722

PRINTED BY THE STANDARD REPORTER COMPANY, S. S. A.

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT 1966
301 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444
Copy B - to be filed with employer's tax return

This statement is to be filed with the employer's tax return. It is before payroll deductions or "sick pay" exclusions. This block is for use in reporting salary or other compensation which was not subject to withholding. See Circular E. Add this block to wages in figuring the amount to be reported on wages and salaries on your income tax return.

* One-twelfth of this amount was withheld to finance the cost of Hospital Insurance Benefits. The remainder is for old-age, survivors, and disability insurance.

Type or print EMPLOYER'S identification number, name, and address above		FEDERAL INCOME TAX WITHHELD		WAGES PAID SUBJECT TO WITHHOLDING IN 1966		OTHER COMPENSATION PAID IN 1966		SOCIAL SECURITY INFORMATION		TOTAL PICA WAGES PAID IN 1966	
1655 43		13543 64						NO. OF EMPLOYEES 2		217 20	
M A QUENNEVILLE		XXXX		STATE TAX WITHHELD		CITY TAX WITHHELD		TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL		FOR NON-RESIDENT EMPLOYEES ENTER STATE EARNINGS	
119 LOCKWOOD CIRCLE				20 72				59 7286		1455 00	
JACKSON MISSISSIPPI		39212		NAME OF STATE		EMPLOYEE NUMBER					
FOR USE OF INTERNAL REVENUE SERVICE		Employee's copy and employer's copy compared									

FORM W-2 - U. S. Treasury Department, Internal Revenue Service

APP. I. R. S. 11/18/65 722

PRINTED BY THE STANDARD REPORTER COMPANY, S. S. A.

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT 1966
301 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444
Copy C - For Employee's Records

1 Includes this reported by employee. This amount is before payroll deductions or "sick pay" exclusions.
2 This block is for use in reporting salary or other compensation which was not subject to withholding. See Circular E. Add this block to wages in figuring the amount to be reported on wages and salaries on your income tax return.
3 One-twelfth of this amount was withheld to finance the cost of Hospital Insurance Benefits. The remainder is for old-age, survivors, and disability insurance.
4 If your wages were subject to social security taxes, but are not shown, they were here for the same as wages shown under "Income Tax Information," but not more than \$9,600.
Keep this copy as part of your tax records.

Type or print EMPLOYER'S identification number, name, and address above		FEDERAL INCOME TAX WITHHELD		WAGES PAID SUBJECT TO WITHHOLDING IN 1966		OTHER COMPENSATION PAID IN 1966		SOCIAL SECURITY INFORMATION		TOTAL PICA WAGES PAID IN 1966	
1655 43		13543 64						NO. OF EMPLOYEES 2		217 20	
M A QUENNEVILLE		XXXXXXXXXX		STATE TAX WITHHELD		CITY TAX WITHHELD		TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL		FOR NON-RESIDENT EMPLOYEES ENTER STATE EARNINGS	
119 LOCKWOOD CIRCLE				20 72				59 7286		1455 00	
JACKSON MISSISSIPPI		39212		NAME OF STATE		EMPLOYEE NUMBER					
FOR USE OF INTERNAL REVENUE SERVICE		Employee's copy and employer's copy compared									

FORM W-2 - U. S. Treasury Department, Internal Revenue Service

APP. I. R. S. 11/18/65 722

PRINTED BY THE STANDARD REPORTER COMPANY, S. S. A.

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT 1967
701 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0244444
Copy C - For Employee's Records
¹ Includes tips reported by employee. This amount is before payroll deductions or "sick pay" exclusions.

² Add this item to wages in figuring the amount to be reported as wages and salaries on your income tax return.

³ The social security (FICA) rate of 4.4% includes .5% for Hospital Insurance Benefits and 3.9% for old-age, survivors, and disability insurance.

⁴ Includes tips reported by employee.

Type or print EMPLOYER'S identification number, name, and address above.

INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION			
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1967	OTHER COMPENSATION ² PAID IN 1967	STATE TAX WITHHELD	CITY TAX WITHHELD	TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL	TOTAL FICA WAGES PAID IN 1967 ³
1805.34	12210.97				290.40	
K D MYERS 400 COOPER ROAD JACKSON MISSISSIPPI 39212			MISSISSIPPI		6764.65	59.5436
			UNCOLLECTED EMPLOYEE TAX ON TIPS		0	

Type or print EMPLOYEE'S social security number, name, and address above.

FORM W-2 - U. S. Treasury Department, Internal Revenue Service

APP. L.R.S. 11/14/66 F22

PRINTED BY THE STANDARD REGISTER COMPANY, S.E.A.

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT 1967
701 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0244444
¹ Includes tips reported by employee. This amount is before payroll deductions or "sick pay" exclusions.

EMPLOYEE: ATTACH THIS COPY TO STATE (or City) TAX RETURN.

Type or print EMPLOYER'S identification number, name, and address above.

INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION			
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1967	OTHER COMPENSATION ² PAID IN 1967	STATE TAX WITHHELD	CITY TAX WITHHELD	TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL	TOTAL FICA WAGES PAID IN 1967 ³
1805.34	12210.97				290.40	
K D MYERS 400 COOPER ROAD JACKSON MISSISSIPPI 39212			MISSISSIPPI		6764.65	59.5436
			UNCOLLECTED EMPLOYEE TAX ON TIPS		0	

Type or print EMPLOYEE'S social security number, name, and address above.

APP. F22

PRINTED BY THE STANDARD REGISTER COMPANY, S.E.A.

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT 1967
301 SOUTH 18TH STREET
FONT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444
EMPLOYEE'S NO. 39212
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JACKSON MISSISSIPPI
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1 Includes tips reported by employee. This amount is before payroll deductions or "sick pay" exclusions.
2 Add this item to wages in finding the amount to be withheld for Federal income tax.
3 The Social Security (FICA) rate of 4.2% includes 3% for the Social Security tax and 1% for Medicare.
4 Includes tips reported by employee.

INCOME TAX INFORMATION		SOCIAL SECURITY INFORMATION	
FEDERAL INCOME TAX WITHHELD	WAGES PAID SUBJECT TO WITHHELD IN 1967	FICA EMPLOYEE TAX WITHHELD	TOTAL FICA WAGES PAID IN 1967
1805.34	12210.97	290.40	
STATE TAX WITHHELD		TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL	
XXXX	6764.65		
CITY TAX WITHHELD		EMPLOYEE NUMBER	
XXXX	59 5434		
NAME OF STATE (OR CITY)		UNCOLLECTED EMPLOYEE TAX ON TIPS	
MISSISSIPPI			
Type or print EMPLOYEE'S social security number, name, and address above		* (SICK PAY) EXCLUDABLE UNDER SECTION 103 (6)	
XXXX			

FORM W-2 - U. S. Treasury Department, Internal Revenue Service.

APP. I. R. S. 11/18/66 F23

PRINTED BY THE STANDARD READING COMPANY, U.S.A.

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT 1967
301 SOUTH 18TH STREET
FONT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444
EMPLOYEE'S NO. 39212
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JACKSON MISSISSIPPI
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1 Includes tips reported by employee. This amount is before payroll deductions or "sick pay" exclusions.
EMPLOYEE ATTACH THIS COPY TO STATE (or City) TAX RETURN.

INCOME TAX INFORMATION		SOCIAL SECURITY INFORMATION	
FEDERAL INCOME TAX WITHHELD	WAGES PAID SUBJECT TO WITHHELD IN 1967	FICA EMPLOYEE TAX WITHHELD	TOTAL FICA WAGES PAID IN 1967
1805.34	12210.97	290.40	
STATE TAX WITHHELD		TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL	
XXXX	6764.65		
CITY TAX WITHHELD		EMPLOYEE NUMBER	
XXXX	59 5434		
NAME OF STATE (OR CITY)		UNCOLLECTED EMPLOYEE TAX ON TIPS	
MISSISSIPPI			
Type or print EMPLOYEE'S social security number, name, and address above		* (SICK PAY) EXCLUDABLE UNDER SECTION 103 (6)	
XXXX			

APP. F23

PRINTED BY THE STANDARD READING COMPANY, U.S.A.

MISSISSIPPI
ANNUAL INCOME TAX RETURN
For Calendar Year 1967

For period begun _____ 19____
and ended _____ 19____

File this Return not later than April 15, 1968, or if you file on the basis of a fiscal year, on the 15th day of the 4th month following the close of taxable year.

Mail TO: COMMISSIONER OF INCOME TAX
P. O. BOX 930
JACKSON, MISSISSIPPI 39205

PLEASE ANSWER ALL QUESTIONS—

1. Occupation _____

2. Of what state are you a resident or citizen? _____

3. Were you married and living with husband or wife on December 31, 1967? _____

4. If not, did your husband or wife die during the year 1967? _____

5. Is this a joint return of husband and wife? _____

6. Did you file a return for 1966? ☒ Yes ☐ No. If name or address was different than shown above, enter name and address used. _____

If No—Why? _____

Husband's Social Security No. **XXXX**

Wife's Social Security No. **XXXX**

7. State name of husband or wife if a separate return was made _____

8. Did your spouse have separate income in 1967? _____

Item and Instruction No. **INCOME**

1. Salaries, wages, commissions, etc. (State name and address of employer)
American-Best Freight System, Inc.

2. Dividends: (Attach Schedule) _____
3. Interest: (Attach Schedule) Employees Federal Credit Union
4. Partnerships, Fiduciaries, etc. _____
5. Total of other income (From page 2) _____

Net Income

DEDUCTIONS AND CREDITS

6. TOTAL DEDUCTIONS: (From Schedule F, Page 2) OR you may elect to claim:
- (a) Single person or Head of family: 10% of income not to exceed \$500 _____
- (b) Husband: 10% of his individual income not to exceed \$500 _____
- (c) Wife: 10% of her individual income not to exceed \$500 _____
- TOTAL _____

Net Taxable Income

7. Subtract Specific Exemption _____

8. Balance subject to tax _____

The specific exemptions are:

Married Persons (Joint)\$7,000.00
If separate returns are filed, may be deducted by either or divided.

Head of Family\$7,000.00
(Attach schedule showing information in detail after reading instructions)

Single Individuals\$5,000.00

COMPUTATION OF TAX

Chapter 457, Laws of 1960	Income	Tax
1. Balance Subject to Tax from Line 8	2414.45	40.23
2. Tax on first \$5,000.00 or less, @ 2%		
3. Tax on balance @ 3% Less: Louisiana Tax		10.76
4. TOTAL TAX FOR THE YEAR		51.00

It is our very earnest desire to be as helpful as possible to our taxpayers and to relieve them as far as we can of the complications and vexations incident to the tax-paying process. To this end we shall greatly appreciate any suggestions from you, either as to simplifying our forms or doing anything else which may improve the service which we are trying to render.

DEXTER BARR, Chairman

5. Amount Paid Herewith

MAKE REMITTANCE PAYABLE TO STATE TAX COMMISSION

YOUR REMITTANCE MUST ACCOMPANY THIS RETURN

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

M. J. Barr
(Signature of person (other than taxpayer or agent preparing return))

2-21-68
(Date)

2-21-68
(Date)

DUPLICATE — FOR TAXPAYER'S RECORD.

PAGE 1

(Signature of taxpayers)

(Date)

Total receipts (State whether your books are kept on cash or accrual basis)

COST OF GOODS SOLD		OTHER BUSINESS DEDUCTIONS	
1. Inventory beginning of year		7. Salaries (not to self or spouse)	
2. Merchandise bought for sale		8. Taxes	
3. Other costs (itemize below)		9. Bad Accounts	
4. TOTAL (Lines 1 to 3)		10. Depreciation (Schedule E)	
5. Less inventory end of year		11. Rent, Repairs, losses and other expenses (itemize below or on separate sheet)	
6. NET COST OF GOODS SOLD		12. TOTAL (Lines 7 to 11)	
Itemize other costs and deductions below:		13. TOTAL DEDUCTIONS (Lines 6 & 12)	
		14. NET PROFIT (or LOSS)	

SCHEDULE B.—INCOME FROM RENTS AND ROYALTIES (See Instructions)

Kind of Property	Amount Received	Cost, or Value March 16, 1912	Depreciation and Depletion	Repairs	Other Expenses

SCHEDULE C.—PROFIT OR LOSS FROM SALES OF PROPERTY. (See Instructions)

Kind of Property	Date Sold	Date Acquired	Amount Received	Depreciation	Cost	Subsequent Improvements

SCHEDULE D.—OTHER INCOME (Describe)

TOTAL (Carry to Page 1, Line 5)

SCHEDULE E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION OR DEPLETION CLAIMED IN SCHEDULE A AND B

Kind of Property (If built, date and cost of material of construction)	Date Acquired	Cost, or March 16, 1912 Value if acquired prior to that date (Indicate basis)	Depreciation or Depletion Allowed (or allowable) in prior years	Remaining Cost or other basis to be recovered	Life Used in Accumulating Depreciation or Depletion	Estimated Remaining Life from Beginning of Year	Depreciation or Depletion Allowable this Year

SCHEDULE F.—DEDUCTIONS

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions. Itemize in detail each deduction claimed. If additional space is needed, attach schedule.

INTEREST PAID									
REAL ESTATE TAX PAID									712 67
PERSONAL PROPERTY TAX PAID									252 63
Losses from fire, storm, theft, and other casualties (Indicate each loss except \$100.00)									
CHARITABLE CONTRIBUTIONS (Do not deduct medical expenses)									
CHARITABLE CONTRIBUTIONS (Not to exceed 10% of net income)									

PAGE 2

TOTAL (Carry to Page 1, line 6)

NAME OF DEPENDENT
GIVE ADDRESS OF DEPENDENT

NAME OF EMPLOYER
GIVE ADDRESS OF EMPLOYER

1. ENTER ALL WAGES, SALARIES, BONUSES, COMMISSIONS, ETC.

WAGE AND TAX STATEMENT 1967
Copy B - to be filed with employee's tax return

Includes tips reported by employee. This amount is before payroll deductions of "sick pay" accumulations.

Add this item to wages in figuring the amount to be reported as wages and salaries on your income tax return.

The social security (F.I.C.A.) rate of 4.4% includes 2% for Hospital Insurance, Benefits and 0.9% for old-age, survivors, and disability insurance.

Includes tips reported by employee.

NAME OF EMPLOYEE
Type or print EMPLOYEE's identification number, name, and address above

INCOME TAX INFORMATION

FEDERAL INCOME TAX WITHHELD: 1605.34

WAGES PAID SUBJECT TO WITHHELD IN 1967: 12210.97

OTHER COMPENSATION PAID IN 1967

STATE TAX WITHHELD: 21.05

CITY TAX WITHHELD

BASE OF STATE: LOUISIANA

UNCOLLECTED EMPLOYER TAX ON TIPS

SOCIAL SECURITY INFORMATION

PICA EMPLOYEE TAX WITHHELD: 290.40

TOTAL PICA TAXES PAID IN 1967

TOTAL WAGES SUBJECT TO TAX IF DIFFERENT FROM FEDERAL: 1900.12

EMPLOYER BURDEN: 59.5936

(SICK PAY) EXCLUDABLE UNDER SECTION 109(a)

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FORM W-2 - U. S. Treasury Department, Internal Revenue Service

ENTER ONE-HALF OF LINE 15, OTHER.

COMPUTATION OF TAX

17. FIRST BRACKET (Not Over First \$10,000 of Line 15 or 16) \$ 12210.97

18. LESS: (A) ALLOWABLE EXEMPTION & CREDIT (Line 10, Schedule J) \$ 720.63

(B) ENTER ONE-HALF OF LINE 15A IF SPLIT INCOME COMPUTATION IS USED; OTHERWISE, ENTER LINE 15A

19. FIRST BRACKET TAXABLE BALANCE (Line 17, minus Line 18B) \$ 527.00

20. SECOND BRACKET (Not Over Next \$40,000 of Line 15 or 16)

21. THIRD BRACKET (Balance Over \$50,000 of Line 15 or 16)

22. TOTAL (Line 19 plus Line 20, plus Line 21)

23. MULTIPLY AMOUNT ON LINE 22 BY 2 IF SPLIT INCOME COMPUTATION WAS USED

24. LESS: (A) LOUISIANA INCOME TAX WITHHELD (From L-2's Attached) \$ 21.05

(B) PAYMENTS ON 1967 DECLARATIONS OF ESTIMATED TAX (Acct. No.)

(C) TOTAL PREVIOUS PAYMENTS (Line 24A plus Line 24B)

25. BALANCE DUE (To Be Paid in Full with this Return) \$ 21.05

26. OVERPAYMENT: EITHER CREDIT TO 1968 TAX ☐ OR REFUND ☒ BUT NOT BOTH \$ 21.05

I declare under the penalties for filing false reports that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return. If the return is prepared by a person other than the taxpayer, his declaration is based on all the information relating to the matters required to be reported in the return of which he has any knowledge.

2-21-63

(TAXPAYER'S SIGNATURE) 2017 St. Charles St. - Jackson, Miss.

(DATE)

(WIFE'S SIGNATURE - IF THIS IS A JOINT RETURN, BOTH HUSBAND AND WIFE MUST SIGN)

(DATE)

(SIGNATURE OF PREPARER OTHER THAN TAXPAYER)

(ADDRESS)

(DATE)

Schedule J.—COMPUTATION OF ALLOWABLE EXEMPTIONS AND CREDITS FOR DEPENDENT

Schedule K.—Complete if (A) Head of Family Status and/or (B) A Dependent who is not your child and/or (C) Special Exemption for the Blind, Loss of Limb, or Mentally Retarded is claimed. If Head of Family Status is claimed, **DO NOT** claim credit for one dependent listed.

[illegible]

File No. and Date

Auditor

INCOME TAX DIVISION - STATE REVENUE BUILDING
LITTLE ROCK, ARKANSAS 72201

(Make remittance payable to Commissioner of Revenues)

INDIVIDUAL OR JOINT INCOME TAX RETURN

For Single Person, Husband or Wife or JOINT HUSBAND AND WIFE

For 1967 or Fiscal Year beginning _____ ending _____

Mail Form AR-1000
with your payment to the
treasury by May 15, 1968**1967**

FORM AR-1000

IDENTIFICATION Place print or type	YOUR FIRST NAME AND INITIAL MR. MISS MRS. KING D.	WIFE'S FIRST NAME AND INITIAL VODA R.	LAST NAME MYERS		YOUR SOCIAL SECURITY NUMBER XXXX	
	Your occupation Road Driver	Wife's occupation Housewife			WIFE'S SOCIAL SECURITY NUMBER XXXX	
	HOME ADDRESS (Number and Street or Rural Route) 408 Cooper Road	CITY OR POST OFFICE Jackson,	COUNTY OF Hinds	STATE Miss.	ZIP CODE 39202	
	Enter the name and address used on your return for 1966 (if the same as above, write "Same"). Same					
How did you file for tax year 1967? SEPARATE ☐ JOINT ☒ NONE FILED ☐ If none filed, give reason.						
Your present employer and address Arkansas-Best Freight System, Inc. - Jackson, Miss.						
Were you a resident of Arkansas during ALL of taxable year? ☐ IF NO, STATE _____ HUSBAND OR SINGLE: FROM None TO _____						

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT 1967**301 SOUTH 11TH STREET****FORT SMITH, ARKANSAS 72901****EMPLOYER'S NO. 71-0249444**

Type or print EMPLOYEE'S identification number, name, and address above

INCOME TAX INFORMATION				SOCIAL SECURITY INFORMATION			
FEDERAL INCOME TAX WITHHELD	WAGES* PAID SUBJECT TO WITHHELD IN 1967	OTHER COMPENSATION* PAID IN 1967	NO. OF DEPENDENT DEBTS	FICA EMPLOYER TAX WITHHELD	TOTAL FICA WAGES PAID IN 1967		
1605.34	12210.97			290.40			
K D MYERS XXXXXXXX		STATE TAX WITHHELD	CITY TAX WITHHELD	TOTAL WAGES SUBJECT TO TAX IN DIFFERENT FORMS FEDERAL	FOR NON-RESIDENT EMPLOYEES ENTER STATE EARNINGS		
408 COOPER ROAD		25.81			2000.23		
JACKSON MISSISSIPPI		NAME OF STATE ARKANSAS		EMPLOYER NUMBER 59 5936			
Type or print EMPLOYEE'S social security number, name, and address above 39214		UNCOLLECTED EMPLOYER TAX ON TIPS		* (EACH PAY) EXCLUDABLE UNDER SECTION 505 (d)			

FORM W-2 - U. S. Treasury Department, Internal Revenue Service

APP. I. R. S. 12/16/66 F33

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Attach Check or Money Order here	12	1% of \$1.00 or less	12	
	13	2% of Next \$3.00 or part	13	
	14	3% of Next \$5.00 or part	14	
	15	4% of Next \$14.00 or part	15	
	16	5% of all over \$25.00	16	
	17	1872.75 18.73	17	Total Amount of tax shown on line(s) 17: 18.73
	18	PERSONAL AND DEPENDENT TAX CREDITS (DETERMINE FROM LINE 4 ABOVE)	18	18.00 35.00
	19	CREDITS TO ARKANSAS RESIDENTS FOR INCOME TAX PAID TO ANOTHER STATE	19	19.00 00.00
	20	TOTAL TAX FOR THE YEAR (Add Lines 18 & 19 and Subtract Results from Line 17)	20	20.00 00.00
	21	TOTAL ARKANSAS INCOME TAX WITHHELD (Attach AR-2WS or W-2)	21	25.81
22	TOTAL 1967 DECLARATION OF ESTIMATED TAX PAYMENTS MADE	22		
23	TOTAL TAX PAID (Add Lines 21 & 22)	23	25.81	
24	TAX DUE (If Payments Line 23 Are LESS Than Tax Line 20 - PAY IN FULL)	24	NET TAX DUE 0	
25	REFUND (If Payments Line 23 Are LARGER Than Tax Line 20 - YOUR REFUND)	25	NET REFUND 0	
26	Amount of Refund on Line 25 to be applied on 1968 Tax Return ☐ Estimated ☐ H ☐ W - See Instructions	26	26.00	
27	Subtract Line 26 from 25 and apply to refund only	27	25.81	
I declare, under the penalties of perjury, that the foregoing statements are true to the best of my knowledge and belief and that all my 1967 income is reported herein.				
Name of Agent or Preparer Other Than Taxpayer 2017 St. Charles St. - Jackson, Miss.		Signature of Taxpayer - Husband or Single Person 2-21-68		
Address of Agent or Preparer Other Than Taxpayer		Signature of Taxpayer - Wife or Joint Return 2-21-68		

No refund or credit of less than \$1.00 will be made without a separate written request.

DEPARTMENT OF THE TREASURY

Or Other Taxable Year Beginning 1967, Ending 19

YOUR
COPY

Your social security number
(Husband's if joint return)
XXXX

Your occupation
Road Driver

Wife's number, if joint return
XXXX

Wife's occupation
Housewife

• ATTACH CHECK OR MONEY ORDER HERE

2. Check Block Which Is Applicable { 1. ☐ Single; 2. ☐ Married Filing Joint Return; 3. ☒ Married Filing Separate Return
4. ☐ Unmarried "Head of Family" Name of Wife (Husband)
3. List names of your children claimed by you with less than \$400 income. Give address if different from yours

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT 1967 Copy B - to be filed with employee's tax return

301 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901

EMPLOYER'S NO. 71-0249444

Type or print EMPLOYEE'S identification number, name, and address above

INCOME TAX INFORMATION		SOCIAL SECURITY INFORMATION	
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHELD IN 1967	OTHER COMPENSATION ² PAID IN 1967	NO. OF DEPENDENT CHILDREN
1605.34	12210.97		
K D MYERS		PICA EMPLOYEE TAX WITHHELD ³	
XXXX		250.40	
403 COOPER ROAD		TOTAL PICA WAGES PAID IN 1967 ⁴	
JACKSON MISSISSIPPI		1018.73	
39212		TOTAL UNDER SUBJECT TO TAX IF DIFFERENT FROM FEDERAL	
MISSOURI MOHW-2		1018.73	
59 5936		FOR NON-RESIDENT EMPLOYEES ENTER STATE CHARGES	
UNCOLLECTED EMPLOYEE TAX ON TIPS		1840.70	
* (BICK PAY) EXCLUDABLE UNDER SECTION 505 (e)		1000.00	
FORM W-2 - U, S. Treasury Department, Internal Revenue Service		PRINTED BY THE "FEDERAL REPORTER COMPANY" - U. S. A.	

19. If your tax (line 17) is larger than your payments (line 18) enter the BALANCE DUE here
Pay in full with this return to "Director of Revenue". If less than \$1.00 file return without payment

20. If your payments (line 18) are larger than your tax (line 17) enter the OVERPAYMENT here
No refund will be made if less than \$1.00

21. Line 20 to be:

(a) Credited on 1968 estimated tax \$

(b) Refunded \$ 3.13

Schedule of Federal Income Tax Paid in 1967

A. Federal Income Tax for 1967 1338.83
B. Paid by withholding and declaration in 1967 1605.34
C. Line A or B whichever is smaller 1338.83
D. Balance 1966 paid in 1967
E. Additional Tax for years paid in 1967
F. Total of lines C, D and E
G. Amount deducted on this return
H. Amount deducted on spouses return

IF REFUND - Mail To:
Director of Revenue, P. O. Box 500, Jefferson City, Mo. 65101.
OTHER RETURNS - Mail To:
Director of Revenue, P. O. Box 329, Jefferson City, Missouri 65101.

Under penalty of perjury, I declare that I examined this return including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here 2-21-68
Taxpayer's signature and date
If joint return both husband and wife must sign
Wife's signature and date 2-21-68
Sign here 2017 Stl Charles St. - Jackson, Miss. 2-21-68
Signature of preparer other than taxpayer
Address

ARKANSAS-BEST FREIGHT SYSTEM, INC.
301 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444

Type or print EMPLOYER'S Federal Identification number, name, and address above

FEDERAL INCOME TAX INFORMATION		
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1968	OTHER COMPENSATION ² PAID IN 1968
3279 68	14076 44	
Type or print EMPLOYEE'S social security number → XXXX		
K C MYERS		
408 CCCPER ROAD		
JACKSON, MISSISSIPPI 39212		

FORM W-2—U. S. Treasury Department, Internal Revenue Service

APP. 105 1-10-68 F22

WAGE AND TAX STATEMENT—1968

1 Includes tips reported by employee. This amount is before payroll deductions or "sick day" exclusion.
2 Add this item to wages in figuring the amount to be reported as wages and salaries on your income tax return.
3 The social security (F.I.C.A.) rate of 4.4% includes .6% for Hospital Insurance Benefits and 3.8% for old-age, survivors, and disability insurance.

EMPLOYER'S STATE IDENTIFICATION NUMBER		SOCIAL SECURITY INFORMATION		Copy C— For Employee's Records	
PICA EMPLOYEE TAX WITHHELD ³	TOTAL PICA WAGES PAID IN 1968	NO. OF DEPENDENTS	GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL		
343 20			24 37		
NAME OF STATE		STATE FORM NO.	STATE TAX WITHHELD		
OKLAHOMA			19		
NAME OF CITY		CITY FORM NO.	CITY TAX WITHHELD		
*Excludable Sick Pay. **Uncollected employee tax on tips.					

ARKANSAS-BEST FREIGHT SYSTEM, INC.
301 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444

Type or print EMPLOYER'S Federal Identification number, name, and address above

FEDERAL INCOME TAX INFORMATION		
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1968	OTHER COMPENSATION ² PAID IN 1968
2279 68	14076 44	
Type or print EMPLOYEE'S social security number → XXXX		
K C MYERS		
408 CCCPER ROAD		
JACKSON, MISSISSIPPI 39212		

FORM W-2—U. S. Treasury Department, Internal Revenue Service

APP. 105 1-10-68 F22

WAGE AND TAX STATEMENT—1968

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2 Add this item to wages in figuring the amount to be reported as wages and salaries on your income tax return.
3 The social security (F.I.C.A.) rate of 4.4% includes .6% for Hospital Insurance Benefits and 3.8% for old-age, survivors, and disability insurance.

EMPLOYER'S STATE IDENTIFICATION NUMBER		SOCIAL SECURITY INFORMATION		Copy C— For Employee's Records	
PICA EMPLOYEE TAX WITHHELD ³	TOTAL PICA WAGES PAID IN 1968	NO. OF DEPENDENTS	GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL		
343 20			104 46		
NAME OF STATE		STATE FORM NO.	STATE TAX WITHHELD		
INDIANA			2 06		
NAME OF CITY		CITY FORM NO.	CITY TAX WITHHELD		
*Excludable Sick Pay. **Uncollected employee tax on tips.					

ARKANSAS-BEST FREIGHT SYSTEM, INC.
301 SOUTH 11TH STREET
FORT SMITH, ARKANSAS 72901
EMPLOYER'S NO. 71-0249444

Type or print EMPLOYER'S Federal Identification number, name, and address above

FEDERAL INCOME TAX INFORMATION		
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1968	OTHER COMPENSATION ² PAID IN 1968
2279 68	14076 44	
Type or print EMPLOYEE'S social security number → XXXX		
K C MYERS		
408 CCCPER ROAD		
JACKSON, MISSISSIPPI 39212		

FORM W-2—U. S. Treasury Department, Internal Revenue Service

APP. 105 1-10-68 F22

WAGE AND TAX STATEMENT—1968

1 Includes tips reported by employee. This amount is before payroll deductions or "sick day" exclusion.
2 Add this item to wages in figuring the amount to be reported as wages and salaries on your income tax return.
3 The social security (F.I.C.A.) rate of 4.4% includes .6% for Hospital Insurance Benefits and 3.8% for old-age, survivors, and disability insurance.

EMPLOYER'S STATE IDENTIFICATION NUMBER		SOCIAL SECURITY INFORMATION		Copy C— For Employee's Records	
PICA EMPLOYEE TAX WITHHELD ³	TOTAL PICA WAGES PAID IN 1968	NO. OF DEPENDENTS	GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL		
343 20			40 03		
NAME OF STATE		STATE FORM NO.	STATE TAX WITHHELD		
WISCONSIN					
NAME OF CITY		CITY FORM NO.	CITY TAX WITHHELD		
*Excludable Sick Pay. **Uncollected employee tax on tips.					

ARKANSAS-BEST FREIGHT SYSTEM, INC.

301 SOUTH 11TH STREET

FORT SMITH, ARKANSAS 72901

EMPLOYER'S NO. 71-0249444

Type or print EMPLOYER'S Federal identification number, name, and address above

FEDERAL INCOME TAX INFORMATION		
FEDERAL INCOME TAX WITHHELD 2279 68	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1966 14076 44	OTHER COMPENSATION ² PAID IN 1966
Type or print EMPLOYEE'S social security number K E MYERS 408 CCCPER ROAD JACKSON, MISSISSIPPI	XXXX 39212	

Type or print EMPLOYEE'S name and address (including ZIP code) above

FORM W-2—U. S. Treasury Department, Internal Revenue Service

APP. 105 1-15-66 732

WAGE AND TAX STATEMENT—1966

1 Includes tips reported by employee. This amount is before payroll deductions or a 5.2% FICA surcharge, as figured on the amount to be reported as wages and salaries on your income tax return.

2 The social security (F.I.C.A.) rate of 4.4% includes .6% for hospital insurance benefits and 3.8% for old-age, survivors, and disability insurance.

EMPLOYEE'S STATE IDENTIFICATION NUMBER		SOCIAL SECURITY INFORMATION		GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL	
FICA EMPLOYEE TAX WITHHELD ³ 343 20	TOTAL FICA WAGES PAID IN 1966 14076 44	NO. OF DEPENDENTS 00	GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL 2010 09		
NAME OF STATE LOUISIANA		STATE FORM NO. 700-101	STATE TAX WITHHELD 33 64		
NAME OF CITY Baton Rouge		CITY FORM NO.	CITY TAX WITHHELD		

*Excludable Sick Pay.
**Uncollected employee tax on tips.

ARKANSAS-BEST FREIGHT SYSTEM, INC.

301 SOUTH 11TH STREET

FORT SMITH, ARKANSAS 72901

EMPLOYER'S NO. 71-0249444

Type or print EMPLOYER'S Federal identification number, name, and address above

FEDERAL INCOME TAX INFORMATION		
FEDERAL INCOME TAX WITHHELD 2279 68	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1966 14076 44	OTHER COMPENSATION ² PAID IN 1966
Type or print EMPLOYEE'S social security number K E MYERS 408 CCCPER ROAD JACKSON, MISSISSIPPI	XXXX 39212	

Type or print EMPLOYEE'S name and address (including ZIP code) above

FORM W-2—U. S. Treasury Department, Internal Revenue Service

APP. 105 1-15-66 732

WAGE AND TAX STATEMENT—1966

1 Includes tips reported by employee. This amount is before payroll deductions or a 5.2% FICA surcharge, as figured on the amount to be reported as wages and salaries on your income tax return.

2 The social security (F.I.C.A.) rate of 4.4% includes .6% for hospital insurance benefits and 3.8% for old-age, survivors, and disability insurance.

EMPLOYEE'S STATE IDENTIFICATION NUMBER		SOCIAL SECURITY INFORMATION		GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL	
FICA EMPLOYEE TAX WITHHELD ³ 343 20	TOTAL FICA WAGES PAID IN 1966 14076 44	NO. OF DEPENDENTS 00	GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL 845 75		
NAME OF STATE MISSOURI		STATE FORM NO. MO-2	STATE TAX WITHHELD 2 54		
NAME OF CITY St. Louis		CITY FORM NO.	CITY TAX WITHHELD		

*Excludable Sick Pay.
**Uncollected employee tax on tips.

ARKANSAS-BEST FREIGHT SYSTEM, INC.

301 SOUTH 11TH STREET

FORT SMITH, ARKANSAS 72901

EMPLOYER'S NO. 71-0249444

Type or print EMPLOYER'S Federal identification number, name, and address above

FEDERAL INCOME TAX INFORMATION		
FEDERAL INCOME TAX WITHHELD 2279 68	WAGES ¹ PAID SUBJECT TO WITHHOLDING IN 1966 14076 44	OTHER COMPENSATION ² PAID IN 1966
Type or print EMPLOYEE'S social security number K E MYERS 408 CCCPER ROAD JACKSON, MISSISSIPPI	XXXX 39212	

Type or print EMPLOYEE'S name and address (including ZIP code) above

FORM W-2—U. S. Treasury Department, Internal Revenue Service

APP. 105 1-15-66 732

WAGE AND TAX STATEMENT—1966

1 Includes tips reported by employee. This amount is before payroll deductions or a 5.2% FICA surcharge, as figured on the amount to be reported as wages and salaries on your income tax return.

NOTICE TO EMPLOYEE
THIS STATEMENT IS IMPORTANT. IT MUST BE ATTACHED TO YOUR STATE OR CITY INCOME TAX RETURN TO CLAIM CREDIT FOR ANY TAX WITHHELD.

EMPLOYEE'S STATE IDENTIFICATION NUMBER		SOCIAL SECURITY INFORMATION		GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL	
FICA EMPLOYEE TAX WITHHELD ³ 343 20	TOTAL FICA WAGES PAID IN 1966 14076 44	NO. OF DEPENDENTS 00	GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL 845 75		
NAME OF STATE MISSOURI		STATE FORM NO. MO-2	STATE TAX WITHHELD 2 54		
NAME OF CITY St. Louis		CITY FORM NO.	CITY TAX WITHHELD		

*Excludable Sick Pay.
**Uncollected employee tax on tips.

FOR STATE USE ONLY

EMPLOYEE'S COPY AND EMPLOYER'S COPY COMPARED

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT—1988

301 SOUTH 11TH STREET

PORT SMITH, ARKANSAS 72901

EMPLOYER'S NO. 71-0245444

Type or print EMPLOYER'S Federal Identification number, name, and address above

FEDERAL INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION		GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL	
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHELD IN 1988	OTHER COMPENSATION ² PAID IN 1988	SSICA EMPLOYEE TAX WITHHELD	TOTAL PICA WAGES PAID IN 1988	NO. OF DEPENDENTS	GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL
2279.68	14076.44		343.20			2026.47
Type or print EMPLOYEE'S social security number → XXXX			NAME OF STATE ARKANSAS		STATE FORM NO.	STATE TAX WITHHELD 24.00
K E MYERS			NAME OF CITY		CITY FORM NO.	CITY TAX WITHHELD
408 CCCPEN ROAD						
JACKSON MISSISSIPPI 39212						

FORM W-2—U. S. Treasury Department, Internal Revenue Service APP. 100 1-10-88 F22

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT—1988

301 SOUTH 11TH STREET

PORT SMITH, ARKANSAS 72901

EMPLOYER'S NO. 71-0245444

Type or print EMPLOYER'S Federal Identification number, name, and address above

FEDERAL INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION		GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL	
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHELD IN 1988	OTHER COMPENSATION ² PAID IN 1988	SSICA EMPLOYEE TAX WITHHELD	TOTAL PICA WAGES PAID IN 1988	NO. OF DEPENDENTS	GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL
2279.68	14076.44		343.20			482.05
Type or print EMPLOYEE'S social security number → XXXX			NAME OF STATE MISSISSIPPI		STATE FORM NO.	STATE TAX WITHHELD
K E MYERS			NAME OF CITY		CITY FORM NO.	CITY TAX WITHHELD
408 CCCPEN ROAD						
JACKSON MISSISSIPPI 39212						
JACKSON MISSISSIPPI 39212						

FORM W-2—U. S. Treasury Department, Internal Revenue Service APP. 100 1-10-88 F22

ARKANSAS-BEST FREIGHT SYSTEM, INC. WAGE AND TAX STATEMENT—1988

301 SOUTH 11TH STREET

PORT SMITH, ARKANSAS 72901

EMPLOYER'S NO. 71-0245444

Type or print EMPLOYER'S Federal Identification number, name, and address above

FEDERAL INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION		GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL	
FEDERAL INCOME TAX WITHHELD	WAGES ¹ PAID SUBJECT TO WITHHELD IN 1988	OTHER COMPENSATION ² PAID IN 1988	SSICA EMPLOYEE TAX WITHHELD	TOTAL PICA WAGES PAID IN 1988	NO. OF DEPENDENTS	GROSS WAGES FOR STATE IF DIFFERENT FROM FEDERAL
2279.68	14076.44		343.20			8402.85
Type or print EMPLOYEE'S social security number → XXXX			NAME OF STATE MISSISSIPPI		STATE FORM NO.	STATE TAX WITHHELD
K E MYERS			NAME OF CITY		CITY FORM NO.	CITY TAX WITHHELD
408 CCCPEN ROAD						
JACKSON MISSISSIPPI 39212						
JACKSON MISSISSIPPI 39212						

FORM W-2—U. S. Treasury Department, Internal Revenue Service APP. 100 1-10-88 F22

MISSISSIPPI 59265
REQUESTED

MISSISSIPPI
INDIVIDUAL INCOME TAX RETURN
For Calendar Year 1968

Or for period begun _____ 19____
and ended _____ 19____

File this Return not later than April 15, 1969, or if you
file on the basis of a fiscal year, on the 15th day of the
4th month following the close of taxable year.

MAIL TO: COMMISSIONER OF INCOME TAX
P. O. BOX 900
JACKSON, MISSISSIPPI 39205

PLEASE ANSWER ALL QUESTIONS— 1. Occupation Head of Family

2. Of what state are you a resident or citizen? Miss.

3. Were you married and living with husband
or wife on December 31, 1968? Yes

4. If not, did your husband or wife die during the year 1968? Yes

5. Is this a joint return of husband and wife? Yes

6. Did you file a return for 1967? ☒ Yes ☐ No. If name or address was
different than shown above, enter name and address used.

(If married, numbers of both spouses MUST be shown.)

Your Social Security No. XXXX

Spouse's Social Security No. XXXX

7. State name of husband or wife if a
separate return was made.

8. Did your spouse have separate income in 1968? ☐ Yes ☐ No AMOUNT

Item and
Instruction No.

INCOME

Amount

1. Salaries, wages, commissions, etc. (State name and address of employer)
Atlantic Coast Freight Lines, Inc. Jackson, Miss.

2. Dividends: (Attach Schedule)

3. Interest: (Attach Schedule) Credit Union 52.00 — Miss. Bk. & Tr. Co. 25.00

4. Partnerships, Fiduciaries, etc.

5. Total of other income (From page 2)

Net Income

14254.11

DEDUCTIONS AND CREDITS

6. TOTAL DEDUCTIONS: (From Schedule F, Page 2) OR you may elect to claim:

(a) Single person or Head of family: 10% of income not to exceed \$500

(b) Husband: 10% of his individual income not to exceed \$500

(c) Wife: 10% of her individual income not to exceed \$500

TOTAL

3506.10

Net Taxable Income

10748.01

7. Subtract Specific Exemption

8. Balance subject to tax

6000.00

4751.26

The specific exemptions are:

Married Persons (Joint) \$6,000.00

If separate returns are filed, may
be deducted by either or divided.

Head of Family \$6,000.00

(Attach schedule showing
information in detail after reading
instructions)

Single Individuals \$4,000.00

It is our very earnest desire to be as helpful as possible to
our taxpayers and to relieve them as far as we can of the
complications and vexations incident to the tax-paying
process. To this end we shall greatly appreciate any sugges-
tions from you, either as to simplifying our forms or doing
anything else which may improve the service which we are
trying to render.

ARMY RHODEN, Chairman

COMPUTATION OF TAX

	Income	Tax
1. Balance Subject to Tax from Line 8	4758.26	
2. Tax on first \$5,000.00 or less, @ 3%		143.04
3. Tax on balance @ 4% <u>Less: Louisiana Tax Attached:</u>		181.50
4. TOTAL TAX FOR THE YEAR		324.54

5. Amount Paid Herewith

☒ MAKE REMITTANCE PAYABLE
TO STATE TAX COMMISSION

YOUR REMITTANCE MUST ACCOMPANY THIS RETURN

I declare under the penalties of perjury that this return (including any accompanying schedules and statements)
has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

ARMY RHODEN
(Signature of person (other than taxpayer or agent
preparing return))

2-14-69
(Date)

2-14-69
(Date)

2-14-69
(Date)

DUPLICATE FOR TAXPAYER'S RECORD

PAGE 1

(Signature of taxpayers)

(Date)

... (State nature).

2 INTEREST (Louisiana sites).

TOTAL OTHER INCOME OR LOSS (Line 7 - 8) (do not include line 10, if any) 5

14.—INCOME FROM BUSINESS OR PROFESSION CARRIED ON WHOLLY OR PARTLY WITHIN THE STATE OF LOUISIANA

SALES OR RECEIPTS FROM BUSINESS OR PROFESSION

NET BUSINESS INCOME (Attach statement).....

Enter "C" or "C or M" in Items 6 and 8 to indicate whether inventory is valued at cost, or cost or market, whichever is lower.

20. NET BUSINESS INCOME APPORTIONED TO LOUISIANA (If income is WHOLLY from Louisiana sources, enter item 19 on item 20. Otherwise, enter item 19 multiplied by 25%)

21. INTEREST, DIVIDENDS, AND PROFITS DERIVED FROM THE SALE OR EXCHANGE OF BONDS, NOTES, AND STOCKS OWNED BY THE COMPANY

22. NET INCOME ALLOCATED TO LOUISIANA (Enter on Line 5 on Page 31)

Schedule G.—COMPUTATION OF INCOME APPORTIONMENT PERCENTAGE

Schedule G.—COMPUTATION OF INCOME APPORTIONMENT PERCENTAGE

NOT ALL THE FOLLOWING FACTORS SHOULD BE USED. YOUR PRINCIPAL KIND OF BUSINESS DETERMINES WHICH FACTORS APPLY.

For all transportation use factors (a) and (c); for pipeline transportation use factors (a), (b), and (c); for other transportation use factors (a) and (c); for service enterprises in which the use of property is not a material income-producing factor use factors (a) and (b); for loan business use factors (c) and (d); for merchandising, manufacturing and others use factors (a), (b), and (c).

1. (a) Net Sales of Merchandise and/or Charges for Services:

2. (i) Sales. (Enter in Column 3 only sales where goods, merchandise, or property is received in Louisiana by the purchaser.)

3. (2) Charges for Services. (Enter in Column 3 only services performed)

5. (b) Wages, Salaries and other Personal Service Compensation Paid

6. (c) Value of Real and Tangible Personal Property of the Business:

7. (1) At the beginning of period covered by return.....

8. (2) At the end of period covered by return,

9. Total of Lines 7 and 8.....

11. (d) Loans made during the year. (Enter ratio in Column 4)

12. (e) Total of applicable Percents in Column 4. (Use only factors

13. Average of percents (Line 12 divided by number of factors used) (Ap

Schedule H.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES B AND F

5. KIND OF PROPERTY (IF BUILDINGS, STATE MATERIAL OF WHICH CONSTRUCTED), EXCLUDE LAND AND OTHER NONDEPRECIABLE PROPERTY

2. DATE
ACQUIRED

3. COST OR OTHER
BASIS
(EXCLUDE LAND)

4. DEPRECIATION ALLOWED (ALLOWABLE IN PRIOR YEARS)

5. METHOD OF COMPUTING DEPRECIATION

6. RATE
(%) OR L
(YEARS)

7. DEPRECIATION
FOR THIS YEAR

than May 15, 1969 TO:

P. O. BOX 1000
LITTLE ROCK, ARKANSAS 72203

1968

INDIVIDUAL OR JOINT INCOME TAX RETURN

For Single Person, Husband or Wife or JOINT HUSBAND AND WIFE

For 1968 or Fiscal Year beginning ending 1969

FORM AR-1000

YOUR FIRST NAME AND INITIAL MR. MISS MRS. KIND D.		WIFE'S FIRST NAME AND INITIAL VODA R.		LAST NAME MYERS		YOUR SOCIAL SECURITY NUMBER XXXX	
Your occupation Road Driver		Wife's occupation Housewife		WIFE'S SOCIAL SECURITY NUMBER XXXX			
HOME ADDRESS (Number and Street or Rural Route) 408 Cooper Road				CITY OR POST OFFICE Jackson,		COUNTY OF Hinds	
STATE Miss.				ZIP CODE 39212			
Your present employer and address Arkansas-Best Freight Systems - Jackson, Miss.							
Were you a Resident of Arkansas During ALL of Taxable Year? ☐ YES ☒ NO ☐ WIFE - YES ☐ NO ☐ HUSBAND or single - YES ☐ NO ☒ WIFE (Mo., day, yr.): FROM TO							
Did Federal Authorities adjust your Net Income for Federal Tax for any year or years after 1964? YES () NO () - IF YES							
attach statement of such adjustments.							
FIRST NAMES OF DEPENDENTS							
(1) ☐ Single Individual \$17.50 1. 9. (2) ☒ Married Filing Joint Return, even if only one had income \$35.00 2. 10. (3) ☐ Head of Family (See instructions for qualifications) \$35.00 3. 11. (4) ☐ Married Filing separately on this form (return) \$35.00 4. 12. (5) ☐ Married Filing separate Forms AR-1000 (May be taken by either or divided; Spouse's name and S.S. No.) \$35.00 5. 13. (6) ☐ Number of dependents at \$5.00 each (list names at right) 6. 14. (7) ☐ Number of retarded children, attach affidavit (AR-1000C) \$50.00 7. 15. 8. 16.							
IMPORTANT: HUSBAND & WIFE FILING SEPARATELY CANNOT SPLIT THEIR INCOME. EACH MUST REPORT HIS OWN INCOME. HOWEVER, YOU MAY COMBINE YOUR INCOME AND FILE A JOINT RETURN.							
5 Wages, salaries, tips, etc. if not shown on attached State Copy of W-2 form(s)—Explain. 5• 2036 47							
6 Other income (From Page 2, Part A, Line 11) 6• 7							
7 Total (add Lines 5 and 6) 7• 2036 47							
8 Adjustments (Business and Travel Expense, Attach Schedule or Fed. Schedule No. 2104) 8• 8							
9 TOTAL INCOME (Subtract Line 8 from Line 7) 9• 2036 47							
10 ITEMIZE DEDUCTIONS: If you itemize deductions, enter total from page 2, Part C, Item 6 STANDARD DEDUCTION: If you do not itemize deductions, (1) Married filing separately, each enter 10% of line 9 or \$500, whichever is the lesser amount. (2) All others 10% of line 9 or \$1,000.00 whichever is the lesser amount. 10• 203 65							
11 Net Taxable Income (Subtract Line 10 from Line 9). Figure your tax on these amounts! 11• 1832 82							
12 1% x First \$3,000 or less 12• 18 33							
13 2% x Next \$3,000 or part 13•							
14 3% x Next \$5,000 or part 14•							
15 4% x Next \$14,000 or part 15•							
16 5% x on all over \$25,000 16•							
17 Total of lines 12 to 16 17• (a) 18 33 (b)							
18 Add amounts (a) & (b) on line 17 for husband and wife and enter total HERE 18• 18 73							
19 PERSONAL AND DEPENDENT TAX CREDITS (DETERMINE FROM ITEM 4 ABOVE) 19• 35 00							
20 CREDITS TO ARKANSAS RESIDENTS FOR INCOME TAX PAID TO OTHER STATE(S) 20•							
20-A Submit copy of out-of-state (returns) as proof } ADD LINES 19 & 20 AND ENTER TOTAL HERE 20-A• 35 00							
21 TOTAL TAX FOR THE YEAR SUBTRACT TOTAL CREDIT(S) (LINE 20-A) FROM LINE 18 AND ENTER AMOUNT HERE 21• 00 00							
22 TOTAL ARKANSAS INCOME TAX WITHHELD (Attach State Copy of W-2) 22• 24 68							
23 TOTAL ESTIMATED TAX PAID ON 1968 INCOME 23•							
24 TOTAL TAX PAID (Add Lines 22 & 23) AND ENTER TOTAL HERE 24• 24 68							
25 TAX DUE: IF LINE 21 IS MORE THAN LINE 24 (YOU OWE ADDITIONAL TAX) ENTER AMOUNT HERE NET TAX DUE 25•							
26 REFUND: IF LINE 24 IS MORE THAN LINE 21 (YOU ARE DUE A REFUND) ENTER AMOUNT HERE NET REFUND 26• 24 68							
27 Amount of Refund on Line 26 to be applied on 1969 Tax Return ☐ Estimated ☐ H ☐ W—See Instructions 27•							
28 Subtract Line 27 from 26 and refund only. 28• 24 68							
I declare, under the penalties of perjury, that the foregoing statements are true to the best of my knowledge and belief and that all my 1968 income is reported hereon.							
Name of Agent or Preparer Other than Taxpayer				Signature of Taxpayer—Husband or Single Person			
2-14-69 (Date)				2-14-69 (Date)			
Signature of Wife on Joint or Separate Filing							
No refund or credit of less than \$1.00 will be made without a separate written request.							

Attach State Copy of W-2 here

 IDENTIFICATION
Please print or type

TITLES AND TAX CREDITS

INCOME

DEDUCTIONS

COMPUTATIONS

CREDITS AND PAYMENTS

TAX DUE OR REFUND DUE

SIGNATURE

STATE OF NEBRASKA

Norbert T. Tiemann, GOVERNOR

Murrell B. McNeil, TAX COMMISSIONER

Dept. of Revenue

Box 4318 State Capitol
Lincoln, Nebraska 68509

February 20, 1970

International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D. C. 20001

Attention: Carlos Moore
Political & Legislative Director

Gentlemen:

We have your letter of February 5, 1970, requesting information on nonresident withholding.

The Nebraska Revenue Act of 1967 imposes an income tax on nonresident individuals who earn income for services performed in Nebraska or income derived from Nebraska sources.

Nebraska Withholding Regulation TC-21-6, Determining Tax To Be Withheld On Wages Paid To A Nonresident, provides that when an employee who is a nonresident of Nebraska performs services within the State for an employer, such employer is required to deduct and withhold income tax at the Nebraska rate.

If an employee performs services for an employer both within and without Nebraska, the employer shall follow the usual procedure in computing the Nebraska withholding, but prorate the Nebraska withholding on the basis of the services rendered within Nebraska to the total services rendered. We have administratively approved provisions for withholding on the basis of the percentage of time spent in Nebraska.

The Nebraska statutes further provide at Section 77-2753(3), R.S. Supp., 1967:

The Tax Commissioner may enter into agreements with the tax department of other states, which require income tax to be withheld from the payment of wages and salaries, so as to govern the amounts to be withheld from the wages and salaries of residents of such states. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld, and under regulations prescribed by the Tax Commissioner, may relieve employers in this state from withholding income tax on wages and salaries paid to nonresident employees. The agreements authorized by this subsection are subject to the condition that the tax department of such other states grant similar treatment to residents of this state.

The Tax Commissioner has not at present entered into any such agreements but contact has been made with surrounding states in reference to this subject. In addition, the State of Nebraska, an initial member of the Multi-State Compact, is working with a special subcommittee to develop a uniform position concerning multi-state withholding. It is anticipated that a draft proposal will be released within the month to the member states, industries, and other interested groups with additional proceedings at the June meeting of the Commission.

If we can be of further assistance, please communicate with this office.

FOR THE STATE TAX COMMISSIONER

Sincerely,

Floyd Kent Kalb
Floyd Kent Kalb
Income Tax Division

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

KEITH H. MILLER, GOVERNOR

PJUCH S—JUNEAU 98801

December 29, 1969

Mr. William Martin
Interstate Commerce Tax Reform Committee
55 Bell Street
Seattle, Washington 98121

Re: Alaska Income Tax

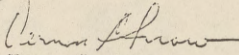
Dear Mr. Martin:

Reference is made to our letter to you dated October 20, 1969.

We are presently researching the extent of the alleged problem of multiple filing of state income tax returns. Part of the information requested from various companies has been received and the remainder is expected during the next month. We will advise you with regard to this after the information requested has been received and analyzed.

In order to allow your group to file delinquent income tax returns without the imposition of penalty, we are extending the time for filing until March 15, 1970.

Very truly yours,


Vernon L. Snow
Deputy Commissioner

VLS/ge

cc: Tom Parke
Bud Pyles

DR 600 S ALASKA INDIVIDUAL INCOME TAX RETURN - SUMMARY RETURN FORM

645

Department of Revenue
Pouch SA
Alaska Office Bldg.
Juneau, Alaska 99801

(PLEASE TYPE OR PRINT)

Name JASON CALGARI
(If this is a joint return of husband and wife, use first names of both)
Home Address 55' BELL ST. 95 MAP
(Number and street or route)
Seattle, WA 98121
(City, town, or post office) (Postal zone number)
Your Social Security Number [REDACTED]
Occupation
Wife's Social Security Number
Occupation

	1960	1961	1962	1963	1964	1965	1966
1 Total income per wage statement							
2 Alaska income percentage (from DR 605 S)	%	%	%	%	%	%	%
3 Alaska income (line 1 x line 2)							
4 Less itemized deductions (from NR-1A on reverse)							
5 Less personal exemption credit (from NR-1B on reverse)							
6 Alaska taxable income (line 3 less lines 4 & 5)							
7 Tax (from Tax Rate Schedule)							
8 Alaska income tax { 14% of line 7 16% of line 7							
9 Plus Alaska School Tax	10.00	10.00	10.00	10.00	10.00	10.00	10.00
10 Tax Due (line 8 plus line 9)							
11 Interest @ 6% per year							
12 Total Due (line 10 plus line 11)							

I declare under the penalties of perjury that this return, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief it is true and correct. I declare under the penalties of perjury that no other return other than the foregoing, has been filed by me or on my behalf for the year covered by this return. I am not aware of any other return being filed in the name required to be reported in the name of which he has any knowledge.

Signature of Taxpayer and Spouse (If this is a joint return, BOTH HUSBAND AND WIFE MUST SIGN) _____
Signature of Preparer Other Than Taxpayer _____
Address _____
Total Amount due _____

STATE OF ALASKA
Department of Revenue

GUIDELINES TO PROPER FILING

- (1) The income as reported to this department appears on line 1, form DR 600 S, Summary Return form. This one sheet, accompanied by the supporting schedules, will comprise your filing from 1960 to 1966.
- (2) Form DR 605 S, Allocation Schedule. Follow closely the instructions on the lower portion of the page.
- (3) Form DR 600 NR 1, Itemized Deduction Schedule. Use the following guidelines:
 - A. DEDUCTIBLE ITEMS: The following are some common properly deductible items: Contributions (limited to amounts paid to Alaska organizations or Alaska chapters of national organizations); interest and taxes on real and personal property which is taxable by the state or its subdivisions; gasoline and sales taxes on amounts expended in Alaska; medical expenses paid from Alaska earnings; commercial fishing licenses; Alaska locals' union dues.
 - B. NONDEDUCTIBLE ITEMS: The following are some of the commonly claimed items which are not deductible: State or federal income tax; Social Security; federal and state excise tax; school and disaster taxes; interest and taxes on real estate and personal property which are not taxable by the state or its subdivision; casualty losses incurred outside Alaska; away-from-home expenses when personal residence is located outside Alaska; moving and transportation expenses not meeting the federal minimum 39-week residency requirement; commuting expenses; cost of clothing to meet climactic conditions.
- (4) Complete the lower portion of form DR 600 NR 1. Carry figures from these computations to DR 600 S.
- (5) Only the tax table included in this package may be used to determine tax. Enter this tax on line 7, DR 600 S.
- (6) In 1960 the Alaska taxable rate was 14% of the above amount. From 1961 through 1966 the rate is 16%.
- (7) After adding lines 8 and 9, enter total on line 10. Multiply this figure by the appropriate percentage shown on line 11.
- (8) Your liability for each year is the sum of lines 10 and 11.
- (9) Enter the sum of all years liabilities in the appropriate blank and include this amount with your return.

STATE OF ALASKA
DEPARTMENT OF REVENUE
Alaska Office Building, Pouch SA
Juneau, Alaska 99801

Dear Taxpayer:

According to information in our files, you have earned income for services performed within Alaska and its waters. The constitutionality of the application of Alaska State Income laws to that income was decided in the case of the State of Alaska vs. Petronia, 418 P 2d 755 (Sct Wash 1966), cert. denied 389 U.S. 7 (1967). This decision by the Washington Supreme Court makes you liable for Alaska state taxes on that portion of your income earned in Alaska.

In order to alleviate, as much as possible, the lengthy process of filing the required returns from 1960 to the present, the State of Alaska has designed the enclosed forms, including a multiple tax form, DR-605S.

It is requested that you complete the enclosed multiple return form and return it to this office with remittance, including tax and interest.

As these cases have been in litigation the 25% failure to file penalty will be waived if you file multiple return by February 15, 1969. If not filed by that date, penalties will be assessed.

Sincerely yours,

Charles L. Pyle

Supervisor
Income Tax Audit

STATE OF IOWA
DEPARTMENT OF REVENUE

LUCAS STATE OFFICE BUILDING
DES MOINES
50319

February 25, 1970

International Brotherhood of Teamsters
Washington Office of
Frank E. Fitzsimmons
25 Louisiana Ave. N.W.
Washington, D. C. 2001

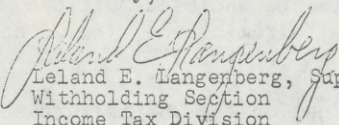
Attention: Carlos Moore, Political & Legislative Director

Re: Iowa Withholding

Gentlemen:

In reply to your letter of February 5, 1970 we have no definite state law, however, our policy is that withholding of Iowa Income Tax is based on the ratio of total salaries vs. time spent in Iowa, when calculating withholding for truck drivers, air line pilots and railroad employees.

Sincerely,


Leland E. Langerberg, Supervisor
Withholding Section
Income Tax Division

LEL:gmcn

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

1025 P STREET
SACRAMENTO, CALIFORNIA 95814

August 27, 1969

In reply refer to
CA:MJD:kf

Mr. August J. Turchi
 Certified Public Accountant
 525 Yeon Building
 Portland, Oregon 97204

Re: Income Tax Withholding - Nonresidents

Dear Mr. Turchi:

Under the California Personal Income Tax Law, a nonresident is taxable on income from sources within California. Compensation for personal services performed in this State is considered income from a California source.

In the case of nonresident employees, an employer is required to withhold income tax if the income exceeds the amounts listed in our July 23 letter. The instructions on Form 592 (copy enclosed) contain the provisions of this law.

The following paragraph is taken from the Income Tax Regulations:

"If nonresident employees are employed in this State at intervals throughout the year, as would be the case if employed in operating trains, boats, planes, motor buses, trucks, etc., between this State and other states and foreign countries, and are paid on a daily, weekly or monthly basis, the gross income from sources within this State includes that portion of the total compensation for personal services which the total number of working days employed within the State bears to the total number of working days both within and without the State. If the employees are paid on a mileage basis, the gross income from sources within this State includes that portion of the total compensation for personal services which the number of miles traversed in California bears to the total number of miles traversed within and without the State. If the employees are paid on some other basis, the total compensation for personal services must be apportioned between this State and other States and foreign countries in such a manner as to allocate to California that portion of the total compensation which is reasonably attributable to personal services performed in this State."

With respect to Oregon residents, we believe that the State of Oregon will allow a credit against the Oregon tax for tax paid to California on any income taxed by both states.

Yours very truly,

W. J. Groves



BOB SCOTT
COMMISSIONER OF REVENUES

STATE OF ARKANSAS
DEPARTMENT OF REVENUES

REVENUE BUILDING, LITTLE ROCK 72201

POST OFFICE BOX 3628
Little Rock, Arkansas 72203

Friday, February 13, 1970

International Brotherhood of Teamsters
25 Louisiana Avenue, North West
Washington, D.C. 20001

Attention Mr. Carlos Moore, Political and Legislative Director

Dear Sir:

You asked for the policy or laws of Arkansas relating to the withholding of state income tax from the wages and salaries of nonresident truck drivers, air line pilots and railroad employees that enter Arkansas in the course of their employment.

Since only the income earned in or derived from Arkansas is taxable to nonresidents, income tax is required to be withheld only on that portion of the individuals income for Arkansas income tax purposes. Enclosed is a complete employers withholding packet for your examination.

If we can be of further assistance to you, please feel free to contact us.

Very truly yours,

A handwritten signature in cursive script, reading "Kin B. Claunch".

Kin B. Claunch
Tax Examiner

KBC:al

Enclosure

SECTION 7

WHAT ARE TAXABLE WAGES

- a. The word "wages," as defined by the Arkansas Income Tax Withholding Act of 1965, means remuneration in cash or other form for services performed by an employee for an employer. (Exempt income is defined in Section 9).
- b. The word "wages" includes all types of employee's compensations such as salaries, fees, bonuses, and commissions, whether paid in cash or other emoluments. When wages are paid in property other than money, such as stocks, bonds, merchandise, room, board, house rent, or other considerations for services passed to the employee, the employer shall withhold on the fair market value of such property.
- c. Vacation allowances, sick leave pay, back pay, and retroactive wage increases shall be taxed as ordinary wages.
- d. Tips or gratuities paid directly to an employee by a customer and not accounted for to the employer are not subject to withholding. However, the recipients must include this income in their personal income tax returns.
- e. Nonresident Employees: The tax shall be deducted and withheld on all wages paid to nonresident employees for services performed in Arkansas. Accordingly, if a nonresident employee performs all services in Arkansas, the tax shall be deducted and withheld from all wages paid to him in accordance with the "Employee's Withholding Exemption Certificate" (Form AR-4EC) and the applicable withholding rate as shown in the Arkansas withholding tax tables.

If a nonresident employee performs services partly within and partly without the State, only wages for services performed within the State are subject to withholding. The amount of wages attributable to services within the State is the portion of the total wages which the total number of working days employed within the State bears to the total number of working days employed both within and without the State, exclusive of non-working days, such as Saturdays, Sundays, holidays, days of absence because of illness or personal injury, vacation or leave with or without pay. However, the Arkansas portion of the earnings of salesmen or other employees whose compensation depends directly on the volume of sales is that portion of the compensation received which the volume of sales negotiated by the employee within Arkansas bears to the total volume of sales negotiated by him within and without the State.

The portion of wages allocable to Arkansas may be determined by the employer on the basis of the preceding year's experience. Nonresidents employed in train, bus, or trucking service must allocate their earnings in the proportion which mileage in Arkansas bears to the total mileage on which wages are computed. However, if the employee reasonably expects that the preceding year's experience will not be applicable to the current year, he may furnish his employer a statement estimating the portion of his wages allocable to Arkansas or the employer himself may make such estimate and may then withhold on the basis thereof. Where withholding is based on an estimate of the Arkansas wages, the employer must, prior to the close of the year, actually compute the Arkansas wages, and if the amount withheld is insufficient, the employer must then withhold additional tax prior to the close of the year so that the proper amount will be withheld for the year.



State of New Mexico

BUREAU OF REVENUE
Santa Fe, New Mexico
87501

February 17, 1970

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers
of America
2801 Trumbull Avenue
Detroit Michigan 47216

Attn: Carlos Moore, Political and
Legislative Director

Gentlemen:

The information you requested in your letter of February 5, regarding withholding of state income taxes, is included in Section VI of the general instructions with the enclosed CRS-1 Combined Report Form. Please note that, for non-resident employees, an employer is required to withhold New Mexico income taxes from wages the employee earns within the State of New Mexico.

We are enclosing, also, New Mexico State Tax Withholding Tables.

If we can be of any more assistance, please let us know.

Sincerely yours,

Franklin Jones
Commissioner

FJ/DDG/ef

Enclosures:
CRS-1, PIT-2



HARVEY L. RABREN
Commissioner

RALPH P. EAGERTON, JR.
Secretary

STATE OF ALABAMA DEPARTMENT OF REVENUE

INCOME TAX DIVISION

MONTGOMERY, ALABAMA 36102
TELEPHONE 269-6861
AREA CODE 205

TRAVIS WILLIAMS, JR.
Assistant Commissioner

JAMES M. BRADSHAW, Chief
Income Tax Division

February 17, 1970

International Brotherhood of Teamsters
Chauffeurs Warehousemen & Helpers
2801 Trumbull Avenue
Detroit, Michigan 48216

Attention: Carlos Moore

Dear Mr. Moore:

Receipt is acknowledged of your inquiry of February 5, 1970.

Regulation 424(2).1 of the Alabama income tax law states in part that an employer who is a resident of Alabama is required to withhold tax from the wages of his employees who are residents of Alabama, regardless of whether the wages are earned in Alabama or outside the State.

An employer who is a resident of Alabama is required to withhold tax from the wages of his employees who are not residents of Alabama only to the extent that the wages are earned in Alabama. In other words, a non-resident employee of an Alabama employer should have Alabama income tax withheld only on such wages as are earned in Alabama.

An employer who is not a resident of Alabama is required to withhold tax from the wages of his employees to the extent that such wages are earned in Alabama, whether the employee is a resident or a non-resident of the State. A non-resident employer is not required to withhold Alabama income tax on wages paid for services performed outside of Alabama, whether such wages are paid to a resident or to a non-resident of Alabama.

The burden and duty is placed upon the employer to determine the place of residence of such employee, and to determine the exact part of each employee's earnings which is attributable to the services performed within Alabama and to apportion such earnings accordingly for the purpose of withholding the tax.

noted 2-25-70
may

If we may be of further service in this regard, please advise.

Very truly yours,

V. S. McElvy, Supervisor
Withholding Tax & Field Section
Income Tax Division

By: D. E. Atkisson
D. E. Atkisson

DEA:bt

N—A NONRESIDENT WORKING INSIDE KANSAS

The following rules shall be observed by employers withholding Kansas tax from wages earned by nonresidents of Kansas.

1. A nonresident employee working full-time in Kansas

If a nonresident of Kansas works full-time in Kansas, the employer shall withhold for Kansas 10% of the Federal income tax withheld from the total wages paid the employee.

2. A nonresident of Kansas working both inside and outside of Kansas

If an employee performs services for an employer both within and without the State of Kansas, the employer shall compute following this regular procedure, the amount of Kansas withholding tax on the total wages paid during the pay period. The amount thus determined is then reduced to the portion that the employee's services rendered in Kansas bears to the total services rendered.

Example: A resident of Missouri performs 40% of his services for an employer within the State of Kansas. This employee has wages of \$600.00 per month and Federal income tax of \$79.00 withheld. The computation of the employee's Kansas withholding shall be as follows:

Kansas withholding tax (per table)	\$7.75
Percentage applicable to Kansas	40%
Amount to be withheld for Kansas	<u><u>\$3.10</u></u>

If the employee's services rendered to the employer within Kansas can reasonably be expected to be less than 10% of the total services rendered for the employer for the calendar year, the employee will be exempt from Kansas withholding and should complete an Affidavit to Support Exclusion from Kansas Withholding Tax (Form K-4 B). If the employee's services rendered within Kansas can reasonably be expected to be 10% or more of the total services rendered, the employee should complete an Employee's Certificate of Nonresident Allocation of Withholding Tax (Form K-4 C).

The following are examples of how an employee may compute the percentage of his income which will be applicable to Kansas withholding. These examples do not prohibit use of any other logical method of allocation which will fairly reflect the income applicable to Kansas withholding.

1. If the employee expects his services to be rendered to his employer to remain relatively consistent with the prior year, he may compute the percentage of income applicable to Kansas based on the prior year's experience.
2. If the employee expects his service rendered to his employer within Kansas to change substantially within the forthcoming year, he could compute the percentage of income applicable to Kansas based upon one of the following methods:

- a. Commission salesmen:

$$\frac{\text{Commissions expected to be earned in Kansas}}{\text{Total commissions expected to be earned}} = \%$$

- b. An employee compensated by an hourly wage:

$$\frac{\text{Hours estimated to be worked in Kansas}}{\text{Total estimated hours to be worked}} = \%$$

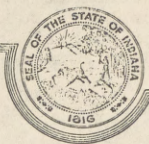
- c. An employee compensated by a salary:

$$\frac{\text{Estimated days to be worked in Kansas}}{\text{Total estimated days to be worked}} = \%$$

- d. Transportation workers:

$$\frac{\text{Estimated miles to be traveled in Kansas}}{\text{Total estimated miles to be traveled}} = \%$$

STATE OF INDIANA



INDIANAPOLIS, 46204

DEPARTMENT OF REVENUE
STATE OFFICE BUILDING

CIRCULAR IT-25
(Revised)

April 10, 1969

SUBJECT: APPLICATION OF THE ADJUSTED GROSS INCOME TAX TO RESIDENT
TAXPAYERS WITH OUT-OF-STATE INCOME

This circular replaces Circular IT-25 dated October 31, 1967. On and after the above date, April 10, 1969, all statements contained in previous circulars issued by the Department, which are in conflict herewith, are null and void.

All words in *this style type* represent changes in this circular.

An Indiana resident must include his income from all sources including out-of-state income in the calculation of Indiana adjusted gross income tax. If such resident is required to, and does pay an income tax to another state on income derived from that state, he may take credit against the amount of Indiana adjusted gross income tax computed on his total income for an amount equal to the lesser of:

- (a) The amount of income tax actually paid to the other state on income from the state; or
- (b) An amount equal to two per cent (2%) of the income from the other state.

Credit will not be allowed for taxes paid to a state which allows Indiana residents a non-resident credit for taxes paid or payable to Indiana against taxes assessed by that state. In this case, credit should be obtained from the state which imposes the tax upon Indiana residents.

The following states allow Indiana residents a non-resident credit: Arizona, California, Idaho, Kentucky, Maryland, *Nebraska*, *Vermont*, West Virginia, and Washington D.C. Therefore, credit for ~~taxes~~ paid to these states may not be claimed on the Indiana return.

The credit will be allowed only upon the presentation to the Indiana Department of Revenue of a tax return of the other state properly certified as to the payment of the tax liability shown thereon.

Such taxpayers should complete Indiana Individual Income Tax Return, Form IT-40. Credit for taxes paid to other states is entered in total credit and a supplemental schedule showing computation of the credit is attached to Form IT-40.

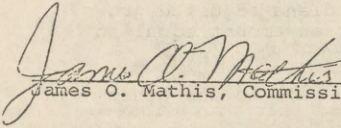
E X A M P L E

Total Income	\$ 10,000.00
Income from Indiana	6,000.00
Income from other state	4,000.00
Tax paid in other state	80.00
Total Exemptions	3,000.00

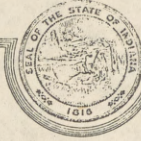
Calculation of Indiana Adjusted Gross Income Tax

Total Income	\$ 10,000.00
Less Exemptions	3,000.00
Taxable Income	\$ 7,000.00
Tax Rate	2%
Adjusted Gross Income Tax	\$ 140.00
Credit for tax paid in other state	
Income from other state	\$ 4,000.00
Indiana rate	2%
*Tax credit	\$ 80.00
<u>Balance of Tax Due</u>	\$ 60.00

*Must not be greater than actual tax paid in other state.


James O. Mathis, Commissioner

STATE OF INDIANA



INDIANAPOLIS

DEPARTMENT OF REVENUE
STATE OFFICE BUILDING

46204

CIRCULAR IT-9
(Revised)

June 13, 1969

TO: ALL INTERSTATE MOTOR-TRUCK TRANSPORTATION COMPANIES
SUBJECT: METHOD OF APPORTIONMENT AND DETERMINATION OF INDIANA
ADJUSTED GROSS INCOME FOR INTERSTATE MOTOR-TRUCK
TRANSPORTATION COMPANIES

This circular replaces Circular IT-9, dated November 20, 1963. On and after the above date, June 13, 1969, all statements contained in previous circulars issued by the Department, which are in conflict herewith, are null and void.

The Department of Revenue has determined that the use of the three-factor apportionment formula as provided in Section 204 of the Adjusted Gross Income Tax Act will not fairly represent the adjusted gross income of interstate motor-truck transportation companies derived from sources within Indiana.

The Department, therefore, pursuant to authority provided by Section 204 (m) of the Adjusted Gross Income Tax Act, requires such companies to apportion their adjusted gross income on the basis of "over-the-road" miles operated. If this provision does not fairly represent the transportation company's income derived from sources in Indiana, the company may petition the Department with an alternate method of apportionment as provided in the same section of the Act. Any alternate method of apportionment or allocation must be approved by the Department. The change in methods will apply only to the current and subsequent tax years.

Under this mileage apportionment formula, the adjusted gross income (net taxable income for federal tax purposes with Indiana adjustments) of an interstate motor-truck transportation company (either a corporation or nonresident person) shall be determined by multiplying the taxpayer's total adjusted gross income from all sources both within and without the state of Indiana by the following fraction.

$$\frac{\text{Total Number of "Over-the-Road" Miles in Indiana}}{\text{Total Number of "Over-the-Road" Miles Everywhere}}$$

James O. Mathis
James O. Mathis, Commissioner

STATE OF INDIANA



INDIANAPOLIS

DEPARTMENT OF REVENUE
STATE OFFICE BUILDING

46204

CIRCULAR IT-4
(Revised)

September 28, 1967

SUBJECT: INDIANA - KENTUCKY, MICHIGAN, AND WISCONSIN RECIPROCITY AGREEMENT

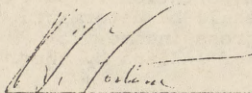
This circular replaces Circular IT-4 dated August 1, 1963. On and after the above date, September 28, 1967, all statements contained in previous circulars issued by the Department, which are in conflict herewith, are null and void.

A reciprocal income tax agreement now exists between Indiana and the states of Kentucky, Michigan, and Wisconsin. The reciprocal agreement with Michigan will commence October 1, 1967.

These agreements provide that Indiana will not impose its adjusted gross income tax upon salaries, wages, and commissions earned by legal residents of Kentucky, Michigan, and Wisconsin working in Indiana. Kentucky, Michigan, and Wisconsin will not, in turn, impose their individual income taxes on salaries, wages, and commissions earned by legal residents of Indiana working in those states.

Employers of legal residents of Kentucky, Michigan, and Wisconsin working in Indiana need not withhold the Indiana adjusted gross income tax from salaries, wages, and commissions paid to such residents. For the sake of better tax compliance and administration, it is urged that the employer withhold the tax which is applicable in the employee's state of residence.

The employees, however, will be required to submit to Indiana employers an affidavit as to their legal residence in the mentioned states of Kentucky, Michigan, and Wisconsin.


Wm. L. Fortune
Commissioner

THE FOREGOING INTERPRETATIONS
WILL BE ADHERED TO AND APPLIED
UNTIL CHANGED OR RESCINDED BY
THE DEPARTMENT OF REVENUE, OR
UNTIL REPLACED BY OFFICIAL RE-
GULATION OR NULLIFIED BY COURT
DECISION OR OFFICIAL OPINION OF
THE ATTORNEY GENERAL.

RECIPROCAL INCOME TAX AGREEMENT BETWEEN STATE OF INDIANA AND
STATE OF MICHIGAN

Whereas, under the existing laws and regulations of the State of Indiana and the State of Michigan, a Michigan resident, who at no time during the taxable year was a resident of Indiana, and who is employed in Indiana and deriving income from salaries, wages, and commissions, or an Indiana resident, who at no time during the taxable year was a resident of Michigan, and who is employed in Michigan and deriving income from salaries, wages, and commissions may be relieved from the filing of a nonresident income tax return in the state of employment; and a Michigan employer of an Indiana resident and an Indiana employer of a Michigan resident may be relieved from withholding income tax from the salary or wages of such persons; and

Whereas, the laws and regulations of Michigan and Indiana include reciprocal provisions under which such nonresidents are exempt from net income taxes on income from salaries, wages, and commissions, to the state of nonresidence provided the state of residence of such nonresident individuals allows a substantially similar exemption, and employers are exempt and relieved from withholding income tax provided the state of residence of such nonresident individuals allows a substantially similar exemption; and

Whereas, large numbers of citizens and residents of Michigan and Indiana, who do not at any time during the taxable year become residents in their state of employment, earn their livelihood in the neighboring state; and

Whereas, it is the intention and desire of the taxing authorities of the respective jurisdictions to collect taxes from their respective residents and relieve such nonresidents of the burden of filing nonresident income tax returns in their nonresident state of employment, and employers of the burden of withholding income tax from such nonresidents;

Now, therefore, pursuant to and in conformity with the laws and regulations of their respective jurisdictions, the State of Indiana, by and through its Commissioner of Revenue, William L. Fortune, and the State of Michigan, by and through its Commissioner of Revenue, -----, do hereby covenant and agree to the following:

1. This is to establish an exemption policy which affects the filing of nonresident returns and the assessment of state income tax on nonresidents beginning October 1, 1967.

a. With respect to residents of the state of Indiana who are not residents of Michigan on or after October 1, 1967, and who are employed in Michigan and whose only income from Michigan sources is in the form of salaries, wages, or commissions. The Michigan Department of Revenue will not assess such nonresidents or require such individuals to file a nonresident Michigan income tax return.

b. With respect to residents of Michigan who are not residents of Indiana at any time during the taxable year and who are employed in Indiana and whose only income from Indiana is in the form of salaries, wages, or commissions. The Indiana Department of Revenue will require such individuals to file a nonresident return and be assessed on only the income received prior to the above date of October 1, 1967.

2. To establish a mutual exemption policy which affects the employers and the withholding of state income tax from the employees which becomes effective October 1, 1967.

a. With respect to employers located in the State of Indiana who employ Michigan residents, who are not residents of Indiana at any time during the taxable year, the Indiana Department of Revenue will not require such employers to withhold Indiana income taxes from the wages or salaries of such Michigan residents who file with their employers certificates of nonresidence.

b. With respect to employers located in the State of Michigan who employ Indiana residents, who are not residents of Michigan at any time during the taxable year, the Michigan Department of Revenue will not require such employers to withhold Michigan income taxes from the wages or salaries of such Indiana residents who file with their employers certificates of nonresidence.

3. To establish a mutual exemption policy which affects the taxpayers filing nonresident returns for the taxable year beginning on or after January 1, 1968, and which provides as follows:

a. With respect to residents of the State of Indiana, who are not residents of Michigan at any time during the taxable year and who are employed in Michigan, and whose only income from Michigan sources is in the form of salaries, wages, or commissions, the Michigan Department of Revenue will not require such individuals to file a nonresident Michigan income tax return.

b. With respect to the residents of the State of Michigan, who are not residents of the State of Indiana at any time during the taxable year and who are employed in the State of Indiana, and whose only income from Indiana sources is in the form of salaries, wages, or commissions, the Indiana Department of Revenue will not require such individuals to file a nonresident Indiana income tax return.

Executed in duplicate, this the ----- day of -----, 1967.

-----,
Commissioner of Revenue,
State of Indiana.

-----,
Commissioner of Revenue,
State of Michigan.

STATE OF ILLINOIS,
DEPARTMENT OF REVENUE,
Chicago, March 19, 1970.

HON. WARREN G. MAGNUSON,
Chairman, Commerce Committee of the U.S. Senate,
Senate Office Building, Washington, D.C.

DEAR SENATOR MAGNUSON: The Department of Revenue of the State of Illinois expressed opposition to the enactment of S. 2044.

First, S. 2044 deals only with transportation workers. This is a discriminatory classification which cannot be justified. The operating methods of multistate businesses do not support such a classification. The problem which S. 2044 attempts to solve extends far beyond the limited class of employees of interstate carriers.

Second, the designation of the state of residence as the exclusive withholding state negates both the true purpose of withholding and the business realities of a mobile work force. Withholding of income taxes is merely a method of advance payment of a tax liability and thus any rules regarding withholding should parallel the ultimate tax liability. The state which is the center of the employee's activity is the state which has the proper jurisdictional and substantive claim to taxes on wages earned. It is the failure of certain states to recognize that an employee's services can be localized in one state which has caused the present withholding problems. The nature of the contemporary work force is such that the nexus of the employee's services can with less certainty be equated with his residence.

Third, S. 2044 is a Federally imposed remedy to a unique state problem. Illinois is a member of the Multistate Tax Commission which is working currently on this problem. The Commission will recommend remedial legislation shortly.

Unlike some other states, Illinois does believe that an actual problem exists in the area of multiple withholding by employers and multiple tax liability for employees. Illinois believes that withholding should take place in only one state and that tax liability should arise in no more than two states: the state of employment and the state of residence, which should give a credit to residents for taxes paid to the state of employment. If other states would adopt the provisions existing in the Illinois Income Tax Act, this objective would be achieved.

The Illinois Act uses a single concept to determine (1) the numerator of the payroll factor of a multistate business; (2) the imposition of tax on compensation paid to nonresidents; and (3) compensation subject to withholding. The use of a single concept greatly eases the compliance burden of employers and employees.

The compensation treated in each case above is "compensation paid in Illinois." Compensation is "compensation paid in Illinois" if:

- (i) The individual's service is performed entirely within this State;
- (ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or
- (iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

This concept has been used for a number of years by all states in the Uniform Unemployment Compensation Act; it is the numerator of the payroll factor in the Multistate Tax Compact and in the Uniform Division of Income for Tax Purposes Act. Thus, this concept has been widely used and accepted in state taxation. Illinois has extended the concept to determine when an employer must withhold and when a nonresident is subject to tax on compensation.

The use of this concept provides that withholding take place in the state which is the employee's center of economic activity. There would be withholding in no other state. If the employee were a resident, he would be totally taxable on such compensation. If a nonresident, the employee would be totally taxable on the compensation because it would be compensation paid within the state. Of course, a state must give its residents credit for tax on compensation paid in another state or double taxation would result. (All states now do this or have a system of deduction which reaches the same result).

An employee would file no more than two returns; one where he works and one where he resides and in most cases these places are the same, resulting in the filing of only one return.

The base for withholding, the base for unemployment compensation tax, and the numerator of the payroll factor are all the same. This greatly simplifies an employer's record-keeping burden. Furthermore, the law applies to all employees, not only to transportation workers.

In conclusion, we urge that S. 2044 not be enacted. But if you believe that Federal legislation is necessary, we urge you to give careful consideration to the Illinois solution to the problem.

Sincerely,

GEORGE E. MAHIN,
Director of Revenue.

STATE OF NORTH DAKOTA,
OFFICE OF STATE TAX COMMISSIONER,
STATE CAPITOL,
Bismarck, N. Dak., July 8, 1970.

Hon. QUENTIN BURDICK,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR BURDICK: The Multistate Tax Commission, of which North Dakota is a member, has just written to inform us that Congress is likely to act on S. 2044 or H.R. 10634, its companion bill, within the next few days. Further, the Multistate Tax Commission reports that one of these measures is likely to pass without the changes which have been suggested by the Multistate Tax Commission.

S. 2044 and H.R. 10634 would allow only the state of residence of an interstate carrier employee to require withholding from earnings of that employee. The bills would prevent all other states from obtaining, from the carrier, reports concerning that employee's earnings. On the other hand, the Multistate Tax Commission's proposed alternative would limit withholding to that state from which more than 50% of the employee's earnings were derived. In most cases this would result in withholding for the state of residence, only, since either more than 50% of the earnings would be derived from that state or since, alternatively, more than 50% of his earnings would not have been derived from any state other than the state of residence in which case only the state of residence could require withholding.

If you are required to vote on S. 2044 or H.R. 10634 without the changes suggested by the Multistate Tax Commission, I would urge you to vote against either of the proposals. The Multistate Tax Commission's proposed alternative is in North Dakota's best interests. Thank you for your consideration.

Sincerely,

BYRON L. DORGAN,
Tax Commissioner.

MARCH 20, 1970.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Committee on Commerce,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR MAGNUSON: The New York State Department of Taxation and Finance has just completed a review of Senate Bill 2044 and we are opposed to its enactment.

We understand that you have kept the Committee record open to allow for filing of additional statements on this measure. We have, therefore, prepared the attached statement for insertion in the record.

Sincerely,

(Signed) NORMAN F. GALLMAN,
Acting Commissioner.

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TO: The Committee on Commerce of the United States Senate
RE: Position on S. 2044

The New York State Department of Taxation and Finance is opposed to S. 2044. The bill would amend the Interstate Commerce Act and the Federal Aviation Act of 1958 to prohibit the withholding of state income taxes from wages or salaries paid to certain employees of truck, rail and air carriers. The bill also would prohibit the filing of information returns or reports with respect to such wages or salaries with any state or subdivision other than the state or subdivision of the employee's residence.

It seems apparent that the chief beneficiaries of this proposal would be a relatively small class of individual employees who would, for most practical purposes, be exempted from the payment of income taxes legally due on a nonresident basis to states in which they earn their income. The proposed elimination of the withholding and information requirements would so hamper the administration of state income tax laws as to constitute an unwarranted impairment of rights of the states to impose taxes within their respective jurisdictions.

New York's requirements for withholding of taxes from non-resident's wages or salaries are certainly not burdensome to the employee and their flexibility eases the burden upon the employer.

In meeting requirements that employers withhold on that proportion of wages which days worked in New York bears to total working days, the previous year's experience may be used. In addition, no withholding is required where it appears that the wages for services rendered in New York will not exceed the employees' personal exemptions. In general, it has been our experience that employees prefer exact withholding and sometimes initiate complaints when employers are not withholding or are underwithholding. Thus, assuming that employees will discharge their obligations to New York, they will receive no benefit from the bill.

It is difficult to assess the burden of withholding and preparation of information returns which the employer is required to shoulder. Certainly, we may assume that multiple state withholding requirements add to the burden of withholding to some degree--but not necessarily to a disproportionate degree. Many employers, especially interstate employers, are making use of advanced payroll processing methods involving the use of high speed electronic data processing equipment. The trend is towards the use of this equipment which eases the burden greatly because the addition of several payroll items produces no strain on the machines in use. In some of the interstate industries, high speed electronic data processing equipment is reducing the number of employees of the industry. It would seem anomalous to pass this bill solely on the basis of reducing the burden on employers at a time when our progressive technology is eliminating much of the burden claimed.

To recapitulate, S. 2044 would inconvenience the honest employee who would continue to discharge his tax obligations; withholding is an acceptable burden upon employers, not demonstrated to be unreasonable in the cases in question; furthermore, the withholding burden on employers is being greatly eased because of advanced payroll techniques. Finally, of course, the revenues of the states would be adversely affected because tax evasion would be encouraged.

AIR TRANSPORT ASSOCIATION

OFFICE OF THE PRESIDENT
STUART G. TIPTON

1000 CONNECTICUT AVENUE, N.W.
WASHINGTON, D. C. 20036

February 20, 1970

Honorable Warren G. Magnuson
Chairman
Committee on Commerce
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

On behalf of the scheduled, certificated airlines of the United States, the Air Transport Association of America is pleased to file these comments in support of S. 2044, a bill to amend the Interstate Commerce Act and the Federal Aviation Act to exempt certain wages and salary of employees from withholding for tax purposes under the laws of states or subdivisions thereof other than the state or subdivision of the employee's residence.

S. 2044 is designed to protect the instrumentalities by which interstate commerce is conducted from unduly burdensome and duplicative tax compliance procedures. It would amend the Interstate Commerce Act and the Federal Aviation Act in order to exempt wages and salary of certain employees of regulated interstate transportation carriers from withholding for tax purposes under the laws of states or subdivisions thereof in instances other than those involving the state of that employee's residence. We are in agreement with its purpose.

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

In the case of air carriers receiving public service payments, the Federal government would be paying a portion of these additional costs.

We believe that such a burdensome development should not be permitted. We, therefore, support S. 2044 with a suggested amendment to section 4, that section of the bill dealing with aviation, intended to clarify its application and purpose. The suggested amendment would not in any way affect the liability of any individual to pay any tax on his income which any state or political subdivision might levy.

The suggested change clarifies the primary intent of the bill by precluding states and their political subdivisions from requiring the withholding of employees' wages solely by reason of the fact that some portion thereof may have been earned in the course of performing duties on board aircraft in or over the geographical area of a state or its subdivisions without reference to any other justification, such as residence of the employee within the state or the location therein of his principal place of employment. We suggest, therefore, that lines 11 through 17 of page 5 of S. 2044 be stricken and the following inserted in lieu thereof:

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

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

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

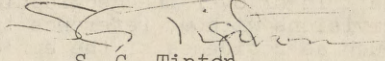
"Sec. 1112. (a) No part of the wages or salary paid by any air carrier to an employee who performs his regularly assigned duties as such an employee on an aircraft engaged in air transportation in more than

one state shall be withheld for tax purposes pursuant to the laws of any state or subdivision thereof solely by reason of the operation of such aircraft into any state or subdivision thereof; nor shall such carrier file any information return or other report for tax purposes with respect to such salary or wages with such state or subdivision thereof."

As thus amended, S. 2044 has our full support.

We respectfully request the Committee to adopt the suggested amendment and ask that this letter be included as part of the hearing record.

Cordially,



S. G. Tipton

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

KEITH H. MILLER, GOVERNOR

POUCH S--JUNEAU 99801

March 25, 1970

The Honorable Warren G. Magnuson
Chairman, Senate Commerce Committee
United States Senate
Room 5202 Senate Office Building
Washington, D. C. 20510

Re: S. 2044 - Taxation of Transportation Workers

Dear Senator Magnuson:

On March 4, 1970 the Senate Commerce Committee held hearings on S. 2044. This bill would limit the withholding of state income taxes from the wages of transportation workers involved in the movement of commerce between states. I understand that at those hearings many unkind things were said about our great State of Alaska. Because of this I am writing to you to review Alaska's history in this area. Also to point out that S. 2044 and its companion House Bill H.R. 1240 fail to solve the problems for which they were introduced.

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

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

In February, 1969 six union representatives from the Maritime Tax Reform Committee, including three from seamen's unions, two from the teamsters union, and one from the airline pilots union came to Juneau and for several hours poured out their grievances to the State of Alaska for asserting its right to the tax. One

of the group's requests was a complete dropping of any claim by Alaska for income taxes from transportation workers who reside outside the State of Alaska. The union representatives claimed they were willing to pay a state income tax. However they objected to having to pay it to several states and also objected to having to file multiple returns.

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

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

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

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

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

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

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

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

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

H. R. 1240 and S. 2044 are defective because they do not solve the problem of relieving transportation workers of paying taxes to various states or filing multiple returns. Outside of withholding for only one state the only thing these bills do is to relieve the employer of having to furnish any information to states other than the state of residence listed on the employer's records. If the employee lists as his residence a state that does not have an income tax there would be no income tax paid to any state because no other state could obtain the records to ascertain the error or fraud.

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

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

in the State of Utah. Under H. R. 1240 and S. 2044 Utah would receive nothing. Or take the case of a truck driver or bus driver who drives from Grants Pass, Oregon near the California border to Los Angeles. California would receive nothing even though it furnished virtually all of the roads and police protection.

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

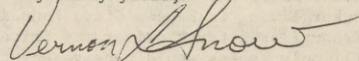
Intrastate transportation complicates the interstate problem. For example, many of Alaska Airlines flight crews probably handle more intrastate business than interstate. The same is true of many bus drivers and railroad workers. What part of the transportation workers wages do the workers seek to have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

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

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

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

Very truly yours,



Vernon L. Snow
Deputy Commissioner

VLS/ge

cc: Members Senate Commerce Committee
Eugene Corrigan, Executive Director, Multistate Tax Commission
Charles Conlon

Statement of Charles F. Conlon,
Executive Secretary National Association of Tax Administrators

The tax commissioners of the following states

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

express their opposition to the enactment of S. 2044 on several grounds:

- (1) That it is undesirable on principle
- (2) That there is no evidence of multiple withholding situations involving numerous states and small amounts of tax sufficient to warrant congressional intervention
- (3) That the states have taken action in many instances to eliminate multiple withholding
- (4) That the prohibition of withholding and information returns is tantamount to providing a tax exemption for the employees affected
- (5) That the bill is much too broad and would prevent withholding and information reports to be made to a state where an employee earns 90 percent or more of his income, and

- (6) That, in any case the prohibition on withholding of information reports should not apply to a state, other than the state of residence, which is the employee's basing point or duty station or in which he earns a substantial proportion of his income, say, one-third or more.

Double Taxation Not Involved

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

Legislation Not Necessary

The earlier hearings on similar proposals before the Congress suggest that the carrier proponents of federal legislation are mostly concerned with the possibility of multiple withholding burdens rather than with actual conditions. There have been some cases where trucking companies have been nominally subject to withholding requirements on small amounts of employees' earnings but these instances were speedily dealt with by state action. In fact,

between the time hearings were held on S. 1719 before the Senate Commerce Committee in February 1964, and the hearing before the House subcommittee in August of that same year, the specific sources of complaint cited by the trucking industry had already been eliminated.

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

For example, the North Carolina Department of Revenue has an agreement of the type referred to with its neighboring states of South Carolina and Virginia, providing for the withholding of income tax from employees of common carriers on the basis of residence, unless the employee has his principal job situs in a state other than his state of residence. The commissioner of revenue will make a similar agreement with any other state where a multiple withholding problem might arise. This agreement further provides that an employer may discontinue withholding if the North Carolina resident works outside the state and his employer is required to withhold for another state.

West Virginia similarly has reciprocal agreements with its neighboring states of Virginia, Kentucky, and Maryland. South

Carolina has agreements with North Carolina and Georgia.

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

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

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

Within the past year, a number of states have been surveyed to ascertain whether there have been complaints from carriers of one kind or another in respect to withholding or reporting requirements. This survey indicated there had been no substantial change in the situation in the past five years. Complaints were reported by only a few states and most of these had been worked out satisfactorily, the principal exception being the case of the seamen

employed in Alaska waters. The objection there, it should be noted, is to the payment of any tax at all.

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

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

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

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

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

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

Minnesota: Reciprocal agreements with Wisconsin and North Dakota

- Missouri: No withholding on nonresident carrier employees unless a substantial portion of the employee's duty time is spent in Missouri or the employee is based at a terminal in the state.
- Montana: Does not require withholding from nonresident employees engaged exclusively in interstate commerce except where the point of duty ends or begins in the state (base of operations).
- Nebraska: New income tax. One overwithholding situation which it is expected will be worked out satisfactorily. Reciprocal agreements authorized.
- New York: Taxable income proportioned according to the number of total working days in the state; if it may be reasonably expected that earnings will not exceed exemptions, no withholding is required.
- Oklahoma: No complaints. Airline flight personnel subject to withholding only if residents of state.
- Wisconsin: Minimum for withholding \$1,500. No withholding on nonresident flight personnel. Any information to the contrary is incorrect.

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

Tantamount to Exemption

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

The consequences of such a policy would be acute in border areas between states and particularly so in metropolitan border areas. Consider, for example, a situation where an employee resident in a border city in State A derives 95% of his income from service performed almost wholly in neighboring State B on a regular daily trip basis. Under existing law, the employer withholds the tax due State B. Under the bill, S. 2044, the employer would not withhold the tax and would not even file an information return. The likelihood is that the employee would not pay any income tax either. It is true that the bill does not purport to affect the employee's liability for taxes in any state but in practice unless the employee voluntarily files a return it is going to be virtually impossible for the tax department in State B to identify and locate that taxpayer, let alone collect the tax from him. In fact, if the employer does not maintain a place of business in the adjoining state (state of employee's residence), it is quite likely that no state--neither the state of employment nor the state of residence will have any direct information as to the source or amount of the employees earnings.

Bill Much Too Broad

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

Moreover, a non-carrier employee in a substantially similar situation would be subject to withholding and his employer would have to comply with this requirement. Why should the carrier employer and the carrier employee be treated any differently from any other employer or employee similarly situated? The answer is, of course, that they should not be treated differently. It is one thing to say that by virtue of the extreme mobility of some carrier employees, both the carrier and the employee should be protected against multiple withholdings on small amounts of income earned in operations among many states. It is quite

another thing to say that in identical factual situations, there will be one rule for employers and employees generally and another rule for carriers and their employees. Yet, this is precisely the result that will follow from the enactment of S. 2044 as the bill stands now.

This suggests that if all other objections to the bill were not persuasive, at the very least S. 2044 should be amended so as to provide that the prohibition against withholding and information reporting is not effective as to any state (1) which is the employee's base point or duty station, or (2) in which a substantial proportion of the employee's service is performed, say one-third, or more. The tax jurisdiction of the base-point state was specifically recognized and approved in the statement of the Teamster Union representative on a bill similar to S. 2044 in the 88th Congress.¹

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

¹Sidney Zagri, Legislative Counsel, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Hearing, S. 1719, 88th Cong. 2d Sess., February 24, 1964, pp. 50, 53.

comments on this point are spelled out in a separate letter to the Committee on Commerce.

The state tax agencies which join in the presentation of this statement are listed on the following page.

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

STATE OF NEBRASKA

Norbert T. Tiemann, GOVERNOR

Murrell B. McNeil, TAX COMMISSIONER

Box 4818 State Capitol
Lincoln, Nebraska 68509S. Committee Comm.
H. Comm. 415 6/18
Dept. of Revenue

July 15, 1970

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Honorable Roman Hruska
United States Senator - Nebraska
Washington, D. C.

ROMAN L. HRUSKA

RE: S. 2044 and H. R. 10634

Dear Senator Hruska:

I have been informed that Congress will consider the passage of S. 2044 or H. R. 10634, its companion bill, within the next few days, without making the changes suggested by the Multistate Tax Commission.

You will recall that S. 2044 and H. R. 10634 would allow only the state of residence of an interstate carrier employee to require withholding from earnings of that employee. In doing so, they would seriously jeopardize our ability to collect tax on substantial earnings derived from within our state by carrier employees. The significance of the danger would be increased if the "state of residence" philosophy was extended to earnings other than those of operating employees of interstate carriers. I am told that such an extension will be sought in the event that one of the above bills passes.

The Multistate Tax Commission, of which Nebraska is a Regular Member, has taken active steps to examine the proposed federal legislation and to suggest equitable alternatives. The Commission's resulting proposal would have much the same effect on carrier withholding as does the proposed legislation but would avoid the potential problems which that legislation would produce.

The Multistate Tax Commission's proposal would limit withholding to that state from which more than fifty percent of the employee's earnings are derived during a calendar year. If the employee's work is so distributed that more than fifty percent of total earnings are not derived from any one state, then withholding is required for the state of residence only. In the case of carrier operating employees, most of whom work in several states, this would result in withholding only for the state of residence. Yet, it would preserve the important philosophical point that the state from which the preponderance of earnings is derived is entitled to withholding.

In the case wherein more than fifty percent of the earnings are derived from a state other than the state of residence, the state of residence can still require an information return from the employer, an important aid to good tax administration for every state.

The Multistate Tax Commission's proposal, in the form of uniform state legislation, was virtually unanimously approved by the regular members of the Multistate Tax Commission at its recent June meeting in Chicago, only Arkansas voting against it. That proposal has now been converted into a proposed federal bill which is enclosed herewith.

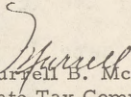
I urge your immediate support of the Multistate Tax Commission's proposal and request that you take such action as is necessary to return S. 2044 and H. R. 10634 to Committee for Amendments in accordance with the enclosed Multistate Tax Commission proposal; or, alternatively, that you sponsor the enclosed bill.

Because of Congress' apparent intention to pass legislation in this area and in view of the strong support of the original proposal by the Multistate Tax Commission's members, you should expect to receive assistance and support from the Regular Member States of the Multistate Tax Commission and additional support from many of the other states who are Associate Members of the Multistate Tax Commission.

Your consideration and support of this suggestion will be deeply appreciated.

With best wishes to you and your staff, I remain

Very truly yours,


Murrell B. McNeil
State Tax Commissioner

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% 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 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% 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 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% 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% 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. 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% 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. 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.