634. Also, memorial of Reno Stock Exchange, expressing its disapproval of revenue stamp taxes on corporation stock and indorsing the amendment to the tax bill proposed by Senator HARRISON providing for the repeal of said stamp taxes; to the Committee on Ways and Means.

635. By Mr. CELLER: Petition of the Kings County Republican Club, of New York City, urging reward to the aliens of the steamship *Roosevelt* with United States citizenship; to the Committee on Immigration and Naturalization.

636. Also, resolution adopted by the American citizens of Polish descent, 569 East Fifth Street, New York City, seeking to amend the immigration act of 1924 so that the wives, husbands, unmarried minor children, and parents of citizens of the United States, and of permanent residents who have declared their intention to become citizens of the United States, may be admitted as nonquota immigrants; to the Committee on Immigration and Naturalization.

637. By Mr. DARROW: Memorial of the Philadelphia Board of Trade, opposing the enactment of Senate bill 2289, to stimulate commerce in agricultural products, etc.; to the Committee on Agriculture.

638. By Mr. GARBER: Letter from the Chamber of Commerce, Fort Dodge, Iowa, protesting against Senate bill 575, known as the Gooding long-and-short-haul bill; to the Committee on Interstate and Foreign Commerce.

639. Also, report of the committee of the Northwestern Baptist Association in regular annual session at Buffalo, Okla., October 15, 1925, opposing any change in the prohibition law, the Volstead Act, or eighteenth amendment to our National Constitution; to the Committee on the Judiciary.

640. Also, resolution by the Ohio Wholesale Grocers' Association Co. relating to Federal legislation legalizing resale-price maintenance; to the Committee on Interstate and Foreign Commerce.

641. Also, petition by Fort Whipple Chapter No. 3, of the Disabled American Veterans of the World War, suggesting amendments to World War veterans act of 1924; to the Committee on Military Affairs.

642. Also, resolution of the New Mexico Cattle and Horse Growers' Association, indorsing Senate bill 595, known as the Gooding long-and-short-haul bill; to the Committee on Interstate and Foreign Commerce.

643. Also, resolution by the Associated Traffic Clubs of America, stating that the Congress should pass a law charging the Interstate Commerce Commission with the regulation of motor vehicles when engaged in interstate commerce; to the Committee on Interstate and Foreign Commerce.

644. Also, resolution of the National Preservers' Association, authorizing the officers and executive board of their association to oppose the enactment of Senate bill 481 and House bill 39; to the Committee on Agriculture.

645. By Mr. KVALE: Petition of the Evansville Parent-Teachers' Association, resolving that the education bill before Congress should be enacted into law; to the Committee on Education.

646. Also, petition of the Willmar Branch Railway Mail Association, Tenth Division, resolving to go on record as expressing their approval of the following bills: Lehlbach retirement bill, Kelly bill (H. R. 4476), Kelly bill (H. R. 4477), Kelly bill (H. R. 5697), Griest bill (H. R. 3838), Mead bill (H. R. 3508), Schneider bill (H. R. 14); to the Committee on the Post Office and Post Roads.

647. Also, petition of the Alexandria Commercial Club, favoring the establishment of a Great Lakes-St. Lawrence waterway; to the Committee on Rivers and Harbors.

648. Also, a petition of Business Forum of Minneapolis, for the construction of the St. Lawrence ship canal for the bringing of ocean shipping into the Great Lakes, by providing a channel around the rapids of the St. Lawrence River between Montreal and Lake Ontario; to the Committee on Rivers and Harbors.

649. Also, petition of several farmers to secure the passage of an amendment to the present immigration laws that will protect their interests in the event of the development of a shortage in the supply of farm laborers; to the Committee on Immigration and Naturalization.

650. Also, petition of representatives of 60 country members of the Federal reserve system in central and northern Minnesota relative to Federal reserve system; to the Committee on Banking and Currency.

651. By Mr. O'CONNELL of New York: Petition of the Upper Bushwick Civic Association of Brooklyn, N. Y., requesting the Congress to bring the coal strike to a settlement and to put an end to the existing deadly tragedy, the privations and hardships of the very poor people being frightful; to the Committee on Interstate and Foreign Commerce.

SENATE

THURSDAY, *February 11, 1926*

(Legislative day of Monday, February 1, 1926)

The Senate reassembled at 11 o'clock a. m., on the expiration of the recess.

The VICE PRESIDENT. The Senate resumes the consideration of House bill No. 1.

TAX REDUCTION

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 1) to reduce and equalize taxation, to provide revenue, and for other purposes.

Mr. SMOOT. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	Fernald	King	Robinson, Ind.
Bayard	Ferris	La Follette	Sackett
Blease	Fess	Lenroot	Sheppard
Borah	Fletcher	McKellar	Shipstead
Bratton	Frazier	McLean	Shortridge
Brookhart	George	McNary	Simmons
Broussard	Gerry	Metcalf	Smith
Bruce	Gillett	Moses	Smoot
Butler	Glass	Neely	Stanfield
Cameron	Goff	Norbeck	Stephens
Capper	Hale	Norris	Swanson
Copeland	Harreld	Nye	Trammell
Couzens	Harris	Oddie	Tyson
Cummins	Harrison	Overman	Wadsworth
Curtis	Heflin	Pepper	Walsh
Dale	Howell	Phipps	Warren
Deneen	Johnson	Pine	Watson
Dill	Jones, Wash.	Ransdell	Weller
Edge	Kendrick	Reed, Mo.	Willis
Ernst	Keyes	Reed, Pa.	

Mr. SHEPPARD. The junior Senator from Texas [Mr. MAYFIELD] is absent on account of illness. This announcement may stand for the day.

The VICE PRESIDENT. Seventy-nine Senators having answered to their names, a quorum is present.

Mr. SMOOT. Mr. President, I ask that the Senate turn to page 135 of the bill. At the request of the Senator from Nebraska [Mr. NORRIS], the amendments on that page, in line 5, line 18, and line 22, involving the insertion of the words "without assessment," were passed over. The Senator from Nebraska has made an examination of the reasons why the words were inserted, and he has no objection now to the amendments.

The VICE PRESIDENT. The clerk will state the first amendment.

The CHIEF CLERK. On page 135, line 5, after the word "court," insert the words "without assessment."

The VICE PRESIDENT. Without objection, the amendment is agreed to.

The CHIEF CLERK. On page 135, line 18, after the word "court," insert the words "without assessment."

The VICE PRESIDENT. Without objection, the amendment is agreed to.

The CHIEF CLERK. On page 135, line 22, after the word "court," insert the words "without assessment."

The VICE PRESIDENT. Without objection, the amendment is agreed to.

Mr. SMOOT. I yield to the Senator from Wyoming [Mr. WARREN] to submit a report from the Committee on Appropriations.

URGENT DEFICIENCY APPROPRIATIONS

Mr. WARREN. Mr. President, from the Committee on Appropriations I report back favorably with amendments the bill (H. R. 8722) making appropriations to supply urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1926, and prior fiscal years, to provide urgent supplemental appropriations for the fiscal years ending June 30, 1926, and June 30, 1927, and for other purposes, and I submit a report (No. 165) thereon. I give notice that I shall seek to call up the bill immediately on the conclusion of the consideration of the revenue bill.

The VICE PRESIDENT. The bill will be placed on the calendar.

PER CAPITA PAYMENT TO CHIPPEWA TRIBE OF MINNESOTA

Mr. HARRELD. Mr. President, the bill (H. R. 183) providing for a per capita payment of $50 to each enrolled member of the Chippewa Tribe of Minnesota from the funds standing to their credit in the Treasury of the United States is before us now in the form of a favorable report from the Committee on Indian Affairs. I ask unanimous consent for

the immediate consideration of the bill because of some emergency features connected with it.

Mr. SMOOT. I have no objection, if it does not lead to any debate.

Mr. HARRELD. I do not think it will, because it is an emergency matter, and the department is very anxious to have the bill expedited.

Mr. SMOOT. So I am informed.

The VICE PRESIDENT. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered as in Committee of the Whole, and it was read, as follows:

Be it enacted, etc., That the Secretary of the Interior be, and he is hereby, authorized to withdraw from the Treasury of the United States so much as may be necessary of the principal fund on deposit to the credit of the Chippewa Indians in the State of Minnesota, arising under section 7 of the act of January 14, 1889 (25 Stat. L. 642), entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," and to make therefrom a per capita payment or distribution of $50 to each enrolled member of the tribe, under such rules and regulations as the said Secretary may prescribe: *Provided*, That before any payment is made hereunder the Chippewa Indians of Minnesota shall, in such manner as may be prescribed by the Secretary of the Interior, ratify the provisions of this act and accept same: *Provided further*, That the money paid to the Indians as authorized herein shall not be subject to any lien or claim of attorneys or other parties.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

PETITIONS AND MEMORIALS

Mr. WARREN presented a memorial signed by 200 citizens of Jacksons Hole, Teton County, Wyo., remonstrating against any extension of the boundaries of the Yellowstone National Park, which was referred to the Committee on Public Lands and Surveys.

Mr. WILLIS presented a petition of sundry members of the faculty of Western Reserve University, at Cleveland, Ohio, praying an amendment of existing copyright law so as to include mimeographic copies as well as copies made by the photoengraving process, which was referred to the Committee on Patents.

REPORTS OF COMMITTEES

Mr. SHORTRIDGE, from the Committee on Naval Affairs, to which was referred the bill (S. 2086) for the relief of A. T. Marix, reported it with amendments and submitted a report (No. 166) thereon.

Mr. HOWELL, from the Committee on Claims, to which was referred the bill (S. 2679) for the relief of Herman A. Lueking, submitted an adverse report (No. 167) thereon.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. EDGE:

A bill (S. 3101) for the relief of Harold Eugene McCarthy; to the Committee on Naval Affairs.

By Mr. CAPPER:

A bill (S. 3102) to modify and amend the act creating the Public Utilities Commission of the District of Columbia; to the Committee on the District of Columbia.

By Mr. SHORTRIDGE:

A bill (S. 3103) authorizing the construction of a bridge across the Colorado River near Blythe, Calif.; to the Committee on Commerce.

By Mr. WILLIS:

A bill (S. 3104) granting an increase of pension to Julia A. Leisle (with accompanying papers); to the Committee on Pensions.

By Mr. DILL:

A bill (S. 3105) granting a pension to Mary E. Kester; and

A bill (S. 3106) granting a pension to Mary Stevens; to the Committee on Pensions.

CHANGE OF REFERENCE

On motion of Mr. WALSH, the Committee on Public Lands and Surveys was discharged from the further consideration of the bill (S. 1047) to reimburse the State of Montana for expenses incurred by it in suppressing forest fires on Government land during the year 1919, and it was referred to the Committee on Claims.

AMENDMENT TO AGRICULTURAL APPROPRIATION BILL

Mr. RANSDELL submitted an amendment intended to be proposed by him to House bill 8264, the Agricultural Department appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed as follows:

On page 50, after line 17, add a new paragraph, as follows:

"For the experimental construction of airplanes to be used for the purpose of spreading arsenicals in dust form on a large field scale against the cotton boll weevil and such other insects as may be controlled by this measure; for the compensation of expert employees in this work and for the purchase of special parts, special instruments, special experimental dusting equipment, hangars, testing sheds, tools, machinery, etc., including employment of persons and means, in the city of Washington and elsewhere, $250,000."

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Farrell, its enrolling clerk, announced that the House had passed an act (H. R. 264) to amend an act to provide for the appointment of a commission to standardize screw threads, in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

An act (H. R. 264) to amend an act to provide for the appointment of a commission to standardize screw threads was read twice by its title and referred to the Committee on Manufactures.

TAX REDUCTION

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 1) to reduce and equalize taxation, to provide revenue, and for other purposes.

Mr. COPELAND. Mr. President, I would like to suggest to the Senator from Utah [Mr. SMOOT] that he carry out his original plan for night sessions until the revenue bill is concluded. There is no reason that I can see why we might not have passed the bill two days ago. I think we can and ought to stay here until the bill is completed. I am speaking this way because four or five days ago the Senator from Utah suggested, because of my interest in the coal bill, that I was filibustering.

Mr. SMOOT. Oh, no.

Mr. COPELAND. The time taken on the coal question would not begin to compare with the time the Senator from Kentucky [Mr. ERNST] occupied the other day in reading an official report. My friend the Senator from Pennsylvania [Mr. REED], the friend of the Secretary of the Treasury, has taken five times as much time defending him as we have taken in the consideration of the coal question.

My suggestion is that we remain in session to-night until we complete the revenue bill. I hope the Senator from Utah will not yield to importunities to adjourn early but will hold the Senate in session until we finish the bill.

Mr. SMOOT. Mr. President, last night the Senator from Utah would not have consented to taking a recess, but we found that we could not keep a quorum here. There were a number of Senators who made that statement when I pleaded for the Senate to remain in session until 10 o'clock.

Mr. COPELAND. Senators should stay here. It is not right to go away and break a quorum. On this side of the Chamber we desire to see the bill finished, and I hope the Senator from Utah will insist on the Senate remaining in continuous session until we complete the bill.

Mr. SMOOT. I do not confine my last suggestion to Senators on one side of the Chamber alone. Last night the suggestion came from both sides of the Chamber. I hope to have the Senate remain in session until 10 o'clock to-night.

Mr. WILLIS. Mr. President, I wish to ask the Senator from Utah a question while we are discussing this matter. Some of us have engagements that we would like to fill on occasion of Lincoln's birthday to-morrow, but I have no disposition to run away from the work now before the Senate. I simply want to know what the Senator's plans are. Can he give us any indication as to when he expects to get a final vote on the pending measure?

Mr. SMOOT. I wish to get a vote on the bill at the very earliest moment, but I do not think we shall have concluded its consideration until to-morrow evening, anyway, in view of the number of Senators who have already told me that they have amendments and the questions which will be discussed when the bill reaches the Senate. That, I will say to the Senator, would be my opinion on that subject.

Mr. WILLIS. In all probability, then, there will not be a final vote on the bill until Saturday? I understand, however, that the Senator from Utah can not speak with definiteness as to that.

Mr. SMOOT. I can not say positively, but I certainly hope we shall reach a vote on the bill by to-morrow night.

Let me say to the Senate at this time that I do hope the final vote on the bill will not be delayed later than to-morrow night. If we shall then vote finally on the bill we can have it printed and the conferees can begin work on Sunday morning. We do not wish to lose a day, and if the bill shall go over

until Saturday we shall not be able to have it printed in order to begin consideration of the bill in conference on Sunday. I would be delighted, I will say to the Senator, if the bill shall pass to-morrow.

Mr. WILLIS. The Senator from Utah, then, rather hopes to get a final vote on the bill to-morrow evening?

Mr. SMOOT. I certainly hope so.

Mr. SMITH. I desire to ask the chairman of the committee a question. I believe there are still some committee amendments remaining undisposed of, and we have agreed that those amendments shall be first considered?

Mr. SMOOT. We have still three committee amendments remaining; and I wish to say now that the subcommittee, consisting of the Senator from Pennsylvania [Mr. REED] and the junior Senator from Utah [Mr. KING], to consider the question of amendments to the administrative features have now completed that examination; and I learn from the Senator from Pennsylvania that he is now ready to offer those amendments to the administrative features of the bill which the department thinks are absolutely necessary. I ask the Senator from Pennsylvania to offer those amendments at this time.

Mr. HARRISON. Why does not the Senator from Utah take up some of the other propositions—for instance, the alcohol tax?

Mr. SMOOT. The amendments to the administrative features to which I refer will take but a very few moments, and then we can consider the subject referred to by the Senator from Mississippi.

Mr. SMITH. Mr. President, I understand there are some committee amendments which under the agreement will be first considered, and that then, immediately after their consideration, the probabilities are that we shall take up the amendments to the administrative features of the bill?

Mr. SMOOT. I should like to take up the amendments to the administrative features of the bill right now. They will lead to no discussion, and I desire to get them out of the way.

Mr. SMITH. There are some of us who have amendments which we desire to offer to the bill and to have considered before the rush of the last minute arrives.

Mr. SMOOT. When the bill shall go into the Senate after its consideration in Committee of the Whole Senators will have ample opportunity to offer their amendments.

Mr. SMITH. I understand that; but I want to "get a whack" at the bill while it is in Committee of the Whole.

Mr. SMOOT. Senators will have ample time in which to offer their amendments.

Mr. NORRIS. Inasmuch as the Senator from New York [Mr. COPELAND] is so anxious to finish the bill to-night and has announced that Senators on the other side of the Chamber are so anxious to accomplish that result, I should like to suggest to the Senator from South Carolina to take the matter up in the cloakroom with the Senator from New York and decide whether or not the Senator from South Carolina will be allowed to offer his amendment. If we shall finish the bill to-night the probabilities are that amendments of individual Senators will have to be disposed of without debate. Therefore there is not any use of the Senator from South Carolina laying the unction to his soul that he is going to have any time in which to discuss his amendments. As I understand, we are to finish the bill to-night.

Mr. SMITH. No.

Mr. NORRIS. I do not see any reason why we should not finish the bill by 1 o'clock.

Mr. SMITH. No real reason?

Mr. NORRIS. No. Just as soon as the committee amendments shall have been concluded there will be no reason why we should delay this wonderful bill and prevent this reduction of taxes from taking place immediately.

Mr. COPELAND. Mr. President, will the Senator from Nebraska yield to me?

Mr. NORRIS. I yield.

Mr. COPELAND. I simply want to say that I rejoice that the Senator from Nebraska has promised immediate action on the bill. If we are to get through by 1 o'clock it is because we have a guaranty that the Senator from Nebraska is not going to speak five hours again to-day, as he did a couple of days ago.

Mr. NORRIS. The Senator from Nebraska has no apology to make. He may speak five hours more. I consented the other day to a limitation of debate on the inheritance tax, and that agreement cut off quite a number of Senators, including myself, from calling attention to some of the sins here that the Senator from New York, who now joins in this wonderful coalition, wants to cover up.

Mr. COPELAND. I want to say to the Senator that if my sins were to be covered up it would take several weeks of the time of the Senate; but if the Senator from Nebraska will be satisfied to let us proceed I think we can get the bill through quickly.

Mr. NORRIS. We would have proceeded if it had not been for the interruption of the Senator from New York, who started this debate about finishing the bill to-day. If he had said nothing about it there would not have been anything said, and we would have been going on doing business.

Mr. COPELAND. If my being quiet will facilitate the passage of the bill, I will sit silent and will not say another word.

Mr. NORRIS. The Senator began with an apology, which I do not think was necessary, because I voted with the Senator. I suppose he will next be telling about the time that I consumed in the debate in my discussion of the coal question, which was raised by him, and will be criticizing me for that.

Mr. SMOOT. Mr. President, at this time I ask the Senator from Pennsylvania [Mr. REED] to offer the committee amendments which have been agreed upon by the subcommittee to the administrative features of the bill.

Mr. COPELAND. Mr. President, will the Senator yield to me for just a moment?

Mr. SMOOT. Yes.

Mr. COPELAND. Mr. President, I will say that my friend from Nebraska must be a little "off his feed" this morning, because we so often agree that I think he must forgive me if I disagree with him on occasions. Ordinarily, I expect to continue under his leadership as he thinks I have done in the past!

Mr. NORRIS. The Senator has not followed my leadership very closely in the last day or two. As to being "off my feed," I presume from the Senator's professional knowledge he has better judgment on that question than have I. He is probably looking after his professional income when he suggests that I need medicine, because he knows that I very often consult him about my physical condition. I did not know, however, that he had a license to practice medicine in the District. It may be that there is a bill coming to me which I had not anticipated, and that he is fishing around to get an opportunity to send another bill. [Laughter.]

Mr. REED of Pennsylvania. Mr. President, reverting to the tax bill, I move that the word "such," on page 61, in line 4, be stricken out. It is merely a grammatical correction.

The VICE PRESIDENT. Without objection, the amendment is agreed to.

Mr. REED of Pennsylvania. I send the following amendment to the desk.

The VICE PRESIDENT. The amendment will be stated.

The CHIEF CLERK. After the amendment heretofore agreed to, following line 10, on page 334, it is proposed to insert the following:

PERSONAL SERVICE CORPORATIONS

SEC. —. Any individual who has paid a tax, in accordance with section 218 of the revenue act of 1918 or section 218 of the revenue act of 1921) as a stockholder of a personal service corporation shall be entitled to a credit or refund, in the manner provided in section 284, if (a) such corporation has been finally determined not to be a personal service corporation, and (b) such corporation has paid the tax imposed by Title II of the revenue act of 1918 or Title II of the revenue act of 1921, as the case may be, and (c) claim therefor is filed within one year after the enactment of this act, or before the expiration of the period of limitations upon the filing of such claim, whichever is the later.

Mr. REED of Pennsylvania. Mr. President, in explanation of this seemingly confused amendment, it is necessary to state the conditions that have given rise to it.

Mr. COUZENS. Mr. President, will the Senator yield for a moment?

Mr. REED of Pennsylvania. I am glad to yield.

Mr. COUZENS. Will the Senator tell us what is meant by "personal service corporation" before he proceeds?

Mr. REED of Pennsylvania. Yes. A personal service corporation is one whose income is derived chiefly from the personal services of the members of the corporation. An illustration of that would be an incorporated brokerage concern or an incorporated advertising agency or an incorporated hospital. We can think of a great number of illustrations if we pause to do so. Under the excess profits tax law——

Mr. SMITH. I ask the Senator on what page the amendment comes?

The VICE PRESIDENT. The amendment is proposed to page 334 of the bill.

Mr. REED of Pennsylvania. It is a new section and comes on the last page of the bill, page 334.

Under the excess profits tax law, as the Senate will remember, we had a graduated scale of taxes running up to 80 per

cent on all that a corporation earned in excess of 8 per cent on its capital. It is perfectly obvious that the capital of these personal-service corporations is in their brains, and Congress recognized that in the early revenue laws by providing that if they were true personal-service corporations of that sort they might make their returns as individuals, including the earnings of their proportion of the corporation. That made them subject to the personal surtax, but got them away from the very high rates under the excess profits tax law. So far so good. Many cases were doubtful. The taxpayers themselves and the bureau were not sure whether the corporations did fall within the definition of personal-service corporations or whether they did not. In those cases they would make their returns as individuals and then fight out the question with the bureau as to whether they were entitled to the benefit of that provision or not. Many of those cases were decided against the taxpayers. The bureau held that they should properly be taxed as corporations and should pay this high excess-profits tax; and that was all right; we are not trying to correct that; but then the trouble came in this way: The individual had paid his tax when he made his return; he had paid it as an individual, and could not claim credit for that payment on account of the tax which was due from the corporation. So the Government had to go ahead and collect the full tax from the corporation without giving any credit for the amount of money that had been paid by the individual when he filed his individual return. The result was that the Government collected a tax both from the individual and from the corporation on the same earnings.

The Senator from Virginia [Mr. SWANSON] told us at some length the other day of a case of this sort which had come up from his State, and he showed a case that is typical of a great many. The statute of limitations had run against any claim for a refund by the individual and the assessment had been made against the corporation, and it was obvious that unless we had something like this amendment the United States would have collected two taxes on the same income.

Mr. SMITH. Mr. President, if the Senator from Pennsylvania will allow me, I think in a hospital case in my State almost identically the same situation arose as that to which the Senator is now calling attention.

Mr. REED of Pennsylvania. I think that is quite likely, and, of course, it is not fair, and we ought in all good conscience to correct it.

Mr. SMITH. As I understood that case, a member of that corporation paid his personal tax and paid on identically the same thing when the corporation tax came up.

Mr. REED of Pennsylvania. Precisely——

Mr. NORRIS. Mr. President, I thought the Senator from Pennsylvania had not concluded. Had he?

Mr. REED of Pennsylvania. Yes; I yield the floor.

Mr. NORRIS. Then, Mr. President, I want to say a few words. Perhaps I should apologize to the Senator from New York for taking up time now. So far as I am able to see, there is not any objection to this amendment; but I should like to call my colleague's attention to the amendment, if he will give me his attention.

This amendment has not been printed; has it?

Mr. SMOOT. No.

Mr. NORRIS. No one has read it, and no one has heard it read, perhaps, except from listening to the reading at the desk. I have had my attention called to a series of cases that are pending; and I have been told by the prosecuting attorney representing the Government in the trial of one of those cases, a sort of a test case, that in his judgment there are hundreds, if not thousands, of similar cases. The one that was tried as a test case is now on its way to the Supreme Court of the United States. Involved in that case was the question of the excess-profits taxes of corporations, as I understood; and last night I read the opinion of the court of appeals in which this test case was decided. The opinion seemed to be quite clear, but it had the excess-profits tax involved in it in a case where the corporation, as the judge rendering the opinion said, had been dissolved just on the eve of the enactment of the law of 1917, I think. What law was it in which that tax was repealed?

Mr. REED of Pennsylvania. The law of 1917 was the one that first established the excess-profits tax.

Mr. NORRIS. I desire to ask my colleague the date. I do not know whether or not he read the case. I was going to consult with him this morning about it.

Mr. REED of Pennsylvania. The law of 1921 repealed it.

Mr. NORRIS. Was that the bill that was enacted and became a law in October?

Mr. REED of Pennsylvania. November 23, 1921.

Mr. NORRIS. The dissolution of the corporation I am speaking of took place in August. It took place after the bill had passed the House, had come to the Senate, and had been reported by the Senate committee, because the judge referred to the fact that corporations of this kind always kept close tab on the action of Congress. It was quite apparent at the time of the dissolution of the corporation that Congress was going to enact the law which later it did enact, but which at that time had not been enacted; and the judge held, for various other reasons that it is not necessary to enumerate, that they dissolved with the intention of avoiding the corporation tax and escaping taxation.

Mr. SMOOT. What year was that?

Mr. NORRIS. I can not give the Senator the year.

Mr. REED of Pennsylvania. It must have been the year 1917.

Mr. NORRIS. It probably was.

Mr. REED of Pennsylvania. Because dissolution in 1921 would not have any bearing on that case.

Mr. NORRIS. Would any case of that kind be affected by this amendment?

Mr. REED of Pennsylvania. Not at all.

Mr. NORRIS. Can the Senator give me any information as to whether the enactment of this amendment into law would end the litigation that is pending now in which this question is involved?

Mr. REED of Pennsylvania. I do not know of any litigation involving this question, but I speak largely from ignorance. There might be such litigation that I had not heard of.

Mr. SMOOT. These are cases where they have both paid the double tax—the excess-profits tax and the individual income tax.

Mr. NORRIS. Certainly wherever a man has paid a double tax we ought to return it. There is not any question about that.

Mr. SMOOT. This applies only to the double taxes.

Mr. NORRIS. That was not involved in this case, the opinion in which I read last night.

Mr. REED of Pennsylvania. Mr. President, if the Senator will indulge me——

Mr. NORRIS. Yes; I shall be glad to do so.

Mr. REED of Pennsylvania. I will say that in another amendment, which we have already adopted, we have made very clear the liability of the transferees of corporate property upon dissolution, and have provided very distinctly that the liability of the corporation for its tax shall persist as far as that property is concerned in the hands of the transferees after its dissolution. We are trying very hard to cover such cases. I think it is already the law. The general law of corporations applicable to failure to pay a debt on dissolution, I think, protects that.

Mr. NORRIS. This particular case that I said was a test case upon which a good many other cases depend, as I understand from the affidavits that I read in the case, was one where the Government sought to hold stockholders in the corporation liable for the tax of the corporation where the corporation had dissolved, sold its property, and turned all the proceeds of it over to the members of the corporation in proportion, of course, to the amount of stock that they owned in the corporation. They were legally dissolved under the laws of the State.

Mr. SMOOT. But they ran the business as a partnership so as to escape the excess-profits tax?

Mr. NORRIS. No; they dissolved the corporation in order to do that.

Mr. SMOOT. That is what I say.

Mr. NORRIS. I have some doubt whether that corporation, which was a close corporation with only four or five stockholders, would have been held to be a personal-service corporation. The question of double taxation, however, was not involved in the case. If it had been, I should be glad to relieve them. It was simply a question of escaping taxation under the law as it existed at the time they were in business.

Mr. REED of Pennsylvania. This amendment applies only to cases where the tax has been paid twice.

The VICE PRESIDENT. The question is upon agreeing to the amendment.

The amendment was agreed to.

Mr. REED of Pennsylvania. Now, Mr. President, I ask a reconsideration of the amendment on page 334, which deals with the filing of claims for amortization; and I hope the Senate will be patient with me if I try to explain what causes my request.

The amendment already adopted provides that claims for amortization shall be permitted if filed before March 3, 1924.

If the action on this amendment is reconsidered, I propose to move that that date be changed to June 15, 1924.

There is probably no question under the income tax laws that is so complicated as this matter of amortization. The Senator from Michigan [Mr. COUZENS] and his committee have studied it exhaustively for the past two years; and I know the Senator will agree with me in the statement I have made, that it is probably the most complicated question under all of these tax laws.

To go back to the original allowance of amortization, the idea was that where a corporation or any other taxpayer had expended money to create facilities for the production of articles that would help in the prosecution of the war the taxpayer should be allowed to deduct from his income the amount by which those facilities depreciated in value on the arrival of peace. It was to give him credit for the wasted war cost, so to speak, of creating those facilities.

A typical case would be that of a factory costing a million dollars, built to produce machine guns, which after the war had a value, say, for any conceivable purpose, of half a million dollars. Obviously, there was a loss to the taxpayer, due to his effort to assist the Government during the war time. At all events, that was the philosophy of Congress in enacting this amortization law.

As I recall, it was first put in the tax law of 1918, which actually was not signed by the President until February, 1919. Then, in the law of 1921 this same right to file amortization claims was recognized; but an unfortunate clause was put in the law, the effect of which seemed to occur to nobody at the time, which said that these claims should be allowed if the claim for amortization was filed with the return of the taxpayer for the year in which the amortization was taken. Senators can see that the effect of that was to deny all claims for amortization unless they were filed with the original tax return, say in the spring of 1919 or 1920, as the case may be.

The bureau at first did not give these words that effect. They did not construe this clause in parenthesis as having that effect at all; and they settled a great many tax claims that included amortization allowances where the claim was filed long after the original return had been filed. In fact, there were two decisions by the solicitor of the bureau, to which I shall refer in a minute, which held that those amortization claims could be filed at any time within five years after the date for filing the original return. Then came a decision by the Board of Tax Appeals, which put on this clause in parenthesis, the very strict construction to which I have referred.

The Board of Tax Appeals held that the solicitor had been all wrong, and the taxpayers' lawyers had been all wrong, and the current construction of the amortization law had been erroneous, and that no claim should be allowed unless it was filed at the same instant as the original tax return. That not only defeats the intention of Congress but it works out a shocking inequality among taxpayers, because a great many of them have settled their cases, have got their tax paid, and got their acquittance from the Government, and their cases can not be opened up. Many of them had not filed their amortization claims at the moment of filing their tax returns, and yet because the bureau happened to get to them first, or because the auditors working on those cases were a little more active, those cases are settled and closed and can not be reopened, many of them, and those taxpayers have an advantage that no other taxpayer can get. On the other hand, there are a good many cases that the Government can reopen, because the period of limitation has not yet run. So that if that decision of the Board of Tax Appeals is going to stand the bureau will have to go back and open up a whole lot of cases that it thought were closed, and that, you see, works out fresh inequalities.

It was agreed by all hands—by the Senator from Utah [Mr. KING] and myself, who were working on this matter as a subcommittee; by the Senator from Michigan [Mr. COUZENS], to whom we referred it because of his long interest in this very question; by his counsel, Mr. Manson, and by the counsel for the bureau—it was agreed by everybody that something ought to be done to establish a uniform rule. It was also agreed, I ought to say, that this amortization clause has been very much abused.

It was very loosely drawn in the original act. It depended largely upon the discretion of the engineers and the auditors who were assigned to the case. It was very difficult to enforce, and we all agreed that we should not open up the door to the manufacture and filing of any such claims in the future.

Those were the two extremes. We agreed we must not have any more claims filed in the future, and we were all agreed that something ought to be done. The problem then came to fix a date. The date of March 3 was originally put into this amendment as it was adopted last week, because, under a joint resolution, March 3, 1921, was the official date of the ending of the war for tax purposes. It is a curious contradiction that the President fixed July 2, 1921, as the official date of the ending of the war for most purposes, the veterans' laws, for example, but in all tax questions the war officially ended on March 3, 1921, and the date of March 3, 1924, was originally put in this amendment because that was the end of the three-year period from the official ending of the war. That date had been allowed by the bureau itself for filing claims, if my recollection is correct. We thought that did justice, and the Senator from Michigan, not very enthusiastic about extending this time at all, I know, consented to that date of March 3.

Mr. COUZENS. Mr. President, does the Senator mind telling us why a three-year period from the ending of the war was fixed upon?

Mr. REED of Pennsylvania. There are so many technicalities in this thing now that I am just a little bit afraid of involving myself over my head and over everybody else's head. Anyway, the three-year period was fixed and was recognized by the bureau. I guess it is enough to say that. I think it was fixed in one of the statutes, probably in 1918. That is why we agreed on March 3.

Since that agreement this situation has arisen. For a good many years before this decision of the Board of Tax Appeals it had been generally understood in the bureau that the taxpayer had five years after the date of the filing of a return to make his amortization claim. Solicitor Mapes and Solicitor Hartson, of the bureau, each rendered an opinion which, in effect, sustained that view. So that down until last year, as far as the law was settled at all or could be said to be settled by these official opinions, these solicitors' views seemed to control, and the lawyers of the country and the tax experts generally relied on that.

My attention has been called to one typical case, and perhaps it will make things clear if I refer to that with names and dates. The Smith & Wesson Co., manufacturers of revolvers up in Massachusetts, built a factory at Springfield, Mass., for the sole purpose of making revolvers for the United States Army during the war. They wanted to file a claim for the amortization of that factory, because they believed it to be entirely worthless to them after the war, or practically worthless. They consulted their lawyers about it. The lawyers looked up the opinions of the solicitors of the Bureau of Internal Revenue, and they said:

> Here are these two opinions of the solicitors which say you have five years to file your claim.

Under the tax law of 1918, which was delayed in its passage, the time for filing returns for the year 1918 was extended to June 15. So they said:

> You have five years from June 15 to set up your claim for amortization which occurred to your factory because of the signing of the armistice.

Obviously the moment pen was set to the armistice that revolver factory represented a big loss to the taxpayer. They deliberately refrained from filing their claim, because, as they and their counsel agreed, it would be easier to show the worthlessness of that factory if they delayed the filing of the claim until as late a date as possible, and so got all the evidence possible. They could have filed it sooner, but in reliance on the solicitors' opinions they did not do it.

It seems to me that we ought to make the date June 15 because the good faith of the Government is involved, in a sense, not to take care of that particular taxpayer, for there are some others; we can not ascertain the exact number, but not a very large number would be benefited. It seems to me we could not make the date later than June 15, 1924, because, although we have all been urged to—I dare say that every Senator who hears my voice has been urged to allow the general statute of limitations to fix the time—I feel that claims for amortization in the years that followed the war are not so meritorious as those of 1918.

What Congress wanted to take care of was the collapse of value which occurred in these munition establishments on account of the signing of the armistice, and therefore I think that a claim for amortization for the year 1918 stands on a far better footing than one for a later year. The great trouble with this amortization section has been that it has been taken advantage of by many taxpayers to recoup themselves for losses which occurred to them by reason of the panic of 1920 and the depression of 1921 which followed it. That was not what Congress meant to do at all. We wanted to take account of the change from war to peace, but we did not want to take account of depreciations in value which came about through a general slump in business. That is why I think that while

we should take care in good faith of these claims of 1918 there is no reason for giving the claims of 1919 and subsequent years privileges to which the taxpayers never thought they were entitled. I think the Senator from Michigan agrees with me in that.

Mr. COUZENS. Does not the Senator agree that they have already gotten advantage of those subsequent years?

Mr. REED of Pennsylvania. A great many of them have, I am sorry to say; but we can not do anything about it.

Mr. COUZENS. To the extent of hundreds of millions of dollars?

Mr. REED of Pennsylvania. I think to a very considerable extent. The total amortization allowances have been about $600,000,000. That does not mean the Government has lost $600,000,000.

Mr. COUZENS. It means, though, that they lost about 80 per cent.

Mr. REED of Pennsylvania. They lost the tax on $600,000,000. Part of that we meant the Government should lose. A large part of it is properly lost; but some of those allowances I think were excessive. The Senator from Michigan and myself are of one mind on that.

Mr. COUZENS. Mr. President, when there was first presented the amendment we are now asked to reconsider I recognized that many of these corporations had received excessive amortization allowances, due to the slump in business and the depression in the fall of 1920 and in 1921. But there seemed to be no way of preventing it, and the allowances were made. In other words, they had gotten away with it. They were working under the statute giving them three years from the official closing of the war, which was March 1, 1921, as applied to the revenue act. So that inasmuch as many of them had received their allowances, it seemed to be an injustice to estop those who had filed their claims prior to March 3, 1924, and in conference with the Senator from Pennsylvania [Mr. REED] I did not see how we could really object to doing equity between the taxpayers. One of the greatest faults the committee which investigated the bureau found was the evidence of injustices between taxpayers plus the injustices to the Government.

After we agreed upon this date, and the amendment was adopted by the Senate, there appeared these claims referred to by the Senator from Pennsylvania [Mr. REED], the claimants relying upon these decisions of two solicitors of the Bureau of Internal Revenue. For myself, I would have liked to see them all estopped the year following the signing of the armistice; but that seeemed impossible of realization. So, to do equity between the taxpayers, I do not see how we can fail to recognize these two solicitors' opinions as giving the taxpayers five years from June 15, 1919, to file their claims. That means that no claim that was not filed prior to June 15, 1924, will be considered, but all claims filed up to that time will be considered if this amendment shall be adopted.

Mr. REED of Pennsylvania. Mr. President, when we were considering this matter this morning in the subcommittee the Senator from Utah [Mr. KING] asked that no action be taken on it until he had a chance to discuss it with Mr. Manson. I completely forgot that, and I have unconsciously broken my agreement with the Senator. Therefore I shall have to ask that this go over for the present, until the Senator from Utah has had a chance to have that conference.

The VICE PRESIDENT. It will be passed over.

Mr. SMOOT. That completes the administrative amendments, with the exception of the one that has just been passed over. I would like now to turn to page 264, the Board of Tax Appeals.

The VICE PRESIDENT. The clerk will read the amendment.

The CHIEF CLERK. The amendment passed over is at the bottom of page 265, to strike out lines 24 and 25, both inclusive, and on page 266 to strike out lines 1 to 7, both inclusive, and to insert:

(b) The terms of office of all members who are to compose the board prior to June 2, 1926, shall expire at the close of business on June 1, 1926. The terms of office of the 16 members first taking office after such date shall expire as designated by the President at the time of nomination, 4 at the end of the fourth year, 4 at the end of the sixth year, 4 at the end of the eighth year, and 4 at the end of the tenth year, after June 2, 1926. The terms of office of all successors shall expire 10 years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor.

(c) If at any time after the expiration of two years after the enactment of this act the President determines that the functions of the board can be performed efficiently by less than the number of members then in office, the President may by Executive order specify the number of members he determines to be necessary. After the issuance of such Executive order, no appointments to fill vacancies shall be made until the number of members is reduced to the number so specified.

Mr. KING. Mr. President, I send to the desk an amendment to the committee amendment.

The VICE PRESIDENT. The amendment to the amendment will be stated.

The CHIEF CLERK. On page 266, line 10, strike out "16" and insert in lieu thereof "12," and on page 266 strike out lines 8 to 21, inclusive, and insert in lieu thereof the following:

(b) The terms of office of all members who are to compose the board prior to June 2, 1926, shall expire at the end of June 1, 1926. The terms of office of the 12 members first taking office after such date shall expire, as designated by the President at the time of nomination, four at the end of the second year, four at the end of the third year, and four at the end of the fifth year, after June 2, 1926. The terms of office of all successors shall expire five years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his precedessor was appointed shall be appointed only for the unexpired term of his predecessor.

Mr. KING. Mr. President, the amendment seeks to reduce the number of members constituting the Board of Tax Appeals from 16 to 12 and to shorten the terms of office of the various members of the board to a maximum of five years.

On page 266 of the pending measure and line 10 the word "sixteen" is found in the sentence, "The terms of office of the 16 members first taking office after such date shall expire," and so forth. My amendment proposes to strike out the word "sixteen" and to insert in lieu thereof the word "twelve." In line 12 the provision reads as follows:

four at the end of the fourth year, four at the end of the sixth year, four at the end of the eighth year, and four at the end of the tenth year, after June 2, 1926.

My amendment proposes to restrict the membership of the board to 12 and provides that the term of office of four shall terminate at the end of the second year after their appointment, four at the end of the third year after their appointment, and four at the end of the fifth year after June 2, 1926.

Mr. PHIPPS. Mr. President, may I ask the Senator a question?

The VICE PRESIDENT. Does the Senator from Utah yield to the Senator from Colorado?

Mr. KING. I yield.

Mr. PHIPPS. Can the Senator inform us as to the condition of work of the Board of Tax Appeals at the present time? How many cases are pending and how long will it require the present board of 16 members to bring the work up current?

Mr. KING. There are approximately 8,000 cases pending; that is, 8,500 appeals have been taken up to about a month ago, but many were dismissed, hundreds of the appeals abandoned, and a considerable number determined. Under the confused condition resulting from former conflicting rulings, and unpublished ones, many taxpayers have sought to reopen cases or to appeal from the commissioners' rulings. But the situation will soon be cleared; the accumulated "war cases" will soon be disposed of, so that the work of the board will soon diminish, and within two or three years the collections of the bureau will be current. But I repeat to the Senator I can not state definitely the number of cases now on the calendar.

Mr. REED of Pennsylvania. I can give the figures, if the Senator will permit me to interrupt.

Mr. KING. There have been 8,500 appeals taken to the board.

Mr. REED of Pennsylvania. Does the Senator want the figures?

Mr. PHIPPS. Yes; I would like to have the figures.

Mr. REED of Pennsylvania. The total number of cases filed with the Board of Tax Appeals up to the last day of last month was 11,470. Of that number they have decided 1,275. They have dismissed for lack of jurisdiction, failure to prosecute, or other causes 2,795. They have heard, but have not yet decided, 904 of the cases. The number of cases pending is, of course, the difference between the total of those three and the total number filed.

Mr. PHIPPS. Of the total cases so far filed, over 7,000 have not yet been considered by the Board of Tax Appeals.

Mr. REED of Pennsylvania. Not quite so many. The total number of cases decided, dismissed, and so on, is 4,874, and that number from the total of 11,470 leaves about 6,600.

Mr. SMOOT. In this connection I want to say to Senators that the board is receiving on an average of over 250 new cases each week, and no doubt they will continue at about that rate for a considerable time, but how long no one knows.

Mr. REED of Pennsylvania. At their present rate of progress they are disposing of about 425 cases a month.

Mr. PHIPPS. It seemed to me, from information I have had, if the Senator from Utah will pardon me for taking his time, that the proper move would be to increase the number of members of the board rather than to decrease the number at the present time.

Mr. KING. I concede that a great number of cases have been appealed to the board. The work which it is doing was performed formerly by an agency in the Tax Unit which in effect correspond to the organization which the bill perpetuates. I want to say, however, that the great majority of cases which have been appealed and a great majority of those which will be appealed will fall into a limited number of categories, and the establishment of a rule—and rules are being established through the decisions—will automatically settle or dispose of many cases which reach the board. The Senator from Pennsylvania called attention a moment ago to about 2,800 cases which have been either dismissed or abandoned. Many of the cases filed are based upon efforts to reopen settlements or obtain special assessments or secure benefits by having different interpretations placed upon invested capital provisions of the law. A decision by the board may lay down a rule which will dispose of thousands of cases, and automatically they will be dropped from the docket, or, at least, will not be prosecuted, and in due course will be dismissed.

In my opinion, based upon the researches of the Couzens committee and information received from reliable sources, 12 judges could dispose of the business that will come before the Board of Tax Appeals; and also, that within 2 to 4 years not more than 6 to 8 members of the board will be required.

Mr. DILL. Mr. President——

The VICE PRESIDENT. Does the Senator from Utah yield to the Senator from Washington?

Mr. KING. I yield.

Mr. DILL. I want to ask the Senator why it is proposed now to change the term of office of these men? The term is now 10 years. The House proposes to make it 14 years. There is an amendment proposed to make it 12 years, and now the Senator from Utah proposes to make it 5 years. What is the reason for wanting to change the term? Why change the length of term of office every time we pass a revenue bill?

Mr. KING. This legislation creating the Tax Appeals Board was experimental in character. There were some persons who wanted to create a huge and imposing court, panoplied with all the powers and dignity of Federal courts; judges were to be appointed who were to have a life tenure of office. Out of the conflicting views the present organization was developed. It was felt that it might not function well, or that radical changes might be necessary in its form and functions. The board has justified its existence, although there has been some criticism—particularly as to the influences which secured the appointment of some of its members.

When the Ways and Means Committee of the House considered the question early this year they provided for a board of 16 with a maximum term of office of 14 years. When the matter came before the Senate Committee on Finance the term was limited to 10 years. As I have indicated, the work of the board will soon be reduced to such a point that but a few members will be needed. With the settlement of the war cases and claims, the question of depletion and amortization, and the bringing of the work of the tax unit to date—that is, so that it is kept current—the board's labors will be greatly reduced. I believe at the end of five years a board consisting of five members will be sufficient to meet the needs of the Government and the people.

Mr. REED of Pennsylvania. Does not the Senator think that the contingency is amply taken care of by the committee amendment, which begins at the bottom of page 266, where the President is given authority to leave a vacancy on the board if at any time after two years he finds the work can efficiently be done by less than the full board?

Mr. KING. The Senator knows how difficult it is to abolish an office. Political pressure is exerted, and the President can not always resist it. Indeed, under our system of party government he responds to the wishes of his party, not always, but the departures are rare. It will be impossible to abolish any of these positions. There will be an apparent necessity for retaining all the members, and a multitude of reasons will be urged for the filling of every vacancy. It is unfortunate that judicial positions should be partisan.

I am told that, if not members of the present board themselves, at least their friends are insisting that the terms of members of the board shall be extended. Senators know that when offices are created political pressure will be brought and an abnormal situation developed under which it will appear that there is a necessity for continuing the positions.

Mr. SMOOT. May I call my colleague's attention to the fact that the House text provides for a term of 14 years?

Mr. KING. Yes; I know it does.

Mr. SMOOT. The Finance Committee cut that down to 10 years.

Mr. KING. That I have stated; it was a wise amendment, but I am not yet satisfied with the provision. I think we ought to cut the term down to five years.

Mr. DILL. Why does not the Senate hold to the present term of 10 years?

Mr. REED of Pennsylvania. That is what we want to do. That is the Senate committee amendment now.

Mr. DILL. I understood it was 12 years that was proposed by the Senate committee.

Mr. SMOOT. No. We reduce it from 14 years, as the House text provided, to 10 years.

Mr. DILL. I want to say a word against the lengthening of the terms. Whenever we get an official in office and give him a long term it makes him arbitrary just to the extent we lengthen his term of office. I am not objecting to the present 10-year term, but I am objecting to increasing it.

Mr. SMOOT. The House increased it to 14 years, but the Senate Finance Committee proposes to put it back to 10 years, which is the term under the present law.

Mr. GEORGE. Mr. President——

Mr. KING. I yield to the Senator from Georgia.

Mr. GEORGE. I wish to suggest to the Senator from Utah the fact that the board is empowered and is directed to hold hearings at other places than Washington. I think that a division of the board ought never to be composed of less than two members, and therefore, if they are to visit different parts of the country the number fixed in the bill would seem to me to be not too large. I think it very important that the board hold hearings in different parts of the country, so as to oblige the taxpayers; that is, to save them the great expense of coming to Washington to present their cases.

I agree with the Senator that in so far as the mere work of the board at its headquarters in Washington is concerned 12 men or possibly 10 or it may be even 5 might do the work just as well as a larger number; but when it is considered that they are to hold hearings about the country and for the convenience of the taxpayers, which I regard as important, I doubt the wisdom of reducing the number.

Mr. NORRIS. Mr. President——

Mr. KING. I yield to the Senator from Nebraska.

Mr. NORRIS. I want to get the Senator's idea about some questions that have arisen in my mind regarding the Board of Tax Appeals. I believe that it is more or less, and ought to be more or less, of a judicial nature. They will pass purely and solely upon questions of law. Am I right in that statement?

Mr. KING. Questions of fact necessarily are involved.

Mr. NORRIS. Oh, yes; I ought to modify my statement to that extent.

Mr. KING. They are in a sense nisi prius courts.

Mr. NORRIS. But it is their duty to say what the law is on the facts as they find them?

Mr. KING. Yes.

Mr. NORRIS. They are just the same as any other court in that respect?

Mr. KING. Yes.

Mr. NORRIS. Do these 16 members sit as a body and listen to arguments?

Mr. KING. No; they are divided into groups.

Mr. NORRIS. That is what I supposed; and the object of dividing them into groups is to expedite business?

Mr. KING. Absolutely.

Mr. NORRIS. So that, as a matter of fact, we have several courts?

Mr. KING. And they are also ambulatory; they visit the various sections of the United States for the purpose of considering cases that may be presented instead of having the taxpayers come to Washington.

Mr. NORRIS. When one group goes to San Francisco or some other place and sits on a series of cases, do they render no judgment until they make their report to the full board?

Mr. KING. My understanding is that they may render judgments—that is, pass upon preliminary matters.

Mr. SMOOT. No; they do not.

Mr. KING. That is, they may make their findings for presentation to the board when they report back to Washington.

Mr. SMOOT. They make no findings at all. The court itself makes the findings after the case is presented by the two or three members who have considered cases in other sections of the country.

Mr. KING. I repeat, they can pass on all preliminary matters, and they can prepare their findings or views upon the testimony taken, so that when they return to Washington they may have something concrete to present to the board.

Mr. NORRIS. It seems to me that would bring about a court so large that delays would necessarily occur.

Mr. REED of Pennsylvania. Mr. President, my attention was diverted when this conversation began, but if the Senator from Nebraska is speaking about the hearing of cases by divisions of this court, I will say that the proposed act as reported provides that the decision of any division of one or more members shall become final unless it shall be reviewed or ordered reviewed by the chairman within 30 days.

Mr. NORRIS. It seems to me we are considering this tribunal as having rather a judicial aspect, and that, I think, is the way it ought to be considered. That puts a loophole into the proposed law that will not result in efficient work, because here is a court composed of quite a large number of men—judges, let us call them—divided up into divisions that go out into different parts of the country and come in and make their report. The tendency is naturally going to be, I should think—I speak of it in no critical sense—that the report of one division would be approved mostly as a matter of form, and the judges involved in that decision would, as a matter of form, approve a report coming from another division.

Mr. KING. I presume there will be such a coordination of the activities of those various groups——

Mr. NORRIS. What kind of men compose those groups?

Is the junior Senator from Utah acquainted with the personnel of the court?

Mr. REED of Pennsylvania. I can advise the Senator about that, but I do not like to do it in the time of the Senator from Utah.

Mr. KING. I know the names of the members of the board, but I was observing, when interrupted, that there is coordination of the activities of the various groups, so that there will be uniformity in the decisions.

Mr. NORRIS. I have no doubt that in their work one division would be found down in New Orleans, for instance, considering questions that would be, perhaps, identical with questions that would be considered by another group in Philadelphia or Pittsburgh or Harrisburg.

Mr. KING. Exactly.

Mr. NORRIS. One of the things I think that everybody must concede as necessary if we are to obtain good results is that the decisions coming from this court shall not be conflicting; they must be uniform, of course.

Mr. KING. Undoubtedly.

Mr. NORRIS. They can not reach uniformity, it seems to me, if each division renders a judgment and that becomes final unless somebody appeals from it.

Mr. KING. The Senator from Nebraska knows that in some States the appellate courts have two or more divisions or sections. In important cases the entire court will sit, but in many matters the controversies are submitted to a decision, usually three judges.

Mr. NORRIS. Somebody must do something in order to prevent the decision from becoming final.

Mr. REED of Pennsylvania. Mr. President——

Mr. NORRIS. Just a moment. If the decision of a division at San Francisco on a certain question is one way and a different conclusion is reached by another division in Boston, I can conceive that such conflicting opinions and judgments rendered by them might both stand unless it were necessary under their rules and regulations before either decision should become effective that they should be passed on by the full board.

Mr. KING. Mr. President, the procedure provision of the act, I think, makes for certainty and uniformity of decision; I think it is carefully guarded, and we need have no apprehension in that regard. Section 906 and the subdivisions following fully protect against incongruities and will bring about uniformity.

Mr. NORRIS. Of course, that is what we want. The certainty of the law is almost as important as to have the law itself, so that taxpayers may know what the law is.

Mr. KING. I agree with the Senator.

Mr. NORRIS. If the decisions are promulgated and the law becomes a certainty, a decision in one case will often settle several hundred cases.

Mr. KING. Undoubtedly.

Mr. REED of Pennsylvania. Mr. President, will the Senator let me interfere at that point?

Mr. KING. I yield.

Mr. REED of Pennsylvania. The same provision, in substance, is in the law to-day. The central office is in Washington; every decision is reported to Washington; and up to the present time every decision of a division has been looked over, privately if not publicly, by every member of the board before it has been published, and every decision is published for the benefit of the public. The board has built up already a substantial set of reports.

Mr. NORRIS. Let me ask the Senator another question——

Mr. SMOOT. Mr. President, I have the first volume of those decisions; there are over 1,200 of them; and each decision in the first volume is on a different subject matter.

Mr. NORRIS. Will not that result in the diminution of the cases that are pending? Is it true that there are so many questions arising all the time that the work is increasing beyond the power of the commission to pass on them and to keep the work current?

Mr. REED of Pennsylvania. I think the board has all it can handle at the present time.

Mr. NORRIS. Will there not be a tendency toward the reduction in the number of cases that the board will even be called upon to consider if there is uniformity in their decisions?

Mr. REED of Pennsylvania. Of course, that will be the tendency also because of the disappearance of the excess-profits tax cases, and because we are trying to simplify the law so as to cut out difficult questions of depletion, which always mean a lawsuit. As we get the law simplified, and the excess-profits tax recedes into history, the work of this board will be less. Then, if we put in the provision allowing the President to drop members of the board or to keep vacancies unfilled, instead of making prompt reappointments. If he finds that the board is catching up with its work, he will not have to fill a vacancy that occurs after two years.

Mr. WILLIS. Mr. President——

Mr. KING. I yield to the Senator from Ohio.

Mr. WILLIS. I desire to ask a question, either of the Senator from Utah or the Senator from Pennsylvania. I have not had opportunity sufficiently to examine this section, or, perhaps, I could answer the question for myself. Is there any provisions, other than the general provision which appears in section 901, touching the qualifications of the members of this board? This is practically a court, as I understand. Must the appointees thereto be members of the bar? What is the provision as to their qualification? Does that reside entirely in the sound discretion of the appointing power?

Mr. KING. It rests with the President of the United States.

Mr. REED of Pennsylvania. It is all in section 901, which provides that they shall be appointed "solely on the grounds of fitness to perform the duties of the office."

As the President has to consider that question and as the Senate has to consider it when the question of confirmation comes up—for appointments to this board all come to the Senate for confirmation—it is reasonably sure that they will be lawyers, and lawyers who know something about tax cases.

Mr. WILLIS. I should think, in view of the nature of the court, they would have to be lawyers.

Mr. KING. Mr. President, I have been asked by the Senator from Nebraska the names of the members of the board. Six of them were employees in the solicitor's office, receiving salaries much less than those which they are now receiving. They were passing upon questions of the same character as those presented to them as members of the Tax Appeals Board. They were taken out of the solicitor's office and lifted into these judicial positions. Then four former employees of the Treasury Department, who, as I understand, resigned and were giving attention to tax cases, were brought back into the department.

We hear much these days about the enormous fees received by persons engaged in tax cases and their disinclination to accept office, yet four persons who had been in the department and who had separated themselves from the service were glad to accept, or did accept, positions upon this board and thus reentered the service of the Government. I am not complaining or criticizing them for so doing. Of the entire board only six were not in the tax unit or former employees in the Internal Revenue Bureau. I have here the names of the members of the board, but shall not place them in the RECORD. I will hand them to the Senator of Nebraska if he desires me to do so.

Those taken from the solicitor's office were receiving much less compensation than is provided in the bill.

I am not advancing that as an argument against their appointment or against their qualifications for the position. Perhaps some of them are more familiar with our revenue laws than are some eminent lawyers throughout the country; and yet, in my opinion, it was most unwise to select so many employees and ex-employees of the bureau for these judicial positions. No matter what their qualifications may be, they are bound to have the bureaucratic view, or, to use the language of the distinguished Senator from Virginia [Mr. GLASS] a few days ago, they are saturated with the Treasury view or the tax view in regard to these matters. Moreover, it is, in my opinion, improper to create offices to be filled by those who are in the public service. I should like to see a provision in this bill making ineligible for a place on the board any person in the Treasury Department for two years after his separation from the service.

Mr. REED of Pennsylvania. Mr. President, will the Senator permit an interruption?

Mr. KING. Yes.

Mr. REED of Pennsylvania. Does not the Senator think that is pretty well answered by the fact that out of all the cases they have decided they have completely reversed the commissioner in 13 per cent of their cases; they have partly reversed him in 34 per cent of the cases, and have affirmed him completely in only 53 per cent of the cases? That does not indicate that there is an absence of independence on their part?

Mr. KING. Well, I do not know whether those figures indicate very much, for the reason that the decisions of the employees in the department and of the commissioner himself were so varied, so incongruous, that whatever way they decided the board was bound to affirm many of the decisions and was bound to reverse many of the decisions of the Commissioner of Internal Revenue.

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. KING. Yes.

Mr. McKELLAR. I want to know if the Senator has any information as to how many of the 16 are lawyers?

Mr. KING. Mr. President, I have no information——

Mr. SMOOT. They are all lawyers but one, I will say to the Senator.

Mr. KING. I do not know. I think most of them went into the department a few years ago as young men and worked themselves up from unimportant positions to the solicitor's office, and from the solicitor's office they were transferred to this board.

Mr. PHIPPS. Mr. President——

Mr. KING. I yield to the Senator from Colorado.

Mr. PHIPPS. I should like to ask the Senator as to the status of the 6,600 cases, approximately, which are now before the Board of Tax Appeals and which have not as yet been considered. While they are pending, and until the tax which the citizens must eventually pay is determined, the amount will not bear interest. The more quickly these cases are decided, the earlier the Treasury of the United States will receive the money, and thereby will have its use, and prevent this loss of interest which is now occurring by reason of the delay in considering these appeals.

Mr. KING. Mr. President, that is a two-edged sword. If the Government has to make a refund, the taxpayer is entitled to interest; and if the taxpayer is owing the Government, he is required to pay interest.

Mr. PHIPPS. Yes; but the taxpayer is entitled to the use of his money, and he should not be kept waiting an undue length of time for the adjudication of his case.

Mr. KING. There can be no controversy about that. Any person is entitled to money due him. However, 6 per cent interest is a fairly good rate of interest.

Mr. PHIPPS. Any business that can not earn more than 6 per cent is a mighty poor business in these days.

Mr. KING. I think the Senator, because of his knowledge of some of the great business organizations and trusts of the United States, knows that many of them are exploiting the people and making earnings far greater than are just or equitable.

Mr. PHIPPS. In the Senator's State and my State the business man as a rule has to pay considerably more than 6 per cent for money.

Mr. KING. I do not quite agree with the Senator.

Mr. PHIPPS. Perhaps not as a rule, but very frequently.

Mr. KING. I think the banks of my State are loaning large sums at 6 per cent, and the Senator knows that the land banks and many insurance companies are making loans for 6 per cent, and in some instances less than that. But no one opposes the Senator's contention that if a taxpayer has overpaid he should receive back from the Government at as early a date as possible the amount which is due him; and, of course, whatever is due from the taxpayer to the Government ought to be promptly paid by him.

Mr. SMITH. Mr. President, may I ask the Senator whether interest accrues from the time the tax is paid when they find that there has been an overpayment by the taxpayer? Does interest accrue from the date of payment when they find that the Government owes him a rebate?

Mr. KING. Yes. My understanding is that if the Senator had paid in 1920 or 1921 or 1922 to the Government an amount in excess of the proper tax, and the matter was before the department for final adjudication, and he was contesting the payment, and it was decided that he had overpaid, he would receive it with interest at the rate of 6 per cent.

Mr. SMITH. When did that law go into effect? That has not been operating long, has it?

Mr. KING. No; I think that law was passed in 1921. Recently, in one case that was brought to my attention, an individual received $300,000 as a refund, and interest amounting to $90,000 upon the refund.

Mr. SMOOT. The first interest was allowed under the act of 1921. All the acts before that time allowed no interest to the taxpayer; but the act of 1921 provided that the taxpayer should receive the same rate of interest that the Government charged the taxpayer in case he lost.

Mr. KING. And that is the reason why so many now are getting large amounts of interest.

Mr. SHORTRIDGE. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Utah yield to the Senator from California?

Mr. KING. I yield.

Mr. SHORTRIDGE. I understand that the Senator favors the provision of the bill which permits, if it does not almost direct, the members of this appeal board to divide themselves up into divisions and hear cases throughout the whole country.

Mr. KING. I think that is a wise provision. That is one of the meritorious features of the bill.

Mr. SHORTRIDGE. I think so. Also, we must admit that there are now pending and undetermined something in the neighborhood of 6,500 or 6,600 cases. I assume that the Senator whom I am addressing favors that provision in the bill which will enable the President to defer appointments to fill vacancies in the event that he determines that such vacancies should not be filled.

Mr. KING. The Senator knows that when this matter was before the Finance Committee, of which both the Senator and myself are members, that provision was urged by me with what little force I possessed. I felt that the number of 16 was entirely too great, and that a provision should be inserted that would authorize the President to determine when the business of the board warranted, then the membership of the board should be reduced.

Mr. SHORTRIDGE. I understand that the Senator objects to the number of 16, however, and wishes to reduce it to 12.

Mr. KING. My position is, that 12 members can perform the work; that 16 are not required. The fact that a large number of appeals have been taken means nothing, in view of the fact that so many of them fall into a few categories, so that when a controlling decision is made hundreds will be abandoned or effectually disposed of.

May I give an illustration? The German Mixed Claims Commission had presented to it claims aggregating over one billion dollars. There will be allowed perhaps not more than two hundred million dollars. Many of the cases fell into three or four groups; and as soon as one of the cases in a group was decided, that automatically ended hundreds of cases which had been filed. As a result, the commission has disposed of practically all claims within an incredibly short time. It is to the credit of that organization that it has done such fine work. I wish that the Mexican Mixed Claims Commission would follow the example of the German Mixed Claims Commission.

Mr. SHORTRIDGE. I wish to make merely one observation, not to prolong the discussion. I suppose we will all agree that justice delayed is justice denied. We will also agree that there should be an ample number of members of this board to hear and consider cases speedily before deciding them. It has been remarked here that a great many of these cases were dismissed for lack of jurisdiction.

Mr. KING. Lack of prosecution.

Mr. SHORTRIDGE. Well, but first for lack of jurisdiction to hear and determine them. Of course, we all recognize that in order to decide that point an examination must be made

of the case, and it may take a very considerable time to resolve and decide that matter properly.

Mr. KING. May I interrupt the Senator right there?

Mr. SHORTRIDGE. Certainly.

Mr. KING. The Senator knows that many of these cases are prosecuted by clever tax experts and tax lawyers. They know the decisions; and when they have a case on appeal, and a decision has been made which affects it, they have sense enough to abandon the appeal; and many cases will not be brought to the attention of the board at all.

Mr. SHORTRIDGE. Let us hope that that has been so and will be so.

Mr. KING. I am sure that is the case.

Mr. SHORTRIDGE. I am merely inviting the Senator's attention and that of other Senators to the proposition that we want a speedy and a correct determination of these cases, and this so-called Board of Tax Appeals is, in point of its functions, a judicial tribunal; and no taxpayer's claim, no demand of the Government, should be finally determined by that body without a thorough examination of the facts and the law.

Moreover, I invite the Senator's attention to this proposition: The bill vests in the board the functions of a trial court. It is to hear and determine facts as well as to resolve the law applicable to those facts. It is not merely a tribunal to listen to arguments touching matters of law. They receive evidence, they listen to witnesses, they receive evidence oral and documentary, as a jury does. Therefore I am suggesting that the number, 16, when divided and holding court throughout this vast Republic, is not too great a number to speed on the work in hand.

Therefore, not to indulge in mere platitudes or reflections or generalities but to look at the practical situation, I should like to agree with the Senator; but I can not bring my mind to the conclusion that 16, divided up into divisions, is too great a number.

Mr. SMITH. Mr. President——

The PRESIDING OFFICER (Mr. WILLIS in the chair). Does the Senator from Utah yield; and if so, to whom?

Mr. SHORTRIDGE. That is all I have to say.

Mr. KING. I yield to the Senator from South Carolina.

Mr. SMITH. It seems to me that the Senator has given a persuasive argument here as to why we should keep 16 members of this board, in view of the fact that there is a provision in the bill that when they shall have caught up with the work sufficiently so that not all of them are needed the President may drop them out as he sees they are not needed.

Mr. KING. As their terms expire.

Mr. SMITH. As their terms expire, and their terms are not very long. In work of this kind I am inclined to view with favor a rather long term, because the work is of such a nature that if the man is qualified, the longer he is kept the more expert he becomes, and therefore he is better qualified to perform the duty. It seems to me that if we keep the 16 members, as they become more expert they will work doubly well, because of the accumulated number of cases and the expertness with which they can approach them; and then, as the work is caught up with, we may diminish the number.

Mr. SHORTRIDGE and Mr. EDGE addressed the Chair.

The PRESIDING OFFICER. To whom does the Senator yield?

Mr. KING. To the Senator from California.

Mr. SHORTRIDGE. Mr. President, finally, the law will always be subject to controversy, discussions, and consequent appeals. We may not indulge ourselves in the vain hope that the law will become so certain and so definite as to make litigation unnecessary. New laws will be passed, new conditions will develop, and there will always be controversy and honest difference of opinion as to the meaning of the law.

This Republic is a going concern, vastly increasing in population; and I can not see a time when there will not be the necessity for at least this number of judges to determine all these controverted matters. I hope the Senate will at least retain this number, with the provision that the President may cut it down when it appears that a less number will be sufficient to carry on speedily the work of the board.

Mr. EDGE. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from New Jersey?

Mr. KING. Yes.

Mr. EDGE. Did I understand the Senator a short time back to make the statement that 15 of the 16 members of the board are lawyers, members of the bar?

Mr. KING. The statement was made that 15 are lawyers and 1 was not. I did make the statement that the major portion of them—I gave the exact number—were employees of the department or ex-employees, and that only five had been drawn from outside the influence of the Treasury Department. I did not make that statement as a criticism, although I did say that I believed that the board was too much saturated with the bureaucratic spirit and that it would have been better if a greater number of members of the board had been drawn from lawyers of experience—not mere tax experts and accountants, but lawyers of broad knowledge and experience.

Mr. EDGE. I wanted to observe, with all due deference to the splendid profession of which the Senator from Utah is such a conspicuous member, that it might expedite the business of the board if some of the members were accountants or tax experts; and I ask the Senator if, in the consideration of his amendment to cut down the number of the board, it would or would not be wise to consider the possibility of expediting the business by having practical tax men, accountants, who may not have been admitted to the bar?

Mr. KING. Mr. President, I did not attack them upon the ground that they were not lawyers. The question was asked as to how many were lawyers. I was unable to answer that, but I was told by the chairman of the committee that all were lawyers except one. I believe that what the Senator says is true, that to have upon that board some who are familiar with the tax law is of advantage. Yet I believe that men who have a comprehensive knowledge of the law will do better work of a judicial character than men who are merely trained in the technique of bureau activities, no matter how able they are. I do not mean in any way to discredit that technique or the advantages which may be derived from long years of service in some bureaucratic pigeonhole of the Government.

Mr. NORRIS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Nebraska?

Mr. KING. I yield.

Mr. NORRIS. The law under which the members of this board are appointed provides that—

> Members of the board shall be appointed by the President, by and with the advice of the Senate, solely on the ground of fitness to perform the duties of the office.

I suppose that law was drafted and passed with the idea that these men should be appointed without regard to politics; that there should not be a lot of politicians put on the board; that they should be free from political influence.

Mr. KING. As all judicial officers should be. I agree with the Senator.

Mr. NORRIS. I have heard a great deal of criticism of this board, coming to me in an ex parte way, of such a nature that I would not give publicity to it, because, as I said, it is ex parte, and I do not want to do an injury to anybody. The Senator is familiar with the personnel of this board, and I desire to ask him this question: Has the spirit of that law been obeyed? The Senator can use his own judgment about answering, but I am satisfied that his answer will be in general terms. Have they been appointed with reference to their fitness entirely, or have they, or some of them, been appointed through influence, either of the bureau or of those interested in the work of the bureau, or through the influence of politicians?

Mr. KING. Mr. President, I try to be frank and I sometimes think I have a little degree of courage, but I hope the Senator will excuse me from answering that question.

Mr. NORRIS. Why should we not know about it? We are passing on this matter now. Has the law been carried out in good faith? Have we a board that is free from all the influences which the Senator himself admits should not exist on this kind of a board?

Mr. REED of Missouri. Mr. President——

Mr. KING. I have not sufficient knowledge to answer that question fairly. I know a few of the men upon the board by reputation and one I know personally. He is an able and splendid young man, and I think gives promise of a fine career. I have heard the same criticisms, doubtless, to which the Senator refers. I have not verified them. Therefore, I have refrained from making any criticism of the personnel of the board.

Mr. NORRIS. I asked the Senator the question because he has had better opportunity to find out——

Mr. REED of Missouri. Mr. President, I think I may relieve the Senator from Utah from embarrassment, by suggesting that he might answer that they are all men of the highest character, but there is a remarkable number of them related to distinguished gentlemen in the public service.

Mr. KING. Mr. President, I shall not detain the Senate longer. I felt——

Mr. NORRIS. Mr. President, may I pursue that inquiry a little further?

Mr. KING. I yield.

Mr. NORRIS. Is it true that men in the public service, high officials of the Government, are getting their relatives on this board?

Mr. KING. I did not answer the question, and so I shall again beg the Senator not to press the question. There are some names here which are rather suggestive, but I do not know, and I make no comment.

I agree with all that my good friend from California [Mr. SHORTRIDGE] has said as to the necessity of having expedition and celerity in the disposition of public business. It is very unfortunate that some of our judges are not up with their work; and may I say in passing, it is my opinion that many of the judges are not as expeditious as they should be.

Mr. McKELLAR. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Tennessee?

Mr. KING. In one moment. I am afraid that many of the judges are political appointees. A few years ago we authorized the appointment of 25 additional Federal judges. The understanding was that they would be appointed because of their fitness and that politics should not be taken into account. Yet we know that quarrels between conflicting political parties or factions in parties in various States held up the appointments in many instances for weeks and months and years, although we were, under the whip and spur of the Republican Party, compelled to pass the bill, or at least we responded to the compulsion, upon the ground that business was crowding the courts and that they were congested and important cases could not be tried, and we must have those 25 judges immediately. The days went into months and the months into years before all the positions were filled, because of the quarrels of Republican politicians in the various States over who should distribute and receive the spoils. It is said that merit and judicial ability were not always considered in making these appointments. As I recall, there is only one Democrat in the entire number, and that was in Louisiana. The Republicans could not find a Republican lawyer in the State or they would not have appointed a Democrat.

Mr. WATSON. Mr. President, I wanted to ask how it happened that a Democrat was appointed.

Mr. KING. Because there was not a Republican lawyer in the State who was fit for the job.

Mr. McKELLAR. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Tennessee?

Mr. KING. I yield.

Mr. McKELLAR. The Senator is in favor of the system under which 16 judges sit here in Washington, various ones of their number being sent out to dispense justice in the various parts of the country. Would the Senator be willing at all to agree to a judicial system under which all the Federal judges should be put upon one bench here in Washington, and then the various members of the court sent throughout the country to dispense justice as they saw fit in the various States of this Union? I will say to the Senator that I can not think that he believes in any such system. If he does not believe in any such system, in so far as the ordinary matters of justice are concerned, why is he willing to stand for a system of this kind in regard to tax matters, which are just as important matters as any about which any question may be raised?

Mr. KING. The situation which confronts us now is sui generis. It does not quite approximate the situation which the Senator has in mind. Of course, I would not want the Supreme Court to divide into groups and visit the various States to hear controversies and then return to Washington to pass upon the cases. But we have an entirely different situation in the matter of collecting revenue. There is no analogy or resemblance.

Consider the Interstate Commerce Commission, for instance. It has quasi judicial functions, but its functions and labors are such that it is necessary at times to dispatch to various States one or more members to take testimony upon important matters relating to freight or passenger rates, and so forth. After taking testimony the member of the commission returns to Washington, where the question is considered by all members and a decision rendered.

Mr. McKELLAR. The Senator will recall that the Interstate Commerce Commission, following that procedure, has not given satisfaction to the country. I want to ask the Senator this question——

Mr. KING. Let me interrupt the Senator right there. That is possible; and yet I think the Interstate Commerce Commission in the main has acted prudently and wisely and has attempted to perform its duty. I make no criticism of the commission.

Mr. McKELLAR. Perhaps so; I am not going into that.

Mr. KING. We can not suit everybody.

Mr. McKELLAR. I want to ask the Senator this question: In the matter of these tax cases, which are really lawsuits between taxpayers and the Government, in the interest of good and orderly government, why would it not be better and simpler and more in accordance with American institutions to confer jurisdiction upon the various Federal courts of the land and let these tax questions be settled in the vicinage of the taxpayer by courts which are regularly appointed, having no particular bias in regard to these matters? Why would it not be infinitely cheaper for the taxpayer, infinitely better for the taxpayer, and infinitely better for the Government to have these important questions relating to taxes settled by the courts of the land?

Mr. KING. Mr. President, the question of taxes and the collection of taxes is one which has to be differentiated from the ordinary judicial procedure. The Government can not wait to have all of the questions in relation to taxation litigated in the courts. It goes out and seizes the property of the taxpayer when he is delinquent. Take the Senator's own State. An assessment is made.

The county commissioners—probably that is the title given there; it is the title given in many States—meet, and in an informal way pass upon the cases which are presented by the taxpayers, and they grind them out by dozens, if not by hundreds, every day. In most of the States no taxpayer can resort to the courts until he pays the tax.

Mr. McKELLAR. Mr. President, the Senator undertakes to differentiate tax cases in the way he has stated, but he is very largely mistaken about the facts concerning that. I say to the Senator, that within the last three or four years tax cases involving a hundred million dollars have been settled by court decisions, even under the restrictions by which the courts are hedged about. Cases involving at least a hundred million dollars have been settled in the courts in the way that I have suggested. We already have that system in part, and to-day about one-fifth of all the cases are settled in the courts. Why would it not be better to give the courts jurisdiction to settle all of the cases and not have this Peripatetic board going about the country, one man or two men taking testimony, which may or may not be in accordance with justice in a particular case.

Mr. WADSWORTH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from New York?

Mr. KING. Let me answer this question, and then I will yield. I do not agree with the Senator from Tennessee that one-fifth of all the tax cases have been settled by the courts.

Mr. McKELLAR. That is the report.

Mr. KING. I think that thousands and tens of thousands of cases where individuals have paid taxes are settled without controversy to one that reaches the courts. Now I yield to the Senator from New York.

Mr. WADSWORTH. I was going to observe, with the permission of the Senator from Utah, that doubtless the Senator from Tennessee remembers that the bill confers jurisdiction on the Federal courts under certain conditions.

Mr. McKELLAR. The taxpayer can appeal.

Mr. WADSWORTH. He can appeal to the district court.

Mr. McKELLAR. There are certain conditions under which that can be done, and it has been done for several years. For instance, we have paid judgments in favor of taxpayers amounting to a hundred million dollars, I will say to the Senator, within the last five or six years.

Mr. KING. Yes; and we have collected billions. I think the creation of the Board of Tax Appeals was a step in the right direction. As I remember, the Senator from Iowa [Mr. CUMMINS], as well as other Senators, complained about the method under which clerks, men who were not experienced, could settle tax cases involving millions of dollars. As a result of those complaints we evolved the present Board of Tax Appeals provision of the law. I believe it has worked fairly well. I think it is an improvement over the former plan or procedure, and I am satisfied with the provision which requires members of the board to visit the various States and there pass upon the tax questions which are presented, or at least to take the testimony connected with the same.

Mr. SHORTRIDGE. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from California?

Mr. KING. I yield.

Mr. SHORTRIDGE. I wish merely to add that we must bear in mind that it is 3,000 miles from the city of Washington to the State of Washington, for example, or to my own State. The provision permitting the board to divide up into divisions and hear cases throughout the United States is altogether proper.

Mr. KING. I did not intend to detain the Senate more than a moment, but so many questions have been propounded that I have occupied the floor unduly. I shall not press my amendment at the present time. When the bill reaches the Senate I shall ask for a vote upon it.

The PRESIDING OFFICER. The Chair understands the Senator from Utah at this time to withdraw his amendment.

Mr. KING. I shall ask for a vote in the Senate if I conclude then to do so.

Mr. SMOOT. Has the committee amendment been agreed to?

The PRESIDING OFFICER. The question is on agreeing to the committee amendment as amended.

The amendment as amended was agreed to.

Mr. SMOOT. I would like now to have the Senate turn to page 325, which provides for assistants to the general counsel.

The PRESIDING OFFICER. The amendment will be stated.

The CHIEF CLERK. On page 325 the committee proposes to strike out lines 11 to 25, inclusive, in the following words:

(b) There is hereby created in the Bureau of Internal Revenue the office of special deputy commissioner of internal revenue. Special deputy commissioners shall be appointed by the President, by and with the advice and consent of the Senate, for terms of 10 years; but not more than six special deputy commissioners shall hold office at any one time. Each special deputy commissioner shall receive a salary at the rate of $8,000 per annum, and shall perform such duties as may be prescribed by the commissioner or required by law. Any special deputy commissioner may be removed by the President, after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause.

And to insert in lieu thereof the following:

(b) There is hereby created in the Bureau of Internal Revenue the office of assistant to the general counsel. Assistants to the general counsel shall be appointed by the President, by and with the advice and consent of the Senate, but not more than six assistants shall hold office at any one time. Each assistant to the general counsel shall receive a salary at the rate of $8,000 per annum and shall perform such duties as may be prescribed by the commissioner or required by law.

Mr. SMOOT. The junior Senator from Utah asked me, when we reached this provision, previously, to have it passed over. I do not know whether he is now ready to proceed with it or not.

Mr. KING. Mr. President, I want to call attention to the committee amendment. I think that the amendment should be rejected. I see no merit in it except to give jobs to a number of persons who are now in the department. As the bill came from the House it provided for additional deputy commissioners. It was elicited during the hearings before the Finance Committee that those persons were in the department and the claim was made that in order to hold them we would have to increase their salaries and, I presume, give them a higher title. So they were made assistant commissioners and their salaries increased to $8,000 per annum. I think the salaries are now in the neighborhood of $5,000 or less.

Mr. GLASS. Mr. President, will the Senator from Utah yield to me for a moment?

Mr. KING. I yield to the Senator from Virginia.

Mr. GLASS. I was temporarily called out of the Chamber. I wanted to offer an amendment to the section dealing with the Board of Tax Appeals.

Mr. SMOOT. I understand what the Senator wants, and I ask unanimous consent that the vote by which the committee amendment as amended, dealing with the Board of Tax Appeals, on page 266, was agreed to may be reconsidered for the purpose of allowing the Senator from Virginia to offer an amendment to the committee amendment.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Utah? The Chair hears none, and it is so ordered. The vote is reconsidered, and the question is now on the committee amendment as amended.

Mr. GLASS. I send to the desk an amendment which I propose to that section of the committee amendment.

Mr. REED of Pennsylvania. It is on page 266, following line 21?

Mr. GLASS. If that be the proper place. I had proposed to insert it at the end of line 19, on page 265.

Mr. SMOOT. I think it ought to go in after line 21, on page 266.

Mr. GLASS. Very well.

The PRESIDING OFFICER. The amendment to the amendment will be reported.

The CHIEF CLERK. On page 266, after line 21, insert the following:

No person who has been an attaché of the Bureau of Internal Revenue shall be eligible to appointment to any vacancy on the Board of Tax Appeals until at least two years have elapsed since such official connection with said bureau, but this prohibition shall not apply to the present members of the board.

Mr. SMOOT. I have no objection to the amendment.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Virginia to the amendment of the committee.

Mr. FESS. Mr. President, what would the amendment do?

Mr. GLASS. It does just exactly what it says. It precludes from future membership on the board attachés of the Internal Revenue Bureau.

Mr. FESS. Does the Senator mean that we could not promote someone from the bureau to the board?

Mr. GLASS. That is exactly what I mean; that we could not promote anyone from the Internal Revenue Bureau to this judicial body to reaffirm opinions and actions that he may have rendered and taken theretofore.

Mr. FESS. I have no objection to the amendment to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Virginia to the committee amendment.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. REED of Missouri. Mr. President, I desire to offer an amendment to a committee amendment.

Mr. COPELAND. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from New York will state it.

Mr. COPELAND. Has the committee presented all of its amendments?

The PRESIDING OFFICER. The Chair is advised that there are a number of committee amendments which have not yet been disposed of.

Mr. SMOOT. I understand the Senator from Missouri wants to offer an amendment to a committee amendment.

Mr. REED of Missouri. Yes; to paragraph 1001, on page 278, at the bottom of the page, in the committee amendment.

Mr. SMOOT. It is with reference to court review of decisions of the board.

Mr. REED of Missouri. Yes.

Mr. SMOOT. The committee amendment there has been agreed to, but in order that the Senator from Missouri may offer his amendment I ask unanimous consent that the vote by which section 1001, page 278, was agreed to, may be reconsidered.

The PRESIDING OFFICER. Without objection, it is so ordered, and the amendment offered by the Senator from Missouri to the committee amendment will be reported.

The CHIEF CLERK. Amend section 1001, at the bottom of page 278, by striking out all of paragraph (a) thereof and inserting the following:

SEC. 1001 (a). The decision of the board rendered after the enactment of this act may be reviewed upon appeal upon application of either the taxpayer or the commissioner, provided notice of such appeal is filed with the board within six months after its decision is rendered. Such appeal shall lie to the district court of the district in which the taxpayer resides, or, if the taxpayer and commissioner shall mutually agree, to the district court of the District of Columbia. The decision of the district court shall be subject to review upon appeal as in ordinary civil actions.

In case the taxpayer is not a resident of the United States the said appeal shall be lodged in the district court of the District of Columbia.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Missouri to the committee amendment.

Mr. CUMMINS. Mr. President, I would like to ask the Senator from Missouri a question in regard to the section. Does the Senator from Missouri understand that under this section the circuit court of appeals is to review the record made by the Board of Tax Appeals? The Board of Tax Appeals is not, technically at least, a judicial body. How is the circuit court of appeals to obtain jurisdiction of the act of, in law, an administrative body? Is the Board of Tax Appeals to certify the record it has made to the circuit court of appeals, and is the circuit court of appeals to consider the case as though it had been appealed from a district court of

the United States? I am at a loss to understand just how they are going to operate under the section.

Mr. REED of Missouri. The question of the Senator might perhaps more properly be addressed to the committee that reported the bill.

Mr. CUMMINS. That is very true. I recognize that.

Mr. REED of Missouri. What I am seeking to do is to change the location of the appeal from the circuit court of appeals to the district court of the district in which the taxpayer resides. The question which was just asked by the Senator from Iowa, when, I think, the Senator from Pennsylvania was for the moment otherwise engaged, and which I think the Senator from Pennsylvania perhaps ought to answer instead of myself, is how the appeal gets to a court, whether it goes up on the record that is made in the Board of Tax Appeals or how it gets there. I answered that I would prefer to have a member of the committee answer the question, because I am not dealing with that subject. I am dealing with the matter only in trying to change from one court to another.

Mr. REED of Pennsylvania. The procedure outlined in the bill as reported from the committee treats the Board of Tax Appeals practically as a court of original jurisdiction. An appeal from the board to the circuit court of appeals is in all respects similar to an appeal from a district court to the circuit court of appeals. The case is reviewed on the record and the appellate court has the power to reverse, with or without a venire de novo, or to affirm, but it does not try the case de novo. It does not take testimony. The practice is appellate practice entirely.

The amendment of the Senator from Missouri would change the procedure by making the appeal lie from the Board of Tax Appeals to the United States district court of the taxpayer's district, and, of course, in that court it would be tried de novo before a jury, with the commissioner and the taxpayer again offering their evidence and making their record.

Mr. REED of Missouri. Not necessarily, and I had not so intended. There is no procedure in the bill outlined for the matters which we are discussing, as I believe after having somewhat hastily examined the provisions of the bill.

As the bill now stands—it may not be very definite, but as I construe it—it means that there shall be a hearing before the Board of Tax Appeals. If the taxpayer or the commissioner is dissatisfied they appeal to the United States circuit court of appeals, and the case would, I presume, go up on the record, because that court, among other things, has no general jurisdiction to try a case de novo. All that I am seeking to do is to substitute for the circuit court of appeals the district court. The case would go there by appeal from the decision. I have used that term. While the district court does have jurisdiction to try cases de novo, and ordinarily does so, nevertheless the court can appoint a master to take evidence or a commissioner to take evidence, and in that case the court passes upon the record. It is not my purpose to have a trial de novo in the district court. If it is necessary to put in language to cover that, to say that it shall be there heard upon the record made, I have no objection to doing so. What I am trying to do is to give the taxpayer a chance to try the case, if he is dissatisfied with the board's decision, in his own district instead of having to go in many instances to a distant town to follow the circuit court of appeals wherever it may be.

Mr. WADSWORTH. Does the Senator not think that other provision in the bill which permits the taxpayer to take his case to the district court—conditioned, of course, upon his paying the assessment—meets the situation?

Mr. REED of Missouri. No; it does not.

Mr. WADSWORTH. Then he gets a trial de novo.

Mr. REED of Missouri. Yes; that is true; but he does not need a trial de novo if he tries his case right in the first instance, and neither does the Government.

Mr. WADSWORTH. That would be the first trial, would it not?

Mr. REED of Missouri. Yes; it would be in that case; but here is the difficulty about that, I will say to the Senator from New York, and I think a very grave one.

Let me say, by way of parenthesis, that all I want to do is to reduce the labors and burdens of the taxpayers as much as I can. In the instance put by the Senator from New York the taxpayer gets the trial, when and how? By paying whatsoever sum of money the Board of Tax Appeals has said he must pay.

Mr. WADSWORTH. No; the commissioner.

Mr. REED of Missouri. The commissioner, I should say. The commissioner may have levied a tax that is ruinous; that the taxpayer can not pay; but, in any event, to pay it is a great hardship, because it means to lay out his money. I have in mind cases that have come to my own observation where the taxpayer, in order to save himself from a distraint, has been obliged to pay the taxes under such conditions that the payment of those taxes has brought bankruptcy.

Sometimes men have credit when they can not get money, and sometimes they can get bond. My proposition here is that, so far as this particular amendment is concerned—and I have another one—instead of compelling the taxpayer to proceed by appeal from the board to the circuit court of appeals, to allow that question to be decided by the district court of the district. I can illustrate it geographically. Suppose that a tax is assessed against me in Kansas City. The Board of Tax Appeals comes to Kansas City, through one or more of its members, and hears my case. I put in my evidence and the Government puts in its evidence. Then that decision by the one or two members of the Board of Tax Appeals who have come to Kansas City goes to the general board sitting in Washington. If I am to have any relief there I must employ an attorney in Washington, or I must journey from Kansas City here with my attorneys and try the case. Then, if I am dissatisfied, I can appeal to the circuit court of appeals. This bill says to a circuit court of appeals; it does not say which one. The commissioner may be dissatisfied, and he may appeal to a circuit court of appeals; he may appeal to the court of appeals here in Washington. Then I have got to come here again, 1,200 miles from my home—and I am using myself as an illustration merely—and hire lawyers and present that appeal.

Mr. REED of Pennsylvania. Mr. President, has the Senator from Missouri seen the provisions of section 1002?

Mr. REED of Missouri. I thought I had.

Mr. REED of Pennsylvania. Those sections limit the appeal to the circuit court of appeals for the circuit whereof the taxpayer is an inhabitant, so that the taxpayer does not have to come to Washington.

Mr. REED of Missouri. In that event I should probably have to go to St. Louis or to St. Paul or to some other place where the circuit court of appeals sits in a circuit that embraces several great States. I think it is an unnecessary hardship, so I have brought in this amendment. If it shall be adopted this is the way it will work out: The Board of Tax Appeals will sit, by one or two members, in Kansas City. I will present my case. No matter what their decision may be, whether it is affirmed by the full board or not, I can await that decision and I can then file an appeal from it to the district court in Kansas City, where I live, where the collector of internal revenue lives, and where the property is located that is to be assessed; or, at least, the habitat of the owner of that property. It is a much simpler provision, and if adopted would save the terrible expense of traveling all over the country. All I desire is to fix it so that the trial shall occur as near the home of the taxpayer as possible.

Mr. REED of Pennsylvania. Does not the Senator from Missouri think that the procedure that he would introduce would really create one additional step through which the taxpayer would have to labor, because, to take the illustration that the Senator from Missouri has used, the Board of Tax Appeals goes to Kansas City and hears his case by one of its divisions. If he is dissatisfied with that decision he does not have to come to Washington to appear before the full board; he simply lets it go by default, as it were, unless the decision of the division ripens into the decision of the full board; or he may by a mere letter to the chairman of the board call his particular attention to that case, and he can be very sure the full board will consider it before they affirm the decision of the division. However, the taxpayer does not need to go from Kansas City.

Under the bill as it stands the dissatisfied taxpayer takes his appeal directly to the circuit court of appeals. Under the Senator's provision he would take it to the district court, and if he got his relief there, and if the commissioner were sure enough of his ground to have fought the case before the court, the probability is that the commissioner would then appeal to the circuit court of appeals, so that the case would reach there eventually; but the taxpayer would have had his trouble for his pains in the district court.

What we are trying to do is to short-circuit this procedure as much as possible and to expose the taxpayer to as little litigation as possible and give him a prompt decision so far as it is possible to do so. At present, under the law of 1924, if the taxpayer does not like the board's decision he simply ignores it and brings suit in the district court, and then the case is tried out de novo. Then he goes on up to the circuit court of appeals and perhaps to the Supreme Court of the United States. There is too much litigation about it. We are trying to abbreviate it.

Mr. REED of Missouri. I wish to say to the Senator from Pennsylvania that I think the committee improved the bill,

but I do not agree with the Senator's argument in whole, because he assumes the appeal of these cases from the district court. My own opinion is that there will be but few cases appealed. The district courts are presided over by judges of experience and ability in almost every instance, and if the taxpayer can get a trial at home it is very likely that he will be satisfied, or the Government will be satisfied, when once a judge has decided it. It is true the right is preserved to either side to appeal to the circuit court of appeals, but the vast majority of cases are not appealed, and I think in this class of cases few of them would be appealed to the circuit court of appeals.

The method that is presented by the committee compels recourse to the circuit court of appeals at once. That does make for finality, that is true, but it also makes the citizen pay—I suppose he would be compelled to pay—the expense of the printing of his record under the rules of the circuit court of appeals, the printing of his brief, and the sending of his attorneys to the court, which very likely is at a distant point.

The provision which I submit is one which allows the determination, at least, by a judge in the district court in the home practically of the taxpayer. I think it has that great advantage. I think, also, it has another advantage: I think it means a much quicker decision and much quicker disposition of the case.

So I want the Senator from Iowa to understand that my amendment does not change the procedure except in the matter of going to court. I do not think this bill is as clear as it might be in the matter of getting the record either into the circuit court of appeals or into district court.

Mr. CUMMINS. Mr. President, I understand that; but, of course, my question went a little deeper than the amendment proposed by the Senator from Missouri.

Mr. REED of Missouri. It does go very much deeper.

Mr. CUMMINS. My difficulty with regard to this part of the bill is rather fundamental. At the present time the commissioner makes his assessment finally, and the taxpayer must either allow the assessment to be collected or he must pay the assessment under protest and bring suit to recover the amount he has paid to the United States. He can bring that suit in either of two tribunals. He can bring it in the Court of Claims—and under the present law the Court of Claims is given jurisdiction—or in certain cases, which I need not stop to particularize, he can bring the suit in the district court of the United States, and it is there, of course, tried like any other suit which may be brought. So it is in the Court of Claims. I do not know why the Court of Claims is ousted from its jurisdiction by the bill before us. I have not heard any explanation upon that point. There may be a very good explanation; I do not know as to that.

Mr. REED of Pennsylvania. Does the Senator want an explanation now or would he prefer that I wait until he finishes?

Mr. CUMMINS. Just a moment, and then I will yield to the Senator. But the point I am making is that there is absolutely no way provided in the bill for the review. It is not provided that the Board of Tax Appeals shall certify to a record. It is not provided that the Board of Tax Appeals shall have any record. The Board of Tax Appeals, so far as I know the law, can try the case without taking down one syllable of the testimony that may be introduced. It is not required to make a record. I speak with deference about that, because I am not as familiar with the bill as the Senator from Pennsylvania is.

If the circuit court of appeals, or the district court, either, for that matter, is called upon to review the action of the Board of Tax Appeals, it must be reviewed in one of two ways. It must be reviewed upon a record made by the Board of Tax Appeals and certified to either the district court or the circuit court of appeals; and that is provided for only in a very indirect way and a very unsatisfactory way in paragraph (b) of this section, which reads:

Such courts—

Speaking of the circuit courts of appeals—

are authorized to adopt rules for the filing of such petition—

I assume that is a petition for a review—

and the conduct of proceedings upon such review, and, until the adoption of such rules, the rules of such courts relating to appellate proceedings upon a writ of error, so far as applicable, shall govern.

What is the proceeding upon a writ of error in an appellate court? A writ of error may bring up to the appellate court the entire proceedings had in the court below, or it may bring up a single point. It does not require a full record; and in a writ of error the litigant must take his exception in the trial court, and he must preserve that exception by a bill of exceptions which is signed by the trial court.

I can not conceive, Mr. President, of a proceeding in an administrative board, even if it is quasi judicial, in which a review is attempted by a judicial tribunal. In the first place, I have the very gravest doubt about the constitutionality of the entire provision. I do not believe that the Board of Tax Appeals is a judicial tribunal. If it is a judicial tribunal, its members must be appointed as provided in the Constitution of the United States; they must be appointed during good behavior. If it should be held that the Board of Tax Appeals is a judicial tribunal in the sense of the Constitution, then it seems to me that the whole foundation that is laid in this section and the subsequent sections for a review will fail. If it is not a judicial tribunal, you can not appeal a case from an administrative tribunal to a judicial tribunal. You can review the action of such a tribunal as the Board of Tax Appeals in a judicial way; but it must be reviewed either by attacking the order of the administrative tribunal in a court, as, for instance, by an application or a petition or a bill in equity for an injunction, or it can be enforced, on the other hand, by a suit brought by the administrative tribunal to enforce its order.

I know there has been some confusion about this particular point; and it has been said that the orders of the Interstate Commerce Commission, which is as truly judicial or quasi judicial as the Board of Tax Appeals, can be reviewed, and that the orders of the Federal Trade Commission, which occupies exactly the same relation to our Government that the Interstate Commerce Commission does, can be reviewed, and that under the packers' act it is provided that there can be a review; but I have looked in vain for a decision of the Supreme Court of the United States which holds that there can be what we understand to be an appeal from such a tribunal to a judicial tribunal.

Mr. REED of Pennsylvania. Mr. President, will the Senator permit a question?

Mr. CUMMINS. Certainly.

Mr. REED of Pennsylvania. Would not the Senator's entire objection on that score, then, be removed if we were to amend the word "appeal" to read "review"?

Mr. CUMMINS. No; you use the word "review," but in some fashion that I can not quite understand you are to get the record of the inferior tribunal before the superior tribunal. I do not know how you are going to get it there.

Mr. REED of Missouri. Mr. President, I have not given this clause of the bill anything except a very cursory reading. My attention was directed more particularly to the place of review.

Mr. CUMMINS. Do not understand that I have any objection at all to the Senator's amendment.

Mr. REED of Missouri. No; but unless there is apt language in the bill providing for the preservation of a record and for some proper certification of the record, I think it ought to go in. I submit to the Senator, however, whether the document which the taxpayer files, in which he appeals from the decision of the board, is not in the nature of an original petition which he might file to review or set aside the decision of this board; and, although it does not come within the old forms, nevertheless we have the power by statute to give the court a jurisdiction by saying in direct terms, if we want to, that whenever the Board of Tax Appeals has rendered a decision, its record, which shall embrace all of the evidence taken and the rulings thereon, shall be, at the request of the taxpayer, certified to a court, and that it shall constitute the record upon which the court shall decide the case. If that is not in here, or something like it, it ought to be.

Mr. CUMMINS. I think there is no difficulty whatever in giving either the district court of the United States or the circuit court of appeals original jurisdiction of this subject; but, when you do give it original jurisdiction, my judgment is that either the Government or the taxpayer ought to be permitted to introduce further testimony that relates to the issues of the case.

Why should you cut off a man from his opportunity to introduce evidence if he believes that the action of the Government has been illegal? In every other case—in the cases that relate to the Federal Trade Commission, in the cases that relate to the Interstate Commerce Commission—when their orders are sought to be reviewed by an original petition brought in any court, both sides may introduce additional testimony.

I am not very familiar with the way in which cases are tried before the Board of Tax Appeals and just how they do oper-

ate; but under paragraph (b), if the Government or the taxpayer should offer testimony that was irrelevant, immaterial, or incompetent, and it was admitted, there is your exception; you take an exception to that and can review that ruling, I suppose.

Mr. REED of Missouri. I think the most dangerous point the Senator makes on that subject is that if no exception is taken to the decision, or to any ruling made, a court on appeal might refuse to consider the objection then raised for the first time.

Mr. REED of Pennsylvania. Mr. President, will not the Senator let me interrupt him?

Mr. CUMMINS. Certainly I will.

Mr. REED of Pennsylvania. The whole thing, I think, is answered by the provisions of the bill on page 273, where the make-up of the record before the board is fully described—the provision for findings of fact and for conclusions of law, the provision for an opinion giving the reasons, and the transcript of the stenographic report of the hearings—and then there is a provision that the rules of evidence prevailing in the equity courts of the District of Columbia shall govern this board. The rules to which the Senator has called attention, which are found in clause (b) on page 279, are rules of the appellate court.

Mr. CUMMINS. Precisely.

Mr. REED of Pennsylvania. They do not relate to the proceedings before the board itself, although they clearly can relate to the making-up of the record on appeal.

Mr. CUMMINS. But there is no provision whatever for getting the record that is made before the Board of Tax Appeals before the circuit court of appeals.

Mr. REED of Pennsylvania. But it is provided in section (b) on page 279 that the courts are to adopt rules for that.

Mr. CUMMINS. Oh, no; they can not adopt rules for the Board of Tax Appeals.

Mr. REED of Pennsylvania. But that was not what the Senator said. The Senator spoke of getting the record up to the appellate court. That will be done by writ of certiorari, or its equivalent, issuing out of the appellate court.

Mr. REED of Missouri. But what record, Mr. President?

Mr. REED of Pennsylvania. The record that will go up will be the record that is made as directed on page 273.

Mr. REED of Missouri. Let us see what that is:

(b) It shall be the duty of the board and of each division to make findings of fact and a decision in each case before it and report thereon in writing, except that the findings of fact and report thereon may be omitted in case of a decision dismissing any proceeding upon motion either of the taxpayer, the commissioner, or the board. Whenever the board deems it advisable, the report shall contain an opinion in writing in addition to the findings of fact and decision.

(c) All reports of the board and all evidence received by the board and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public, except that after the decision of the board in any proceeding has become final the board may, upon motion of the taxpayer or the commissioner, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits introduced in evidence before the board or any division; or the board may, on its own motion, make such other disposition thereof as it deems advisable.

That is a provision to make them public records, but it is not a provision that the testimony shall be taken in shorthand, or, taken, that it shall be transcribed, that it shall be certified, that it shall constitute the record in the case, and that it, together with the findings of the board, shall be sent up on appeal. Does not the Senator, as a careful lawyer, think that we might have some difficulty in being sure that on appeal the evidence goes up, although it is made a public record?

Mr. REED of Pennsylvania. Yes; I think we might go more into detail with that. I think it was the intention of the draftsman that it should be part of the record, but he has not said so in clear language. I think that can be improved by further amendment.

Mr. CUMMINS. Does the Senator think the circuit court of appeals could issue a writ of certiorari to the Board of Tax Appeals?

Mr. REED of Pennsylvania. Under the power given on page 279; yes.

Mr. REED of Missouri. Why could we not get past that by simply saying that, in case an appeal is lodged, the record shall be forthwith sent up?

Mr. REED of Pennsylvania. Because in many cases the whole record is not wanted.

Mr. REED of Missouri. Or such part of the record as the taxpayer calls for.

Mr. REED of Pennsylvania. The Senator from Iowa called attention to the fact that on writ of error often the whole record did not go up. It ought not to go up in this case.

Mr. CUMMINS. We agree on that.

Mr. REED of Pennsylvania. In some cases one-tenth of the record will present the only question that needs to be litigated.

Mr. CUMMINS. But there must be established some sort of a legal connection between the circuit court of appeals and the Board of Tax Appeals or the district court if the amendment of the Senator from Missouri shall prevail. I do not think the connection is established and described. I have some doubt whether the connection can be established, but the Senator from Pennsylvania has considered that question, and I have no disposition to argue it.

Mr. REED of Pennsylvania. May I also offer another suggestion to the Senator, so that he may answer it before he concludes his remarks? He spoke about the impossibility of taking evidence in the circuit court of appeals. I assume such a court always would have power to take testimony by a master, if it wanted to appoint one.

Mr. CUMMINS. The Senator must have misunderstood me. The circuit court of appeals has no difficulty in taking testimony.

Mr. REED of Pennsylvania. Whenever it wants to do it.

Mr. CUMMINS. It has original jurisdiction in quite a variety of cases where it must take testimony.

Mr. REED of Pennsylvania. Then I must have misunderstood the Senator.

Mr. CUMMINS. I think the Senator misunderstood me.

Mr. REED of Pennsylvania. I think the Senator was not in the Chamber when an amendment was adopted on page 282, referring to the authority of the appellate court, in paragraph (b). I will read the section to the Senator as it has been amended:

Upon such review such courts shall have power to affirm or, if the decision of the board is not in accordance with law, to modify or to reverse the decision of the board, with or without remanding the case for a rehearing, as justice may require.

So, if there has been any inadequacy in the record, it can always be corrected by a remanding, with a direction to take further testimony.

Mr. CUMMINS. My own judgment is that if the circuit court of appeals can acquire jurisdiction at all, it ought to enter the final decree, precisely as it does in cases of equity, and ought not to remand cases to the Board of Tax Appeals.

Mr. REED of Missouri. It seems to me that, in view of all these complications which have come up, we will save the time of the Senate and the time of all of us if this matter can be passed over, and we can take a few minutes out of the Senate to frame these amendments, about which we can probably agree; except that I hope the Senator from Pennsylvania will agree to my amendment and let it go in.

Mr. REED of Pennsylvania. I do not like the Senator's amendment, because it introduces just one more step to be taken in contesting cases.

Mr. REED of Missouri. There is a possible additional step, but the fact is that in 90 per cent of the cases in all probability the case will be settled in the district court.

Mr. REED of Pennsylvania. It means just one more trial of each case and one more court to go to, and I do not like it for that reason.

Mr. CUMMINS. We can very easily avoid that if we so desire. Senators are treating the Board of Tax Appeals as a court of original jurisdiction, and if they wanted to they could make the decision of the district court final, because then the taxpayer would have had two trials, just as a litigant has two trials when he tries a case originally in the district court and takes it to the circuit court of appeals. However, I am not sure that I would favor the Senator's amendment.

Mr. REED of Pennsylvania. I do not believe I would favor that. We would be getting a great variety of decisions.

Mr. REED of Missouri. The fact is that if a case goes to the Board of Tax Appeals and is decided, and goes to the district court, in all human probability that will end it; but the right ought to be preserved to go clear to the Supreme Court of the United States, if that right should exist.

Mr. CUMMINS. Under the present law that right can exist only through certiorari, or through a certificate of questions by the circuit court of appeals.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Missouri to the committee amendment.

Mr. REED of Missouri. If the amendment is not accepted, I suppose we will have to call for a quorum. I want to present my reasons for offering the amendment.

Mr. REED of Pennsylvania. Perhaps for the present the easiest way to handle the matter would be to accept the Senator's amendment, with the understanding that we may move to reconsider later in the day.

Mr. REED of Missouri. Very well.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Missouri to the committee amendment.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. REED of Missouri. I have another amendment, which I send to the desk and ask to have read.

The PRESIDING OFFICER. The Secretary will state the amendment.

The CHIEF CLERK. On page 127, section 274, to amend by inserting in advance of the text of paragraph (a) the following:

The return made by the taxpayer shall be prima facie evidence of its correctness, and the commissioner shall not declare that there is a deficiency in the return until he has given the taxpayer notice that a deficiency is believed to exist and has given the taxpayer an opportunity to explain the alleged deficiency.

Mr. REED of Pennsylvania. I ask unanimous consent that the vote by which the committee amendment inserting section 274 was adopted be reconsidered.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the vote is reconsidered. The question is on agreeing to the amendment offered by the Senator from Missouri to the amendment of the committee.

Mr. REED of Pennsylvania. I think the amendment is open to objection, particularly in cases of jeopardy assessments, and I think that the last part of it is really unnecessary, because it outlines the practice which the commissioner now follows; that is, in giving the taxpayer a chance to present his side before he sends out the formal 60-day letter.

As we add these various requirements in the statute we are simply multiplying the technicalities open to dishonest taxpayers. It is one more step that the commissioner has to establish as a prerequisite to his right to collect. As a matter of fact, it is a just thing that he should give an opportunity to the taxpayer, and, as a matter of fact, he does it now; but I do not like to see it added as a condition precedent to his authority to proceed further.

Mr. REED of Missouri. There is one objection which the Senator has raised which I am willing to meet; that is, in case of an emergency, and I am willing to interline the proper words to take care of that.

Mr. REED of Pennsylvania. Add the words "except in cases of jeopardy assessments."

Mr. REED of Missouri. Make it read:

The return made by the taxpayer shall be prima facie evidence of its correctness, and the commissioner shall not, except in cases of jeopardy assessments, declare—

And so forth.

I am very much in earnest about this proposition, because I know that while the commissioner may have a custom of notifying the taxpayers, it is not observed. They may observe it in certain cases, but in the last 90 days three cases have come to my direct attention where taxpayers have simply been notified that taxes have been raised, and in one of those cases in particular there was an absolutely plain explanation, and, if the young man who came out to represent the Government had taken the pains to interrogate the taxpayer, certainly there would never have been any increase in the levy.

I do not speak of these cases because I have any special interest in them, but because they happened to come to my attention. The circumstances in the case I mentioned the other day were these: An attorney collected a fee of some $18,000 from a body of men for whom he was working. That was substantially his income for the entire year, for he had been giving them all of his time. He reported $18,000 legal fees, but he did not say from whom he had collected the fees, which he was not required to do. One of these bright young men, in examining the books of the men who had paid this attorney the fee, discovered that he had received this money, and without saying a word to him, proceeded to raise his assessment, and then notified him, after it had been done; and, of course, he is put to all the difficulty and circumlocution of explaining that matter. A simple visit to his office and an inquiry, and the trouble would have been avoided.

The Senator said that the commissioners have followed the rule which I now propose to put into the law. If they already do so, they will suffer no additional hardship. There ought to be a protection of the taxpayer. I think about one-third of the dissatisfaction that our people feel in paying taxes to-day arises from the way in which the business is handled. There have been outrages perpetrated that I would not want to tell about on the floor of the Senate. I have known of concerns being bankrupted by the purely arbitrary action of young men who have had no experience, but are simply keenly alive to the fact that it is their business to get the money.

Before any man in the country has what amounts to a judgment entered against him—because that is in its nature what is done when his taxes are raised with the right of a distraint to be issued by the Government at once existing—I think that the taxpayer ought to have notice so he can protect himself. I have modified the amendment by inserting the words suggested, and I hope the Senator from Pennsylvania will not insist on his objection.

The PRESIDING OFFICER. The Chair suggests that it may be advisable to have the amendment as modified again reported. The clerk will report the amendment to the amendment as modified.

The CHIEF CLERK. Amend section 274, page 127, by inserting in advance of the text of the bill the following:

274. (a) Except in case of jeopardy assessments, the return made by the taxpayer shall be prima facie evidence of its correctness, and the commissioner shall not declare that there is a deficiency in the return until he has given the taxpayer notice that a deficiency is believed to exist and has given the taxpayer an opportunity to explain the alleged deficiency.

Mr. REED of Pennsylvania. I think I can assure the Senator that the amendment is not necessary, but I suggest for the present that we accept it with the understanding we had with reference to his other amendment, that we may move later to reconsider in case we fail to agree.

Mr. REED of Missouri. That is agreeable to me.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the committee as modified. Without objection, it is agreed to, and the amendment as amended is agreed to. Has the Senator from Missouri another amendment?

Mr. REED of Missouri. Yes; I have sent it to the desk.

The PRESIDING OFFICER. The amendment will be reported.

The CHIEF CLERK. On page 132, after line 13, insert:

In any event, and notwithstanding the other provisions of this act, any taxpayer aggrieved by the action of the commissioner may file his action in the district court of the district in which he resides to review the action of the commissioner and/or to determine the amount of taxes by him justly due and payable. Upon the filing of such petition, together with a good and sufficient bond conditioned that the taxpayer will abide and satisfy the decision of the court, no distraint against the properties of the taxpayer shall issue. If such bond is not filed, then distraint may issue as elsewhere in this act provided. If the court, upon the hearing of the cause, shall find that the suit was filed for the mere purpose of delay, or that the action was not in good faith, then the court may, in addition to the other penalties provided for in this act, award an additional penalty in excess of the taxes returned by the taxpayer of not to exceed 10 per cent of the taxes found to be due.

Mr. REED of Pennsylvania. With the same agreement as to this amendment that we have as to the other two amendments, that a motion to reconsider may be made, I shall not present any objection at this time.

Mr. REED of Missouri. That is agreeable to me.

The PRESIDING OFFICER. Without objection, the amendment of the Senator from Missouri is agreed to.

Mr. SMITH. Mr. President, may I ask the Senator in charge of the bill if the committee amendments have yet been completed?

Mr. REED of Pennsylvania. No; we are now considering an amendment on page 325, which deals with assistants to the general counsel. There are about half a dozen committee amendments still to dispose of. The Senator from Utah was discussing this amendment a short time ago.

Mr. KING. Recurring to the amendment, which I shall briefly state, I want to submit just a word or two. On page 325, beginning with line 24, the following language appears:

There is hereby created in the Bureau of Internal Revenue the office of assistant to the general counsel.

That is a part of the amendment tendered by the Finance Committee. To that sentence I have no objection. It is to the residue of the section that I object; it reads as follows:

Assistants to the general counsel shall be appointed by the President, by and with the advice and consent of the Senate, but not more

than six assistants shall hold office at any time. Each assistant to the general counsel shall receive a salary at the rate of $8,000 per annum and shall perform such duties as may be prescribed by the commissioner or required by law.

Such legislation in my opinion is highly improper. It is an attempt to take care of six persons now holding positions in the Treasury Department. I opposed this morning in a temperate way some of the provisions relating to the Board of Tax Appeals.

I stated then that the board was saturated with bureaucracy. A great majority of the appointments were from within the department or gathered from the outside from a list of persons who had recently severed their relations with the department. It seems as if the commissioner, or those who are controlling the tax unit of the Government, want to keep within the department, and in these important positions, persons having their point of view and who will owe their appointments to those whose actions and rulings they are to pass upon.

I am advised that efforts to have appointed to this board lawyers of recognized standing and ability were unsuccessful, and the reason was that the commissioner and others connected with the Treasury Department determined that most of the members of the board should be employees and ex-employees of the Internal Revenue Bureau. In my opinion the letter and spirit of the law were not observed in the selection of persons to fill the board. Most of the members of the board represent the Treasury's views; they have grown up under the spirit of the tax unit, and can not do otherwise than reflect the unit's views upon the questions which will come before them. This is unfortunate when it is recalled that the investigation of the Internal Revenue Bureau by the Couzens committee demonstrated that erroneous rulings have been made, injustices have been permitted, confused decisions have been made, and the Government has been deprived of millions of taxes legally due from large corporations.

Most of those appointed upon the board were persons who had had no experience as lawyers in the general practice of law. They were officials in the tax unit, and with but little knowledge of the great science of the law. I am not condemning the board. So far as I know, they are men of good character and ability. I am criticizing the policy of filling these positions with so many young men from the tax unit instead of selecting lawyers of large practice and recognized standing by the profession. I do not think the bureaucratic view should be so strongly represented on the board. But to return to my amendment.

There are six other men in the tax unit whom the commission desires to retain, it is claimed, and they must therefore be given new titles and increased emolument. The House provided that there should be created six special deputy commisisoners of internal revenue to be appointed by the President, with a salary of $8,000 per annum each. They were to hold office indefinitely; it might be a life tenure. The House gave these individuals a higher title and larger salaries. They are to perform the same duties with diminishing responsibilities and duties, because the work of the Internal Revenue Bureau will grow less, and with the settlement of the war-tax cases there will be a material diminution in the activities of the bureau. The House raised the salaries of these six persons to $8,000.

The Finance Committee amended the bill and provided that—

Assistants to the general counsel shall be appointed by the President, by and with the advice and consent of the Senate, but not more than six assistants shall hold office at any one time. Each assistant to the general counsel shall receive a salary at the rate of $8,000 per annum, etc.

The Senate committee is still solicitous for the welfare of these same six men. They are called "assistants to the general counsel," but their duties are to be the same and their salaries the same. The general counsel already has 162 lawyers working under him. We are asked now to give him six additional ones, with salaries of $8,000 each. I submit this is special and unjust legislation. Its sole purpose is to care for persons now in the bureau and give them a tenure of office different from that which they now enjoy, with a great increase in compensation.

But it may be said the men hold important positions and the department needs their services. That is said of nearly every official in the Government. Particularly when legislation is contemplated to abolish the office or to diminish the salary. The claim is then made that the official is indispensable to the public service. It is possible some Senators think they are indispensable, and they may appeal with great earnestness to their constituents to reelect them because of their invaluable services to the country. However, they retire or pass on and the Republic moves on undisturbed by their departure.

The positions in question are not vital to the country; they can be filled if the present incumbents should resign. There are no "key positions" that can not be filled by others than those now occupying them. Other men can fill the positions the men are occupying to-day, and with as much ability as that which they exhibit in the performance of their duties. I submit that the effect of this proposed legislation will be bad.

If we take these men now occupying positions that correspond with heads of bureaus and give them $8,000 a year, every head or subhead of a bureau and every person holding a corresponding position in the various departments will demand an increase in salary and perhaps a higher and more exalted title. It is my opinion that if we enact into law this particular provision every official in the Government who occupies a corresponding position in any department or any executive agency will insist that he shall receive $8,000 per annum. I think this proposed legislation is unwarranted and discriminatory and will be provocative of further attacks upon the Treasury, further efforts to increase salaries in every department of the Government.

There was no explanation made before the Finance Committee which satisfied me as to the wisdom or necessity of this action. Those men are there, and they have been there for years. I think if some of them should go that there would be no disadvantage to the Government. There have gone out of the department to the advantage of the Government persons who held similar positions. There are some men who would come within this class who are men of ability and standing, but they have been there for years; they have been satisfied with the salary received; and there is no reason why they shall not continue. If they do not do so, others will be glad to take their places without an increase in salaries. So, Mr. President, I hope that my amendment to the committee amendment will be adopted.

The PRESIDING OFFICER. The amendment of the junior Senator from Utah will be stated at the desk.

Mr. KING. My amendment is to strike from the Senate committee amendment beginning in line 25, on page 325, all of the residue of the paragraph down to and including the word "law" in line 7 on page 326.

The PRESIDING OFFICER. The amendment will be stated from the desk.

Mr. COUZENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum being suggested, the Secretary will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	Fess	La Follette	Sheppard
Bayard	Fletcher	McKellar	Shipstead
Blease	Frazier	McLean	Shortridge
Borah	George	McMaster	Simmons
Bratton	Gerry	McNary	Smith
Brookhart	Gillett	Metcalf	Smoot
Broussard	Glass	Moses	Stanfield
Bruce	Goff	Neely	Stephens
Butler	Gooding	Norris	Swanson
Cameron	Hale	Nye	Trammell
Capper	Harreld	Oddie	Tyson
Copeland	Harris	Overman	Wadsworth
Couzens	Harrison	Pepper	Walsh
Cummins	Heflin	Phipps	Warren
Curtis	Howell	Pine	Watson
Deneen	Johnson	Ransdell	Weller
Dill	Jones, Wash.	Reed, Mo.	Wheeler
Edge	Kendrick	Reed, Pa.	Willis
Fernald	Keyes	Robinson, Ind.	
Ferris	King	Sackett	

The VICE PRESIDENT. Seventy-eight Senators having answered to their names, a quorum is present.

Mr. REED of Pennsylvania obtained the floor.

The VICE PRESIDENT. Will the Senator from Pennsylvania yield, in order that the amendment proposed by the junior Senator from Utah [Mr. KING] to the committee amendment may be stated?

Mr. REED of Pennsylvania. I shall be glad to have that done.

The VICE PRESIDENT. The amendment to the committee amendment will be stated.

The CHIEF CLERK. On page 325, beginning in line 25, the junior Senator from Utah [Mr. KING] proposes to strike out the words:

Assistants to the general counsel shall be appointed by the President, by and with the advice and consent of the Senate, but not more than six assistants shall hold office at any one time. Each assistant to the general counsel shall receive a salary at the rate of $8,000 per annum and shall perform such duties as may be prescribed by the commissioner or required by law.

Mr. REED of Pennsylvania. Mr. President, the purpose the committee had in mind in inserting this amendment was, if possible, to cut down the excessive turnover among the lawyers employed in the Bureau of Internal Revenue. At the present time it is nearly impossible to keep a good man there. Those men can earn more in a month outside in private practice than they are paid for a year's service for the Government. The men who will be paid $8,000 per annum under the committee amendment have to handle cases running into the millions of dollars. Never a day will pass but each of those men will have on his desk a case involving a million dollars or more to the Government.

An illustration of the responsibilities that rest on these men and the way they are underpaid is shown in the Steel Corporation case, which involved $27,000,000. The report on that case was written by a man who was getting a salary from the Government of but $3,500 a year. By the time he had written his report he received an offer to take outside employment at $10,000 a year, and he accepted it. Now, there is no one in the bureau who knows what is in that opinion, which is nearly 8,000 pages long, and the bureau will have to consume a good deal of the time of another man in learning just what is in the opinion.

In the long run we waste money by underpaying these men, and the committee felt, and felt almost unanimously—I think the junior Senator from Utah [Mr. KING] was the only one who disagreed—that $8,000 a year was not too much for these assistants.

Mr. KING. Mr. President, I apologize for restating some of the points which I made a few moments ago. The situation briefly is this: The House created or sought to create six additional deputy commissioners. The object was to create high titles for men who are now in the department. They occupy similar positions in the department to those occupied by men in other agencies and departments of the Government whose salaries are from $4,000 to $5,000 a year. My first point was that if we increase the salaries of these officials we are bound to increase them in all the departments of the Government, and the result will be that we will have hundreds and thousands of applications to increase salaries in all departments of the Government.

Secondly, these six men are there working in the department. They have been satisfied, apparently, with the salaries which they have received. The plan now is to give them different titles and call them assistants to the general counsel of the bureau. He already has 162 lawyers under his jurisdiction, and some of them receive four, five, or six thousand dollars. I think they are rendering efficient service. Mr. Gregg, who will be named general counsel, indeed, who has been named now for solicitor, is a man of ability, and he will have charge of all the legal activities of the bureau. I object to taking these men who now have positions there, giving them different titles, and increasing their salaries. Their positions are in part executive in character. I think it is unfair and discriminatory to lift them out and give them a different title and increase their compensation, because, as I said, every subordinate in the Government service who occupies a corresponding position in the departments of necessity will have to be paid the same salary, or at least he will demand an increase in his salary.

It is true that there is some turnover there, Mr. President. It is true that a good many men have left the department. A good many men who have left the department are not making double the salaries that they made there. It is like it is in law or in medicine. We hear of some man who makes a fee of $100,000 or $200,000, and immediately young men covet the position of lawyer, and they study law, expecting to become immensely rich; and yet the lawyers of the United States do not earn on the average $1,000 a year. That is the average earning of all the lawyers of the United States. We select some of these men who have gotten secret information in the departments and who go out and get some client who has a large claim, and they get 15 or 20 or 30 per cent upon any refund which they may obtain, and thus get an enormous fee, and so we soon hear of these large fees; and other young men, hoping to get large fees, leave the department. Many of them succeed, many do not. There are some men in the department, as there are some men upon the bench, who have some pride in their work, and who are interested in doing good work and who would not be seduced away from their positions by the possibility of being employed in some big case if they should sever their relations with the Government.

I know of men who have left lucrative positions to become professors on a salary of three or four thousand dollars a year. There is something in the world besides the mere salary; and merely to gratify these six men, or to provide berths for them by increasing the compensation beyond that which is paid to men who are doing law work in the Post Office Department or in the other departments of the Government seems to me vicious, discriminatory, unwise, and unfair.

Mr. REED of Pennsylvania. Mr. President——

Mr. KING. I yield.

Mr. REED of Pennsylvania. Does the Senator know that we have had seven Solicitors of Internal Revenue in the last seven years; that the old committee on appeals and reviews in the bureau, which contained the highest-paid lawyers there, had 16 resignations out of 21 members in a space of four years; that they had four chairmen of that board in four years? Does not the Senator think there is a great loss of efficiency from that excessive turnover?

Mr. KING. Mr. President, I agree with the Senator that there is some loss of efficiency; but the Senator is referring to an abnormal situation, which will not be long continued. We had these amortization cases, these depreciation cases, these war situations, in which there was a vast amount of business dumped in upon the department. Some of these men when they learned of these tax-refund cases and of the chaotic condition of the department, of the lack of uniformity in rulings, when they learned that they could go out and take the case of some taxpayer and get an enormous fee in a few weeks, resigned. A good many of them resigned; but, fortunately, that situation will soon end. The department will clear up its business; matters will become current; and I make the prophecy that within two years there will be hundreds of lawyers seeking jobs in the Government service at salaries very much less than $8,000. Men covet these positions as they coveted the positions upon the Tax Appeal Board, where the compensation was only $7,500. Now we propose to increase that to $10,000, though there were scores of men seeking the positions when the compensation was only $7,500.

Mr. President, this is discriminatory. It is an effort to take care of six men in the department and to increase their salaries by merely changing the title of the office which is bestowed upon them.

I hope that my amendment will prevail.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Utah to the amendment of the committee.

The amendment to the amendment was rejected.

Mr. KING. Mr. President, in line 3, I move to strike out the word "six" and insert the word "four," so that it will read:

not more than four assistants.

As I state, the general counsel already has 162 lawyers, and now it is proposed to give him 6 more. I wish to limit it to 4.

I ask for a vote.

The VICE PRESIDENT. The question is upon agreeing to the amendment offered by the Senator from Utah to the amendment of the committee.

The amendment to the amendment was rejected.

Mr. KING. Mr. President, I desire to say that I shall ask for a record vote on this amendment in the Senate.

The VICE PRESIDENT. The question now is upon agreeing to the amendment of the committee.

The amendment was agreed to.

Mr. REED of Pennsylvania. Mr. President, I ask now that we take up my request to reconsider the amortization amendment, which was put in on page 334. I ask unanimous consent that the vote by which that amendment was adopted be reconsidered.

The VICE PRESIDENT. Is there objection to the request for reconsideration? The Chair hears none, and the vote by which the amendment was adopted is reconsidered.

Mr. REED of Pennsylvania. Now, Mr. President, I move to strike out the date "March 3, 1924," and to insert in lieu thereof the date "June 15, 1924." I may say that I understand that the Senator from Utah [Mr. KING] has had a chance to consider the matter and is now ready to agree to the change.

Mr. KING. Mr. President, I have given attention to that matter, and I believe that it was the intention of Congress to extend the period for three years, and that would bring it up to June, 1924. If the amendment goes no further than that, I am willing to accept it.

Mr. FLETCHER. Mr. President, I do not quite understand what the amendment is. Does the Senator say it is on page 334?

Mr. REED of Pennsylvania. On page 334 an amendment was inserted which will allow amortization claims if they were

filed up to March 3, 1924. The committee wants to change that date to June 15, 1924.

Mr. KING. It does not permit the filing of any claims now, or after June, 1924, no matter what their character may be.

Mr. SMITH. Mr. President, how far back are these claims allowed to run? I understand that now they only run up to a certain fixed period, and that after that there will be no more amortization claims.

Mr. REED of Pennsylvania. The whole idea of war-time amortization has ceased. It does not apply now. No such amortization is permitted for present years.

Mr. SMITH. Mr. President, let me read a letter which I have here. I want the Senator to help out my constituent. He says:

As there are matters concerning claims for refund in which I am much interested, and as our local interests, in common with others, had to make certain changes under war-time conditions, there has been pending with the Board of Tax Appeals a case in which consideration of amortization is an important factor.

I am informed that, following the decision of the Board of Tax Appeals in the case of the Stauffer Chemical Co., decision 835, the Treasury Department is disallowing all deductions for amortization in which claim was not made at the time of filing returns for the taxable years 1918, 1919, 1920, and 1921.

Mr. REED of Pennsylvania. Mr. President, I can answer that now. Those claims will be allowed, if they are otherwise proper, provided they were filed at any time before June 15, 1924. That will amply take care of the case of the Senator's correspondent.

Mr. SMITH. Yes. Let me read another paragraph and see if we are correct:

I do not believe that it was the intention of Congress to thus deprive taxpayers of proper deductions, the right to which had accrued prior to the passage of the revenue act of 1921, especially in view of the fact that in many cases the extent of deductible losses was not definitely ascertained until the end of the normal postwar years, namely, March 3, 1924.

It is quite possible that later decisions of the Board of Tax Appeals may define the situation more clearly, but at present I believe it to be highly desirable that, if possible, an amendment be made of the pending revenue bill which will remove all doubt and clearly define the rights of taxpayers in this respect.

Now he refers to this bill:

As the case in which I am interested is going to be affected by the foregoing decision of the board, I would request and urge your consideration to use your efforts in having the adoption of the amendment of the pending revenue bill to the effect "that nothing in paragraph (9) of subdivision (a) of section 214, or paragraph (8) of subdivision (a), section 234, of the revenue act of 1921, shall be construed to bar from allowance any claim for amortization relating to any taxable year prior to 1921.

Mr. REED of Pennsylvania. In substance, this provides the same thing. All that would limit the claim of the Senator's correspondent would be that he neglected to file his claim until after June 15, 1924; but as the date that he himself mentions is March 3, 1924, it is perfectly obvious that he will be satisfied, because we give him even more time than he asks for.

Mr. SMITH. If he filed his claim prior to June 15, 1924, his claim will be considered?

Mr. KING. Yes.

Mr. SMITH. Very well, Mr. President.

Mr. KING. Mr. President, I want to say, with respect to the law passed by Congress dealing with amortization claims, that in my opinion Congress has been entirely too lenient. We ought to have cut them off years ago; but Congress passed the law giving three years, and I have acceded to this amendment because in good faith I think we should carry out that provision of the law.

The VICE PRESIDENT. The question is upon agreeing to the amendment offered by the Senator from Pennsylvania to the amendment of the committee.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. SMOOT. Mr. President, the next amendment we desire to take up is found on page 19, known as the depletion amendment.

The VICE PRESIDENT. The amendment will be stated.

The CHIEF CLERK. On page 19, the committee proposes to strike out lines 19 to 24, inclusive; all of page 20; and page 21 down to and including line 11, and in lieu thereof to insert:

(c) The basis upon which depletion, exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the same as is provided in subdivision (a) or (b) for the purpose of determining the gain or loss upon the sale or other disposition of such property, except that—

(1) In the case of mines discovered by the taxpayer after February 28, 1913, the basis for depletion shall be the fair market value of the property at the date of discovery or within 30 days thereafter, if such mines were not acquired as the result of purchase of a proven tract or lease, and if the fair market value of the property is materially disproportionate to the cost. The depletion allowance based on discovery value provided in this paragraph shall not exceed 50 per cent of the net income of the taxpayer (computed without allowance for depletion) from the property upon which the discovery was made, except that in no case shall the depletion allowance be less than it would be if computed without reference to discovery value. Discoveries shall include minerals discovered or proven in an existing mine or mining tract by the taxpayer after February 28, 1913, not included in any prior valuation.

(2) In the case of oil and gas wells the allowance for depletion shall be 25 per cent of the gross income from the property during the taxable year. Such allowance shall not exceed 50 per cent of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this paragraph.

On page 22, line 5, the senior Senator from Florida [Mr. FLETCHER] has the following amendment pending, to strike out the words:

Discoveries shall include minerals discovered or proven in an existing mine or mining tract by the taxpayer after February 28, 1913, not included in any prior valuation.

Mr. FLETCHER. Regarding that amendment, I do not propose to discuss it at any length at all. I merely submit it.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Florida to the committee amendment.

Mr. REED of Pennsylvania. I think I ought to say that the amendment offered by the Senator from Florida is very strongly approved by the Treasury Department. They say that if that sentence is left in it will add great confusion and do great injustice to the Government.

Mr. COPELAND. May I ask the Senator from Pennsylvania if he has had any conference with the Senator from West Virginia [Mr. NEELY] about the depletion provision?

Mr. REED of Pennsylvania. That is a different question entirely. That has to do with oil. This relates to the question of mines.

Mr. COPELAND. That matter in which he is interested will be given consideration?

Mr. REED of Pennsylvania. That will be discussed at length, I think, after the Senator from Michigan shall have concluded his remarks.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Florida to the committee amendment.

The amendment to the amendment was agreed to.

Mr. COUZENS. Mr. President, I would like to have the chairman of the Finance Committee explain subdivision (c), paragraphs 1 and 2, on pages 21 and 22 of the bill.

Mr. SMOOT. I will be compelled to leave the Chamber in just a few moments, and if it is agreeable to the Senator from Michigan, I will ask the Senator from Pennsylvania [Mr. REED] to explain that provision.

Mr. COUZENS. That is entirely agreeable.

Mr. REED of Pennsylvania. Mr. President, in substance, the committee did not mean to change the basis for ascertaining depletion on mines. Any change as to mines is a mere change in the wording of the section. It is not intended to change the basic law. We did intend to change the method of calculating depletion on oil wells.

As the Senator so well brought out in his investigation, the calculation of depletion in the case of oil and gas wells has led to great uncertainty and in many cases to widely varying depreciation allowances. It is a rather complicated subject, but perhaps it ought to be explained in some detail.

When we come to calculating the income of a man who owns an oil well, we have to take into account the fact that his capital is constantly disappearing, that it is being depleted by the flow of the oil or gas.

Mr. COUZENS. That is equally true of the depletion of other minerals, is it not?

Mr. REED of Pennsylvania. It is equally true of the depletion of other minerals, and we allow depletion in the case of other minerals, just as coal mined from the ground depletes the mine owner's capital.

It is more difficult to deal with oil than with coal, because we can measure the thickness of the seam of coal, we know its area, and we can calculate with considerable accuracy the tonnage that is in the ground. We do not discover coal in the same way that we discover oil. There is not the element of uncertainty about it.

Obviously, in calculating the oil well owner's income tax, we have, first, to make a deduction from his gross income for the amount by which this capital is being returned to him in this form which we call depletion. In the past that has been calculated in this way: The expert engineer of the bureau goes to the area where the oil is being produced, he finds out what the size of the tract is, and, by a combination of guesswork and imagination, he estimates the quantity of oil in that area, the quantity of oil that is likely to be produced by that well during its entire life. Then, by another process of guesswork, he estimates what each barrel of that oil will bring in during each of the future years during which the oil will be produced, and having arrived at one uncertainty, he multiplies it by the other uncertainty, and that gives him the depletion allowance per barrel to be credited against that man's income before calculating his tax.

Mr. COUZENS. Mr. President, will the Senator yield there?

Mr. REED of Pennsylvania. I am glad to yield.

Mr. COUZENS. If the depletion were computed on cost, that would not happen, would it?

Mr. REED of Pennsylvania. No; it would not happen. If we were to calculate the depletion at some fixed percentage of the cost of the property that would not occur. But ever since early war days Congress has followed the policy of allowing what they call discovery value for both oil and gas wells and for minerals. It is perfectly obvious that if I buy an acre of land in the Rocky Mountains and pay $10 an acre for it, and then, by hard work, discover a rich deposit of gold in it, the calculation of my depletion on the original $10 basis would not allow me any adequate return for my real capital. So, in allowing what is called discovery value, Congress and the bureau have tried to get at the real but the unknown value of the property owned by the taxpayer.

Whether it is wise to handle the problem in that way or not I am not entirely persuaded. It has led to some large deductions from income, but to refuse to do it and to calculate the depletion on the original cost is not fair, either, because in these uncertain industries there is much property which is bound to be worthless, on which the taxpayer really makes a dead loss; but there is no production and consequently no depletion from that property.

Mr. KING. And no tax.

Mr. REED of Pennsylvania. And no tax.

Mr. COUZENS. Does the Senator know of any other industry where that is allowed?

Mr. REED of Pennsylvania. The production of minerals is the only one that I know of—either oil or gas or solid minerals. It is only in the production of such minerals that the element of uncertainty enters so largely.

Mr. COUZENS. We can not determine the degree of the element of risk that enters into the respective industries, but I submit that anyone who undertakes an industry, whether it be a manufacturing industry, a bank, or something else, has an element of risk, has he not?

Mr. REED of Pennsylvania. Yes; he has an element of risk, but his property is generally worth something, even if the risks go against him. That is not true of the man who takes a worthless mineral claim.

Mr. COUZENS. If he discovers oil he gets the results similar to those obtained by the man who produces some trade-marked article that happens to please the people. He may or may not trade-mark an article that appeals to the public. In other words, he may go on for years experimenting with a trade-marked article, and he may lose many millions of dollars; then he may discover an article which appeals to the public, but he is not allowed to capitalize all his previous losses in computing his taxes.

Mr. REED of Pennsylvania. I see the Senator's point. Will not the Senator let me explain what Congress has done and what the committee recommends now, and then we can go back to the more fundamental question which the Senator raises, as to whether either policy is right—that is, the past policy or the new one that we have recommended?

I hope I have explained to the Senate how this present method of calculating depletion in oil wells is really a combination of uncertainties. The factor of error that is possible in either of those elements is intensified by the fact that we are multiplying one uncertainty by another.

That leads to almost constant conflict between the oil-well operators and the bureau. There is hardly any important operator who does not have a lawsuit on every year's return, because he estimates that his depletion is, say, $1.25 a barrel, and the bureau sends its engineers down, and they make guesses different from those of the taxpayer, and they say to him, "No; your depletion is only 30 cents a barrel." While that does not sound very large when applied to an important producing area, it means a difference of millions of dollars to the Government and to the taxpayers.

So we are trying, by the Finance Committee amendment, to get away from those uncertainties and to adopt a rule of thumb which will do approximate justice to both the Government and the taxpayers.

We find, then, that probably the best way to do it is to provide that an arbitrary percentage on the gross value of each year's yield be chalked off for depletion. We figure it on gross income instead of net income, because the net income from oil wells varies very greatly. When the first flush production comes the operating cost of the well is very low per barrel, but as the well trails down and finally comes to produce a small quantity of oil, the cost increases. Up in my State we have many wells working which average less than a quarter of a barrel of oil per day. Obviously, the operating cost of those wells is pretty high, and in many cases production gets down to the point where there is practically no net income, and yet the oil keeps flowing. There is a reduction of capital going on, and if we based the depletion on net income we would not always reflect it.

Mr. HARRELD and Mr. NEELY rose.

The VICE PRESIDENT. Does the Senator from Pennsylvania yield; and if so, to whom?

Mr. REED of Pennsylvania. I yield to the Senator from Oklahoma.

Mr. HARRELD. I would like to ask, if this rule were in vogue, would it not result in thousands of the wells of which the Senator has spoken being shut down entirely because they would not pay, thus taking off the market thousands of barrels of oil?

Mr. REED of Pennsylvania. Oh, no; Mr. President.

Mr. HARRELD. If we applied the depletion based on net profits it would result in that, would it not?

Mr. REED of Pennsylvania. Yes; it would.

Mr. HARRELD. That is what I mean. If we applied a rule that dealt with net profits, it would cause a great many of those wells to be shut down. They may be barely paying now, and yet, because there are thousands of them, they are producing thousands of barrels of oil.

Mr. COUZENS. Let me point out the fact that the law takes only 12½ per cent, so the operator still has 87½ per cent of his profit, even though there arises a condition such as the Senator from Oklahoma has stated.

Mr. HARRELD. As the Senator from Pennsylvania has said, a great many of those wells are producing only a half or a quarter of a barrel per day. Yet, it is high grade oil, and the owner can afford to pump, because he is perhaps making enough each day to justify it. But if you took off a percentage of the net profit, it would bring the profit below the point where it would pay to run a great many of those wells.

Mr. REED of Pennsylvania. Endeavoring to come at the rule of thumb, the Finance Committee decided to base the tax on gross income from the well, and they decided, after long consideration, that 25 per cent of the gross income was about fair. We realize, in doing that, that that is going to work rather a hardship on the owners of flush production, newly discovered oil pools which put out a great amount of oil per day. It is hardly going to be enough to take care of those people, because that flush production does not last long. At the same time we realized that it was going to be a great help to the owners of these little wells which barely pay the cost of pumping and keeping cleaned out. We tried to strike approximately the correct point between the two extremes.

Mr. NEELY. Mr. President, is it not a fact that the period of flush production to which the Senator has referred is usually of short life in his State and in the neighboring State of West Virginia?

Mr. REED of Pennsylvania. Yes; and I think that is true in the mid-continent field, too.

Mr. NEELY. Is it not also a fact that 25 per cent is not a sufficient amount of depletion for those who have this flush production, because of the fact that, basing the judgment on past experience, it can not endure for any great length of time?

Mr. REED of Pennsylvania. If we consider that the well will probably run on for years with the same production and

that we have to strike a happy medium some place, it seemed to me that 25 per cent was pretty nearly enough. If there is any error in the 25 per cent figure, I imagine it is in favor of the Government.

Mr. KING. Mr. President, will the Senator yield?

Mr. REED of Pennsylvania. I am glad to yield to the Senator from Utah.

Mr. KING. I call the Senator's attention to the further fact which of course the able Senator from West Virginia has in mind, namely, that there is no provision which excludes from consideration all the money which has been expended by the oil man in finding the well. I think he gets as a capital investment, or gets as a part of his expenses, hundreds of thousands or possibly millions that he may have expended in nonproductive activities, and those are to be credited to him and allowed, as I understand the amendment, so that he gets many accretions to the aggregate sum which he balances against any amount he may receive from the well.

May I say to the Senator when he speaks about the action of the committee that I was not satisfied with the amendment and did not agree to it, so I do not want the Senator to include me in the number of Senators on the Finance Committee who agreed to the amendment.

Mr. REED of Pennsylvania. I had forgotten that. I am glad the Senator called attention to it.

Mr. NEELY. Mr. President——

Mr. REED of Pennsylvania. I am glad to yield to the Senator from West Virginia.

Mr. NEELY. Is it not a fact that the bureau in the past has allowed a great deal more than 25 per cent for depletion?

Mr. REED of Pennsylvania. The bureau has allowed on an average about 37.5 per cent, as I recall the figures, over all its cases. Perhaps I had better put the figures in the RECORD to be more definite about it.

Mr. NEELY. Does the Senator think the bureau has allowed an excessive amount for depletion in the past?

Mr. REED of Pennsylvania. I do think so in a good many cases.

Mr. NEELY. The question is, Has the average allowance made by the bureau in all cases been fair and just?

Mr. REED of Pennsylvania. I am not qualified to speak about the average because I do not know of many cases, but I know of some that seemed excessive, and of others that have been criticized which seemed to be all right.

Mr. NEELY. Inasmuch as the purpose of the bill with which the Senate is now laboring and for which the country is anxiously waiting is to reduce taxes, does the Senator think that we should approve this provision, the effect of which will be to raise the taxes of every independent oil operator in the country?

Mr. REED of Pennsylvania. That depends on whether the amount previously allowed was or was not excessive. I believe it is just as important in the tax bill that we equalize burdens as that we reduce for everybody. Now, let me put in the RECORD the figures that show just what the allowances have been.

Mr. NEELY. If the bill is passed in its present form it will result in an increase in the taxes of all independent operators.

Mr. REED of Pennsylvania. It would for some of them and it would result in a decrease for others. I can not bring that out too strongly, that all the little men and men who have settled production will probably be the gainers.

Mr. NEELY. They are the large ones, are they not?

Mr. REED of Pennsylvania. In my section of the country they are not.

Mr. NEELY. In my section of the country they are.

Mr. REED of Pennsylvania. It would result to the disadvantage of those men who have the bonanza wells, the great flush wells producing thousands of barrels a day. I can see why they do not like it, but against each one of those there are 100 men owning smaller wells and it is to their advantage. Before we carry the discussion any further, let me put the figures in the RECORD for which the Senator asked.

Mr. NEELY. Does the Senator know of any independent or so-called small operator who is in favor of the change?

Mr. REED of Pennsylvania. Yes; I do. I know of a good many.

Mr. NEELY. So far as I am informed every independent operator in my State is opposed to it.

Mr. REED of Pennsylvania. Let me be plain about it. I think every oil man of my acquaintance has been after me to get me to agree to raise the figure to 35 per cent, but that is just the thing that takes place in connection with every tariff bill and every tax bill. Nobody wants to pay taxes. Everyone wants to have his exemptions raised. They have a perfect right to do it; and if their point is sound, it ought to be respected. But I can not agree with the Senator that no oil man would be glad to have the amendment adopted. I think very many of them would.

Mr. NEELY. I think those who have settled oil production, like the Standard Oil Co., are perfectly satisfied with it as it is, but I know of no independent producer who does not think that the 25 per cent provided in the amendment should be increased to 35 per cent. I hope the bill will be amended so as to protect the small producers.

Mr. GOFF. Mr. President——

The VICE PRESIDENT. Does the Senator from Pennsylvania yield to the junior Senator from West Virginia?

Mr. REED of Pennsylvania. I am glad to yield.

Mr. GOFF. I do not want to interrupt the Senator from Pennsylvania now if he will yield to me for a few moments after he has introduced the figures into the RECORD. I want to discuss a point that was suggested by my colleague, the senior Senator from West Virginia.

Mr. REED of Pennsylvania. I am glad to yield to the Senator at this time.

Mr. GOFF. I wish to ask the Senator, if the 25 per cent of gross income allowance does not have the effect, at least on the flush wells, so to speak, of depreciating the capital assets rather than the income received from the wells? While it may result in increasing the income of the Treasury Department, it nevertheless decreases the capital account that is invested in oil, and it has the ultimate effect of discouraging the opening and operating of new fields. My colleague, the senior Senator from West Virginia, has suggested very clearly and most accurately the effect which the 25 per cent depletion has upon the new operator in new territory in such States as West Virginia and the Southwestern States of the United States. Many of the wells, at least 25 per cent, as the Senator from Pennsylvania well knows, are dry holes. If the capital account is to be depleted in the new wells—that is, the discovery wells, so to speak—then the fact that we have a rate of only 25 per cent and not 35 per cent would make a vitally material difference, I understood the Senator to say, and I understand that the figures he is going to introduce are within the experience of the Treasury Department.

Mr. REED of Pennsylvania. I want to put those figures in the RECORD because they are rather enlightening and it is interesting to know just exactly what has happened.

Mr. GOFF. We had better have the figures inserted in the RECORD first and then I will submit some further questions to the Senator with reference to the matter.

Mr. REED of Pennsylvania. The Treasury Department selected at random 50 taxpayers engaged in the production of petroleum for the three-year period 1918, 1919, and 1920, and again for the three-year period 1921, 1922, and 1923. The result shows the percentage of depletion to gross income for those years, and I ask Senators to follow the figures carefully because some of them are pretty startling.

In 1918 the gross income was $15,900,000. I will omit the odd figures. The depletion allowed for net income was $5,195,000. In other words, 32 per cent of the gross income of those taxpayers was excluded from the payment of income tax that year. In 1919 the gross income of the 50 taxpayers was $26,748,000, while the depletion allowances were $11,169,000, or 41.76 per cent of their income. In 1920 their gross income was $57,984,000 and the depletion allowances $21,640,000, or 37 per cent of the income. The average amount of the reduction from their gross income in that three-year period was 37.75 per cent.

The law was changed and I ask Senators to follow the results for the next three years. In the first period of three years there was no limitation in the law on the amount of depletion that could be taken, but in the 1921 law a limitation of 100 per cent of the net income was established. In the 1924 act this was reduced to 50 per cent, but we have not any cases under the 1924 act.

In 1921 the gross income of those taxpayers was $38,412,000 and the depletion allowances were $21,590,000, or 56.20 per cent of their gross income. That, it should be understood, is the amount that is claimed by those taxpayers. There are a number of audits pending and it is to be hoped or expected that the Government would not acquiesce in those high allowances. But that is what their returns show they have deducted from their taxable income on the score of depletion.

Mr. HARRELD. The 1919 and 1920 cases have been audited, and the figures were based on audited accounts?

Mr. REED of Pennsylvania. I think that is true. If it is not true in every case, it is so in nearly every case.

In 1922 they reported gross income of $28,593,000 and charged off $17,842,000 for depletion, or 62.39 per cent of their income. That again I think is apt to be reduced by the time the auditors get to it. In 1923 they reported $21,031,000 gross income and took off $10,911,000 in depletion deductions, or 51.85 per cent.

Mr. COUZENS. How many companies were involved in those figures?

Mr. REED of Pennsylvania. Fifty companies. I may say that these 50 companies are none of them engaged in marketing refined products. If we took cases involving such companies, we would get into complications of their income from refining operations and that would obscure the lesson we can draw from the figures.

Mr. SMITH. Were the last figures the Senator quoted under the 50 per cent limitation?

Mr. REED of Pennsylvania. No. That limitation was put into the 1924 law.

Mr. SMITH. This was where in the judgment of the department it might go as high as 100 per cent?

Mr. REED of Pennsylvania. This was where under the 1921 act the depletion was limited to 100 per cent of the net income.

Mr. HARRELD. What was the per cent in 1919?

Mr. REED of Pennsylvania. The percentage for 1919 was 41.76.

Mr. SACKETT. Does the 50 per cent refer to net income or gross income?

Mr. REED of Pennsylvania. It refers to net income, and the Senator will find the provision on page 22, line 12. On that page appears the Finance Committee's solution or attempted solution of this very difficult problem.

Mr. GOFF. Mr. President, will the Senator yield?

Mr. REED of Pennsylvania. I am glad to yield to the Senator from West Virginia.

Mr. GOFF. As I understand these figures which the Senator from Pennsylvania has just read into the RECORD, they would admit of the interpretation that the computations of the Treasury Department show that a 35 per cent allowance based upon those figures is necessary to maintain the capital account of the industry.

The depletions which had theretofore been made, beginning in 1918, 1919, and 1920, would average, the Senator said a moment ago, about 37½ or possibly 40 per cent if we are to maintain strictly the capital account of the investment.

The purpose of the depletion allowance is to enable the operator to maintain his capital account, inasmuch as he is a discovered operator rather than one who is maintaining a settled industry.

It seems to those who are operating upon a discovery basis that, if they are to be allowed only 25 per cent for depletion, then, as soon as the flush period of the well has passed, the 25 per cent depletion allowance will obviously invade the capital account, and to that extent deprive them of the incentive as well as the opportunity to continue in the reproduction of oil.

Mr. COUZENS. Mr. President, will the Senator from West Virginia yield at that point?

Mr. GOFF. Certainly, I yield.

Mr. COUZENS. I desire to ask the Senator how he arrives at the capital account? The method of arriving at the capital account that the Senator is talking about being depleted is the important issue; it is the whole controversy.

Mr. GOFF. That is very true; but we arrive at the capital account by taking the general average of the investment devoted to the discovery oil. We then take the number of cases—the Senator from Pennsylvania [Mr. REED] said that his computations were based upon about 50 companies or 50 discovery productions—and so obtain the general average. I was intending to read when the Senator interrupted me—and I was glad he did so—a statement.

Mr. COUZENS. Does the Senator mind stating where that statement came from? I ask that because I observe that it is on the desks of Senators and is without any signature, and to me it bears the evidences of being propaganda. We might as well put advertising on the desks of Senators if propaganda is going to be put there without any signatures to it.

Mr. REED of Pennsylvania. Is the Senator from Michigan referring to the statement I put in?

Mr. COUZENS. No. I am talking about the statement which the Senator from West Virginia [Mr. GOFF] is going to read.

Mr. GOFF. I will say in reply to the Senator from Michigan that he must not think that everything of which he disapproves is propaganda.

Mr. COUZENS. I said it was not signed, sir.

Mr. GOFF. That may all be true, but the Senator says that because it is not signed it is propaganda.

Mr. COUZENS. It is evidently so.

Mr. GOFF. Let me say to the Senator that the figures were given to me by those who obtained them from the tax experts of the Treasury. They are furnished by reliable people interested in this matter and who are constituents of mine. I am using this document not because it contains these statements, but because the figures here collected are correct and are true. I am using the statement merely for the purpose of showing that on page 2 of this memorandum is——

Mr. COUZENS. Who signed the memorandum?

Mr. GOFF. It is not signed; there is no question about that, but the figures to which I refer are figures obtained from the experts of the Treasury Department. Those gentlemen are here; they are within hearing of my statement, and they can rise, through the Senator from Pennsylvania or the Senator from Michigan, and deny anything that I assert is accurately stated in this memorandum. I am using it merely because it contains information which I am advised is correct, inasmuch as it came from the representatives of the Treasury Department.

Mr. President, I desire further in this connection to call the attention of the Senate to a quotation from an address by Mr. E. W. Marland before the American Petroleum Institute on December 23 last, in which he said:

> Up to 1923 approximately $12,000,000,000 were placed in the legitimate channels of oil-field development and operating in the United States, and only $7,500,000,000 returned from the sale of crude oil produced, leaving a deficiency of four and one-half billion dollars.

This memorandum is based upon statements made and conferences had with the experts of the Treasury who have investigated the matter, it is true, in a field of more or less conjecture, but based upon returns made and audited.

The Senator from Pennsylvania says that many of these claims are now in process of audit. I understand he means that many of the claims for depletion are now in what might be denominated the auditing stage, but that, so far as the Treasury can now determine, a fair depletion allowance, an allowance that does not confiscate the capital investment in the interest of the Treasury, is from 35 to 37½ or 40 per cent; clearly a 25 per cent depletion from the gross income is not sufficient to preserve intact the capital account. If we do not have at least 35 per cent—and 40 per cent would be better—then the capital account is invaded; and the tax, instead of being a tax reasonably levied, is a tax to confiscate the capital invested, and therefore discourages the reinvestment of capital in discovery oil production.

Mr. COUZENS. Mr. President, will the Senator yield there?

Mr. GOFF. Certainly.

Mr. COUZENS. The Senator uses two expressions. One is "capital account" and the other is "capital invested." I want to say that the Senator has no evidence that the discovery value is capital invested.

Mr. GOFF. As a matter of course, the very statement of the proposition involves essentially that it is capital. If a man engaged in the production of oil goes out into a new field and invests a certain amount of money in the discovery of oil, such an investment is essentially capital.

Mr. COUZENS. Certainly; I absolutely agree that the amount he has invested is capital invested; that is just the point I am contending for and the thing on which depletion ought to be allowed is the capital invested. No one wants to invade the domain of capital invested; but what we do want to prevent is the fictitious value placed on capital invested.

Mr. GOFF. The difference, as I see it, between the Senator from Michigan and myself is merely a difference in the experience as we see it which the different discoverers of oil have had. If the men who are engaged in discovery production—that is, in flush production—find that this flush production, as my colleague [Mr. NEELY] so well said, exists only for a short time, is exhausted within a very short period, and that the depletion is allowed only at 25 per cent from the gross income, in the majority of cases from which this computation is a logical deduction, then obviously 25 per cent is an invasion of the capital account and so reduces the capital, that it is only a question until that point is reached where all of the capital which is available for the discovery of oil has been absorbed. That is the question in which the producers in the new field not only in West Virginia but in other States are interested.

Mr. REED of Pennsylvania. Mr. President, will the Senator permit a question?

Mr. GOFF. Certainly.

Mr. REED of Pennsylvania. I wonder if the Senator has noticed the last sentence in this paragraph, which provides that

the owner may always have depletion in an amount equal to his actual cost? He is in no danger of getting less than that.

Mr. COUZENS. That is what I was trying to point out.

Mr. GOFF. That might, of course, be, but that is bringing the provision down to a situation which is contradictory, to say the least. The Senator states that the operator is entitled to 25 per cent unless he is willing to stand upon his individual depletion. I do not care to put that construction upon the bill. Under it anyone who is faced with a 25 per cent depletion from gross income would be in the position of saying, "I do not care to stand upon the law; all I want to do is to invoke the individual depletion computation." That is an uncertainty in the law to which I contend the discoverer producers, as we denominate them in the oil fields, should not be subjected if they are to have their capital run such risks. As I said a moment ago, it is a fair statement that 25 per cent at least of the wells drilled are dry. That is another risk to which anyone who engages in producing oil in new fields is subjected. When he goes out to discover he is subjected to that additional loss which comes from 25 per cent of the wells being dry.

Mr. HOWELL. Mr. President, may I ask the Senator a question?

Mr. GOFF. Certainly.

Mr. HOWELL. Does the Senator think that this is necessary in order to encourage the production of oil?

Mr. GOFF. I do.

Mr. HOWELL. Is it not a fact that it is being urged now that oil is being produced too fast; that we ought not to deplete our natural resources as rapidly as we are?

Mr. GOFF. Of course, the question of the Senator from Nebraska involves a matter of economics as to whether we are too extravagant or whether we are living beyond our mineral capacity. I am in no position to answer that question. I think that the law of supply and demand, the law of trade, would regulate the question of the production of new wells. That is to say, Mr. President, if the price of oil reached such a low point in the market as to be unprofitable, those who are investing capital in such productivities would refrain from taking the risk, for the obvious reason that success in producing wells would not repay the tying up of the capital in such enterprises.

Mr. HOWELL. Does not the Senator think we might well wait until the production of oil falls to such a point that it appears necessary to present as a gift to the oil producer a reduction of 25 per cent from his income in figuring his income-tax return?

Mr. GOFF. No; I should not say that, for this reason: The question of the Senator, in my judgment, involves our entering the paternalistic field, and that I do not think we should do in reference to the oil industry or to any other industry. I do not think the Senate of the United States should say to any producing industry in the United States, "You are producing too much" or "You are producing too little." We should let the industries produce as they see fit to produce, and they should be the arbiters of whether or not the demand for what they produce should be supplied by their activities.

Mr. HOWELL. Does not the Senator think that paternalistic tendencies are indicated by a gift rather than by the refusal of a gift?

Mr. GOFF. No; I do not, and for this reason: I think that we should always take into consideration the existing business development in any specific line, and we should then arrive at what is a fair, judicial, and impartial penalty in the form of a tax upon people who see fit in the pursuit of happiness as the Senator and I both know that term is constitutionally used to develop their producing properties.

Mr. HOWELL. But if they are overdeveloping now, why should we offer this premium for further development?

Mr. GOFF. Then that is their lookout and not the lookout of the Government, unless we intend to be paternalistic.

Mr. HARRELD. Mr. President, will the Senator yield for a minute?

Mr. GOFF. I yield to the Senator from Oklahoma.

Mr. HARRELD. I should like to ask the Senator from Nebraska where he gets the idea that there is an overproduction of oil? If there were not another barrel of oil produced to-day and the consumption of oil should continue at the same rate that it is continuing to-day, three months from to-day there would not be a drop of oil in the United States. Where does the Senator get the idea that there is an overproduction of oil?

Mr. HOWELL. Because I have noted that the prices of gasoline in the retail market have been low, especially where those prices have been regulated. The price of gasoline within the past year in Nebraska ran as low as 12 or 13 cents a gallon. Furthermore, I note that gas oil is cheaper to-day than it has been for a long time. Therefore I assume that when these products are relatively cheap there is an ample production, and that there is no necessity of giving a bonus to an oil producer in the way of deducting 25 per cent from his profits before you figure his income tax.

Mr. GLASS. Mr. President, the Senator from Nebraska is the first man I have ever discovered who thinks that gasoline is cheap. Gasoline is more than 100 per cent higher to-day than it was eight years ago.

Mr. HARRELD. If the Senator will permit me to say——

Mr. HOWELL. Just a moment. I should like to say that in Nebraska we have discovered a method of stopping profiteering. As a consequence, when I was in Nebraska last year gasoline could be purchased as low as 13 and 14 cents a gallon. Prior to the time when we put a public gasoline station into operation they had been charging 18 and 22 cents.

Mr. GLASS. Then the Senator's plea is for public gasoline stations, owned by the State, rather than a contention that gasoline generally is very low. Nebraska is exceptional if gasoline is low there. It is not low in Virginia.

Mr. HOWELL. My contention is simply this: That there is ample oil being produced under the conditions which exist to-day to furnish, at least in one State during this last year, gasoline at 13 and 14 cents; and therefore that it is not necessary to insert in this bill a new provision whereby we say to a man who goes into the oil business: "Your profits are $100,000, but before we calculate your income tax we will take away $25,000." That is what this amendment proposes, and I do not think the industry is in a condition that demands this sort of thing; and talking about paternalism, this is paternalism. It is granting these people something that we do not afford anybody else. This proposes a very favored child.

Mr. NEELY. Mr. President, will my colleague yield?

Mr. GOFF. I yield.

Mr. NEELY. Is it not a fact that the only State in which gasoline has been selling for 14 cents a gallon is the State of the Senator from Nebraska, where the State or its municipalities have gone into the business themselves? Has my colleague or any other person heard of gasoline being ridiculously cheap anywhere in the United States, unless it has been in the State of Nebraska?

Mr. HARRELD. Mr. President——

Mr. HOWELL. Mr. President, I should like to answer that question. I am not referring to the prices paid for gasoline at a publicly owned station. A publicly owned station was established and operated until the prices were reduced, and then it went out of business; but the officials said: "We will be ready to go into business again any time you unduly raise prices." As a consequence, last summer, without a public station operating, the spread in gasoline was only 3 or 4 cents. The trouble here in Washington is that you have a tremendous spread. We know very well that the quartermaster store here in the city sells gasoline to naval officers and Army officers at a reasonable price. The Senator can not get it. I can not get it.

Mr. GLASS. I can not get it, and that is the reason why I asked the Senator how he came to the conclusion that gasoline was low.

Mr. HOWELL. I wish to say that I merely have my experience to go by, and I do not consider that the mere fact that retail gasoline is high indicates that the production of oil is falling off. The prices of gasoline and the other products from oil are absolutely controlled; and the difficulty confronting the people of this country is that there is cooperation in nearly every line for the insurance of profits, except agriculture, and that is what is the trouble with agriculture to-day.

Mr. HARRELD. Mr. President——

The VICE PRESIDENT. Does the Senator from West Virginia yield to the Senator from Oklahoma?

Mr. GOFF. I do.

Mr. HARRELD. I should like to ask the Senator from Nebraska what would be the effect if once the production of oil should drop below the consumption of oil? Would not that necessarily increase the price of gasoline? Would not the law of supply and demand cause it to do so? Does not the Senator think that the important thing, therefore, in holding down the price of gasoline, is to pass such laws as will encourage the production of oil and keep the production of oil above the consumption; and was not that the purpose of this part of the bill and the purpose that Congress had in 1918 in prescribing and giving this discovery depletion to the oil industry? It was to encourage them to take the risks—and they are enormous risks—in order to keep production ahead of consumption and thereby hold down the price of oil.

I desire to ask the Senator if that was not the underlying principle on which this depletion clause was allowed, and if it has not resulted in keeping the production of oil slightly ahead of the consumption of oil?

I gave the figures on this floor last year in discussing another matter. I showed from the statistics that in 47 days from the time I spoke, if there was not another barrel of oil produced, and consumption continued at the rate at which it was then continuing, there would not be a drop of oil in the United States for any purpose. Therefore, it is necessary to keep production ahead of consumption. If not, the price of gasoline will mount to a dollar a gallon; and the very purpose of this allowance is to avoid that. It is not generally understood that that is the very purpose of this discovery depletion allowance, so as to encourage wildcatting; and it has encouraged wildcatting. It has resulted in keeping production ahead of consumption, and thus has held down the price of gasoline.

I make the prediction that if this clause is stricken out of the law men will not go out and take the chances that it is necessary to take in wildcatting; and the natural result will be that consumption will soon exceed production, and then we will have gasoline selling at a dollar a gallon. That will be inevitable, because the law of supply and demand will naturally have that result.

Mr. HOWELL. Mr. President, if that is the situation we shall ultimately be confronted with high prices for petroleum; and I submit that it would be a much better policy for this country to retain a part of its petroleum in the ground here for an emergency, rather than to go on exhausting the oil supply of the country, and secure what is needed to-day from foreign sources. Senators are aware that British scientists have announced that if they do not pay their war debt in rubber they will make us pay their great war debt on account of oil, because Great Britain is securing the great sources of petroleum throughout the world.

Mr. WHEELER. Mr. President——

Mr. HOWELL. I wish to say one word further in this connection. At the time we were loaning Great Britain the funds that represented the debt that has been canceled, she was utilizing her funds in purchasing the interest she now owns in one of the great oil monopolies of the world.

Mr. GOFF. Mr. President, as I was saying when the Senator from Nebraska interrupted with his question, we are discouraging independent oil developbent by allowing a depletion which confiscates the capital invested, because such an allowance of necessity discourages wildcatting or independent oil operations. The suggestions made by the Senator from Nebraska, as I see them, followed to their logical conclusion, take us clearly into the realm of encouraging a monopoly in the production of oil.

It is a well-known fact—so well known that it is axiomatic—that the independent oil operator has no organization that he can take into a new field with him, and that one of the great expenses which he faces is the expense of an overhead; and it is that expense, coupled with the small depletion allowed as a deduction from his gross income when he is successful in discovering oil, that discourages the independent operator from entering the field to compete with monopoly that has its permanent overhead, and has, by and through permanent overhead, the power to eliminate proportionately an operating expense.

I have some other figures, Mr. President, which I now call to the attention of the Senate.

In addition to the fact that 25 per cent of the wells now being drilled are dry, it is computed that from 8 to 10 per cent, and in some instances 12 per cent, of the wells are producing gas and not oil. That brings us clearly to the conclusion that from 35 to 40 per cent of the wells drilled for oil are dry from the oil point of view; and that is another obstruction if not prevention to independent oil development in new fields.

When we take into consideration the further fact that the industry can count upon but little more than one-fourth of its wells being successful, then if we discourage the independent production of oil by those who discover and develop new fields and take the chances of dry wells—from 35 to 40 per cent—and who incur the additional expense which comes from an improvised overhead, then we have discouraged the independent oil operator and have, whether we meant to do so or not—we have played exclusively into the hands of those who produce oil through the cheaper processes of monopoly.

It is for that reason that, in behalf of those who are discovering oil, not only in the State of Pennsylvania and the State of West Virginia, but down in the great oil-producing States of Oklahoma and Texas, that I feel there should be an increase of this depletion tax from 25 to at least 35, if not 40, per cent, for the very necessary reason that the Senator from Pennsylvania has very frankly and very fairly admitted that his computations indicated that from 37½ to possibly 40 per cent was the basis of the depletion which these wells should be entitled, if we were not to have the Treasury of the United States invade the capital investment.

Mr. HARRELD. Mr. President, this is purely an economic question. The trouble comes from the fact that so few people know anything about the production end of the oil business.

Figures were given by the Senator from Pennsylvania awhile ago which show that there is a great deal more money put into oil development than is ever taken out, and that is an undisputed fact. It is a very hazardous business.

In 1918 Congress recognized for the first time the righteousness of allowing to the oil industry this so-called discovery depletion charge. Senators have heard it said that it was a war measure, but it came after the war. It was done because Congress thought by that policy to encourage the production of oil, to keep production above the point of consumption, as I said awhile ago.

Whatever may be said about it, it would be disastrous in this country if we did not produce as much oil as we consumed. If there is a desire to cut down the consumption of oil that is a different question; but as long as there are no restrictions on the consumption of oil it is fundamental that we must produce enough to supply the consuming public with what it uses, and the moment we fail to do that the law of supply and demand will naturally increase the price of gasoline in this country. Congress, recognizing that fact, recognizing that it was necessary to keep production ahead of consumption, as I said, in 1918 for the first time provided for this discovery depletion.

It is not generally understood, but the producer has his choice. He may take his depletion on the cost basis or he may take it on the value of his property at the time the discovery is made, or within 30 days thereafter. A great many of these returns are made upon the cost basis, and they are not affected by this law at all.

I repeat, in so far as depletions are claimed by a producer of oil who pays a big price for his production, this law does not affect them. It affects only that class of producers who go out and lease a body of land, paying a small price for it, drill a wildcat well, or more than one, bring in oil, and discover a field. In that case, of course, because they had gotten these leases at a small price, when there was no oil in sight, had gone out and spent $100,000 in putting down a wildcat well, and had taken the chance in doing so, it would not be right to do otherwise than to give the prospector a depletion allowance as of the value of the property after the discovery was made.

Congress recognized that. That is the only class of men who are affected by this discovery depletion, because the other is based on cost. Just exactly as in the case of a man who buys an office building and tries to deduct depletion allowance, based on the cost of the value of that property, just so a man in the oil business bases his depletion on the cost. But it applies only to that class of fellows who go out and take the hazards of wildcatting and bringing in wells under those circumstances. Congress, I think, rightfully recognized that they were entitled to this relief.

Mr. KING. Mr. President——

The PRESIDING OFFICER (Mr. LA FOLLETTE in the chair). Does the Senator from Oklahoma yield to the Senator from Utah?

Mr. HARRELD. I yield.

Mr. KING. Does not the Senator know that the number of wildcatters, to use his expression, who have had the advantage of the discovery depletion, is inconsiderable, measured by the number who have been advantaged by it? Is it not a fact, in other words, that it is the Standard Oil, and the Shell, and the Union, and the other big corporations, almost exclusively, who get the benefit of the discovery, and a wildcatter does not get the discovery depletable value? If he gets anything for his risks and hazards, it is in the enhanced sale price he receives soon after the discovery, is it not?

Mr. HARRELD. I will answer that by saying that the usual course in the oil field is that the independent man goes out and does the wildcatting, and afterwards, when he has brought his production up to a point which justifies it, he perhaps sells out to the Standard and gets this relief. The Standard generally uses the cost price, because they have bought after the oil has been discovered and after the values have been determined. The Standard generally uses the cost price for its depletion.

Mr. KING. The cost price, or the discovery depletable, whichever they prefer, and they get such a large discovery de-

pletable value that it is greater than the cost price, and they get that augmented credit or deduction from the taxes which they pay.

Mr. HARRELD. It may work that way sometimes, and I am not saying that it does not, but that does not justify repealing absolutely this provision of law.

Mr. KING. Is the Senator in favor of the amendment which has been offered by the committee?

Mr. HARRELD. I am in favor of the amendment, except that I think the percentage ought to be higher, and I am coming to that in a moment.

Mr. KING. Does not the Senator know that the common practice of the oil companies is to deduct development costs from income as current expense, and that this would permit that to be done, in addition to obtaining the credit for the 25 per cent?

Mr. HARRELD. Of course they deduct as expenses everything in the way of cost that takes place after they acquire the property, but that has nothing to do with the cost value in the first instance or the appraised value of the property 30 days after a well is brought in. That has nothing to do with it. That refers to additional costs which come along in the way of development afterwards, just as if, when the Senator buys a mill, he would take off his expense after he bought it. That is just exactly what the oil producers do.

In order that we may understand the real purpose of this law, I want to read a quotation from a man who is president of the Mid-Continent Oil and Gas Association, which association is made up of both the Standard and independents. This man is an authority on these questions. I quote Judge William N. Davis, president of the Mid-Continent Oil and Gas Association:

Apparently the criticism of the so-called discovery depletion section is based entirely on the assumption that the allowance was given in the first instance only as a sort of subsidy or bonus to encourage the wildcatters, to stimulate activity and the discovery of oil for war purposes, but the real reason for the allowance was economic and had no relation to the war supply of oil.

This economic reason is found in the character of oil production. An oil well is no sooner completed than its rapid decline begins. The same is true of oil pools and of the total production of the United States. Maintenance of the necessary production of oil is secured only by drilling every year a vast number of wells. The following statement is justified by the closely uniform experience of past years: The sums of money involved have been greatly increased by the ever-increasing depth to which it is necessary to drill.

The record for 1925 will show drilled in the United States to maintain production some 25,000 wells, at a cost of from $800,000,000 to perhaps more than a billion dollars. Of this number between 25 and 30 per cent will be dry holes. Another 5 to 10 per cent will be so small as to be almost equivalent to dry holes, and another one-third of the whole number will have initial production of less than 25 barrels a day to the well. A large portion of these will not return the investment with interest during their lifetime. Thus the profits from the producing branch of the oil industry must come from about one-third of the wells drilled.

Obviously the oil producer, whether an individual or a corporation, must set aside, from the income derived from profitable wells, a reserve for replacement of the oil produced, in an amount adequate to cover all of the contingencies of this hazardous and uncertain business. It would not be sufficient when producing cheap oil from a rich and prolific property to set aside for replacement no more than the cost of that oil. Such procedure, followed by the distribution in dividends of the remainder of the income, would lead to bankruptcy or rapid liquidation of the business.

It may be reasonably assumed that the cost of replacement will approximate the average cost of the discovery and development of a like amount of oil in the ground, and a producing company failing to make the necessary discoveries is frequently forced, in order to maintain its production, to purchase properties discovered by others. A replacement or depletion reserve must therefore be adequate to meet that contingency, and it was upon this ground that in 1919 Congress authorized the discovery value of a property to be the basis for depletion deductions.

Congress should allow oil producers in computing taxable income the same deductions for replacement or depletion reserves that the hazards and irregularities of the business force them to make in the sound conduct of their affairs. They should not be required to pay on income which is only apparent and which in the maintenance of a continuing business must be set aside to replace the oil then being produced.

Mr. President, as I said, in 1918 for the first time Congress recognized this right. Since that time and up until 1924 the oil companies have been enjoying it. In 1924 the law was reenacted except that we reduced to 50 per cent the amount of depletions that might be claimed, instead of allowing a full 100 per cent. The only question, it seems to me, that remains is the question of whether or not the new proposal made by the Senate Finance Committee should be adopted in lieu and instead of the law that has been in existence since 1918.

I listened to the figures presented by the Senator from Pennsylvania [Mr. REED] a while ago. It will be remembered that he took 50 companies, none of whom dealt in the products of oil, but dealt only in the production of oil. The figures showed that depletions were allowed which equals 32 per cent of the gross income received from oil in 1918; that depletions were allowed which equals 41.75 per cent of gross income in 1918; that depletions were allowed in 1920 which, if based on gross income, amounted to 37 per cent; that depletions were allowed in 1921 which, if based on gross income, amounted to 56.20 per cent; that depletions were allowed in 1922 which, if based on gross income, amounted to 62.39 per cent; and that those allowed in 1923 based on gross income amounted to 51.85 per cent. I have added those percentages together and, dividing them, get an average percentage of 46.86; yet complaint is made here because we propose to change the law so as to allow 25 per cent of the gross income. The very figures cited by the Senator from Pennsylvania, in charge of the bill, show that the oil producers of the country have been entitled heretofore to an average depletion charge based on gross income of 46.86 per cent, and yet in the bill it is proposed to reduce that to 25 per cent.

The only objection I can see to the amendment of the committee as it is now pending is that the rate is not high enough. I am informed that the experts of the Treasury Department—and they will correct me if I am in error—have taken 50 cases under the act of 1921, and their figures show that the amount the Government would realize from the income tax on oil would not be affected in those 50 cases if the rates were raised to 35 per cent instead of 25 per cent of the gross production.

I think the proposal to change the method of calculating the discovery depletion charge is very commendable, is very proper, and is right. I happen to know what a force of oil engineers the department has to have to arrive at those values. As I said, the producer of oil may base his depletion on cost or he may base it on the appraised value at the time of the discovery of the well or within 30 days thereafter, so that the engineers of the department are compelled to go out under the present law and make a valuation, not as of this date, but a valuation of the property as of 5 or 10 years ago or 3 years ago. They make a valuation of it as it ought to have been at the time of the discovery or within 30 days thereof, whenever that may be. Anyone can see what a task that is for the Treasury Department. It has resulted in the employment of almost an army of oil engineers. The proposal involved in the Senate committee amendment does not do away with that. All that a man is required to do is to report to the department his gross receipts from oil and take from it a depletion of 25 per cent. The only objection I can see to that is that I think it is not giving the producer of oil a sufficiently large percentage. In my judgment, it ought to be 35 per cent, and I may later offer an amendment to that effect.

Mr. COUZENS obtained the floor.

Mr. NORRIS. Mr. President, will the Senator from Michigan yield to me?

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Nebraska?

Mr. COUZENS. I yield.

Mr. NORRIS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum is suggested. The clerk will call the roll.

The enrolling clerk called the roll, and the following Senators answered to their names:

Ashurst	Fletcher	McKellar	Sheppard
Bayard	Frazier	McLean	Shipstead
Blease	George	McNary	Shortridge
Bratton	Gerry	Metcalf	Simmons
Brookhart	Gillett	Moses	Smith
Broussard	Glass	Neely	Smoot
Bruce	Goff	Norris	Stephens
Cameron	Hale	Nye	Swanson
Capper	Harreld	Oddie	Trammell
Copeland	Harris	Overman	Tyson
Couzens	Harrison	Pepper	Wadsworth
Dale	Heflin	Phipps	Walsh
Deneen	Howell	Pine	Warren
Edge	Johnson	Ransdell	Watson
Ernst	Jones, Wash.	Reed, Mo.	Weller
Fernald	Kendrick	Reed, Pa.	Wheeler
Ferris	King	Robinson, Ind.	Willis
Fess	La Follette	Sackett	

The PRESIDING OFFICER. Seventy-one Senators having answered to their names, a quorum is present.

Mr. COUZENS. Mr. President, I ask that the committee amendment, on page 21, inserting lines 12 to 25, inclusive, and on page 22, lines 1 to 16, inclusive, be disagreed to. I would cut out of the bill all values based on discoveries and leave it so that all depletions will be computed on the basis of cost. It seems to me, in view of the discussion that has taken place, that perhaps the best way to point out the desirability of the amendment is to read at least briefly from the report of the select committee that investigated the Internal Revenue Bureau. I move to strike out what the committee propose to insert.

The PRESIDING OFFICER. If the Senator from Michigan will permit, the Chair will state that the amendment offered by the Senator from Michigan relates to the proposed committee amendment, and the object which the amendment seeks to accomplish would be accomplished by the rejection of the proposed committee amendment.

Mr. SMOOT. That would be the proper procedure.

Mr. COUZENS. That is the correct parliamentary situation.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment as amended.

Mr. COUZENS. On page 17——

Mr. NORRIS. Mr. President, before the Senator from Michigan proceeds I should like to understand the situation.

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Nebraska?

Mr. COUZENS. I yield.

Mr. NORRIS. I should like to understand the situation. I understood that the Senator from Michigan has offered an amendment to the committee amendment.

The PRESIDING OFFICER. If the Senator from Michigan will permit, the Chair will state that the amendment offered by the Senator from Michigan proposes to strike out the committee amendment as amended, which is printed in italics, beginning in line 12, on page 21, and running to line 16, on page 22.

Mr. NORRIS. The amendment offered by the Senator from Michigan was to strike out the committee amendment.

Mr. COUZENS. I withdraw my amendment, and we can take a vote directly on the committee amendment. If the committee amendment shall be rejected, my amendment will then be offered, because it will then be to strike out the provisions of the House bill.

Mr. NORRIS. Did the Senator's amendment undertake to insert anything in place of the committee amendment?

Mr. CUMMINS. No.

Mr. NORRIS. It strikes out the committee amendment?

Mr. COUZENS. What I shall have to do will be to move to strike out the provisions of the House bill after the committee amendment shall have been disagreed to, if it shall be disagreed to.

Mr. President, on page 17 of the report of the committee which investigated the Internal Revenue Bureau, under the head of "Discovery depletion—depletion of discovery value is an exemption," it is stated:

> The provisions of the income tax law which permit discovery value——

Mr. GOFF. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from West Virginia?

Mr. COUZENS. I do.

Mr. GOFF. Before the Senator from Michigan begins his argument, I should like to offer an amendment relating to the same subject matter concerning that to which the Senator from Michigan is now addressing himself. I ask that the amendment which I now send to the desk may be read.

The PRESIDING OFFICER. Without objection, the amendment proposed by the Senator from West Virginia will be stated.

The CHIEF CLERK. On page 22, after line 16, it is proposed to add:

> *Provided, however,* That when the operating expenses of a property are less than 35 per cent of the gross income from the property during the taxable year, the allowance for depletion shall be 35 per cent of such gross income; and when the operating expenses of a property are less than 25 per cent of such gross income, the allowance for depletion shall be 40 per cent of such gross income. Such allowance shall not exceed 50 per cent of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this paragraph.

Mr. COUZENS. Mr. President, I continue to read from the report of the committee which investigated the Internal Revenue Bureau:

> The provisions of the income tax law which permit discovery value to be depleted grant an exemption to those engaged in the mining and oil industry not granted to or enjoyed by other taxpayers.
>
> The 1913 act and all subsequent income tax laws have treated all increment in the value of capital investments over cost which has accrued since March 1, 1913, as income which becomes taxable when realized by the sale of the property.

That is true when it comes to the sale of the property, but when operated it is exempted under discovery depletion.

I shall skip over a portion of the statement, so as not to delay the Senate, and turn to page 18 of the report, which deals peculiarly with oil, because that seems to be the most discussed matter, although what I propose is applicable to mines and minerals of all kinds just as well as to oil, but the difficulty involved in the case of coal and other minerals is not so great as it is in the case of oil.

> It may be said that the discoverer of oil or minerals assumes a great risk in drilling or prospecting in an unknown field. In the first place, attention is called to the fact that discovery depletion is allowed to the lessor, who sits idly by and risks nothing that is not risked by every investor in real estate. In the second place, we will show that the greater part of the allowances for discovery depletion are made to those who drill in proven ground, where the finding of oil is practically certain. Furthermore, every investor in speculative stocks, particularly those who invest in new enterprises, organized to manufacture new inventions, assume great risks of loss. Except in the case of mines and oil and gas wells, no investor is permitted to set up the value of his business, after its success has been demonstrated, as a deduction from the profit to be derived from that business for the purpose of determining his net taxable income. Discovery depletion is not a deduction permitted for the purpose of arriving at the net income derived from mines and oil and gas wells. It is clearly an exemption from taxation on net income and as such is a discrimination against every other taxpayer and every other industry.
>
> DISCOVERY DEPLETION, $300,000,000 PER YEAR ON OIL
>
> No statistics of the amount of discovery depletion allowed as deductions from taxable income have been compiled by the Bureau of Internal Revenue. Mr. Albert H. Fay, former chief of the natural resources division of the Income Tax Unit, estimates that the deductions allowed to oil producers alone for discovery depletion amount to approximately $300,000,000 per year. As practically all of this depletion is allowed to corporations, which are now taxed at the rate of 12½ per cent, the tax exemption enjoyed by taxpayers in this one industry is approximately $37,500,000 per year.

That appears on page 1874 of the testimony before the committee.

> As these estimates were presented to the committee on February 10, 1925, and no exception has ever been taken to them by the bureau, we feel safe in assuming them to be fairly accurate.
>
> It is obvious that during the high tax years this exemption was worth several hundred millions of dollars to the oil industry. This fact is shown by the allowances made to the Gulf Oil Corporation.
>
> The Gulf Oil Corporation and subsidiaries were allowed depletion deductions, based on cost and 1913 values, for the three years 1917, 1918, and 1919, amounting to $11,517,427.42. These companies were allowed discovery-depletion deductions for 1918 and 1919 alone amounting to $20,996,496.33. Thus it appears that in this case the income exempted from tax, by reason of discovery depletion, in the two years 1918 and 1919 alone was nearly twice the capital depleted during the three years 1917, 1918, and 1919, and that the income exempted would have been taxed at a very much higher rate, had it been taxable, than the rate which was applied to taxable income. The discovery depletion allowed the Gulf Oil Corporation for 1918 and 1919 reduced its taxes for those years by $3,862,517.95.

I submit, Mr. President, that that is not a "wildcat organization"; that is not the producer for whom the Senator from Oklahoma is pleading. That corporation, as will be proved later on, as well as most of the corporations that get the advantage of this provision, could well pay not only the excess-profits tax but could continue to pay the 12½ per cent tax on their profits the same as every other corporation.

If this provision shall be entirely removed from the act it will mean nothing like we are told it will mean by the Senator from Oklahoma and the Senator from West Virginia in its effect upon the industry, because if the companies engaged in the industry make no profit they pay no tax, and if they make a profit they only pay 12½ per cent. So I submit that the entire repeal means no calamity to the industry, but will simplify administration and will put the oil industry and the mining industry on the same basis as every other industry.

> Another illustration of the effect of discovery depletion is found in the case of the United Verde Extension Mining Co.

This case is referred to on pages 3406 to 3411 of the testimony before the committee:

The 1913 value of the property of this company was determined to be $525,000, which was also the par value of the outstanding capital stock of the company. But for the discovery clause in the law, $525,000 would have been the amount this company would have been permitted to deduct from income as depletion during the life of its property.

In 1915 the company discovered an immensely rich deposit of ore. As a result of the allowance of discovery value the amount to be depleted was increased to $30,652,379. Thus during 1915 there was an increase in the value of the property of this company of $30,127,379, which will be realized in the form of operating profits during the life of the property, but which will be exempt from tax as discovery depletion.

In the Texas Gulf Sulphur Co. case a discovery value for depletion purposes of $38,920,000 was allowed on a property which had been purchased by the company for $250,000.

It seems to me, Mr. President, that those are outstanding examples not only of the stupidity of Congress in the past but of the continued stupidity of keeping the provision in the law when the conditions are known.

LIMITATIONS OF AMOUNT OF DISCOVERY DEPLETION DEDUCTIBLE

The provision for the depletion of discovery value was first inserted in the law in 1918. The 1918 act did not limit the discovery depletion allowable. It was found that in some instances the allowance exceeded the operating profit from the property, and the loss thus created was deducted from the income from other sources or carried forward as a deduction from the net taxable income of the succeeding year.

Just imagine that situation! No matter how much profit was made, the fictitious value created by discovery valuation not only wiped out all the profit of the concern and obviated the payment of any tax whatsoever, but the amount by which discovery value exceeded the profits of the corporation was carried over into succeeding years to be deducted again from profits and from taxation.

Mr. SMOOT. That could not possibly happen under the provisions of the pending bill.

Mr. COUZENS. I understand that, but I am showing the absurdity of the whole——

Mr. SMOOT. Of the original law.

Mr. COUZENS. I am showing the absurdity of the whole question of allowing depletion on an estimated value. The only sound value on which depletion can be allowed is the cost of the property to the taxpayer.

To meet this situation the 1921 act provided that the discovery depletion allowable as a deduction shall not exceed the net income—

Now, remember, after this had been going on for some years, they discovered that they were giving the oil and the mining industries too much; so they said:

You can not deduct any more than 100 per cent of your profits and carry over any excess to the following year; so we will exempt you from all taxation, but we will not let you take off for one year in the following year.

Mr. PINE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Oklahoma?

Mr. COUZENS. I yield.

Mr. PINE. Does the Senator mean to say that they carried over depletion from one year into another year?

Mr. COUZENS. I do.

Mr. PINE. Was that done?

Mr. COUZENS. Yes, sir; and it was permitted by law up to 1921.

Mr. PINE. I deny that it was done.

Mr. COUZENS. The Senator, then, questions the veracity of my statement?

Mr. PINE. I do not question the Senator's veracity. I deny that it is a fact.

Mr. COUZENS. I state that it is a fact, and that we obtained it from the investigation of the Internal Revenue Bureau; and I defy the Senator to prove that it is not true. He has not a scintilla of evidence to prove that that did not happen in the oil industry.

Mr. PINE. I do not have to prove that it did not happen. I ask the Senator to prove that it did happen.

Mr. COUZENS. I am proving it. If the Senator will sit down and wait long enough, I will prove that it did happen.

Mr. PINE. How can you deplete an income more than 100 per cent?

Mr. KING. That was done.

Mr. COUZENS. That was done, because it was carried over until the following year.

Mr. PINE. That statement I deny.

Mr. COUZENS. I think the Senator is entirely out of order. He submits no proof and practically states that this report that is signed by three Senators, a majority of the committee, is telling an untruth.

Mr. PINE. I have been in the oil business all of this time——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Oklahoma?

Mr. COUZENS. I do not think I ought to yield to a man who impugns the reputation or the character of a committee that has made a thorough investigation, and who is so ignorant that he has never even been through the bureau to know anything about it.

The PRESIDING OFFICER. The Senator declines to yield.

Mr. PINE. Mr. President——

Mr. COUZENS. I decline to yield.

Mr. HARRELD. Mr. President——

Mr. COUZENS. I decline to yield.

Mr. HARRELD. Does the Senator decline to yield to me?

Mr. COUZENS. I decline to yield.

Mr. HARRELD. All right. I simply wanted to explain that.

Mr. NEELY. Mr. President, I call the Senator from Michigan to order for charging the Senator from Oklahoma [Mr. PINE] with being ignorant.

The PRESIDING OFFICER. The Senator from Michigan will take his seat, and the reporter will read what was said.

The reporter read as follows:

Mr. PINE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Oklahoma?

Mr. COUZENS. I yield.

Mr. PINE. Does the Senator mean to say that they carried over depletion from one year into another year?

Mr. COUZENS. I do.

Mr. PINE. Was that done?

Mr. COUZENS. Yes, sir; and it was permitted by law up to 1921.

Mr. PINE. I deny that it was done.

Mr. COUZENS. The Senator, then, questions the veracity of my statement?

Mr. PINE. I do not question the Senator's veracity. I deny that it is a fact.

Mr. WILLIS. Mr. President, I move that the Senator from Michigan be permitted to proceed in order.

Mr. NORRIS. It has not been decided yet that he was out of order.

Mr. SMOOT. Let the rest of the statement be read.

Mr. NORRIS. I submit that it has not been decided yet that the Senator from Michigan is out of order.

Mr. KING. Mr. President, I ask to have read what the Senator from Oklahoma said.

The PRESIDING OFFICER. The reporter will read the entire colloquy.

The reporter read as follows:

Mr. PINE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Oklahoma?

Mr. COUZENS. I yield.

Mr. PINE. Does the Senator mean to say that they carried over depletion from one year into another year?

Mr. COUZENS. I do.

Mr. PINE. Was that done?

Mr. COUZENS. Yes, sir; and it was permitted by law up to 1921.

Mr. PINE. I deny that it was done.

Mr. COUZENS. The Senator, then, questions the veracity of my statement?

Mr. PINE. I do not question the Senator's veracity. I deny that it is a fact.

Mr. COUZENS. I state that it is a fact and that we obtained it from the investigation of the Internal Revenue Bureau; and I defy the Senator to prove that it is not true. He has not a scintilla of evidence to prove that that did not happen in the oil industry.

Mr. PINE. I do not have to prove that it did not happen. I ask the Senator to prove that it did happen.

Mr. COUZENS. I am proving it. If the Senator will sit down and wait long enough, I will prove that it did happen.

Mr. PINE. How can you deplete an income more than 100 per cent?

Mr. KING. That was done.

Mr. COUZENS. That was done because it was carried over until the following year.

Mr. PINE. That statement I deny.

Mr. COUZENS. I think the Senator is entirely out of order. He submits no proof and practically states that this report that is signed by three Senators, a majority of the committee, is telling an untruth.

Mr. PINE. I have been in the oil business all of this time——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Oklahoma?

Mr. COUZENS. I do not think I ought to yield to a man who impugns the reputation or the character of a committee that has made a thorough investigation, and who is so ignorant that he has never even been through the bureau to know anything about it.

The PRESIDING OFFICER. The Senator declines to yield.

Mr. PINE. Mr. President——

Mr. COUZENS. I decline to yield.

Mr. HARRELD. Mr. President——

Mr. COUZENS. I decline to yield.

Mr. HARRELD. Does the Senator decline to yield to me?

Mr. COUZENS. I decline to yield.

Mr. HARRELD. All right. I simply wanted to explain that.

Mr. WILLIS. Mr. President, before the Chair rules on that point, I submit that a careful consideration of what was said——

The PRESIDING OFFICER. The present occupant of the chair will state that from the reading of the rule it is impossible for him to determine whether or not the Chair is called upon to rule as to whether the point of order is well taken.

Paragraph 4 of Rule XIX reads:

If any Senator, in speaking or otherwise, transgress the rules of the Senate, the Presiding Officer shall, or any Senator may, call him to order; and when a Senator shall be called to order he shall sit down and not proceed without leave of the Senate, which, if granted, shall be upon motion that he be allowed to proceed in order, which motion shall be determined without debate.

Mr. WILLIS. I now renew my motion, Mr. President, that the Senator from Michigan be permitted to proceed in order.

The PRESIDING OFFICER. The question is on the motion of the Senator from Ohio.

The motion was agreed to.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. COUZENS. Mr. President, I am not a parliamentarian, but I should like to find out if there was any decision reached as to whether I was out of order. The Senator from West Virginia [Mr. NEELY] submitted to the Chair the point that I was out of order.

Mr. NEELY. Mr. President——

The PRESIDING OFFICER. If the Senator from Michigan will permit, the Chair will state that the Senator from West Virginia stated his motion in such a manner as to invoke paragraph 4 of Rule XIX, which gives the Chair no opportunity to rule on the question. The rule is mandatory, and the present occupant of the chair will state that he complied with that provision. As far as the present occupant of the chair—who also is not a parliamentarian—is concerned, the Chair has no authority or province to rule under paragraph 4 when it is invoked by any Senator. It then becomes mandatory on the part of the Chair to enforce that section of the rule, and no discretionary power is given to the Chair under the rule to decide as to whether or not the point of order is well taken.

Mr. SMITH. Mr. President, does not the rule say, just preceding that paragraph, that the Chair may, upon his own motion or upon the motion of a Senator, call a Senator to order when he has done certain definite, specific things? That is the point the Senator from Michigan is raising. What thing has he done that would cause either the Chair or a Senator to invoke the rule?

Mr. NEELY. Mr. President, I made the point of order and should like to answer the question.

The PRESIDING OFFICER. The present occupant of the chair will state that he will be glad to be advised by Senators older in service here than himself as to the parliamentary situation which exists.

Mr. NEELY. With the permission of the Senate, I read from Rule XIX, paragraph 4:

If any Senator, in speaking or otherwise, transgresses the rules of the Senate——

Mr. BLEASE. Mr. President, I rise to a point of order.

The PRESIDING OFFICER. The Senator will state it.

Mr. BLEASE. The Chair has ruled on the proposition, and the Senate has unanimously agreed that the Senator from Michigan may proceed, and he has the floor.

The PRESIDING OFFICER. There is no question about that; but the Senator from Michigan raised this point himself, after he received the floor under the rule.

Mr. BLEASE. I submit that he has not any right to raise that question. The Senate has given him permission to proceed, and he has floor.

Mr. NEELY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from West Virginia?

Mr. COUZENS. I do.

Mr. NEELY. With the understanding that I have the floor, Mr. President——

The PRESIDING OFFICER. No; the present occupant of the chair will state that the Senator from Michigan has the floor. He has yielded to the Senator from West Virginia.

Mr. NEELY. Mr. President, I understand that the Senator from Michigan has yielded to me.

The PRESIDING OFFICER. He has yielded to the Senator, but he has not yielded the floor.

Mr. COUZENS. That is true. I have not yielded the floor, but I have yielded to the Senator to ask a question.

Mr. NEELY. I do not want the floor. I want the Senator to permit me to proceed——

The PRESIDING OFFICER. He has done so.

Mr. NEELY. Until I can read the rule and make my comment on it.

Paragraph 4 of Rule XIX provides:

If any Senator, in speaking or otherwise, transgress the rules of the Senate, the Presiding Officer shall, or any Senator may, call him to order; and when a Senator shall be called to order he shall sit down, and not proceed without leave of the Senate.

I submit, Mr. President, that it is a violation, at least of the unwritten law of this body, for one Senator to call another Senator an ignoramus. It is not in keeping with the dignity of a United States Senator to do such a thing, and I protest against it.

Mr. KING. Mr. President, will the Senator yield?

Mr. COUZENS. I yield.

Mr. KING. While I think the Senator from West Virginia was meticulous—I say that not by way of criticism—in invoking the rule, he could, I think, with far greater propriety have invoked the rule against the Senator from Oklahoma, because it seems to me that a proper interpretation of his statement was a challenge to the veracity of the Senator from Michigan.

Mr. HARRELD. Mr. President——

Mr. NEELY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield; and if so, to whom?

Mr. COUZENS. I yield to the Senator from West Virginia.

Mr. NEELY. I wish to say that I did not hear the first part of the colloquy. I came from the anteroom, and just as I entered the Senate Chamber I heard the distinguished Senator from Michigan say what I have stated, and what I do not think he would have said if he had not been peeved. I, of course, did not hear the remarks that were made before I entered the Chamber.

Mr. HARRELD. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the senior Senator from Oklahoma?

Mr. COUZENS. I do.

Mr. HARRELD. I do not think the Senator from Utah is justified in making the statement that my colleague had said anything which reflected at all upon the Senator from Michigan. He was taking issue with the statement of fact which is contained in the report of the committee. He did say that he did not believe that that report stated the fact. I think he was within his rights when he made that statement; but, if the Chair will go to the trouble of having the proceedings read again he will find that my colleague said not a thing which reflected upon the Senator from Michigan, although the Senator from Michigan might have understood it in that way; and perhaps that is the cause of the whole trouble. He may have interpreted it in that way, but I think that it is a tempest in a teapot; and I think the Senator from Michigan should go on with his speech, and let that end it.

Mr. COUZENS. Mr. President——

The PRESIDING OFFICER. The Senator from Michigan.

Mr. COUZENS. I submit that it is not quite so simple as that. This report was signed by the senior Senator from New Mexico [Mr. JONES], the junior Senator from Utah [Mr. KING] and myself—a signed statement, which was being read to the Senate—and I yielded to the junior Senator from Oklahoma, and during the discussion he denied as not true a statement that we had signed. I do not know whether the Senate thinks it is worse to call a Senator a liar or to call him ignorant. It seems, from the way the rule was invoked, as though it is less reprehensible to call a man a liar than it is to call him ignorant.

Mr. BLEASE. Mr. President, I rise to a point of order.

The PRESIDING OFFICER. The Senator from South Carolina will state it.

Mr. BLEASE. The Senate gave the Senator from Michigan permission to go on with his speech, presuming that the other incident had been dropped. I submit that the Senator from Michigan should go on with his speech, and let the personal matter rest. There is another place where they can settle that. [Laughter.]

The PRESIDING OFFICER. The Senate will be in order. The Senator from Michigan will suspend until the Senate is in order. [A pause.] The Senator from Michigan.

Mr. COUZENS. Mr. President, in answer to the junior Senator from Oklahoma, I will state that I have had Mr. Manson conferred with, and he specifically says that the deductions for depletion taken from an Oklahoma field could be deducted from the profits on a Texas production in the following year's return.

Mr. HARRELD. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Oklahoma?

Mr. COUZENS. I think I had better not enter into any more controversies with the Senators from Oklahoma.

Mr. HARRELD. I do not mean to get into a controversy.

The PRESIDING OFFICER. The Senator declines to yield.

Mr. HARRELD. I do not mean to be controversial. I do not do that kind of thing.

The PRESIDING OFFICER. The Senator declines to yield.

Mr. COUZENS (reading)—

The provision for the depletion of discovery value was first inserted in the law in 1918. The 1918 act did not limit the discovery depletion allowable. It was found that in some instances the allowance exceeded the operating profit from the property, and the loss thus created was deducted from the income from other sources or carried forward as a deduction from the net taxable income of the succeeding year. To meet this situation the 1921 act provided that the discovery depletion allowable as a deduction shall not exceed the net income, computed without allowance for depletion, from the property on which discovery is made.

In other words, it was obvious to the Congress that they were taking more than 100 per cent, and the losses created thereby carried it over to the next year, because the Congress themselves corrected it, and said by statute that one could not take off more than 100 per cent of his profit.

The 1924 act further limited the discovery depletion allowable to 50 per cent of the net income.

In 1924 Congress observed that this depletion discovery value was so absurd that they cut it by 50 per cent in 1924. So that it must be obvious to anyone that the act of 1918 was absurd, that the act of 1921 was less absurd, and that by 1924 the act had to be worded so as to reduce the depletion by 50 per cent.

An examination of the hearings before the Ways and Means Committee of the House and before the Finance Committee of the Senate, when the 1918 act was under consideration by these committees, shows that the purpose of the provision for discovery depletion was to stimulate wildcatting or prospecting for the oil and minerals then needed to carry on the war.

That was the pretext that was presented to both committees of Congress in 1918 when the war was on.

Mr. HARRELD. Mr. President——

Mr. COUZENS. That was the argument that was advanced as to the request for allowing a discovery value, rather than a cost value.

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Oklahoma?

Mr. COUZENS (reading)—

The oil industry, through the representatives of its various associations of operators——

Mr. HARRELD. Mr. President——

Mr. COUZENS (continuing)—

represented to the committees of Congress that the country was then consuming oil in excess of production at the rate of 60,000 barrels a day.

The PRESIDING OFFICER. The Senator from Michigan declines to yield.

Mr. COUZENS. That was in 1918. The consumption was in excess of the total production by 60,000 barrels a day. So, because production was much less than the consumption, they appealed to Congress to encourage wildcatting, and for the purpose of encouraging wildcatting Congress granted them this discovery value for depletion purposes.

The oil industry represented to Congress that the prospecting for new oil fields was mostly done by small individuals or concerns. When these prospectors or wildcatters struck oil they sold out and moved on to new undeveloped territory. Sometimes, for years, the wildcatter had no income from which to deduct his losses and expenses, and when he did find oil or mineral the tax rate was so high as to prevent him from even recouping the losses of former years. It was represented that relief from this situation was necessary to encourage that prospecting or wildcatting which was so essential to increase or even maintain the supply essential for the prosecution of the war (1865–66).

It was to meet this situation that the discovery provision was put into the 1918 act.

I submit, Mr. President, that the two purposes for which this was put in the act have entirely disappeared. For one thing, the war is over and the development of oil for the prosecution of the war is not necessary; secondly, the supply is ample for the consumption. Therefore the bases of the two arguments used by the industry have disappeared.

The situation intended to be met by the discovery provision has so changed that every reason advanced for its enactment has disappeared.

Except in the case of lessors, who spend nothing and risk nothing for the discovery of oil, practically all discovery depletion is allowed to corporations. The corporation tax has been reduced to 12½ per cent, and no reason is apparent why any corporation engaged in the operation of oil wells or mines should not pay a 12½ per cent tax on the profits it derives from the discovery of oil or mineral on its property.

An inventor may spend years of time developing an invention from which he may derive immense profits. During the time he is perfecting his invention the inventor, like the wildcatter, may spend much time and money and have no income from which he can deduct his expenses. The manufacturer of a new article may suffer losses over a long period pending the perfection of his manufacturing processes and the development of his market. Neither such inventor nor such manufacturer is permitted by the income tax law to capitalize the prospective profits to be derived from an invention or business developed since March 1, 1913, and deduct their present value from future net income for the purposes of taxation. There is, however, no difference in principle between the cases above stated and that of the prospector for oil or mineral.

Risk is an incident of profit in any business, and, as a rule, the greater the profit the greater the risk which is assumed. The fundamental principle of the whole income tax law is that net profit, "from whatever source derived," shall be taxed. The only exemptions from this rule are the discovery depletion allowed to oil-well and mine operators and the income derived from tax-exempt securities.

The war emergency, arising out of the consumption of 60,000 barrels of oil per day in excess of production, which was pressed as a reason for the enactment of the discovery clause, has also passed. The production of oil now exceeds the demand. The present problem is how to conserve this natural resource.

The President now has a conservation committee in Washington setting about to find ways and means for conserving our natural resources.

LARGE OPERATING COMPANIES, NOT SMALL WILDCATTERS, BENEFICIARIES OF DISCOVERY EXEMPTION

Attention has already been called to the fact that the prospector who discovers new deposits of oil and mineral was represented to the committee of Congress as an itinerant adventurer, who when he discovered an oil well or mine sold out and moved on to new fields (1865). Attention has also been called to the fact that discovery value is not an allowable deduction from the profits arising out of the sale of an oil well or mine, but is deductible only from the income arising out of the operation of a well or mine. It thus appears that the very class for whose relief this exemption was provided can not get the benefit of it, and the exemption can not accomplish its purpose of stimulating activity by this class.

That the wildcatter, who discovers new oil pools, has not been the real beneficiary of this exemption is shown by figures prepared by the oil and gas section of the Income Tax Unit and supplied to the committee (1869).

These figures show that out of 13,671 cases in which discovery depletion was claimed only 35 were actual discoverers of new oil deposits.

In only 35 out of 35,671 cases were they the real discoverers of oil.

Of these 13,671 cases discovery depletion had been allowed in 8,450 cases and 5,221 cases had not been reached for consideration by the oil and gas section.

Another examination of 200 cases made by the oil and gas section showed that 37.5 per cent of the amount of discovery value allowed for depletion was allowed on unproven ground and 62.5 per cent to those who brought in wells in proven fields.

In other words, this whole act produces a result which gave only 37½ per cent of the discovery depletion to real discovery wealth.

These latter cases also showed that 36.3 per cent of the discovery values involved in them were allowed to small operators and 63.7 per cent was allowed to large operators. A note upon the table showing these figures, made by the engineer of the oil and gas section who made the investigation, states that "The very close uniformity in the percentages allowed small operators probably reflects consistent practice in the oil and gas section and also the unvarying operation of economic laws." He also states that the very close approximation of the percentage allowed wildcatters and those allowed small operators "probably indicates nothing more than that taking a large number of cases the original wildcatter is generally a small operator."

In considering the percentages shown for these 200 cases, it must be borne in mind that in classifying these cases a wildcatter is considered to be one who brings in a well outside of a 160-acre tract proven by a commercial well. An oil pool may be, and usually is, large enough to contain many times 160 acres. The real wildcatter, described before the Ways and Means Committee by the representatives of the oil industry, and for whose benefit this clause was enacted, is the discoverer of a new oil pool or field. The ratio in which he has benefited is indicated by the first figures above quoted, 35 out of 13,671.

Mr. Fay estimates that approximately $10,000,000 out of the $300,000,000, or 3⅓ per cent of the annual deductions for discovery depletion, has gone to wildcatters.

That appears in the testimony on page 1874. In other words, out of $300,000,000 allowed for discovery depletion, $10,000,000 goes to the individuals whom Congress intended should have it when they passed the act.

Mr. SHORTRIDGE. Mr. President——

The VICE PRESIDENT. Does the Senator from Michigan yield to the Senator from California?

Mr. COUZENS. I yield.

Mr. SHORTRIDGE. The facts as recited go rather to a criticism of the administration of the law, do they not, than to the true intent and purpose of the law?

Mr. COUZENS. I think not, because it is a difficult problem; and that is a long story, which appears in the testimony. I do not think the committee found so much fault with the interpretation of the law as it did with the lack of uniformity in its application. There was a lack of uniformity in its application.

Mr. President, much has been said about what this 25 per cent which is provided in the Finance Committee's amendment to this provision means.

After this amendment was first suggested in the Finance Committee by the senior Senator from Kansas [Mr. CURTIS], the members of the investigating committee were asked, through Mr. Manson and myself, to ascertain what this would really mean, as far as they could. The conclusions reached, which are substantiated somewhat by these figures which I am now reading, were that a 25 per cent allowance on gross incomes meant in practice an allowance of 50 per cent on net incomes in all cases.

In other words, in some cases it might exceed the 50 per cent, but according to the statute the 50 per cent was the limit, and in no case could we find where it would be less than 50 per cent, so that in effect we might as well say that the discovery value allowed meant a reduction of 50 per cent of the net income in all cases. For example, we took 100 companies who reported in 1918. I might say that the bureau said some of the companies we took were not simply producing companies, but that we included in the list some refining companies. We do not know whether that is true or not, but if it is so the error is entirely upon the bureau, because we took the companies that they used in arriving at the average per cent paid in excess profits under what were called special assessments.

In other words, instead of having to take the whole 80 per cent of the maximum, if there were unusual conditions existing in a particular taxpayer's system or financial structure, then the law permitted him to apply for what was called a special assessment. He may pick out or the bureau may pick out 5 or 10 competitors and average the percentage the competitors paid. The particular taxpayer's percentage may have been 55 per cent of his profits. His competitor's tax may have been anywhere from 15 to 50 per cent. It was intended by the law to cover unusual conditions that might exist where a man in the same industry might have to pay as high as 80 per cent, while his competitor, because of a different financial structure, might get down as low as 15 or 20 per cent, and that would create an unfair condition as between competitors. Therefore the Congress provided what was called a special assessment, so that when a man thought his ratio was too high he applied to the bureau to be assessed under the special assessment provision.

Mr. KING. Mr. President, will the Senator yield?

Mr. COUZENS. I yield.

Mr. KING. If I may emphasize the statement made by the Senator, which was very clear, the department furnished the 100 companies as a standard of comparison and as a basis for determining whether any abnormality existed which would call for a special assessment and allow greater deductions or greater benefit; so if they have furnished to the committee an unfair comparative statement as a basis, obviously they must have been unfair in reaching the conclusions which they have reached in settling a number of the cases where it was alleged that abnormalities existed. The committee assumed that the officials of the department were fair, and I think they were fair, and that they adopted a fair basis for comparison. The 100 companies which they selected were undoubtedly fairly selected, and therefore the committee was entirely justified in taking for their basis of comparison the same companies which the department itself had taken to determine whether there should be special assessments or not.

Mr. COUZENS. I think that is entirely correct, because if in arriving at those comparisons they used any company that was not in an identical business, if they used an operator and then used a refiner or sales agency and took those for comparative purposes, it was entirely illegal and improper, because the law requires that they take industries in the same business. If they were going to arrive at a comparison for special assessments in a producer's case, they should use all producers for obtaining the rate and not confuse it with refiners.

In the 100 cases gross income from production in 1918 was $286,000,000—I will not read the odd figures. Twenty-five per cent of that, which is what it would be under the pending bill, was $71,000,000. The net income computed without allowance for depletion was $76,000,000. Fifty per cent of that, which was the maximum, was $38,000,000. The depletion allowed by the Income Tax Unit was $18,000,000. The percentage of gross income allowed as depletion was 6.34 per cent in those 100 cases, against 25 per cent as proposed in the bill. The per cent of net income computed without allowance for depletion was 23.6 per cent, showing the difference between an allowance on gross income and an allowance on net income. In other words, in those cases the average allowance based on net income was 34.5 per cent on the net income and only 6.34 on the gross income.

For 1919 we took 115 cases with a gross income of $338,000,000, 25 per cent of which, as proposed under the bill, would be $84,000,000. The per cent of gross income allowed for depletion by the bureau was 5.6 per cent, or 30 per cent of the net income. In 1920 we took 75 companies, with a gross income of $361,000,000, 25 per cent of which was $90,000,000. The net income, computed without allowance for depletion by the bureau, was $29,000,000. The depletion allowed by the Income Tax Unit was $16,000,000, or 4.5 per cent of the gross income or 31.5 per cent of the net income.

I ask permission to have the table inserted in the RECORD, so as not to have to take up the time of the Senate in reading the figures. I have pointed out what I consider the high spots in the report.

The VICE PRESIDENT. Without objection, it is so ordered.

The table is as follows:

Comparison of depletion actually allowed oil companies with depletion allowable under 1926 revenue bill

[Discovery depletion included in depletion allowed]

	1918	1919	1920	Total
Number of companies	100	115	75	
Gross income from production	$286,863,485	$338,419,621	$361,121,041	$986,404,147
25 per cent of gross income	$71,715,871	$84,604,905	$90,280,260	$246,601,037
Net income (computed without allowance for depletion)	$76,985,704	$66,431,726	$50,595,303	$203,012,733
50 per cent of net income (computed without allowance for depletion) maximum depletion allowable under 1926 bill	$38,492,852	$33,215,863	$29,797,651	$101,506,366
Depletion allowed by Income Tax Unit	$18,188,848	$18,958,781	$16,381,431	$53,529,060
Per cent of gross income allowed as depletion	6.34	5.6	4.5	5.4
Per cent of net income (computed without allowance for depletion) allowed as depletion	23.6	28.5	27.5	26.4
Net income taxed after deducting depletion allowed	$58,796,856	$47,472,945	$43,213,872	$149,483,673

Comparison of depletion actually allowed oil companies with depletion allowable under 1926 revenue bill—Continued

	1918	1919	1920	Total
Net income taxable after deducting depletion according to 1926 bill	$38,492,852	$33,215,863	$29,797,652	$101,506,367
Per cent of increase in depletion allowable under 1926 bill over depletion actually allowed	111.6	75.2	81.9	89.6
Per cent of reduction in net taxable income when depletion is computed under 1926 bill	34.5	30.0	31.5	32.1

Mr. COUZENS. It might be safely said that the attempt of the Finance Committee to arrive at a percentage was a very admirable undertaking, because the records of the committee which investigated the Internal Revenue Bureau pointed out very clearly the difficulties involved in arriving at a value. It is obvious that those values had to be arrived at in many cases years after discovery was made. The law provided that the value must be fixed as of the time of discovery or within 30 days thereafter, and yet it was years after that time before the Income Tax Unit reached the point where they could examine and audit the taxpayer's return. Then they had to go back and compute the valuation, as to which the taxpayer had the entire benefit of all the experience that accrued from the date of discovery, or 30 days thereafter, up to the time the valuation was actually computed.

If the Senate is determined to allow the oil and mining industry a discovery value, it is a much better proposition to allow them a certain per cent of net income, rather than 25 per cent on gross income, because 30 per cent on net income will be as nearly as possible what the industry has been getting, according to our experience, rather than the 25 per cent as provided in the amendment of the committee.

Mr. SMOOT. Mr. President——

The VICE PRESIDENT. Does the Senator from Michigan yield to the Senator from Utah?

Mr. COUZENS. I yield.

Mr. SMOOT. When the question was first brought to the attention of the committee I spent considerable time trying to arrive at a figure that would be just to the Government and just to the miner. In consultation with the miners they insisted that they should have 40 per cent and that nothing short of 40 per cent would answer. Later there was a representative of the Kansas oil people particularly who so insisted.

The decision by the representatives of the oil people was that 35 per cent was absolutely necessary. But taking into consideration the report made by the Couzens committee, together with the information furnished by the department, which I think showed an average of about 37 per cent, the committee finally decided that they would report the 25 per cent provision as has been done. I really believe that that is as low a percentage of allowance as we ought to impose upon the industry. I have come to the conclusion that it would hardly be fair to make it less than that, although it is said that 20 per cent would be sufficient. I am sure from the investigation I have made that if 35 per cent is not given them, which is what they have to-day, perhaps they are entitled to 25 per cent. That is, my investigation leads me to that belief.

Mr. COUZENS. I submit anyone can pick out any number of cases from the great number in the bureau and arrive at almost any conclusion that he wants to, and yet I do not charge that that has been done. I mean that the results of our inquiry, taking the different concerns that were given to us by the bureau, indicate an entirely different result than was obtained from the 50 companies which were submitted to the Finance Committee.

Mr. SMOOT. That may be true. I know that in some cases, particularly in the case of an oil well where there is a gusher and great production the first year, 25 per cent would not cover it at all. It does seem to me we have to arrive at an average somewhere. We could not enact a law that would recognize, as a basis for taxation for all oil wells, anything that would give what the great gusher would receive under existing law. I do not think it is fair that we should do so. I do believe, however, that it is as far as we ought to go when we reduce it to 25 per cent.

Mr. COUZENS. Does not the Senator consider it a subsidy to the industry to promote development?

Mr. SMOOT. I hardly think so. It is not at the present time with the 25 per cent provision. I know that in 1918 when we had the bill up for discussion the statement as made by the Senator would have been absolutely correct, that it not only affected oil but all the minerals that were needed so badly for war purposes. We have cut it down now in the bill to the point where I believe there is hardly any advantage at all to the companies, taking them as a whole. There may be an advantage here and there to certain producers in small quantities, but there is a disadvantage to the great gusher. That is about the situation. So far as I am personally concerned, I have told all of them that I would support the 25 per cent, but that I could not go any higher than that. The committee was a unit that that was all that could be done. It is for that reason that I want the committee amendment agreed to.

Mr. COUZENS. Mr. President, it seems to me that the committee, under the pressure of the oil industry no doubt, has compromised on a rate lower than the industry wanted. That industry is vitally interested and insistent, as all industries are, on getting every possible advantage that it can in taxation. I am not finding any fault with that, and if the Congress wants to submit to that, it is for them to say; but I can not conceive why that industry is entitled to any concession for depletion any more than any other industry is entitled to a similar concession.

Mr. SMOOT. The only reason, I will say to the Senator, in my mind is this: Every dollar that is taken out is capital. Take a gold mine or a copper mine, and when a vein of ore is discovered every dividend that is paid is not like a dividend that is paid by a going merchandising concern or a manufacturing concern, because such concerns only pay dividends after keeping their capital just as it was, but in the case of a mine every dollar of dividend paid is capital. God Almighty put the ore there and nobody else can ever return it. That is why depletion is allowed to this industry and why it is entitled to the allowance.

Mr. COUZENS. That is a strange philosophy to me. The operators go out and get new oil wells when the old wells have ceased to produce; and that is what this allowance is proposed to encourage. It seems to me that it presents a case no different than that of a man going out and buying more timber. When an individual owner exhausts his forests usually he goes and buys more forests; and when a man exhausts his oil wells he goes out and prospects for or buys more oil wells. These industries have been going on for years and years. Therefore I do not understand the philosophy of saying that something is being taken out of the ground that can not be replaced. It may only be said it can not be replaced in that particular spot, but the industry continues just the same as does any other industry.

Mr. SMOOT. But the individual never will own that same oil or ore in that same spot. His capital is being taken away; there is not any doubt about that at all.

Mr. COUZENS. If I buy ore to produce iron to make automobiles, I am also consuming capital.

Mr. SMOOT. But the Senator gets all that back, together with a profit; he is using his capital, and he does not lose a cent of capital unless he makes a loss in the transaction.

Mr. COUZENS. But his capital in the original investment in the oil well or mine, as the case may be, and he gets back all the capital plus a profit, as other industries get back their capital plus a profit.

Mr. SMOOT. Perhaps he does; but I will say to the Senator now that I think it costs for the prospecting, discovery, development, and working of a mine two or three times more than is ever obtained from the mine in dollars and cents in dividends. I think the whole history of mining in the West ever since it began is that the cost to the prospector, including the development of mines that never pay, amounts to many times more than the dividends that are paid by the mines. I have never heard it denied; I think it is absolutely true; and I know it is true so far as my State is concerned.

Mr. COUZENS. It is also true of other industries. Many more millions of dollars have been lost in the automobile business over a certain period of time than were ever made in the automobile business over a certain period of time. That is true, perhaps, over a certain period of time in the oil or the mining industry.

Mr. SMOOT. Of course, the Senator knows more about the automobile business than I do, but it has been a profitable business to certain individuals I know, and so also has mining.

Mr. COUZENS. Yes; so has mining.

Mr. SMOOT. Yes; I so stated; but I do not think there have been as many dollars lost in the building of automobiles as there have been in undertaking to develop mines.

Mr. COUZENS. Where is the difference, then? If some have been profitable and some have lost in all industries, why an exception in the case of this industry?

Mr. SMOOT. The difference is in the management of the business. Ninety per cent of the failures in business—and

there are about 92 per cent of failures within a given time—comes from over-credit, bad management, and mistakes that are made by those in charge of the business. I do not care how good a manager may be; I do not care if he has studied all of the laws in the world, chemistry and geology and everything else, he can go and hunt for a mine, and he may think it is there, but nine times out of ten—yes; I was going to say ninety-nine times out of one hundred—it is not there. I myself have had a little experience in that matter, I will say to the Senator.

Mr. SHIPSTEAD. Mr. President, if the Senator from Michigan will yield, in the case mentioned no tax is paid.

Mr. COUZENS. Not only is no tax paid, but depletion can be capitalized and deducted as to any property that he does happen to own.

Mr. SMOOT. It is depletion because capital has been taken instead of profits.

Mr. COUZENS. We are not objecting to depletion; there is no controversy about depletion. I recognize that any capital that is depleted must be given credit for, but what I am objecting to is crediting a value for depletion much in excess of what the man invests in the property. That is not done in any other industry; there is no record of any instance in which men are allowed to base depreciation or depletion on anything except what the property cost them. I do not object to that; no one objects to that; but what I object to is this: If a man spends $10,000 in drilling an oil well or in drilling two oil wells and then makes $1,000,000 out of them, he is permitted to deplete on the basis of $1,000,000 instead of on the bases of $10,000, which he invested.

Now, just to show the unreliability of some of the statements that have been made let me refer to the fact that the Senator from West Virginia [Mr. GOFF] read from an unsigned memorandum that was left on the desks of Senators. It is headed—

Memorandum in re the error in section 204 (c) (2) in H. R. 1.

It says it is an error, but no one has pointed out where the error is. Without taking up the time of the Senate to read it all, because it would be a repetition of much of what the Senator from West Virginia said, I call the attention of the Senate to the absurdity of this statement.

Up to 1923 approximately $12,000,000,000 were placed in the legitimate channels of oil-field development and operating in the United States, and only seven and one-half billions of dollars returned from the sale of crude oil produced, leaving a deficiency of four and one-half billion dollars.

Just think how misleading that statement is! It says nothing about how much is left in the wells, nor how much is yet invested. It seeks to draw a misleading, dishonest inference. It says that they have taken out $7,500,000,000 and they invested $12,000,000,000. Suppose then that they have $12,000,000,000 left. Nobody knows from this memorandum. It is the kind of propaganda and it is the kind of material that is used to mislead Congress.

Mr. President, I do not believe it is necessary for me to take up any more time of the Senate in pointing out the unreasonableness of allowing a discovery value for these companies. I call attention to the fact that out of 13,671 cases only 35 were "wildcatters.' If I understand correctly, the proponents of this bill and of this particular provision have abandoned the idea of allowing it to "wildcatters," which was the intention of Congress when it was originally proposed. They have abandoned the idea of allowing this discovery value to "wildcatters," and are going to allow it to the Standard Oil Co., to the Mid-Continent Oil Co., to the Gulf Oil Co., and other oil companies which, as everyone knows, can well afford to pay the 12½ per cent tax on their profits. That is all they have to pay. If the Senators want to exempt them, if they want them to save the 12½ per cent, they will of course pass the bill as it is; but what Congress first intended to do was to allow the deduction to the little "wildcatter" who had spent nearly all his money in exploring for oil and then discovered a well. That was the intent of Congress, as the evidence before the Ways and Means Committee and the Finance Committee of the Senate plainly shows, and as every Senator and Representative who was on those committees at that time must know. That idea has now been entirely abandoned, and this is so profitable and advantageous to the oil industry that it is proposed to extend it so that not only the little "wildcatter" but the whole industry will get the benefit.

I can not understand the philosophy of it all. It is a frank admission that the Standard Oil Co., the Gulf Oil Co., and other big oil companies can not pay the 12½ per cent tax on their profits because the investment they have does not represent the value of the property; in other words, the value of the property, it is assumed, is something different than the amount of money they put into it, and therefore we are going to create a fictitious or an unusual value and allow a depletion based on that value, rather than on the basis of cost, which is the basis used by every other industry except the oil and mining industries.

The VICE PRESIDENT. The question is on agreeing to the amendment to the committee amendment.

Mr. SIMMONS. Mr. President, before the vote is taken on this amendment I wish to make some observations, although I do not propose to discuss the amendment. I may say, however, that so far as the amendment is concerned the committee has dealt with the question very justly, very fairly, and very equitably. One of the most mooted questions that we have had in connection with all of our revenue legislation since 1916 has been the matter of discovery and depletion. I myself have examined very carefully the statistics and I have discussed the matter with many experts who have knowledge of the discovery value and the depletion value of mines, as well as of oil wells. I think it will not work to the disadvantage of the Government, and I am satisfied that it will work very much more justly to the operators and owners if we establish this arbitrary amount as the full extent of the depletion to which the miner and the owner of oil wells shall be entitled.

However, Mr. President, I did not rise for the purpose of discussing that question. I read a few moments ago an article in the New York Times of to-day, in which this statement appears:

Repeal of the estate tax was sanctioned by a much larger vote than had been hoped for—49 to 26—but the Democratic-Republican coalition, which had been driving the bill through the Senate with speed and force, went to pieces when proposals were made to take taxes off admissions, dues, and automobiles. Senators SIMMONS and HARRISON of the Finance Committee could not hold their fellow-Democrats in line, with the result that more Democrats than Republicans voted to abandon the motor and admissions taxes.

The first onslaught on these levies came when Senator KING, of Utah, a Finance Committee member, who disagrees with Senator SIMMONS on the bill, moved to strike out all admissions and dues taxes. His motion was carried by the narrow vote of 36 to 34.

I may state here that I was one of the 36.

Mr. President, that statement in the paper is very misleading and very erroneous. One of the propositions made by the minority in the very beginning, before this bill was taken up by the committee, was the repeal of all admissions and dues taxes. In the committee the minority, as I now remember, voted unanimously in favor of the repeal of admissions and dues taxes. When the matter came up in the Senate the other day on the motion of the Senator from Utah [Mr. KING] to reject the committee amendment, both the Senator from Mississippi [Mr. HARRISON] and myself, and every other member of the minority who voted on the matter, voted as we had voted in the committee, to take the tax off of admissions and dues. In all of the votes that the minority have cast here, with the exception of the Senator from Utah [Mr. KING], the members of the minority have voted in the Senate just as they voted in the committee.

In the committee the members of the minority proposed certain reductions upon the surtaxes. When the committee met we offered to amend the House bill by making those reductions. That motion was defeated by a strict party vote, all Republicans voting against it, all Democrats voting for it; and so we stood upon that question until after we entered into the compromise arrangement with reference to surtaxes.

When our proposition was practically accepted by the majority as to surtaxes we voted for the House bill with that amendment on it. At the time we did that it was known to every member of the committee that the majority members were in favor of the abolition of the inheritance tax; and when that was reached in the committee we all voted for the abolition of the inheritance tax except the Senator from Utah [Mr. KING], without any previous agreement about it, simply because we believed in that principle.

With reference to everything else that has been before the Senate that was before the committee, the minority members of the Finance Committee have taken the same position here that they took in the committee, and have voted that way.

The Senate will recall that some days ago, when we had up the amendment of the committee to increase the tax on corporations from 12½ to 13½ per cent, I stated to the committee that I had opposed this increase in committee and that I proposed to oppose it upon the floor of the Senate with all the might and vigor that I had. I did oppose it, and we came within three votes, I think, of defeating it. When the automobile tax came up in the committee, the committee proposed to

put a tax upon trucks. The minority members of the committee voted unanimously against that proposition. When the matter of adopting that committee amendment was reached yesterday the Senator from Utah [Mr. KING] made an objection to it. If he had not done it, I should have done it; and when the vote was taken upon the question of agreeing to the committee's amendment upon trucks, I voted against it. I voted to take off that tax, and every member of the minority on the Finance Committee voted to take it off.

When the question of the tax on automobiles came up, the same thing happened. We did not "go to pieces." I voted here yesterday to take the tax off of automobiles. I had stated here day before yesterday, in a colloquy which I had with the Senator from Wisconsin [Mr. LENROOT], that I was in favor of taking the tax off of trucks and off of automobiles, and that I was opposed to raising the tax upon corporations. I had already made my fight against the latter, and I stated that I intended to vote against the former, too.

So, Mr. President, what has happened is that the minority members of the Finance Committee have stood by the committee's action in those particulars in which they agreed to the committee's action in the committee, and the minority members of the Finance Committee have opposed and are going to continue to oppose those things adopted by the committee which we did not agree to in committee. We have reached now the matters that we did not agree to, and therefore I am in hearty sympathy and was in hearty sympathy, and so were my associates of the minority, with the position taken by the Senator from Utah [Mr. KING] with reference to the corporation tax and with reference to automobiles and with reference to trucks and with reference to admissions and dues.

I have made this statement, Mr. President, because I find that there is some confusion about it, especially in the press gallery.

The VICE PRESIDENT. The question is upon the amendment offered by the Senator from West Virginia [Mr. GOFF] to the amendment of the committee.

Mr. REED of Pennsylvania. Mr. President, may the amendment be stated?

The VICE PRESIDENT. The Secretary will state the amendment to the amendment.

The CHIEF CLERK. On page 22, at the end of line 16, before the period and after the word "paragraph," it is proposed to insert a colon and the following proviso:

Provided, however, That when the operating expenses of a property are less than 35 per cent of the gross income from the property during the taxable year, the allowance for depletion shall be 35 per cent of such gross income; and where the operating expenses of a property are less than 25 per cent of its gross income, the allowance for depletion shall be 40 per cent of such gross income. Such allowance shall not exceed 50 per cent of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this paragraph.

Mr. SMOOT. Mr. President, do I understand that the amendment is offered to follow the word "paragraph," in line 16, page 22?

The VICE PRESIDENT. It is.

Mr. SMOOT. I will say to the Senator from West Virginia that the amendment ought to be a substitute for paragraph (2), beginning on line 9, down to and including line 16. It simply provides 35 per cent instead of 25 per cent. It is almost word for word the same as paragraph (2).

Mr. HARRELD. I do not believe that it is subject to that construction.

Mr. SMOOT. This is the first time I have heard it. I was called out of the Chamber.

Mr. HARRELD. I do not believe that the Senator will find that that is the proper construction of it.

Mr. SMOOT. If the Senator from Oklahoma desires to speak in the meantime, I will look at the amendment.

Mr. SIMMONS. Mr. President, if the Senator will pardon me, I should like to state that while I voted for 25 per cent, I should have been willing to allow a little bit more than that; but after conference with Senators who come from the mining sections and the oil sections of the country I became satisfied that it was impossible to get a larger deduction than 25 per cent. I think 25 per cent is fairly just, although I should have been willing to let it go a little bit higher.

Mr. SMOOT. I think myself it is a little low, but I believe it will work out in the end all right.

I find that the Senator from Oklahoma is correct in his construction.

Mr. NEELY. Mr. President, before the vote is taken, I make the point of no quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	Fess	La Follette	Sackett
Bayard	Fletcher	McKellar	Sheppard
Blease	Frazier	McLean	Shipstead
Borah	George	McMaster	Shortridge
Bratton	Gerry	McNary	Simmons
Broussard	Gillett	Metcalf	Smith
Bruce	Glass	Moses	Smoot
Butler	Goff	Neely	Stanfield
Cameron	Gooding	Norbeck	Stephens
Capper	Hale	Norris	Swanson
Copeland	Harreld	Nye	Trammell
Couzens	Harris	Oddie	Tyson
Cummins	Harrison	Overman	Walsh
Deneen	Heflin	Pepper	Warren
Dill	Howell	Phipps	Watson
Edge	Jones, Wash.	Pine	Weller
Edwards	Kendrick	Ransdell	Willis
Fernald	Keyes	Reed, Pa.	
Ferris	King	Robinson, Ind.	

Mr. JONES of Washington. I desire to state that the Senator from Kansas [Mr. CURTIS] is necessarily absent on account of his health. He is paired for the rest of the day, as I understand, with the junior Senator from Michigan [Mr. FERRIS].

The VICE PRESIDENT. Seventy-four Senators having answered to their names, a quorum is present. The question is on agreeing to the amendment offered by the Senator from West Virginia to the committee amendment.

The amendment to the amendment was rejected.

The VICE PRESIDENT. The question is upon agreeing to the amendment as amended.

Mr. SMOOT. I send the following amendment to the desk.

The VICE PRESIDENT. The clerk will state the amendment.

The CHIEF CLERK. On page 22, line 5, after the word "value" and the period, insert:

Discoveries shall include minerals in commercial quantities contained within a vein or bed discovered in an existing mine or mining tract by the taxpayer after February 3, 1913, if the vein or bed thus discovered was not merely the extension of a continuing vein or bed already known to exist, and if the discovered minerals are of sufficient value and quantity that they could be separately mined and marketed at a profit.

Mr. SMOOT. The Senate to-day struck out lines 5 to 8, and this is to take the place of the matter stricken out.

The VICE PRESIDENT. Lines 5, 6, 7, and 8 have already been stricken out on motion of the Senator from Florida [Mr. FLETCHER].

Mr. SMOOT. I move this as an amendment to the amendment.

Mr. REED of Pennsylvania. This morning, when those lines were stricken out, I made the statement that the Treasury was opposed to the matter contained in the lines stricken out on the motion of the Senator from Florida. I am advised that the same objection does not obtain to the amendment now offered by the Senator from Utah, and it is satisfactory to all concerned.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Utah to the committee amendment.

The amendment to the amendment was agreed to.

The VICE PRESIDENT. The question is on agreeing to the amendment as amended.

Mr. NEELY. Mr. President, I move to amend the bill by striking out the figures "25," in line 10, on page 22, and inserting in lieu thereof the figures "35."

The object of this amendment is to effectuate the purpose of the amendment offered by my colleague [Mr. GOFF], which has just been voted down.

The chairman of the Committee on Finance admitted on the floor a few moments ago that he believed a 25 per cent depletion allowance in the case of oil and gas wells to be insufficient. The ranking minority member of the committee, the Senator from North Carolina [Mr. SIMMONS], just stated that in his opinion an allowance of 25 per cent is not quite adequate.

The 25 per cent is thoroughly satisfactory to the multimillionaire operators, because their production is what is termed "settled production." They suffer little depletion. But every independent operator in West Virginia, Pennsylvania, Texas, Indiana, Louisiana, and California knows that the life of his business demands more than a 25 per cent depletion allowance.

I implore the Senate to give the "wildcat" operator and the courageous explorer a chance. They hazard all their

capital every day and all day long. Neither their taxes nor their burdens should be increased.

But since the 25 per cent depletion allowance provided by the bill is less than the average depletion heretofore allowed by the Bureau of Internal Revenue, the effect of the bill, if passed in its present form, will be to increase the taxes of every independent oil and gas company in the country, and to put many of them entirely out of business.

I ask for justice for these independent concerns, and on my amendment I demand the ayes and noes.

Mr. SIMMONS. Let me say to the Senator that I did say that 25 per cent was a little low, but there was a great deal of evidence that it was sufficient. Thirty-five per cent, however, I think is too high.

Mr. NEELY. Will the Senator yield for a question?

Mr. SIMMONS. Yes.

Mr. NEELY. The Senator states that there was evidence that 35 per cent was too high——

Mr. SIMMONS. No; I said I thought 35 per cent was too high.

Mr. NEELY. And that 25 per cent is too low. I grant that some of the operators who appeared before the committee agreed to the 25 per cent provision, but it was because of the fact that the attitude of the committee led them to believe that if they did not accept 25 per cent they would get nothing, and consequently be ruined.

Mr. SIMMONS. I suggest to the Senator that if he would change it to 30 per cent I would be strongly disposed to support the amendment.

Mr. NEELY. I hope my 35 per cent amendment will carry. But if it should unfortunately fail, I shall then offer another amendment, based upon the suggestion of my distinguished friend from North Carolina [Mr. SIMMONS]. Mr. President, I now demand a vote on my proposed amendment.

Mr. HARRELD. Mr. President, in support of the motion of the Senator from West Virginia, I want to call attention again to the fact that the Senator from Pennsylvania gave some figures a while ago showing that depletion was allowed to the little men in 1918 amounting to 32 per cent on gross income from oil, 41.75 per cent in 1919, 37 per cent in 1920, 56.21 per cent in 1921, 62.39 per cent in 1922, and 51.85 per cent in 1923. That was an average of 46.86 per cent for the six years. If that does not justify the increase from 25 to 35 per cent, I do not see how it could be justified.

Mr. REED of Pennsylvania. Mr. President, I think it is only fair to say that the figures given for those last three years are the figures claimed by the oil operators themselves. In the first three years the figures were 32 per cent, 41 per cent, and 37 per cent. For the last three years, of which the returns have not been audited, the claims of the oil men are filed in their returns, and in those returns they have asked for deductions amounting to 56 per cent, 62 per cent, and 61 per cent.

Mr. SMOOT. I want to say also that some of the claims made by the operators themselves showed a discrepancy between what they would pay under existing law and what they would pay under the Senate committee amendment. They took it for granted they were going to have the full 50 per cent, and perhaps when their returns were audited they would not get more than 25 or 30. So that would hardly be a fair comparison.

Mr. REED of Pennsylvania. Another thing that is worth considering in connection with these claims of the oil operators is that in some of the leases there was a variation in their own claims of their own returns, running from 30 cents to $1.09.

Mr. COUZENS. That is correct.

Mr. REED of Pennsylvania. That shows how much they themselves are apart in their estimates.

Mr. HARRELD. I merely want to say that, leaving out the last three years and taking only the first three years, of the figures the Senator from Pennsylvania gave, the general average is over 40 per cent, which still justifies this amendment making the figure 35 per cent.

Mr. NEELY. I ask for the yeas and nays on my amendment to the amendment.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll.

Mr. FERRIS (when his name was called). I have a pair with the senior Senator from Kansas [Mr. CURTIS]. In his absence I withhold my vote.

Mr. FLETCHER (when his name was called). I have a general pair with the junior Senator from Delaware [Mr. DU PONT]. I understand that if the Senator from Delaware were present he would vote "nay," and if I were permitted to vote, I would vote "yea." I therefore withhold my vote.

Mr. HOWELL (when his name was called). I have a pair with the Senator from Kentucky [Mr. ERNST], and in his absence I am compelled to withhold my vote.

Mr. KING (when his name was called). I have a general pair upon this measure with the Senator from Colorado [Mr. PHIPPS]. I transfer that pair to the Senator from Mississippi [Mr. STEPHENS] and vote "nay."

Mr. McLEAN (when his name was called). In the absence of my pair, the Senator from Virginia [Mr. GLASS], I withhold my vote. If I were at liberty to vote, I would vote "nay."

Mr. SWANSON (when his name was called). I have a pair with the senior Senator from Illinois [Mr. McKINLEY]. I transfer that pair to the senior Senator from Arizona [Mr. ASHURST] and vote "yea."

Mr. BLEASE. I have a pair with the Senator from Missouri [Mr. WILLIAMS]. I do not know how he would vote on this particular matter, so I withhold my vote. If I were permitted to vote, I would vote "yea."

Mr. FERRIS. As I stated, I have a pair with the senior Senator from Kansas [Mr. CURTIS]. I transfer that pair to the Senator from New Jersey [Mr. EDWARDS] and vote "yea."

Mr. COPELAND. The junior Senator from New Jersey [Mr. EDWARDS] is unavoidably absent. If he were present, he would vote "yea."

Mr. REED of Pennsylvania. I wish to announce that the senior Senator from New York [Mr. WADSWORTH] is necessarily absent. If present, he would vote "nay."

Mr. KING (after having voted in the negative). Since announcing the transfer of my pair, the Senator from Mississippi [Mr. STEPHENS], to whom I transferred it, has entered the Chamber and voted. I therefore transfer my pair with the Senator from Colorado [Mr. PHIPPS] to the Senator from Missouri [Mr. REED] and allow my vote to stand.

Mr. WALSH. My colleague [Mr. WHEELER] is absent on account of illness. He is paired with the senior Senator from Vermont [Mr. GREENE].

Mr. McLEAN. I find I can transfer my pair to the Senator from Minnesota [Mr. SCHALL], which I do, and vote "nay."

Mr. NORRIS. I wish to announce that the senior Senator from California [Mr. JOHNSON] is unavoidably detained from the Senate. He is paired with the senior Senator from Arkansas [Mr. ROBINSON].

Mr. JONES of Washington. I wish to announce the following pairs:

The Senator from Connecticut [Mr. BINGHAM] with the Senator from Nevada [Mr. PITTMAN]; and

The Senator from Colorado [Mr. MEANS] with the Senator from Texas [Mr. MAYFIELD].

Mr. SHEPPARD. I desire to announce that my colleague [Mr. MAYFIELD] is detained from the Senate on account of illness. I will let this announcement stand for the day.

The result was announced—yeas 31, nays 32, as follows:

YEAS—31

Bratton	George	Keyes	Shortridge
Broussard	Gerry	Neely	Simmons
Cameron	Goff	Oddie	Smith
Capper	Harreld	Overman	Stephens
Copeland	Harris	Pine	Swanson
Deneen	Harrison	Ransdell	Tyson
Edge	Heflin	Sackett	Weller
Ferris	Kendrick	Sheppard	

NAYS—32

Bayard	Frazier	Metcalf	Shipstead
Borah	Gillett	Moses	Smoot
Bruce	Hale	Norbeck	Stanfield
Butler	Jones, Wash.	Norris	Trammell
Couzens	King	Nye	Walsh
Cummins	La Follette	Pepper	Warren
Dill	McLean	Reed, Pa.	Watson
Fess	McMaster	Robinson, Ind.	Willis

NOT VOTING—33

Ashurst	Ernst	Lenroot	Robinson, Ark.
Bingham	Fernald	McKellar	Schall
Blease	Fletcher	McKinley	Underwood
Brookhart	Glass	McNary	Wadsworth
Caraway	Gooding	Mayfield	Wheeler
Curtis	Greene	Means	Williams
Dale	Howell	Phipps	
du Pont	Johnson	Pittman	
Edwards	Jones, N. Mex.	Reed, Mo.	

So Mr. NEELY's amendment to the amendment was rejected.

Mr. HARRELD obtained the floor.

Mr. NEELY. I now offer another amendment.

The VICE PRESIDENT. The Senator from Oklahoma has the floor.

Mr. HARRELD. I move to amend the committee amendment by striking out, in line 10, on page 22, the numerals "25" and inserting in lieu thereof "30."

Mr. NEELY. That is what I was about to do, and is what I said a few moments ago I would do if the amendment first offered was rejected.

The VICE PRESIDENT. The question is on the amendment offered by the Senator from Oklahoma.

Mr. KING. Mr. President, the closeness of the vote just taken would seem to indicate that there exists a strong sentiment in the Senate in favor of conferring special favors on the oil producers and the oil companies in the United States. Undoubtedly the legislation, beginning with 1918, which has dealt with the oil industry, has been most discriminatory and highly favorable to that industry. Under one of the statutes the oil producers of the United States were enabled to avoid paying taxes to the United States, or at least to avoid paying just and fair taxes. Under the pretext of encouraging production the act of 1918 was passed, which was so advantageous to those engaged in the oil industry. It was contended when this legislation was enacted that encouragement was necessary to the wildcatter in order that the needs of the Government and the people might be satisfied.

It is obvious that no legislation of such character, or any legislation, was needed to induce the expenditure of time and money for the discovery of oil fields. But it has transpired that the wildcatter, so called, has not been the principal beneficiary of the legislation enacted by Congress affecting the oil industry.

The wildcatters, if they were persons of limited means, derived but little profit from their efforts and their hazards. The wells which they found were speedily absorbed by the great oil companies of the United States, and these companies were enabled, under the legislation referred to, to secure benefits, advantages, and favors which resulted in the Government being deprived of legitimate revenue.

An examination of the returns made by oil producers and oil companies to the Internal Revenue Bureau support the contention which I am making. The investigation made by the special committee of the Senate, charged with the duty to investigate the Internal Revenue Bureau, incontestably established the fact that the oil companies of the United States have deprived the Government of tens of millions of dollars of taxes. In my opinion, the deductions which have been allowed by the Government under claims of the oil companies for discovery depletion, costs, capital expenditures, depreciation, and so forth, can not be justified. The enormous profits made in this industry and by many companies and producers have not yielded to the Government a fair and just return.

No other industry or business has been so favored in the matter of taxation as has the oil industry. It is not my purpose to examine the law and the rulings of the Treasury Department and the claims made by the oil companies which have resulted in this gross favoritism, this indefensible discrimination, and this loss to the Government of revenues which amounts, in my opinion, to hundreds of millions of dollars. The amendment before us will, in my opinion, prove more favorable to the oil industry than the present law. No wonder the oil interests are back of this amendment and determined that it shall be enacted into law.

Notwithstanding the present statute allows them enormous deductions and advantages and absolves them from paying a just tax to the Government, the tendered amendment will further protect them and so operate as to absolve many producers from paying any tax whatever. The passage of this amendment will be received with great joy by the oil companies of the United States.

I can not understand this great solicitude for the Standard Oil Co., the Shell Co., the Sinclair Co., and the other great organizations, whose annual profits are many hundreds of millions of dollars.

Mr. President, under the guise of simplifying the law we are asked to further legislate in the interest of those who have made millions in the oil fields of the United States. Every industry and every taxpayer should be treated fairly; there should be no inequities and no favoritism. I am afraid we are blinded because of the power and the bigness of great corporations and sometimes deal unjustly with the people. Those who invest capital in acquiring oil lands and in driving wells should have proper deductions and should have a return on their capital before they are called upon to pay taxes to the Federal Government. They are entitled to the application of the same principles which govern in determining invested capital, losses, depreciation, and so forth, in other lines of industry. It may be that because of the peculiar hazards in driving wells there should be an additional allowance or deduction. But the proposition before us goes far beyond any reasonable or fair limits, and is a concession to a profitable industry denied to other industries and not warranted by any conditions of which we have knowledge growing out of or connected with oil production.

Mr. President, Senators are anxious to dispose of this question and I shall not detain them longer. I hope that the amendment will be defeated.

Mr. HARRELD. Mr. President, for reasons best known to myself I withdraw the amendment which I have just offered.

Mr. NEELY. I renew my motion to amend the committee amendment on page 22, in line 10, by striking out the numerals "25" and inserting in lieu thereof the numerals "30."

The VICE PRESIDENT. The amendment will be stated.

The CHIEF CLERK. On page 22, line 10, the Senator from West Virginia moves to amend the committee amendment by striking out the numerals "25" and inserting in lieu thereof the numerals "30," so as to read:

(2) In the case of oil and gas wells the allowance for depletion shall be 30 per cent of the gross income from the property during the taxable year. Such allowance shall not exceed 50 per cent of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this paragraph.

Mr. KING. Let us have the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll.

Mr. FERRIS (when his name was called). I have a pair with the senior Senator from Kansas [Mr. CURTIS]. I transfer that pair to the junior Senator from New Jersey [Mr. EDWARDS] and vote "yea."

Mr. FLETCHER (when his name was called). Making the same announcement as on the last vote, I withhold my vote.

Mr. NORRIS (when Mr. JOHNSON's name was called). I desire to announce that the Senator from California [Mr. JOHNSON] is unavoidably detained from the Senate. He is paired with the senior Senator from Arkansas [Mr. ROBINSON].

Mr. KING (when his name was called). I have a general pair upon this question with the Senator from Colorado [Mr. PHIPPS]. I transfer that pair to the senior Senator from Missouri [Mr. REED] and vote "nay."

Mr. McLEAN. Transferring my pair as on the previous vote, I vote "nay."

Mr. SWANSON. Making the same announcement that I did on the previous vote I vote "yea."

The roll call was concluded.

Mr. JONES of Washington. I wish to announce that the Senator from Connecticut [Mr. BINGHAM] is paired with the Senator from Nevada [Mr. PITTMAN], and that the Senator from Colorado [Mr. MEANS] is paired with the Senator from Texas [Mr. MAYFIELD].

Mr. BLEASE. Making the same announcement as before with reference to my pair with the junior Senator from Missouri [Mr. WILLIAMS] I withhold my vote. If I were at liberty to vote I would vote "yea."

Mr. COPELAND. The junior Senator from New Jersey [Mr. EDWARDS] is necessarily absent. If he were present he would vote "yea."

Mr. SACKETT. The senior Senator from Kentucky [Mr. ERNST] is unavoidably absent. If he were present he would vote "yea."

The result was announced—yeas 35, nays 29, as follows:

YEAS—35

Bratton	Goff	Oddie	Simmons
Broussard	Harreld	Overman	Smith
Capper	Harris	Pepper	Stephens
Copeland	Harrison	Pine	Swanson
Deneen	Heflin	Ransdell	Tyson
Edge	Kendrick	Robinson, Ind.	Walsh
Ferris	Keyes	Sackett	Watson
George	Moses	Sheppard	Weller
Gerry	Neely	Shortridge	

NAYS—29

Bayard	Fess	McLean	Shipstead
Borah	Frazier	McMaster	Smoot
Bruce	Gillett	McNary	Stanfield
Butler	Hale	Metcalf	Warren
Cameron	Jones, Wash.	Norbeck	Willis
Couzens	King	Norris	
Cummins	La Follette	Nye	
Dill	McKellar	Reed, Pa	

NOT VOTING—32

Ashurst	Edwards	Johnson	Reed, Mo.
Bingham	Ernst	Jones, N. Mex.	Robinson, Ark.
Blease	Fernald	Lenroot	Schall
Brookhart	Fletcher	McKinley	Trammell
Caraway	Glass	Mayfield	Underwood
Curtis	Gooding	Means	Wadsworth
Dale	Greene	Phipps	Wheeler
du Pont	Howell	Pittman	Williams

So Mr. NEELY's amendment to the amendment was agreed to.

Mr. KING. I desire to give notice that I shall ask for a separate vote on this question in the Senate.

The VICE PRESIDENT. The question is upon agreeing to the committee amendment as amended.

Mr. NORRIS. I think we ought to have the yeas and nays on that, and I call for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll.

Mr. FERRIS (when his name was called). I have a pair with the Senator from Kansas [Mr. CURTIS]. I transfer that pair to the junior Senator from New Jersey [Mr. EDWARDS] and vote "yea."

Mr. FLETCHER (when his name was called). I have a general pair with the Senator from Delaware [Mr. DU PONT]. I transfer that pair to my colleague, the junior Senator from Florida [Mr. TRAMMELL], and vote "yea."

Mr. KING (when his name was called). I have a pair upon this question with the senior Senator from Colorado [Mr. PHIPPS]. Not knowing how he would vote if present, I withhold my vote.

Mr. SWANSON (when his name was called). Making the same announcement as on the previous vote relative to my pair and its transfer, I vote "yea."

Mr. REED of Pennsylvania (when Mr. WADSWORTH's name was called). I am asked to state that the senior Senator from New York [Mr. WADSWORTH] is unavoidably absent, and that if present would vote "yea."

The roll call was concluded.

Mr. JONES of Washington. I desire to announce that the Senator from California [Mr. JOHNSON] is necessarily absent and is paired with the senior Senator from Arkansas [Mr. ROBINSON]. I also desire to announce that if the senior Senator from Kansas [Mr. CURTIS] were present, he would vote "yea."

I am also requested to announce the following pairs:

The Senator from Connecticut [Mr. BINGHAM] with the Senator from Nevada [Mr. PITTMAN]; and

The Senator from Colorado [Mr. MEANS] with the Senator from Texas [Mr. MAYFIELD].

Mr. COPELAND. The junior Senator from New Jersey [Mr. EDWARDS] is unavoidably absent. If present, he would vote "yea."

Mr. BLEASE. Making the same announcement as before, I withhold my vote.

Mr. BROOKHART. I have a pair with the junior Senator from Arkansas [Mr. CARAWAY]. If permitted to vote, I should vote "nay."

Mr. HARRISON. I wish to announce that the junior Senator from Wyoming [Mr. KENDRICK] is necessarily absent, and that if present, he would note "yea."

The result was announced—yeas 48, nays 13, as follows:

YEAS—48

Bratton	George	Metcalf	Shortridge
Broussard	Gerry	Moses	Simmons
Bruce	Gillett	Neely	Smith
Butler	Goff	Oddie	Smoot
Cameron	Hale	Overman	Stanfield
Capper	Harreld	Pepper	Stephens
Copeland	Harris	Pine	Swanson
Deneen	Harrison	Ransdell	Tyson
Edge	Heflin	Reed, Pa.	Warren
Ferris	Jones, Wash.	Robinson, Ind.	Watson
Fess	Keyes	Sackett	Weller
Fletcher	McLean	Sheppard	Willis

NAYS—13

Bayard	La Follette	McNary	Nye
Couzens	McKellar	Norbeck	Reed, Mo.
Dill	McMaster	Norris	Shipstead
Frazier			

NOT VOTING—35

Ashurst	du Pont	Jones, N. Mex.	Robinson, Ark.
Bingham	Edwards	Kendrick	Schall
Blease	Ernst	King	Trammell
Borah	Fernald	Lenroot	Underwood
Brookhart	Glass	McKinley	Wadsworth
Caraway	Gooding	Mayfield	Walsh
Cummins	Greene	Means	Wheeler
Curtis	Howell	Phipps	Williams
Dale	Johnson	Pittman	

So the committee amendment as amended was agreed to.

Mr. SMOOT. I ask that the committee amendment, on page 23, line 23, be now agreed to, the Senate having agreed to the amendment relative to depletion on page 19. The amendment is made necessary by the change which we have made in the law.

The VICE PRESIDENT. Without objection, the amendment is agreed to.

Mr. SMOOT. Mr. President, on page 260 is the alcohol tax provision, which I desire to bring up at this time.

The VICE PRESIDENT. The Secretary will state the amendment proposed by the Committee on Finance.

The CHIEF CLERK. Under the subhead "Title IX.—Tax on distilled spirits and cereal beverages, tax on distilled spirits," on page 260, after line 9, the Committee on Finance propose to strike out:

SEC. 600. (a) There shall be levied and collected on all distilled spirits now in bond or that have been or that may be hereafter produced in or imported into the United States, in lieu of the internal revenue taxes now imposed thereon by law, an internal revenue tax at the following rates, to be paid by the distiller or importer when withdrawn, and collected under the provisions of existing law.

(1) Until January 1, 1927, $2.20 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon;

(2) On and after January 1, 1927, and until January 1, 1928, $1.65 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon; and

(3) On and after January 1, 1928, $1.10 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon.

And in lieu thereof to insert:

"SEC. 600. (a) (1) There shall be levied and collected on all distilled spirits now in bond or that have been or that may be hereafter produced in or imported into the United States, in lieu of the internal-revenue taxes now imposed thereon by law, an internal-revenue tax of $2.20 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid by the distiller or importer when withdrawn, and collected under the provisions of existing law.

Mr. SMOOT. Mr. President, the majority of the Finance Committee have instructed me when this item was reached for consideration to say that the committee desired to recede from its amendment so that the tax imposed upon alcohol will be that as provided by the House of Representatives. The estimates show a loss of revenue under the House provision for this year of $4,000,000 and for next year of $8,000,000; but I think that there is a mistake in the estimates, because, as the House provision reads, there would be no loss for the year 1926. The first reduction begins in 1927. Following this year, however, there would be a loss of $8,000,000.

All I care about is to have the Senate vote upon the question. I have decided that, so far as I am concerned, I will vote to reject the Senate committee amendment, but over $100,000,000 having been taken out of the bill last night, I do not feel that I can vote for any reduction hereafter. I think, Mr. President, I will merely ask the Senate to vote on the question.

Mr. SMITH. Mr. President, let me ask the Senator a question. The tax under the old law was $4 a gallon, was it not?

Mr. SMOOT. No; it was $2.20.

Mr. SMITH. What is the figure that the Senate committee proposes in lieu of the $1.65 tax as provided by the House?

Mr. SMOOT. Under the House provision there is a gradual reduction from $2.20 to $1.10, which was the rate before the World War. The House, however, does not make that reduction in one step. It makes a step from $2.20 to $1.65, and then from $1.65 to $1.10. As the question is now, if the Senate shall disagree to the committee amendment the House provision will stand.

Mr. SIMMONS. Mr. President, I understood the Senator from Utah to say that the Finance Committee had requested him to ask that the Senate recede from the amendment?

Mr. SMOOT. I did.

Mr. SIMMONS. If the committee recedes from it, then there is no amendment.

Mr. SMOOT. I am merely asking now that a vote be taken on it.

Mr. REED of Missouri. What is the present tax?

Mr. SMOOT. It is $2.20 a gallon.

Mr. REED of Missouri. And the committee is now proposing to leave it at that rate?

Mr. SMOOT. The amendment of the Committee on Finance proposes to leave it at $2.20, but if we disagree to the committee amendment, then the House provision will prevail.

Mr. SMITH. Why should we disagree to the committee amendment? What is the reason?

Mr. SMOOT. Because we will thereby be reducing a tax.

Mr. SMITH. Is the rate in the Senate committee amendment lower than in the House provision?

Mr. SMOOT. No; the rate in the Senate committee amendment is higher than in the House provision. The committee amendment makes no reduction whatever in the tax on alcohol, while the House provision does make a reduction.

Mr. SMITH. I understand.

Mr. HEFLIN. Let us vote now on the committee amendment.

Mr. REED of Pennsylvania. Mr. President, I do not agree with the Senator from Utah. I think the amendment proposed by the Finance Committee is wise.

Mr. SMOOT. I did not say that it was not.

Mr. REED of Pennsylvania. Perhaps I misunderstood the Senator. However, I do not agree with those Members who wish to rescind the action of the Finance Committee. They are giving away $8,000,000 a year in revenue, and there is no reason in the world for doing so. The present tax is $2.20. The Finance Committee decided to hold the tax at its present level and not to reduce it. Since that time there has been a perfect storm of letters coming to all the Senators here, and many telegrams, most of them, if not all of them, inspired by manufacturers of a few proprietary medicines, who frankly admit when they are cornered that they do not intend to reduce the price of their medicines to the public.

It is not going to make any difference to the person who goes to the drug store to get a prescription filled; it is not going to make any difference to the person who goes to the drug store to buy a proprietary medicine. The beneficiaries of the reduction made by the House are, first, the manufacturers of patent medicines; and, second, the people who would use that alcohol illegally in the preparation of synthetic liquors.

Mr. McKELLAR. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. ODDIE in the chair). Does the Senator from Pennsylvania yield to the Senator from Tennessee?

Mr. REED of Pennsylvania. I do not yield the floor; I yield for a question.

Mr. McKELLAR. Mr. President, I just want to say to the Senator that he stated that it would make no difference in the price. Fifty-three thousand retail druggists, represented by the National Association of Retail Druggists and State and county pharmaceutical druggists' associations, all on record in favor of the reduction, have stated, through their national president and general counsel, that the price of prescription products will be lowered to the consumer from 10 to 30 per cent; and that was shown in the House hearings.

Mr. REED of Pennsylvania. Now I should like to take up that statement.

Probably there is no medicine on the shelves of the drug stores that contains a larger percentage of pure grain alcohol than sweet spirits of niter. It runs from 92 to 95 per cent grain alcohol. If anything were going to be benefited by the reduction, that would be. An ounce of that sells at retail for 20 cents.

The statement has been made frequently—I have heard it over and over again—that if we will put in the reduction adopted by the House sweet spirits of niter will sell for 15 cents instead of 20 cents an ounce. The fact is that the tax on an ounce of pure alcohol—assuming that the sweet spirits of niter were all alcohol, 100 per cent—the whole tax on that is about 3¼ cents, and the House reduction, which will take effect after two years, would amount to 1⅝ cents, obviously making impossible the 5-cent reduction that these people talk about.

Then they go on and argue that we use great quantities of iodine in our homes, and that this is a tax on iodine, and that we are keeping up the price of iodine to the poor people who buy it at the drug store, when the fact is that iodine is made of a specially denatured alcohol and they do not use any of this tax-paid alcohol in tincture of iodine.

The same thing is true of the rubbing alcohols that are sold. They will not be cheapened one penny's worth by this action, because those are specially denatured and they pay no tax.

So that the propaganda that we have been getting in such quantities, I want to assure the Senate, proves on investigation to be false. About 90 per cent of it is false, and the Senate ought not to be misled by it.

Mr. LA FOLLETTE. Mr. President, will the Senator yield for a question?

Mr. REED of Pennsylvania. I am glad to yield.

Mr. LA FOLLETTE. How does the Senator from Pennsylvania interpret the testimony of Mr. Sailer, speaking for the American Drug Manufacturers' Association, before the House committee, when he said he thought "there would be a reduction of 20 to 25 per cent in the selling price to the trade of all our alcoholic pharmaceuticals"?

Mr. REED of Pennsylvania. It is not possible. It is positively impossible. The Senator from Utah, I know, will bear me out in that. Whether he is for or against the amendment, I know he will agree with me on that.

Mr. LA FOLLETTE. This man appeared before the committee and was speaking for the American Drug Manufacturers' Association. Of course, it is true that he was appearing in opposition to the amendment; but under cross-examination, as I read his testimony, he admitted that the reduction in tax would cause a 20 to 25 per cent reduction in the cost to the trade. Of course, he could not state whether or not the retailers would pass on the reduction, but he was speaking of selling these preparations to the trade, and stated that the reduction would be from 20 to 25 per cent on the alcoholic pharmaceuticals.

Mr. REED of Pennsylvania. I think that is a gross exaggeration.

Mr. SMOOT. It may be true as to Peruna.

Mr. LA FOLLETTE. No; Mr. President——

Mr. SMOOT. I want to say to the Senator that I have a letter—I have not it here or I should be glad to read it—from a druggist in a city of 15,000 people, and there are four drug stores in that city. He says in that letter to me that during the year 1925 those four drug stores used 4 gallons of alcohol in their prescriptions—1 gallon to each store, on the average—and he is interested in some of the drug stores himself.

Mr. LA FOLLETTE. Mr. President, if the Senator from Pennsylvania will be kind enough to yield further——

Mr. REED of Pennsylvania. I am glad to yield.

Mr. LA FOLLETTE. This gentleman, Mr. Sailer, was not representing the pharmacists, as I understand; he was representing the American Drug Manufacturers' Association. That is, I assume that he was representing those who are engaged in the business of manufacturing drugs and other preparations to be sold to the drug stores, where they are then retailed. I do not want to trespass on the Senator's time.

Mr. REED of Pennsylvania. I am glad to have the Senator make his statement.

Mr. LA FOLLETTE. This gentleman, of course, was arguing against a reduction in the tax, on the ground that a reduction in the tax would bring about a reduction in the price of the goods, and that they had large stocks on hand and would, therefore, suffer a loss; but he says:

> With a list of between five and six hundred alcoholic preparations, of which we have to carry tremendous stocks—and some of those goods have to be made at certain times of the year on account of the particular drug involved—and with our branch houses, of which we have quite a number scattered all over the United States, where we carry stocks, there is a shrinkage right away, and we must sell those goods.

That is, provided the tax should be reduced.

> Our competition will force the reduction. You can depend on them to do that.
>
> We will have immediately to begin selling those goods manufactured at the higher cost at lower prices and be subjected to the entire loss and more than the entire loss of the amount of alcohol that went into them.

Prior to that he had stated that, in his judgment, the reduction on these alcoholic pharmaceuticals would be from 20 to 25 per cent. I was just offering that as some evidence that there would be a reduction in the price of these products to the consumer.

Mr. REED of Pennsylvania. Undoubtedly at wholesale there will be some reduction in those products that contain a very large percentage of alcohol. It is conceivable that a gallon of sweet spirits of niter will sell cheaper to the druggist than it does now, but I think I have shown that the consumer, the ultimate user of that medicine, can not possibly get the benefit of it, because the reduction is so slight. The House bill takes care of the particular trade disadvantage that those people called attention to in the hearings, because it postpones the reduction and lets them work off their stock in trade. Their objection is not based on that, but they are still very strongly opposed to the reduction.

Mr. LA FOLLETTE. Of course I was not presenting that as an argument against the reduction provided by the House. It seems to me that it should be made. I was simply offering it as perhaps evidence tending to show that there might be some reduction in the cost of these products to the consumer.

Mr. REED of Pennsylvania. There will be a slight reduction, undoubtedly, to the drug trade, but the ultimate consumer will not get the benefit of it.

Now, just one word more about the effect of reducing the tax on grain alcohol.

Mr. WILLIS. Mr. President, before the Senator starts on that portion of the question, I want to be sure that I understood his statement as to the financial effect of this amendment. What does he think it would be for the next year?

Mr. REED of Pennsylvania. In the calendar year of 1926 it will have no effect on the price, but it will have a very marked effect otherwise, because there will be no more tax

paid alcohol taken out during the balance of this year. Naturally, nobody is going to take out alcohol and pay the tax on it if after the 1st of next January it is going to be possible to do it at 55 cents less.

Mr. WILLIS. In other words, under the terms of the House bill the change, if any, is to be gradual?

Mr. REED of Pennsylvania. The change in rate takes effect on the 1st of next January, and then on the 1st of the following January. The effect will show from the moment that this bill becomes law, because nobody will take out any alcohol and pay the full tax on it unless he knowns he can use it this year.

Now, about the use that will be made of it.

It is obvious that as you make grain alcohol cheaper you make the operations of the bootlegger easier. It is obvious that the present shift that a bootlegger is driven to resort to in redistilling denatured alcohol is an impediment to his business. It is argued, and I think with force, that as you make grain alcohol cheaper you bring it within the reach of people who will use it illegally. They do not now, because it costs so much with all this heavy tax on it; but if you reduce the tax, you will bring in new fields of consumption for that class of alcohol.

Mr. SMOOT. I call for the yeas and nays on the amendment.

Mr. HARRISON. Mr. President, people rich and poor have received some benefits from this bill. We have adopted here reductions on automobiles, trucks, admissions and dues, and various other things; but here is a proposition in which the little drug stores throughout the country say they can reduce the price of medicines to the poor and needy of this land if a reduction is made in the tax on alcohol.

It would seem to me that we are doing a very little thing even by adopting the House provision, which does not reduce the taxes this year at all, but leaves them as they are and only begins reduction in a small way the first of the year 1927, and then makes a further reduction the next year, to reduce the taxes to the pre-war basis. That is all that the House has done. It takes two years to do it.

The drug stores throughout the country say that if this tax is reduced they will be able to get alcohol somewhat cheaper; they will be able to make up their little tinctures, and sell them to the people who need them, cheaper than they can now. The only people, so far as I have seen, who oppose this proposition are some of the big wholesale drug houses of the country that want to furnish to the little drug stores the medicines already prepared.

I hope, therefore, that the House proposition will be adopted.

Mr. COPELAND. Mr. President, it seems to me absurd to drag the bootlegger into this discussion. From what I have heard of the bootlegger, he does not care how much the alcohol costs; he will only put another dollar on the quart. Here, however, is a matter which has to do with the welfare of every family.

With reference to the proprietary medicines, about which the Senator from Pennsylvania spoke, only a very small amount of alcohol goes into them. They contain only from 5 to 15 per cent of alcohol. On the other hand, prescriptions—what the druggists call pharmaceuticals—contain a very considerable amount of alcohol, from 40 to 60 per cent. Furthermore, flavoring extracts, used in every home, could not be made without alcohol. They consist of alcohol to the extent of 75 to 85 per cent. So we are dealing here with a matter which has no moral significance, a thing not related in any way whatsoever to the question of beverage liquor. We are dealing wholly with a question which has to do with the compounding of medicines for the curing of people.

Mr. President, it seems to me that where we have given consideration to people who have riches, and have reduced taxes all down the line, we might give some consideration to the poor mother and father who go around the corner to buy some medicine.

I hope that the amendment of our committee will be voted down.

Mr. SMITH. Mr. President, may I ask the Senator a question? I want to ask him as a professional man, one whose profession deals with medicine, as a doctor, whether he really believes that the reduction proposed here will materially cheapen the medicines that are essential in ordinary use at drug stores?

Mr. COPELAND. Mr. President, I have no question that what we are proposing will reduce the expense of these medicines. I do not think it will be tremendously great; it may not be material in that sense; but when you have a sick baby in the house, and have only a dollar to pay the doctor and 30 cents to buy the medicine, it makes a lot of difference whether the medicine costs 30 or 35 cents.

Mr. SMITH. That is the very point I want to know about—whether the Senator thinks it will be sufficiently reduced for the 30 cents to answer the purpose, where without this reduction in tax it would not answer the purpose?

Mr. COPELAND. I do think so.

Mr. NYE. Mr. President, will the Senator yield?

Mr. COPELAND. I yield.

Mr. NYE. In connection with the question asked by the Senator from South Carolina, I, too, had been given to doubt whether this tax reduction would be made to revert to the people eventually the consumers of these products. A number of days ago, in answer to the appeal and petition of the Druggists' Association of my own State, I dispatched a letter inquiring of them whether they thought that the reduction would be made to revert to the people. In response to that letter I have this telegram, under date of February 8:

FARGO, N. DAK., *February 8, 1926.*

Hon. GERALD P. NYE,
United States Senate, Washington, D. C.:

A tax reduction on medical alcohol would without question revert directly to the advantage of the consuming public, inasmuch as there is bound to be a decided lowering of cost on the individual constituents of medical preparations of all kinds, thereby bringing household remedies and medical preparations within reach of people of moderate means.

W. F. SUDRO, *Secretary.*

I am ready to assert that the people will get the advantage of that reduction.

Mr. BROUSSARD. Mr. President, may I ask the Senator from Pennsylvania whether this tax applies to all alcohol before released?

Mr. REED of Pennsylvania. Oh, no.

Mr. BROUSSARD. Suppose some alcohol is wanted which, under the regulations of the department, must be denatured. Would the tax be imposed?

Mr. REED of Pennsylvania. No; this tax would not be imposed on alcohol intended for denaturing.

Mr. BROUSSARD. I merely wanted to understand that feature of it before I submitted a few observations to the Senate.

I have from my State letters from several wholesale druggists. The largest favor the $2.20 tax, and their competitors, who do a little smaller business, seem to want the reduction. The Louisiana State Pharmaceutical Association has passed very strong resolutions, which I do not care to read here, but which convinced me that there is some benefit to be derived from accepting the House provision.

I wish to call attention, in additon, to the fact that the $1.10 tax, which I think will become effective in three years, is the pre-war rate. We ought to go back to the pre-war basis on that proposition.

I think the Senator from Pennsylvania is not taking into consideration a fact called to our attention by the Senator from New York that, whether the tax be $2.20 or $1.10, it will not interfere with the business of the bootleggers. We might, for the purposes here, absolutely disregard them, because, if the tax were $5, they could still continue their business. We certainly will not stop them by imposing a tax of $2.20.

We must not anticipate and assume that this alcohol will be diverted to illegal purposes. We are expending plenty of money to keep it in legitimate channels, in which it may legally be used, and we must not assume it will be diverted.

The pre-war rate of $1.10, I think, is ample. We should some time or other get back to pre-war rates in all taxes, and there is no reason why we should disagree with the House on that, who have already decided to make reductions, so that on January 1, 1928, the rate will be $1.10.

When we say that a reduction of the cost of the materials that enter into medicines that are kept on a shelf of the drug stores in some places, and in the general stores in the country, will not be affected by a reduction of the price of this alcohol we are denying practically what is generally accepted to be a fact, and in these days of active competition in business that is bound to be reflected in the price to the consumer, to those who have to buy medicines and drugs and articles in the manufacture of which this alcohol is used. They are bound to receive the benefit which the House intended they should receive.

Mr. LA FOLLETTE. Mr. President, I do not want to detain the Senate in discussing this matter; but in view of the remarks of the Senator from Pennsylvania that a reduction in the tax on alcohol to the pre-war rate would encourage the bootlegger, I desire to direct the attention of Senators to the statement which Gen. Lincoln C. Andrews, Assistant Secretary

of the Treasury, in charge of prohibition enforcement, made before the House Committee on Ways and Means. I quote part of his testimony. He said:

We feel in the Prohibition Unit that the high tax on pure alcohol makes so wide a spread between the cost of pure alcohol to the legitimate user and the illegitimate competitor in the manufacture of products in which alcohol goes, such as perfumeries, proprietary medicines, and so on, that it actually encourages the illegitimate user to enter the field.

In answer to questions General Andrews further stated:

I said I thought that a reasonable reduction in the tax on pure alcohol would decrease the wide spread between what the legitimate dealer pays for his alcohol and the illegitimate dealer, who gets his alcohol from the bootleg industry. And by reducing that wide spread you would put the legitimate manufacturer of medicines and perfumes in a position where he could more easily compete with the illegitimate user and manufacturer, who uses the manufacture of these articles as a cover for getting alcohol to turn into the bootlegging liquor traffic.

Mr. TREADWAY. Briefly, your position is that the tax on pure alcohol should be materially reduced, so far as the matter of prohibition is concerned?

Mr. ANDREWS. Yes, sir.

With regard to whether or not any of this reduction in tax will reach the ultimate consumer, I want to call attention to a statement made by Mr. J. M. George, of Winona, Minn., representing the Interstate Manufacturing Association, which, I understand, is composed of manufacturers of medicines, flavoring extracts, perfumes, and toilet articles. Mr. George said:

It has been said by those opposing elimination, apparently in all seriousness—and you will no doubt hear it again to-day—that the elimination of this 1,000 per cent ad valorem tax will not be reflected in the price of alcohol products to the consumer. I am here to say to you positively that our companies will not only reflect it but will actually pass it all right down to the consumer, and in some instances more than the amount of the resulting eliminated cost of manufacture will be passed on to him.

I might say that when the tax went on we passed it to the consumer also.

The amount of this reduction to the consumer will naturally be determined by the percentage of alcohol present in the product. When the amount of the tax represented by the alcohol in one particular package is 25 cents the retail price of that package will be reduced 25 cents when the tax is eliminated.

The alcohol tax itself represents from 25 down to 5 per cent of the retail price of our various alcoholic preparations, and those percentages as they apply to each product will be the percentage of consumer price reduction when the tax is eliminated.

To-day our large-size lemon extracts bring from the consumer $1.25 to $1.50 per bottle. The cost of the alcohol in each bottle is slightly over 25 cents. Tax removal will result in a retail price of $1 on this article. Our 45-cent sizes will drop to 35 cents, which is a 23 per cent reduction.

That statement was made before the Ways and Means Committee of the House, and appears in the hearings on page 1048.

I realize that the Senate is anxious to vote on this matter, and I shall not take any more time upon it; but I hope the committee amendment will not be agreed to.

Mr. McKELLAR. Mr. President, proprietary medicines are looked upon as the poor people's medicines. They will unquestionably be reduced in price if this tax is reduced. If that does not apply to this kind of a tax, to what should it apply? Why should we reduce other taxes? Why is it that the reduction of other taxes will make for prosperity, but when it comes to reducing a tax on those things which are used by the poorer classes of people, it is said, "Oh, it makes no difference. They pay as much, just the same."

I do not subscribe to that doctrine. I think this tax should be reduced in the same measure that we are reducing taxes upon other people, and for that reason I shall support the motion to strike the tax out.

So far as the bootleggers are concerned, I do not think that has any application. Why should the bootlegger pay any tax on this alcohol when he can buy denatured alcohol, and, by a process that costs about 10 cents a gallon, ply his trade just as before? I do not think there is any question of prohibition in it.

I have uniformly voted for every prohibition measure. I do not suppose anyone has more uniformly than I supported prohibition. If I thought it was the question of prohibition, I would be found on the other side, but I believe it will be a matter of justice if we vote this relief for those who use proprietary medicines, flavoring extracts, and everything of the sort.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was rejected.

Mr. SMITH. Mr. President, may I inquire of the Senator in charge of the bill how many more committee amendments are yet to be acted on?

Mr. SMOOT. There is one further amendment that the committee wants to act on, and then one clarifying amendment.

Mr. WILLIS. I desire to inquire of the Senator from Utah what his program is for to-night. Does he intend to finish with the committee amendments and then take up individual amendments?

Mr. SMOOT. Yes; we will take up the individual amendments just as soon as we are through with the committee amendments.

Mr. REED of Pennsylvania. Mr. President, I send to the desk an amendment which I offer.

The PRESIDING OFFICER. The amendment will be stated.

The CHIEF CLERK. On page 332, line 3, strike out after the word "to" through the word "tax" in line 6, and insert in lieu thereof the words "the taxes paid," so as to read:

SEC. 1204. (a) Where prior to the effective date of the repeal of subdivison (2) of section 600 of the revenue act of 1924 any article subject to the tax imposed by such subdivision has been sold by the manufacturer, producer, or importer, and is on such date held by a dealer and intended for sale, there shall be refunded to the manufacturer, producer, or importer an amount equal to the taxes paid in respect of such article.

Mr. REED of Pennsylvania. The purpose is to make the provision on page 332 regarding refunds correspond with the action of the Senate last night in striking out the automobile tax. This is just a companion amendment that goes with the action of the Senate last night.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. SMOOT. Mr. President, in behalf of the Senator from Washington [Mr. JONES] I send to the desk an amendment, which I ask may be stated.

The PRESIDING OFFICER. The Clerk will state the amendment.

The CHIEF CLERK. On pages 47 and 48, in lieu of the part stricken out beginning in line 22 on page 47 and down to and including line 3 on page 48, insert the following:

In the case of an individual citizen of the United States, a bona fide nonresident for more than six months during the taxable year, amounts derived and received from business conducted without the United States.

Mr. SMOOT. I expected the Senator from Washington would be here, but he is temporarily absent. There is no objection to the amendment. It simply means that if an American citizen is engaged in business in a foreign country for a period of six months or more, he is treated the same as an American living in this country and not as a foreigner. It affects all our commercial agents abroad who go to get business.

Mr. McKELLAR. Does it affect any of the employees of the Government?

Mr. SMOOT. It does, as well as individual citizens. Sometimes their occupations keep them abroad for nine months of the year. We simply say that if they are out of the United States for six months, then they are to be treated the same as if they lived in a foreign country all the time. There is no possible objection to it.

The PRESIDING OFFICER. The question is on the amendment to the amendment.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. JONES of Washington subsequently said:

Mr. President, in connection with the amendment adopted on page 47, with reference to Americans doing business abroad, I ask unanimous consent to have printed in the RECORD a statement by Richard P. Momsen, the president of the American Chamber of Commerce in Brazil. I ask that it may appear in the RECORD just following the adoption of the amendment. I do this so that the conferees will have this information. It is a very fine statement with reference to this question.

There being no objection, the matter was ordered to be printed in the RECORD, as follows:

AMERICANS ABROAD AND THE INCOME TAX

[By Richard P. Momsen, president of the American Chamber of Commerce for Brazil]

At this moment the people of this country are awaiting the final outcome of the revenue bill, now pending before Congress, with much interest; public opinion is centered upon the main issues of this legislation, the increase of deductions, the reduction of surtaxes, the abolition of publicity surrounding returns, the elimination of the estate tax, and other important provisions of the bill. And quite naturally these same subjects are those upon which the interest and attention of individual Senators and Congressmen is centered, because their constituencies are vitally concerned with these issues. But there is a special class of Americans who are deeply interested in a particular section of the bill; those few thousands of Americans who reside in foreign lands, the great majority of whom are engaged in the promotion of American trade.

Since the inception of the original law levying an income tax in the United States, Americans residing abroad and deriving their income in foreign lands, have felt that our Government has been unjustly imposing this tax upon them. Sporadic attempts were made to correct this situation; a test case was tried, but the Supreme Court decided that Congress has the power to tax our citizens irrespective of the place of their residence. The only other alternative remedy, therefore, lies within the power of Congress. During the last revision of the income tax law several years ago, a provision for the relief of Americans abroad was almost enacted, but was defeated in the Senate.

When the proposition for revision was revived, due to the tremendous surpluses which the Government has been accumulating and it became evident that taxes would be reduced, Americans individually and collectively abroad, commenced again to try and convince Congress of their situation.

HOUSE GRANTS PARTIAL RELIEF

During the hearings before the Ways and Means Committee of the House in October and November of last year the committee heard the arguments of Mr. O. K. Davis, secretary of the National Foreign Trade Council, a nonpartisan and nonpolitical organization engaged in the promotion of our foreign trade. As a result of the information and suggestions imparted by Mr. Davis, together with other organizations such as the Chamber of Commerce of the United States, the National Association of Manufacturers, the American Manufacturers' Export Association, and others, the committee included the following exemption in the bill which it presented to the House:

"In the case of an individual citizen of the United States, amounts received as salary or commission for the sale for export from the United States of tangible personal property produced in the United States, in respect of such sales made while he is actually employed outside of the United States, if so employed for more than six months during the taxable year." (Par. 14, sec. 213, b.)

The provision was adopted by the House.

SENATE COMMITTEE STRIKES OUT HOUSE PROVISION

When the revenue bill came before the Finance Committee of the Senate the provision cited above was stricken out, with the following comment:

"The committee sees no reason for such an exemption, inasmuch as a citizen so employed abroad, if required to pay any income tax to the foreign country on his salary, receives a credit against his United States tax of the amount of tax paid to the foreign country."

Although the House provision for exemption did not go far enough, according to the opinion expressed by various American chambers of commerce abroad, the Senate, instead of amplifying the exemption, eliminated it completely.

Having been delegated by the American Chamber of Commerce for Brazil and the American Chamber of Commerce of Cuba, established in Rio de Janeiro and Habana, respectively, to express the views of Americans resident and doing business in those countries, it seems to me that our Congress requires further information on the subject, which I am glad to give.

While it is true that Americans residing abroad are permitted to credit against their American tax the amount of their foreign income tax, this only covers income or excess-profits taxes of foreign Governments. Most countries levy a great variety of business and other taxes which are entirely unknown or unheard of in the United States.

These taxes, which are not "income taxes" and consequently can not be applied as a credit against the American tax, in some countries are levied in lieu of income taxes, and in others make up a great part of the taxes imposed. As a result, the present partial "exemption" in the form of a reduction is to a great extent of no value. In countries where the income tax imposed is greater than that in the United States, it would seem that the relief we desire is not necessary. But there is perhaps only one country which levies a higher income tax than the United States. In other countries an income tax lower than that of the United States is imposed. Brazil, where I have resided for the greater part of the last 13 years, is in that category. An income tax was inaugurated there several years ago, and while there is a tendency to increase the rates, they are still far less than those of this country. There are, however, a multitude of other taxes which are imposed upon business and professional men, which, if added to the income tax, would probably make the total a greater burden than our taxes in this country. Every business man in Brazil, for illustration, has to pay a municipal business tax which in many classifications runs into thousands of dollars per year; he must pay a tax on every sign on his place of business or elsewhere; he pays an ad valorem stamp tax on every sale he makes; he pays a stamp tax on every draft, note, or other document he issues or accepts; each time he buys a piece of real estate he pays more than 8 per cent of the value in transfer taxes; the cities also exact the payment of sanitary and a multitude of other taxes on business in every form.

To the Federal Government he pays a fixed tax known as the industrial and profession tax, depending upon the kind of business or profession in which he is engaged; he also pays the Federal Government another tax under the same heading which varies between 10 and 20 per cent of the rent or rental value of the premises he occupies. If he has a bookkeeper, the bookkeeper pays a separate tax, and likewise he pays another tax if he represents a corporation. His commercial books must all be registered and each page pays a small tax; if he engages passage on a steamer to return to the United States, his ticket pays a tax. And the partial list indicated above is entirely separate and distinct from the Brazilian income tax. And yet the American in Brazil, who is compelled to pay these taxes, can not credit them against his American income tax.

It is therefore plainly to be seen that the reason given by the Senate committee as the basis of its decision was undoubtedly reached without a full knowledge of the facts as seen by a foreign resident familiar with the situation on the ground. In other countries where there is no income tax at all and burdensome taxation is levied in other forms the situation is still worse, because there the American must pay not only his full American income tax but a parallel tax, although it may contain a thousand different labels, to the foreign government as well.

UNITED STATES POSITION ISOLATED

One of the arguments we have been using is that the United States is the only country in the world which imposes a tax on its foreign-resident citizens upon their incomes derived from abroad. No one can deny but that the United States can adopt its own policies of taxation, but the point we are making is that other countries—England, France, Germany, Japan, and every other one of our competitors—have recognized the wisdom of giving their nationals abroad every opportunity of competing on equality with the citizens of other nations. It must be obvious that the American trading is at a disadvantage when compared with his competitor, who pays no tribute to any Government other than to the country in which he is established. To illustrate the situation, take an American and a national of another country competing for business in Brazil; examine the array of taxes which each of them have to pay there; and then impose on the American the United States income tax besides. Is his disadvantage not obvious? No question of patriotism or devotion to his country is involved; it becomes a question of business competition under tremendous handicaps; it is discouraging; it is killing American business abroad.

Is it not self-evident that those European countries which are suffering from financial strangulation would levy taxes on their nationals abroad if they thought it would be good policy? Of course they would. But they are keen traders; they have been in the foreign field for many centuries; they see into the future; they give their citizens every moral and governmental encouragement and assistance.

OUR FOREIGN TRADE NEEDS SUPPORT

The United States is a newcomer in foreign trade as compared with European countries; our foreign trade needs every support we can give it. American factories are to-day dependent upon overseas markets, and when periods of depression fall upon us in the future, as they inevitably must, our foreign trade will help fill the gap and keep American capital and labor occupied. Each day competition is becoming more acute, and we are handicapped with high labor costs, our money at par, and a lack of Americans to take care of our business in foreign fields.

It has been stated that the exemption we desire would cause an exodus of Americans from this country. No fear, because one of the greatest difficulties American companies and firms encounter in their foreign trade is to induce Americans to go into foreign fields and to remain there a sufficient time to enable them to become of real value to their employers and to our foreign trade in general.

One can travel to almost any country and find American firms with European managers and other employees in executive positions. Experience has proven that American interests in the hands of Americans are more adequately protected than when intrusted to nationals of competing countries. American citizens established in business abroad or conducting American business are performing valuable services for this country in finding a market for our goods, maintaining a favorable trade balance, and upholding our prestige abroad.

The tendency of our national legislation toward our foreign trade has been and is to promote it, but there is no other proposition which merits as much consideration and attention as does the present issue surrounding our income tax as applied to our citizens resident abroad.

"EXPATRIATES" SHOULD NOT BE EXEMPT

It has been stated that the exemption proposed would open the door to a fairly large number of Americans who have transferred their fortunes abroad, who maintain their citizenship nominally but who seek to escape taxation under our laws.

The organizations I represent, and I am certain that this is the consensus of opinion of American chambers of commerce the world over, are not asking for exemption of these so-called "expatriates." We desire exemption for the American who is a bona fide foreign resident and who is engaged in the pursuit of some legitimate business, profession, or other occupation. Such distinction is, after all, a mere question of so wording the exemption clause to exclude those who are not entitled to receive its benefits. Limiting the exemption to "earned income," if not too narrowly defined, would prove an adequate protection against any wholesale departure of capital from this country into foreign enterprises if it is desirable to avoid it.

THE COST OF LIVING ABROAD

It is contended that Americans in many foreign countries can live more cheaply than they do here. The general costs of living in certain countries are cited to prove this. The argument does not hold in most instances, however, because the American living abroad (the average American who is engaged in a business, a profession, or who is a paid employee) requires a standard of living approximating that to which he has been accustomed here.

In some countries it can not be had at any price; in others the comforts which to-day are necessities here are luxuries abroad. Consequently, although the general cost of living to the native of a particular country may be lower than the average here, this does not imply that an American can thrive under similar conditions nor live as he has been accustomed to without incurring large extra expenses. The high standard of living in this country, the innumerable luxuries of yesterday which are necessities to-day, all make it difficult and costly for the American abroad to give his family the environment which it would enjoy here.

AMERICANS AS PERMANENT FOREIGN RESIDENTS

Contrary to general belief in this country, Americans who go abroad for business and similar purposes almost invariably return to the United States here to permanently reside. In most cases Americans consider it a sacrifice to live abroad and the novelty soon wears off. An examination of the consular records of our principal foreign colonies would no doubt show a great shifting population with a notation "Returned to United States permanently" in most instances. After five years of residence in almost any foreign community one becomes known as "an old timer." The absence of the many comforts of life, the lack of sanitation in certain communities and other unhealthy conditions, the inadequacy of educational facilities in others, the difficulty of mastering foreign languages, the impossibility of harmonizing with the customs of foreign peoples, the disappointments in business ventures—these are but a few of the many motives which contribute to the early return of so many Americans to this country after a comparatively brief foreign residence.

Suppose an American has resided abroad over a period of years and then wishes to return here. What is the situation which confronts him? He is entirely out of touch with conditions in this country and he has lost the thread of success in our ever-changing American life. He can not compete with the man who has stayed here, identified himself in a particular community, and has risen through the ranks of a business, profession, or other occupation.

This means that Americans residing abroad for a period of years must accumulate or endeavor to accumulate sufficient means to enable them to subsist when they return here to permanently reside. Consequently they prefer their investments in this country, and thus these accumulations immediately or eventually return here for permanent capital employment.

Mr. SMOOT. That completes all the committee amendments, and the bill now, of course, is open for individual amendments.

Mr. SMITH. Mr. President, I desire to offer an amendment. There is no particular place where my amendment should be placed, as it pertains to the method by which we will close up and finally settle the question of a receipt for a tax paid.

Mr. DILL. Mr. President, does not the Senator from South Carolina think the amendment of such importance that we ought to have a quorum present?

Mr. SMITH. I think perhaps we had better have a quorum.

Mr. DILL. I make the point of no quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk proceeded to call the roll.

Mr. MOSES. Mr. President, has the amendment been stated?

Mr. DILL. No; but I think it is well to have a quorum here when it is stated.

Mr. SMITH. That is one reason why I desired to have a quorum.

Mr. MOSES. Although the clerk has begun the roll call, I think no one has yet answered, so I am not interrupting it. May I further ask the Senator from South Carolina if his amendment is likely to lead to much debate?

Mr. SMITH. I do not think so. I hope the amendment will so appeal to the Senate that it will be voted for without much opposition.

Mr. MOSES. Of course, all of us who have individual amendments hope they will be accepted by the Senator in charge of the bill, so that there will be no debate at all.

Mr. SMITH. So far as that is concerned, the amendment as I am offering it will, of course, have to take its course.

Mr. DILL. Mr. President, I insist on the point of no quorum.

The PRESIDING OFFICER. The clerk will proceed with the roll call.

The Chief Clerk called the roll, and the following Senators answered to their names:

Bayard	Frazier	McMaster	Sheppard
Blease	George	McNary	Shipstead
Bratton	Gillett	Metcalf	Shortridge
Broussard	Goff	Moses	Simmons
Bruce	Hale	Neely	Smith
Butler	Harreld	Norbeck	Smoot
Cameron	Harris	Norris	Stanfield
Capper	Harrison	Nye	Stephens
Copeland	Heflin	Oddie	Trammell
Deneen	Jones, Wash.	Overman	Tyson
Dill	Kendrick	Pepper	Warren
Edge	Keyes	Pine	Watson
Fernald	King	Ransdell	Weller
Ferris	La Follette	Reed, Pa.	Willis
Fess	McKellar	Robinson, Ind.	
Fletcher	McLean	Sackett	

The PRESIDING OFFICER. Sixty-two Senators having answered to their names, a quorum is present.

The Senator from South Carolina will proceed.

Mr. SMITH. Mr. President, I offer the amendment which I send to the desk. I suggest that the amendment should be inserted on page 289, after line 10.

The PRESIDING OFFICER. The amendment proposed by the Senator from South Carolina will be stated.

The CHIEF CLERK. On page 289, after line 10, it is proposed to insert the following:

When returns are made in accordance with the rules and regulations prescribed by the Treasury Department for making returns for taxes imposed by this act, and such returns are made by or with the aid of an official of the Treasury Department qualified to make such returns for the taxpayer or to aid in making such return, the amount thus found due, when paid by the taxpayer, there shall issue to him by the Treasury Department a receipt for the same, which shall be final except for actual fraud.

The Secretary of the Treasury is hereby authorized and directed to designate for each State officers of the Treasury Department in number adequate to the requirements of the taxpayers thereof qualified to make or aid in making returns as prescribed by the Treasury Department, which shall by rule prescribe the times when and the places at which the services of such officers will be available.

Mr. SMITH. Mr. President, I think every Senator in this Chamber and every citizen of the United States will agree that since the adoption of the income-tax amendment to the Constitution and the statutes enacted for the purpose of carrying that amendment into effect we have reversed the policy of our laws in reference to our citizens. In all of our criminal procedure, we take it for granted that the person accused is innocent until proven guilty. In our attitude toward our taxpayers, however, we seem to take it for granted that every man is a scoundrel until a board of officials at the Treasury Department or elsewhere proves that he is honest. The entire discussion of the income-tax question, whenever the relation of the income tax law to the taxpayer has come up, has had in it a note and flavor to the effect that every man who is called upon to pay taxes to support his Government is attempting to defraud his Government and is a man without character. That is evidenced by some of the arguments which have been made on this floor and by the very system which we have put into operation. The whole attitude of the Government has been that a host of spies, inspectors, inquisitors, shall search minutely into every detail of each tax return in order to ascertain whether or not the citizen who has made the return, who is a free American and who has sworn to it, has either ignorantly or maliciously defrauded the Government out of what it is rightfully entitled to under the law.

Let us analyze this situation. Congress passed the income tax law. We, who are charged with the responsibility of formulating a statute under which there might be collected from the income-tax payers of this country an amount requisite to the needs of the Government, have enacted a law and have graduated and scaled the taxes to be imposed. Then the department has prepared and issued forms and blanks on which tax returns shall be made, the character and nature of which has made it impossible for the average taxpayer of the country even to approximate their full import or to be able to make out his tax return.

I submit, as a simple question of honest dealing with the citizens of this country, that we have no right to impose upon them the miserable piece of machinery now provided for the collection of the taxes which the citizens owe. Not only should the form of tax return be simplified, but if it can not be simplified you and I are in duty bound to furnish the taxpayer the machinery by which when, as an honest citizen, he has sworn to the correctness of his return that he shall have a receipt for that which he has tendered his Government under the law to which you and I have forced him to accede.

What is the condition now? I have just finished going through with the department a tax return for the year 1917 in connection with which an extra assessment was made. Through the years 1918, 1919, 1920, 1921, 1922, 1923, 1924, and 1925 a citizen, as honest and upright as any man who sits on this floor, has been dragged back and forth from Washington, has been forced to employ legal advice, has been put in the attitude of a constructive criminal by his Government when he made an honest return of all that under the circumstances he thought he was justified in returning. He made the return with the aid of an official of the Government, and yet for eight long years he has been harassed by his Government in order for them to collect what they consider, or what different officials consider, an assessment still due the Government. The upshot was that after all these years, when a really competent officer of the department visited my city and went over the return and the papers, there was remitted to the taxpayer $1,800.

Mr. President and Senators, this thing is so manifestly plain on its face that I think it hardly needs any argument. If we formulate the rules under which a taxpayer is to make his return, and we specify the information upon which the returns shall be based and the amount of the deductions and additions and then the Treasury Department furnishes a competent officer to go over it with the taxpayer and the taxpayer lays his cards on the table and, collaborating together, the citizen and the department official work out what the taxpayer owes the Government, when he has tendered the amount that is thus found to be due under his oath, the Government ought to give him a receipt.

Mr. WATSON. Suppose he makes a mistake against himself?

Mr. SMITH. I think that it is better that he should be allowed to make an honest mistake than that you and I, who formulated the law, should hound him for four or five years and put him in the position of a constructive criminal because he has made a mistake.

Mr. WATSON. But suppose he makes a mistake against himself, the taxpayer?

Mr. SMITH. The rule ought to work both ways. If a mistake is made against the taxpayer, as a matter of course let that be final.

Mr. WATSON. Let it be final?

Mr. SMITH. And if there is a mistake against the Government let that be final, unless there may be some process provided by which, upon request, the matter may be adjusted without a legal binding process.

The point I am making is this: It would be infinitely better, as I think the Senator from Indiana will agree with me, for us to lose half the revenue we are getting than to create the spirit that we have created in the hearts of the American taxpayers. I do not believe there has been anything done since this Government was formed that has produced as much irritation and as much resentment and as much contempt for our Government as the method by which we collect the income taxes.

My proposal is simple enough. The amendment provides that where the Treasury Department prescribes certain rules and regulations, according to which tax returns are to be made, and an official, properly qualified, collaborates with the taxpayer, and the taxpayer lays his cards on the table and the amount is found which is due the Government, then the taxpayer shall have a receipt which shall be final except for actual fraud.

I wish that it were possible for us to get a tabulation of the cost to the taxpayers of employing counsel, running from their homes to Washington, back and forth, and paying their other expenses. I will guarantee the assertion that the amount of money the taxpayers have paid out in attorneys' fees, in railroad and other expenses, and in loss of time has been twice the amount that the Government ever received by virtue of the mistakes alleged to have been found and the additional amounts paid because of such mistakes.

As the Senator from Florida [Mr. FLETCHER] suggests, there are accountants, bookkeepers, auditors, a host of young men running about over the country duplicating each other's work. When one inspector has been over the figures, the next year another one comes.

Every honest citizen of this country is willing to pay his tax; he wants to pay his tax; but he does not want a horde of inspectors and spies turned loose on him to harass him after he has honestly attempted to meet the requirements of his Government.

Do you consider it no expense and burden to a taxpayer that when the officer of the law says: "I find that there is due from you to the Government so much," he must obey him? What does the Government do? It says: "There is due from you so much. We make an assessment on you of so much." Then, in order to protect himself, the taxpayer must go right away and employ legal counsel. Where is the matter to be finally adjudicated? First he may take it to the local revenue department. There the decision is not final. Then a trip to Washington is necessary. Then experts must go over his books and audit them again; and the result is that the cost to the Government itself exceeds the amount it collects, and the cost to the taxpayer exceeds the amount involved, to say nothing of the feeling that it engenders.

Why is it not my duty and your duty so to fix the law that the proper officers shall collaborate with the taxpayer; and when the requirements of the law are met in the first instance, and he swears to the return, why should not that be final until or unless actual fraud is discovered or an attempt to defraud the Government?

I take no stock in the seeming thought and attitude that we have toward the host of taxpayers of this country. Listen to the debate on the floor of the United States Senate! One would think, to hear us speak about how we must frame a law in order that the scoundrel may not slip through its meshes, that we are sent here by a horde of thieves, and come here as the only honest men in the country to frame laws to put out a dragnet and draw them in and take what we can before they slip out.

Our whole attitude in discussing this entire tax bill has been that the taxpayer will evade the tax if we do not make it so burdensome, so complex, so intricate, that nobody can make the return for the taxpayer but a skilled lawyer, an expert; and even that is not to be settled for four or five years. It is the most monstrous proposition ever put before the American people.

We have framed the law. We have pointed out the things to be taxed. We have pointed out the method by which the tax is to be collected. We have forced the law upon the citizens of this country and have made it so intricate and complex that we know, you know, I know that the average man can not intelligently sit down and make out his tax return. Fifty per cent of the Members of the Senate can not do it.

I will guarantee the assertion that Senators in this body who have made out their tax returns have had assessments made against them subsequently, and have been called upon subsequently to pay an additional tax. Here we, the people who make the law, are not competent to sit down and make out the returns under it. We have made it so that we force the citizen to go to an expense sometimes equal to or exceeding the amount of the tax to get the proper legal counsel, and then he is not sure of what he has. Four or five or six or seven years afterwards, perhaps after he has gone out of business, perhaps after some disaster has overtaken him, the Government comes and levies an assessment on him, and he is then haled into court or dragged before the department and put in the attitude of an offender against the Government which he would love and does love to support.

We have no right to do this thing. Talk about our restricting and placing the bar of limitation for two years! It ought not to be any longer than an honest man can see the terms and the amount, swear to the return and sign it, and his Government ought to give him quittance then.

When I first drafted this amendment, a Senator said to me, "Why, it is impossible of administration." Mark you, he said that the Government could not get enough experts to help me and the other taxpayers make out our returns. What right have we not to provide the machinery to put into operation this complex thing that we have forced upon the citizens of this

country? The main taxpayers are the nonprofessional men. Are we justified in forcing the citizens to employ outside professional aid to perform a duty that we impose upon them? How will you justify it? It is not a theory; it is a fact. You know that no man of comparatively large affairs can sit down and make out his own tax return; or, if he does, he knows that he is liable to be assessed an additional amount even when he employs what he thinks is the proper legal help.

Mr. SHORTRIDGE. Mr. President, if it does not break the thread of the Senator's remarks, what is the remedy he suggests? I was not in the Chamber when the Senator began his remarks.

Mr. SMITH. Just let me read to the Senator my amendment, which is a good American doctrine. I want the Senator to hear it:

When returns are made in accordance with the rules and regulations prescribed by the Treasury Department—

We pass the law, and they prescribe the rules and regulations under which the returns are to be made—

for making returns for taxes imposed by this act, and such returns are made by or with the aid of an official of the Treasury Department qualified to make such returns for the taxpayer or to aid in making such return, the amount thus found due, when paid by the taxpayer, there shall issue to him by the Treasury Department a receipt for the same, which shall be final except for actual fraud.

I ask the Senator from California, as I asked my other colleagues here, what right have we not to make a provision of that kind, but to force the taxpayer to come here, and leave the door wide open for a host of inspectors and investigators to harass that honest man until we have driven him to a point where he believes, not that honesty is the best policy, but that dishonesty and dodging is the only way in which he can save himself? We have no right to do it. This is a simple, direct method of closing the matter.

Think of the host we now have of inspectors and additional inspectors and auditors and accountants, hosts of them employed by the department and employed by the citizens to try to meet the requirements laid upon them by the law!

I have another paragraph to this amendment that should appeal to us, and that is:

The Secretary of the Treasury is hereby authorized and directed to designate for each State officers of the Treasury Department in number adequate to the requirements of the taxpayers thereof qualified to make or aid in making returns as prescribed by the Treasury Department, which shall by rule prescribe the times when and the places at which the services of such officers will be available.

Mr. President, we have in every State in this Union a branch of the Internal Revenue Bureau. It would be an easy matter, but even if it were a hard matter, it is our duty to provide those who are competent, in the first instance, under the rules and regulations prescribed by the Treasury, to go over finally, to go over particularly and carefully the return of the taxpayer.

He has 65 days from the 1st of January until the 15th of March—plenty of time to serve notice by every local internal-revenue department, plenty of time for him to assemble his facts and avail himself of this offer of the Government, plenty of time to get all the facts assembled and make his return and get his receipt; and then, unless there is actual fraud, we ought to allow him to go and attend to his business, and not have this possible menace over his head until such time as the Government and its agents may see fit to reopen the case.

Mr. WATSON. Mr. President, will the Senator yield?

Mr. SMITH. I yield; yes.

Mr. WATSON. I quite agree with the Senator in what he says about the perplexities and involvements of the income-tax return; but the question is whether the Senator's remedy is adequate, or, indeed, not worse than the disease.

Mr. SMITH. What disease can be worse than the one we have now?

Mr. WATSON. It would take at least 10,000 men to do this.

Mr. SMITH. The Senator is merely speculating as to that.

Mr. WATSON. No, Mr. President.

Mr. SMITH. Wait a minute, now, before we get away from that statement about "at least 10,000 men." In the name of Heaven, how many does it take now, and what does it cost now, to audit and reaudit and reaudit the books? Somebody does it.

Mr. WATSON. Yes; somebody does it, but somebody does not do it as a finality. For example, the refunds after all the investigations made this year amounted to five hundred and some million dollars. The collections by the Government after all the investigations made amounted to two billion eight hundred and some million dollars. In other words, under the Senator's system, to start with there would have been a loss of about two billions.

Mr. SMITH. How much did the Senator say had been collected?

Mr. WATSON. There has been collected for the Government, as a result of reinvestigation, $2,800,000,000. There has been paid, by way of refund to the taxpayers, $554,000,000.

Mr. SMITH. Does the Senator claim that those are official figures?

Mr. WATSON. Oh, yes; they are official figures. I know the figures; and therefore there would be a loss at once to the Government of $2,300,000,000 to start with.

Mr. SMITH. Does the Senator mean that the extra assessments that were made and collected amounted to $2,000,000,000?

Mr. SMOOT. Two billion eight hundred million dollars.

Mr. SMITH. And the rebates were how much?

Mr. WATSON. Five hundred and fifty-four million dollars of refunds to individual taxpayers.

Mr. SMITH. That covered how many years? It covers all the years the income tax has been in operation, does it not?

Mr. SMOOT. From 1917.

Mr. WATSON. From 1917 down to the present time.

Mr. SMITH. And will the Senator tell me how many dollars have been recovered in the last three or four years?

Mr. WATSON. I can not do that.

Mr. SMITH. Now, even taking those enormous figures, I should like to have available and presented to the Senate how much it has cost the taxpayers of this country in lawyers' fees, in reauditing books, in loss of time, in railroad fares, in order that the Government over eight or nine years might collect $1,500,000,000 in excess of what they would have collected had they not had the unlimited recourse that they have.

I state here now that if it had been $5,000,000,000, I would rather lose the billion five hundred million than to lose the spirit of respect and confidence in my Government which we are forcing our citizens to lose under the present miserable system.

I believe, besides that, that an investigation of the figures will show that as the years have gone by and we have become more accustomed to the method of making out the returns, the amount collected has been smaller.

We may say what we please and talk as we please about the amount that was collected by virtue of reinvestigation, the amount lost to the American people at the cost of their respect for the Government has more than doubled that. As I said before, I would rather lose in eight years a billion five hundred million and take the taxpayers' sworn statements as accurate.

Mr. WATSON. Mr. President, I can give the Senator the figures now for 1922, 1923, 1924, and 1925. The amount of tax deficiencies totaled $1,758,000,000.

Mr. SMITH. How much was collected?

Mr. WATSON. That is the amount of the tax deficiency.

Mr. SMITH. How much was collected?

Mr. WATSON. There was collected in that time eleven billion——

Mr. SMITH. No; I mean in the years for which the Senator had the report as to deficiencies.

Mr. WATSON. In 1922, 1923, 1924, and 1925 the collections were——

Mr. SMITH. No; I mean how much was collected as additional assessments?

Mr. WATSON. The result of reaudits?

Mr. SMITH. Yes.

Mr. WATSON. One billion seven hundred and fifty-eight million dollars.

Mr. SMITH. That much was collected?

Mr. WATSON. Yes.

Mr. SMITH. What did it cost to collect it?

Mr. WATSON. I do not know.

Mr. SMOOT. The total appropriations by the Treasury Department for the four years would not have been one-fourth of that amount, taking in everything, in Washington and everywhere else.

Mr. WATSON. For those four years $1,758,000,000 were collected for the Government, and there were refunds to individuals of $450,000,000.

Mr. SMITH. I have not had time to study those figures, and they would not have influenced me if I had studied them, for the simple reason that it is a monstrous proposition. Let me put this to the Senator: Does he think that as lawmakers we are justified in providing for such a miserable, complex method of tax return that after a citizen has sworn to it we can send out a host of investigators and collectors and collect, in addition, $1,700,000,000, to say nothing of the cost of the reassessments and the aggravation of those who have been reassessed?

Does the Senator think we are justified in having such a complicated system, both of the assessment and the method of collecting the tax, as to make such discrepancies as that possible?

I have not analyzed these figures, but I do not believe that, outside of the excess-profits taxes and certain other exigent taxes, we ever collected any such amount.

Mr. WATSON. These are the official figures.

Mr. SMITH. I understand; but the excess-profits taxes came in, and these exigent taxes came in, which are now practically a negligible amount. They are nothing in comparison with what they were just a few years subsequent to the war.

Mr. WATSON. The Senator must remember that we repealed the excess-profits tax at the end of 1921 by the tax law of 1921.

Mr. SMITH. That is gone, and, as a matter of course, that excess-profits tax was very difficult to collect.

Mr. WATSON. It was.

Mr. SMITH. And it was a war tax. We are now down to the basis of taxes based on the income from property, and I maintain that, as we have come to that, we should simplify the methods. The Senator has no way of figuring, nor have I, what the assessments and collections would have been if the taxpayer had been furnished with an experienced, qualified official to help him make out his return.

Eliminate the excess-profits tax, eliminate the exigent taxes, which disappeared after they were not needed, subsequent to the war, and come down to what we have classified as taxable matter in this bill, and then furnish us with a qualified official who will aid in making out the return, and what is lost in taxes will mean a gain in satisfied and contented citizenship.

I maintain that of all provisions we ought to incorporate in this bill, the most important is the provision that when the taxpayer has made his return, sworn to his return, tendered the money to his Government, and they have received it, he should receive a receipt, and his return should not be reopened except upon charge of actual fraud.

Mr. WATSON. The law itself was exceedingly complex, dealing with immense sums of money, and enforcing the hastiest collection, in 1917.

Mr. SMITH. Yes.

Mr. WATSON. Then, under the revision of 1921 there was an attempt to simplify the language so that the average taxpayer might at least begin to understand it.

Mr. SMITH. Yes.

Mr. WATSON. Then, when the next revision came, in 1924, there was a further effort to simplify the language. Since that time the experts have been studying the question of phraseology, so as further to simplify the language, to make it impossible in the future for taxpayers to make these mistakes, especially these egregious blunders, which largely led to the great annoyance; and that is coming about.

Mr. SMITH. The Senator has put his finger exactly on the crime we committed, for it was really that. In order to get income we made such a complex piece of machinery that it has resulted disastrously to the citizens of this country. We would have better done with less, or raised the tax higher and made the return simple, and taxed fewer things, than to have sent out this piece of complicated machinery to the vexation of every taxpayer.

Mr. SMOOT. Mr. President, I ask unanimous consent that when we recess to-night we recess until 11 o'clock to-morrow morning.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. SHORTRIDGE. Mr. President, will the Senator yield to me for just a moment?

Mr. SMITH. Yes.

Mr. SHORTRIDGE. A few days ago when this subject was before us I engaged in a short colloquy with the Senator from Michigan [Mr. COUZENS], in the course of which I took the liberty of making certain statements which I recall now, somewhat in support of the thoughts very forcibly expressed by the Senator from South Carolina.

I said then, and I repeat now:

> If the Senator will permit me an additional sentence, I will not interrupt further. It is not in any contentious spirit, but I have heard so much along this line that I beg leave to state that I think where the citizen, the taxpayer, the honest man, or the honest woman enters into an agreement with his or her Government, and acts upon that agreement, the Government, as well as the citizen, should be bound by the agreement. I apply the same principle of law to the Government and to such a case that I apply as between two citizens who in good faith enter into an agreement and act upon that agreement. It is a well-known, universal, immemorial principle of equity that where an agreement has thus been entered into it may not be set aside unless there is charge of fraud or excusable mistake; but the Government has not acted on that theory in many, many instances.

Mr. SMITH. And particularly this one.

Mr. SHORTRIDGE. If the Senator will permit me to say it, I do not know whether the remedy suggested cures the evil pointed out by the very thoughtful Senator from South Carolina, but I do believe that the same rules which govern as between two honest men should govern as between the honest citizen and his Government, and that where the Government, speaking through an authorized agent, enters into an agreement with the honest citizen, that agreement should become, be considered as, and be held to be an account stated, just as an agreement entered into between two citizens becomes an account stated.

I further believe that where such an agreement has been entered into and acted upon, that agreement is not to be set aside, is not to be opened up, unless there is a specific charge of fraud on the part of the citizen, or mistake which, in law, is known as an excusable mistake.

Mr. SMITH. Let me ask the Senator this question: Does he think we are discharging our duty when we pass a tax law—which in itself, of course, is a burden—and so frame the law as to make it absolutely mentally impossible for a vast majority of the taxpayers to make out properly their returns? Then, after we have made that impossible and the taxpayer has gone to the expense of employing counsel, the best he may obtain, paying that additional tax, employing counsel to do the best he can to meet the requirements of his Government, should we then make him liable to the further expense and annoyance of having his return reaudited and reinvestigated, compelling him to go from his home to Washington, or to his capital, having still further to employ counsel, and still further to incur expense, not taken out of the Government, not taken out of the Senator and me, who frame the law, or the Government that forced its citizens into acquiescence, but taken out of him, not only a tax to meet the Government's expenses but the tax to meet the legal requirements of making it out? I state to the Senator that it would be perfectly competent and I believe fairly within the rules of equity wherever a taxpayer makes out his return for the Government to pay him a reasonable attorney's fee to aid him in doing it. Does not the Senator think that would be right?

Mr. SHORTRIDGE. Mr. President, the Senator has put a rather complex or compound question, which involves many elements.

Mr. SMITH. Just let me put it this way——

Mr. SHORTRIDGE. Permit me. I am in sympathy with the Senator's attitude. We are not opposing one another. I appreciate what he is saying. I sympathize with what he has stated. I am only concerned as to the remedy. If the Senator will be good enough to grasp what I said briefly, I think we agree that there should be a day of adjustment and settlement as between the taxpayer and the Government, and I agree with the Senator, if I understand his position, that where there has been a coming together and an acceptance of the amount, there being no fraud, there being no excusable mistake, that the settlement should be a finality, applying the same rules of law that obtain and control in a settlement, an account stated, between two citizens. Of course, the Government should not be bound by the act of an unauthorized person.

Mr. SMITH. That is right.

Mr. SHORTRIDGE. And, of course, where there is a settlement and the parties act upon it, it should not, in my judgment, be opened up in the manner the Senator has suggested unless, as I repeat and emphasize, as I think the Senator from South Carolina has done, there should be such evidence presented as would show what we term in law excusable mistake or a positive fraud perpetrated in and about the settlement.

It will help the Senator, I think, if I further suggest that the Government in matters of taxation, of course, is acting as a sovereign. I would apply the same rules to the sovereign when acting in that capacity as I would apply and as a court of equity would apply where the Government enters a court of equity asserting its rights as a landowner or property owner. The Senator knows, every lawyer knows, every well-informed person knows, that when the Federal Government or a State government enters into a court of equity, its own court of equity set up by itself, and seeks equitable relief as against a citizen, the Federal Government, mighty as it is, or the State government, powerful as it may be, enters that court of equity as the humblest, the most ragged citizen.

It does not enter with all the trappings of sovereignty, with all the power of sovereignty, but it enters that court as humble and as feeble as the most humble and feeblest citizen, sub-

mitting itself to the rules of equity. And if in a given case the citizen would be deprived of relief, if by equitable principles the citizen would be estopped from asserting even a legal right, the Government is estopped.

It might be of value to those interested in the problem, which has a bearing upon the matter the Senator is discussing, if Senators would turn to the great case of the State of Iowa against Carr, wherein this principle, this doctrine, is stated with great force and with an amplitude of authority to sustain the doctrine. I have elsewhere, unheard and perhaps unnoticed, said on many occasions, even as the Senator in better and finer terms has expressed it, that the Government should not alienate the people, should not so pursue the people as to cool their love for it. I believe that the attitude which the Government has taken in numberless instances has had this deplorable result—that the citizen's love for his country is cooled, if not entirely dead.

I believe the laws should be made more simple, but just how the pending bill could be made more simple I can not now state. But if I grasp the purport of the amendment now offered by the Senator from South Carolina, it is that there should be a settlement as between the Government and the citizen, which settlement should be regarded as an account stated, not to be opened unless there is positive allegation of fraud or excusable mistake.

Mr. SMITH. I think I have fulfilled the necessary requirements when I provide that there shall be a qualified governmental official to participate on the part of the Government in making out the returns. If it took twice the time that it now takes, and if that official were not competent, it is our duty to see that we do furnish the taxpayer with the proper facilities for making out his tax return.

Mr. REED of Pennsylvania. Mr. President, I did not have the advantage of hearing the first part of the debate, but I want to ask the Senator whether he has ever calculated the number of officials that it would be necessary to employ for that purpose?

Mr. SMITH. I just replied to that very question which was asked a few moments ago. Somebody is employed now. Somebody makes out the returns now. Somebody goes over them now. Whose duty is it? What somebody should do that? What somebody should that be? If the Senator and I impose upon the taxpayers of the country a certain duty that he and I know they are not competent to perform, namely, the intelligent filling out of a tax return, does he not think common justice would make him and me vote for the furnishing of material to carry out that which we have imposed upon the taxpayers? The Senator knows that there are Senators in this body who can not make out their tax returns or, if they do, there are mistakes found—found by whom? They may be for or against the Senator.

The contention that I am making is that if the very exigencies of the case require the return to be so complex that the citizen must employ legal assistance it is our duty to furnish that legal assistance. There is no escape from that situation.

Mr. REED of Pennsylvania. Yes; I think there is. It does not seem to me that it is necessary for a citizen to employ aid in the average case. If he makes truthful answer to the questions asked in the blank his return is sufficient. The calculation of the tax is purely a matter of arithmetic, and in a country where literacy is as great as it is in this country, I should say that about 98 per cent of the taxpayers could make out their own returns.

Mr. SMITH. The Senator says the average intelligent man can make out his tax return, and I will admit that men are all honest. That is the attitude of our Government as distinguished from some others, in that we assume a man is innocent until he is proven guilty.

Mr. REED of Pennsylvania. The average man is honest.

Mr. SMITH. Yes; I agree with the Senator. To aid him a little, I think if we would furnish our Internal Revenue Bureau in the several States with a comparatively few well-equipped men, it would answer the purpose. The number of taxpayers we have now is something over a million. We now have in the States comparatively few who would have to make returns, and they have 65 days in which to make them.

Taking the Senator's own admission that they are honest, that they are intelligent enough to make up their own returns, and the only thing to do is some matter of addition and multiplication, let us furnish them with aid where they need the aid and then give them receipts. If the taxpayer is an honest man, competent to make out his own tax return, why does the Senator want to leave him a victim for four years for the exploitation of such agents as may be sent out to audit and reaudit and go over and visa every return? The Senator's own statement was that the majority of them are honest, and the majority of them are more or less competent, and I maintain that by furnishing them a little aid no harm would be done to give them receipts and stop this spying and espionage.

Mr. REED of Pennsylvania. Let us figure that out for a moment. There will be between 6,500,000 and 7,000,000 returns due on the 15th of March at the minimum. They have, as the Senator said, 65 days in which to prepare those returns. Assuming that everybody starts promptly on the 1st of January, assuming that everybody works on Sundays and holidays, that means 100,000 returns every day, including Sundays and holidays.

Mr. SMITH. In 48 States.

Mr. REED of Pennsylvania. One hundred thousand returns in the United States. Assume also that one of the experts can dispose of a return every 30 minutes, though I think it is quite unlikely that he can. He could scarcely ask the necessary questions and do the necessary writing and the necessary computations to fill out a return in 30 minutes. That would be 16 returns per day for each day of eight working hours for each expert. If we are to do 100,000 returns per day, it would take 6,000 experts working steadily eight hours a day, Sundays and holidays included. Has the Senator calculated what that would cost?

Mr. SMITH. I calculate that they may make them out in 65 days, and I also calculate that we have already enough men employed to inspect all of these returns. It seems to me that we could provide in the States sufficient experts. I think it is our duty to do it, army or no army of experts. I think in order to avoid what the Senator from Virginia [Mr. GLASS] complained of the other day, when he himself said, though he did not say it on the floor of the Senate, that it would take a vast army, of course, to administer the amendment I propose. But, I say, suppose it did? It would take a very small addition to the force we already have. I have not taken the trouble to find out just how many employees there are in the several internal-revenue offices in the several States plus those in the Internal Revenue Department in Washington. I do not know. But I do know that it is our duty to see to it that a citizen, when we have forced upon him a condition that he can not meet, should be provided with the means of aid to meet it.

Mr. GLASS. Mr. President, does the Senator imagine the Internal Revenue Bureau would be able for a period of 65 days only to employ between 6,000 and 10,000 experts, whose services it would have to dispense with at the end of 65 days?

Mr. SMITH. That is proceeding upon an assumption that I myself have not figured out, but if it was our duty to do it we would figure it out. It is a question of whether it is our duty or not. The Senator from Virginia can satisfy himself as to whether we are justified in formulating a law that requires the services of an expert to make out the return of a citizen's tax or a mechanic to make it out—whether we are justified in forcing our citizens into that position and forcing them to employ an expert attorney's aid, or whether it is our duty to furnish that aid. It is not a question of how many it will take. It is not a question of what it will cost. It is a question of our duty to those on whom we have imposed this burden.

Mr. GLASS. If I were to concede that it is our duty, which I do not concede——

Mr. SMITH. Why is it not our duty?

Mr. GLASS. If I were to concede that it is our duty to do it, I say that the Senator's proposal is impossible. It can not be put into practical operation.

Mr. SMITH. Why not?

Mr. GLASS. I have just told the Senator why it can not be done. It can not be done because it is an impossibility for the Internal Revenue Bureau of the United States to employ between 6,000 and 10,000 expert tax accountants for a period of 65 days and then dispense with their services at the end of that period.

Mr. SMITH. Very good. Then the Senator and I have no right to impose a law on the people that requires them, out of their pockets——

Mr. GLASS. It does not require them to do it at all.

Mr. SMITH. Why does it not?

Mr. GLASS. It is the misfortune of any man who can not make out his own tax return.

Mr. SMITH. I have heard the Senator say——

Mr. GLASS. Yes; that I can not make out my own return, nor can I, and I employ somebody to do it for me.

Mr. SMITH. Then the Senator thinks we are justified in enacting a law which requires legal assistance in making out a return under it, and then for four or five years officials to be haled back and forth from Washington in order to meet assessments that grow out of, not the expert but the very man whom the Senator has denounced here on the floor of the Senate.

I would rather go to the expense of hiring 8,000 or 10,000 experts for 65 days than do the very thing that the Senator called the attention of the Senate to here the other day.

Mr. GLASS. But you can not hire them; they are not in existence to be hired.

Mr. WATSON. On the 1st day of January there were 14,996 employees in the Internal Revenue Bureau. Ten thousand of those can not make out one of these tax returns so as to permit it to bind the bureau and to bind the Government for the return made.

Mr. SMITH. It comes back to what I said at the very outset, that there has been provided a form for returns that is a disgrace to the United States Congress in respect to its attitude toward its citizens.

Mr. WATSON. How is the Senator going to help it? We have done the best we could.

Mr. SMITH. Heaven help the worst, if this is the best.

Mr. GLASS. All of us could well wish that there were not so many complications in the law; we all might well wish that it were simple enough for a business man to understand and act upon it; but it is not. If it can be made so, if the Senator from South Carolina can make it so, we will all rise up and call him blessed.

Mr. SMITH. Yes; but the Senator from South Carolina is simply claiming what the Senator from Virginia himself admits, that it is capable of further practical reduction to a more simple form.

Mr. REED of Pennsylvania. Oh, no, Mr. President; it is capable of many improvements which will add to its simplicity; but every time we propose such a change the representatives of the interests which are going to be affected by it deluge the Senate with telegrams and letters and lobbyists, and the change is defeated.

Mr. SMITH. Yes; and when I submit an amendment proposing a method to simplify the process and relieve the taxpayer I am deluged with statements to the effect that it might take 10,000 employees for 65 days. I would rather take 100,000 employees, even if it cost the Government half of what it collects, than to leave the citizen to be hounded as a citizen of the State of the Senator from Virginia was hounded by men who, perhaps, had sinister motives, a proceeding which you and I make possible by the method of our legislation.

Mr. GLASS. Those men had a period of four years in which to review the tax returns, but the Senator is proposing to hire an army of experts, which is not available at all, which does not exist, to do the thing in 65 days.

Mr. SMITH. Well, somebody does it in 65 days. The Senator from Pennsylvania said the citizen is honest; that he is competent. Therefore let us amend my proposition and provide that where the citizen has filled out his return and sworn to it and sent in his money the Treasury shall give him a receipt.

The Senator from Pennsylvania said the citizen is honest and is competent and can fill out the blanks. Now, let us take it for granted that he is about as honest as we are, and about as earnest in his desire to pay taxes as we are, and as competent to make out the forms as we are. Then let us dispense with this host of investigators, take the citizen into our confidence as an American taxpayer, and say, "Here is our method of collecting our taxes; we have made it as simple as we can; we are not going to impose upon you the necessity of employing legal experts; make it out yourself, swear to it, and we will accept that; and if a mistake is made we will take it for granted that it was honestly made and that you are not a rogue, and we will not send some Government spy to hunt you up." Let us amend it and say when a taxpayer makes out his return in accordance with the rules and regulations furnished him by the Government, swears to it, and tenders his money, that that shall be final.

Mr. GLASS. If he does it in accordance with the rules and regulations furnished him by the Government, there will be no question in the world about its acceptance.

Mr. SMITH. Very well; I will accept that as an amendment.

Mr. GLASS. No amendment of that sort is needed; the law provides that, and the regulations provide that.

Mr. SMITH. It does not do anything of the kind; and the Senator knows that it does not.

Mr. GLASS. The Senator does not know that it does not.

Mr. SMITH. Rules and regulations are provided, and then after the Government has accepted the money three or four or five different investigators are sent out to search into the details of the return; so where is the finality?

Mr. GLASS. If it is done according to the law and regulations——

Mr. SMITH. Nobody knows the law; it is not done according to any laws and regulations. The taxpayer does the best he can; then an expert comes along and does the best he can for his job; another one comes along and does the best he can for his job, and between the two the citizen is drawn from his home back and forth to Washington, as the Senator so graphically pictured here some days ago, until he reaches the point where he despises his Government. I say that it would be infinitely better—and I never was more earnest in my life—for us to provide that when the taxpayer has made out his return to the best of his ability under the law, as set forth in the return, and has sworn to it, he shall have a receipt. Then, if the Government finds actual fraud, hale him to court; but do not, after he has done the best he can and tendered his money, provide an interim of four or five years during which he may be hounded down by the host of inspectors who are sent out, and even by the department itself. It is a crime against the American people.

Mr. GLASS. Mr. President, I wish very earnestly that the proposition of the Senator were feasible, but, in my judgment, it is utterly impossible.

SEVERAL SENATORS. Vote!

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from South Carolina.

Mr. BLEASE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Bayard	Fletcher	McKellar	Sackett
Blease	Frazier	McLean	Sheppard
Bratton	George	McMaster	Shipstead
Broussard	Glass	McNary	Simmons
Bruce	Goff	Metcalf	Smith
Butler	Hale	Moses	Smoot
Cameron	Harreld	Norris	Stanfield
Copeland	Harris	Nye	Trammell
Deneen	Harrison	Oddie	Warren
Dill	Heflin	Pepper	Watson
Edge	Jones, Wash.	Pine	Weller
Fernald	Kendrick	Ransdell	Willis
Ferris	Keyes	Reed, Pa.	
Fess	La Follette	Robinson, Ind.	

The VICE PRESIDENT. Fifty-four Senators having answered to their names, a quorum is present. The question is on agreeing to the amendment offered by the Senator from South Carolina [Mr. SMITH].

The amendment was rejected.

Mr. COPELAND. Mr. President, I send forward an amendment, which I desire to offer to the pending bill.

The VICE PRESIDENT. The Secretary will read the amendment.

The CHIEF CLERK. On page 44——

Mr. SMITH. Mr. President——

The VICE PRESIDENT. The Senator from South Carolina.

Mr. SMITH. Mr. President, my attention was diverted for a moment, during which time the Chair put the question on my amendment. I ask to have the vote by which the amendment was rejected reconsidered, and that we may have a roll call on the amendment.

The VICE PRESIDENT. Is there objection?

Mr. FESS. Yes, Mr. President.

Mr. KING. I object to a roll call.

Mr. MOSES. The Senator from South Carolina may get a separate vote on his amendment in the Senate.

Mr. SMITH. All right. When the bill comes into the Senate I shall again offer the amendment and ask for a roll call upon it.

Mr. SMOOT. Without any further discussion?

Mr. SMITH. I do not know as to that, I will say to the Senator.

Mr. SMOOT. Then let us have the roll call now.

The VICE PRESIDENT. Without objection, the roll will be called on the amendment of the Senator from South Carolina [Mr. SMITH].

The Chief Clerk proceeded to call the roll.

Mr. FERRIS (when his name was called). I have a pair with the Senator from Kansas [Mr. CURTIS]. I transfer that pair to the Senator from New Jersey [Mr. EDWARDS] and vote "yea."

Mr. FLETCHER (when his name was called). I have a general pair with the Senator from Delaware [Mr. DU PONT]. In his absence I withhold my vote.

The roll call was concluded.

Mr. WARREN (after having voted in the negative). I transfer my pair with the Senator from North Carolina [Mr.

OVERMAN] to the Senator from Minnesota [Mr. SCHALL] and will let my vote stand.

Mr. BLEASE. Mr. President, when I made my pair with the Senator from Missouri [Mr. WILLIAMS] it was understood that he would vote "yea" on this proposition and that I would vote "yea." I have voted on this roll call, therefore, since we had that agreement.

Mr. JONES of Washington. I have been requested to announce the following general pairs:

The Senator from Connecticut [Mr. BINGHAM] with the Senator from Nevada [Mr. PITTMAN];

The Senator from Kentucky [Mr. ERNST] with the Senator from Nebraska [Mr. HOWELL];

The Senator from Illinois [Mr. MCKINLEY] with the Senator from Virginia [Mr. SWANSON];

The Senator from Colorado [Mr. MEANS] with the Senator from Texas [Mr. MAYFIELD];

The Senator from Colorado [Mr. PHIPPS] with the Senator from Utah [Mr. KING];

The Senator from Vermont [Mr. GREENE] with the Senator from Montana [Mr. WHEELER];

The Senator from California [Mr. JOHNSON] with the Senator from Arkansas [Mr. ROBINSON];

The Senator from New York [Mr. WADSWORTH] with the Senator from West Virginia [Mr. NEELY];

The Senator from Iowa [Mr. BROOKHART] with the Senator from Arkansas [Mr. CARAWAY];

The Senator from Vermont [Mr. DALE] with the Senator from Tennessee [Mr. TYSON]; and

The Senator from Idaho [Mr. GOODING] with the Senator from Montana [Mr. WALSH].

The result was announced—yeas 13, nays 40, as follows:

YEAS—13

Ashurst	Frazier	Ransdell	Smith
Blease	George	Sackett	
Dill	Heflin	Sheppard	
Ferris	McKellar	Shipstead	

NAYS—40

Bayard	Glass	McLean	Reed, Pa.
Bratton	Goff	McMaster	Robinson, Ind.
Broussard	Hale	McNary	Simmons
Bruce	Harreld	Metcalf	Smoot
Butler	Harris	Moses	Stanfield
Cameron	Jones, Wash.	Norbeck	Trammell
Copeland	Kendrick	Nye	Warren
Deneen	Keyes	Oddie	Watson
Edge	King	Pepper	Weller
Fess	La Follette	Pine	Willis

NOT VOTING—43

Bingham	Ernst	Lenroot	Schall
Borah	Fernald	McKinley	Shortridge
Brookhart	Fletcher	Mayfield	Stephens
Capper	Gerry	Means	Swanson
Caraway	Gillett	Neely	Tyson
Couzens	Gooding	Norris	Underwood
Cummins	Greene	Overman	Wadsworth
Curtis	Harrison	Phipps	Walsh
Dale	Howell	Pittman	Wheeler
du Pont	Johnson	Reed, Mo.	Williams
Edwards	Jones, N. Mex.	Robinson, Ark.	

So Mr. SMITH's amendment was rejected.

Mr. SMOOT. Mr. President, the action of the Senate in regard to the committee amendment dealing with the alcohol provision required two other amendments to be agreed to and one to be rejected in order to make the House text perfect. So on page 261, line 19, after the word "gallon," I ask that the amendment inserting "or wine gallon when below proof" be agreed to.

The amendment was agreed to.

The CHIEF CLERK. On line 21, before the word "gallon," it is proposed to insert "or wine."

The amendment was agreed to.

The CHIEF CLERK. On line 22 it is proposed to strike out "$2.20, $1.65, or $1.10" and insert "$2.20."

The amendment was rejected.

Mr. MOSES. Mr. President, I offer the amendment which I send to the desk. I ask unanimous consent that the amendment may not be formally read, because it has been in printed form before the Senate for two weeks and is exactly the same amendment as was adopted in the Senate to the revenue bill of 1924. I ask the Senator from Utah [Mr. SMOOT] if he will not accept this amendment and permit it to go to conference.

Mr. SMOOT. This identical amendment was agreed to on the last revenue bill and went to conference, and the House rejected it. I see no reason why we should not agree to it now and let it go to conference.

The VICE PRESIDENT. Without objection, the reading of the amendment will be dispensed with, and without objection it will be agreed to.

The amendment offered by Mr. MOSES was, on page 91, to strike out lines 7 to 15, inclusive, being paragraph numbered (8), and to insert in lieu thereof the following:

PAR. 8. (A) In the case of mines, oil and gas wells, other nature deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the commissioner, with the approval of the Secretary. In the case of leases the deduction allowed by this paragraph shall be equitably apportioned between the lessor and lessee.

(B) In the case of lands managed for the production of crops of timber there shall be allowed as deductions all expenditures pertaining to such management, including expenditures for protection, taxes, administration, planting, and culture; or, at the option of the taxpayer, acting consistently from year to year such expenditures may be capitalized: *Provided*, That in the case of such expenditures for planting and/or culture there may be deducted in any one year not to exceed $15,000 or 15 per cent of the net income of the taxpayer computed without the benefit of this paragraph, whichever is greater, and in case this limitation results in excluding from the deduction a part of the expenditures made for such purpose during any year, then the excess of expenditures over the amount of the deductions shall be capitalized. If and to the extent that such expenditures are capitalized, they shall be added to and form a part of the basis used in the determination of depletion or of gain or loss from sale, exchange, destruction, or other disposal of the timber to which such expenditures pertain.

(C) One-half only of the net income resulting from and allocable to the conversion, utilization, sale, or other disposal of timber from or together with lands managed in good faith for the production of crops of timber shall be used in determining the net income subject to tax: *Provided*, That this paragraph shall apply only to trees left for seed, to immature trees left for further growth and/or to second-growth timber produced by natural and/or by artificial means.

Mr. MOSES. Mr. President, I offer a further amendment which I ask may be read, and to which I invite the attention of the Senator from New York [Mr. COPELAND].

The VICE PRESIDENT. The amendment will be stated.

The CHIEF CLERK. On page 48, line 17, after the word "trade," it is proposed to add a comma and the word "profession."

Mr. MOSES. Mr. President, I am offering this amendment in line with the suggestion which I made the other day in the course of a brief colloquy with the two Senators from Utah. It aims simply to put the medical profession upon the same basis as a traveling man who sells neckties, for example.

Mr. MCKELLAR. May the amendment be stated?

Mr. MOSES. It has just been stated.

The VICE PRESIDENT. The amendment will be restated.

The CHIEF CLERK. On page 48, line 17, after the word "trade," it is proposed to add a comma and the word "profession."

Mr. SMOOT. Mr. President, they are on the same footing now.

Mr. MOSES. If the Senator will permit me, I do not intend to ask for a record vote, because at this stage of the night and with the attendance of the Senate as it is I understand perfectly well that that would not be practicable.

Mr. SMOOT. I hope the Senate will reject the amendment.

Mr. MOSES. I simply want to get this matter before the Senate in some formal way. Of course, the colloquy which I had with the senior Senator from Utah [Mr. SMOOT] and his colleague [Mr. KING] the other day sufficed amply to set forth to the Senate my views on this subject, wherein the medical profession are discriminated against, as I believe, in spite of the protestations of both the Senators from Utah. I have not any desire to impede the passage of the bill at this stage, but I do want the amendment voted upon; and I ask for a division on the amendment.

Mr. SMOOT. Mr. President, I hope the amendment will be rejected.

The VICE PRESIDENT. The question is on the amendment offered by the Senator from New Hampshire.

On a division, the amendment was rejected.

Mr. MOSES. Now, Mr. President, I offer the amendment which I send to the desk and ask to have stated.

The VICE PRESIDENT. The amendment will be stated.

The CHIEF CLERK. On page 136, at the end of line 8, it is proposed to insert a new sentence to read as follows:

Despite the foregoing provisions of this subdivision, such credit or refund may be allowed or made in respect of any taxable year if a deficiency is asserted by the commissioner in respect of any of the seven succeeding taxable years; but no such credit or refund shall

be allowed or made unless it appears that the taxpayer has overpaid the tax for the taxable year to which the claim for credit or refund relates, even though the assessment of a deficiency for such taxable year is barred by an applicable statute of limitations.

Mr. MOSES. Mr. President, the moving cause for this amendment, I will frankly say to the Senate, is the desire to set aside the statute of limitations in some cases.

I have had called to my attention in the last two months probably a hundred cases of taxpayers in New England who discover, when an agent of the internal revenue office of the district comes around to check up their accounts and to make a final settlement of their taxes for a year within the statute of limitations, that the rules under which the check-up is made, if applied to years prior to the statute of limitations, would show that the taxpayer has paid the Government a considerable sum of money in excess of what he should have paid, for which he secures absolutely no credit whatever; whereas if he is shown to have a deficiency a claim is made for that, and he has nothing to set off as against it.

This amendment is offered to correct what I believe to be a palpable evil as against the taxpayer; and with reference to this amendment, as with reference to the others which I have offered, I merely wish to get this state of facts before the Senate, in the hope that without using more words we may get an intelligent and favorable vote of the Senate on the amendment.

Mr. SMOOT. Mr. President, what the Senator has stated is correct. The amendment simply waives the statute of limitations on the part of the taxpayer. If that be done, it ought to be waived in relation to the Government.

Mr. MOSES. Mr. President, the language of my amendment permits that.

Mr. SMOOT. Then I have the wrong amendment.

Mr. MOSES. I am quite sure that the language of my amendment permits it to be waived on behalf of the Government equally. At any rate, I had no intention of making it a unilateral proposal.

Mr. WATSON. Not as it was read.

Mr. MOSES. Then the language is not correct.

Mr. WATSON. May it be read again?

Mr. MOSES. Then I will ask permission to withdraw the amendment, in order that I may make sure that that is the case; and I will reoffer the amendment when the bill comes into the Senate. I will say, in further explanation, that I had this amendment drawn by one of the experts.

The VICE PRESIDENT. The amendment is withdrawn.

Mr. REED of Missouri. Mr. President, I offer the amendment which I send to the desk.

The VICE PRESIDENT. The amendment will be stated.

The READING CLERK. On page 334, after line 10, following the amendments heretofore agreed to, it is proposed to insert the following new section:

MUTUAL INTERINSURERS AND RECIPROCAL UNDERWRITERS

SEC. —. The exemption granted mutual interinsurers and reciprocal underwriters under paragraph (11) of section 231 shall be retroactively applied in determining tax liability under the provisions of the revenue act of 1916, the revenue act of 1917, the revenue act of 1918, the revenue act of 1921, or the revenue act of 1924, or of any such acts as amended. Any tax that has been paid under such acts since December 31, 1918, shall be credited or refunded to the taxpayer as provided in section 284, if claim for credit or refund is filed within one year after the enactment of this act.

Mr. SMOOT. Mr. President, this is on all fours with the amendment that was agreed to and made retroactive as to taxes paid on the installment plan; and I see no reason why it should not apply here, just the same as to installment payments.

The VICE PRESIDENT. The question is on the amendment offered by the Senator from Missouri.

Mr. HEFLIN. Mr. President, let us see if we understand the amendment. Does that mean that we are going back now to 1918 to carry on this business of refunding taxes?

Mr. SMOOT. Yes; that is about what it would mean.

Mr. HEFLIN. It seems to me there is a time to put a stop to that. The honest taxpayer ought to know, within a year or two years, whether he has paid more taxes than he ought to have paid.

Mr. SMOOT. Mr. President, why should we make a retroactive provision as to installment payments on real estate—and we all thought that was just—and not, in a case here virtually of a mutual company, an insurer, grant the same privilege? Why should they not have that privilege?

Mr. HEFLIN. Certainly they ought to have it if we are going to grant it to others.

Mr. SMOOT. But they have not.

Mr. HEFLIN. But there ought to be a time when that will stop.

Mr. SMOOT. That is true. I believe that.

Mr. McKELLAR. It is only to include mutual insurance companies.

Mr. HEFLIN. I think it ought to be extended to them, because if it has already been extended to the others it should be extended to them.

Mr. SMOOT. It has been extended to others, and that is the reason I say that it ought to go in.

Mr. HEFLIN. There should come a time when we would stop this refund of taxes. I think a great deal of it is done when it is not justified at all.

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. COPELAND. Mr. President, I have sent to the desk an amendment which I ask to have reported.

The VICE PRESIDENT. The clerk will state the amendment.

The CHIEF CLERK. On page 44, line 24, after the word "thereof," strike out the period and insert a comma and the following:

provided that employees of municipally operated public utilities who have failed to make an income-tax return or who have failed to pay an income tax during the years 1918 to 1924, both inclusive, shall be exempted from any penalties which may have accrued because of their failure in those years either to make a return or to pay a tax.

Mr. COPELAND. I think this is understood by the Senate.

Mr. SMOOT. We discussed it before, and there is no objection to this amendment. It simply relieves certain taxpayers who thought they were exempt because they were employed by municipal plants. This exempts them from all penalties which would be imposed upon the taxpayers for not having paid their taxes. It does not relieve them of the payment of taxes, but when they pay them, all employees of that class of industries will be on the same footing.

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. COPELAND. Mr. President, I want to ask the Senator in charge of the bill why the committee makes a distinction between these municipal employees engaged in operating waterworks and electric light plants and street railways, where they are owned municipally, and other municipal employees?

Mr. SMOOT. One very good reason is because of a decision of the Supreme Court of the United States.

Mr. COPELAND. I expected the Senator to say that. I would like to have him point out——

Mr. SMOOT. There is another good reason—that money is received for the operation of those plants. There are profits to the cities in many cases—in fact, I think in all cases—and the Supreme Court has held that the compensation of such employees is taxable, and I do not see why it should not be.

Mr. COPELAND. I believe the Senator is mistaken about the Supreme Court. There was a district court decision, just as there have been district court decisions on the other side of the question, but I do not think the Senator can refer to any Supreme Court decision in the matter. I want to say further, since the Senator has not replied to my question——

Mr. SMOOT. The Supreme Court decision was handed down on January 11 of this year.

Mr. SHIPSTEAD. Mr. President, I would like to hear what is being said on the other side.

Mr. SMOOT. The Supreme Court decision was handed down on January 11 of this year.

Mr. COPELAND. If it is actually a fact that the court has so ruled, of course I am out of court; but I can not understand why there should be any distinction. In my city the employees of the water department are on exactly the same plane, they have the same standard of salaries, they are subject to the same retirement consideration with all other employees. They are just exactly in the same situation, and I can not see how an employee helping to serve a city with water should be any different in the eyes of the income tax law from a citizen of my city who is cleaning the street or putting down sewers.

Mr. SMOOT. It does not apply only to employees of waterworks, but also to those of street railways.

Mr. SHIPSTEAD. Will the Senator from Utah yield for a question?

Mr. SMOOT. In just a moment. The decision of the Supreme Court applies to the employees of street railways; it applies to

those of the electric-light plants and the gas plants of the city. Therefore they are not exempt.

Not only that, but when this bill becomes a law there will be a $3,500 exemption for the employee and his wife and an extra exemption of $400 for each child. In other words, the employee would have to receive a salary of $4,700 before he would ever pay a cent of tax, and there are not many employees who are receiving more than that. Under the existing law, of course, the exemption was not sufficient to take many of them in, but under the pending bill very few employees will ever have to pay any tax.

Mr. COPELAND. What would be the attitude of the committee toward a proposal to remit the taxes of these men?

Mr. SMOOT. I thought perhaps those taxes did not amount to very much, and that that could be done, but after an investigation the department thought it would be very unwise to undertake to do that.

Mr. COPELAND. How much would it be?

Mr. SMOOT. The officials could not say, but it would run into the millions.

Mr. COPELAND. There are many of these employees, and nobody is better prepared to consider this question than the Vice President himself. Here are a lot of city employees, many of them low salaried, comparatively, and back taxes and penalties have been piling up. By our action to-night we have gotten rid of the penalties, but back taxes for these past years they can not pay; they can not get the money.

I was somewhat in sympathy with the Senator from South Carolina in this matter, because these employees have been assured by officials of the department that they would be relieved. I have here a sheaf of affidavits from waterworks employees stating that the internal-revenue authorities have said that they are exempt and that they were exempt. It is a great pity, it seems to me, to allow this imposition to be placed upon these persons.

Mr. SMOOT. The Senator must know that if we exempted these few from payment we would have to refund all that had been collected from the others. I thought the Senator was perfectly satisfied to go this far, and I rather insisted with the department that this be agreed to.

Mr. COPELAND. Let me say that that was the understanding, but since that time I have been given assurance that there was no Supreme Court decision. If it is as the Senator says, however, the matter is exactly as he thought it was.

Mr. SHIPSTEAD. Mr. President, I send an amendment to the desk, which I ask to have reported.

The VICE PRESIDENT. The clerk will state the amendment.

The CHIEF CLERK. On page 47, after line 21, to insert the following:

(14) Any taxes imposed by the revenue act of 1924 or prior revenue acts upon any individual in respect of amounts received by him as compensation for personal services as an officer or employee of any State or political subdivision thereof (except to the extent that such compensation is paid by the United States Government directly or indirectly) shall, subject to the statutory period of limitations properly applicable thereto, be abated, credited, or refunded.

Mr. SMOOT. This simply goes a little further than the amendment offered by the Senator from New York [Mr. COPELAND]. I hope this will not be adopted. It is in the face of a decision of the Supreme Court. I can not say anything more than I said in regard to the amendment offered by the Senator from New York, except that this goes further and refunds everything that has been paid.

Mr. SHIPSTEAD. I am advised that the Supreme Court decision did not cover the subject of an employee of a city; that that decision covered the proposition of a man who held a contract to manage for a city a waterworks department, an entirely different question.

This would exempt employees of a subdivision of a State. It covers a field which I think the Supreme Court has held time and time again is not a subject of Federal taxation. For that reason I think this amendment ought to be adopted.

This would put the employees of the city in the position they have always been in under the law and under the Constitution, that the Federal Government can not tax their incomes when those incomes are paid by the city and they are bona fide employees of the city. I think I am right when I say that the Supreme Court did not go so far as the Senator from Utah claims.

Mr. SMOOT. The only ground upon which municipal employees can be exempted at all is found in a provision of the Constitution. Where that has application, where they are working for the government, as in the case of laborers upon the street and all that class of employees, they are exempt to-day. Where an industry is started, like a street railroad or a lighting plant, perhaps in competition with a private company that has been established before, and they charge the same rate and make money in the same way, it seems to me there is no justification for asking that the employees be exempted if they are receiving more than $4,700 a year. That is the amount they will have to receive before they would have to pay anything under the provisions of this bill. I do not think anybody will suffer who is drawing that amount of salary.

Mr. SHIPSTEAD. On that assumption, why exempt any city employee?

Mr. SMOOT. Because the Constitution compels it.

Mr. SHIPSTEAD. The Senator does not deny that they work for the city?

Mr. SMOOT. They work for an organization or a business concern operated by the city. That is quite a different thing from working for the city.

Mr. SHIPSTEAD. I do not see the Senator's distinction. But I do not care to prolong the debate on this question. I ask for a vote on the amendment.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Minnesota.

The amendment was rejected.

Mr. HARRISON. Mr. President, I ask unanimous consent that the vote by which the Senate amendment on page 266 touching the terms of office of members of the Board of Tax Appeals be reconsidered, so that I may offer an amendment.

The VICE PRESIDENT. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and the vote is reconsidered.

Mr. HARRISON. I offer the amendment, which I send to the desk.

The VICE PRESIDENT. The clerk will state the amendment.

The CHIEF CLERK. On page 266, to strike out lines 8 to 21, inclusive, and to insert in lieu thereof the following:

"(b) The terms of office of all members who are to compose the board prior to June 2, 1926, shall expire at the end of June 1, 1926. The terms of office of the 16 members first taking office after such date shall expire, as designated by the President at the time of nomination, 4 at the end of the third year, 4 at the end of the fourth year, and 4 at the end of the fifth year, and 4 at the end of the sixth year, after June 2, 1926. The terms of office of all successors shall expire six years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor."

Mr. SMOOT. The only changes the Senator's amendment makes is on line 13, the fourth year, where the Senator strikes that out and makes it the third year?

Mr. HARRISON. Yes.

Mr. SMOOT. And on the same line, the sixth year, he strikes that out and makes it the fourth year?

Mr. HARRISON. Yes.

Mr. SMOOT. And the eighth year, he makes the sixth year.

Mr. HARRISON. The fifth year. Then on the same line, where it provides for the tenth year, it should be the sixth year.

Mr. SMOOT. Yes.

Mr. HARRISON. In other words, it makes the terms of the members of the Tax Appeals Board 6 years instead of 10 years.

Mr. SMOOT. Then the terms of office of all successors the Senator makes six years.

Mr. HARRISON. The amendment carries that with it.

Mr. KING. It reduces the tenure.

Mr. HARRISON. The latter part of the amendment carries with it a provision that the term shall be 6 years instead of 10 years.

It would seem to me, Mr. President, that 10 years is rather too long a term of office for the members of the Board of Tax Appeals. I have been one of those who believed that to a very great extent to the victor belongs the spoils, and I think that each administration ought to have people within it who are in sympathy with it and its policies. It would seem to me that six years ought to be a long enough term for members of the Tax Appeals Board.

Mr. SMOOT. I wish to say that of course the amendment will have to go to conference and the House more than likely will insist upon the term of years they have fixed, which is a great deal longer than even the Senate Committee on Finance reported.

Mr. HARRISON. I understand they desired to make it a life term.

Mr. SMOOT. Oh, no; I think not.

Mr. HARRISON. I think that idea was in their minds for a while, but they finally got away from it.

Mr. SMOOT. The only objection I have to the Senator's amendment is that it is very doubtful whether we could get men for such a short term to give up their business to take these positions and carry out the work. They would naturally prefer to make it a life business or a large portion of their life business. A first-class attorney can not afford to leave his business and break it up to take a position here for six years.

Mr. HARRISON. We have 96 men in the Senate who are willing to come in for a term of six years.

Mr. SMOOT. That is our attitude, I will say to the Senator. I hope the Senate will not agree to the amendment.

Mr. HARRISON. I will not ask for the yeas and nays, but I do ask for a division on the question whether or not we shall make it a 6-year term or a 10-year term.

Mr. HEFLIN. I suggest to the Senator that he ask for the yeas and nays.

Mr. HARRISON. Very well; I call for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk proceeded to call the roll.

Mr. FERRIS (when his name was called). With the explanation I have previously given of the transfer of my pair, I vote "yea."

Mr. FLETCHER (when his name was called). I transfer my pair with the Senator from Delaware [Mr. DU PONT] to the Senator from Alabama [Mr. UNDERWOOD] and vote "yea."

Mr. WARREN (when his name was called). Has the junior Senator from North Carolina [Mr. OVERMAN] voted?

The VICE PRESIDENT. That Senator has not voted.

Mr. WARREN. I have a standing pair with the junior Senator from North Carolina. I transfer the pair to the Senator from Massachusetts [Mr. GILLETT] and vote "nay."

The roll call was concluded.

Mr. KING (after having voted in the affirmative). I have heretofore voted "yea." I have a general pair with the senior Senator from Colorado [Mr. PHIPPS]. I transfer that pair to the senior Senator from Rhode Island [Mr. GERRY] and permit my vote to stand.

Mr. FERNALD. I have a pair with the senior Senator from New Mexico [Mr. JONES]. I transfer the pair to the junior Senator from Minnesota [Mr. SCHALL], and vote "nay."

Mr. BLEASE. I transfer my pair with the junior Senator from Missouri [Mr. WILLIAMS] to the senior Senator from Arizona [Mr. ASHURST], and vote "yea."

Mr. JONES of Washington. I wish to announce that the Senator from Wisconsin [Mr. LENROOT] is necessarily absent.

Mr. NORRIS. The junior Senator from Nebraska [Mr. HOWELL] is unavoidably detained. He is paired with the Senator from Kentucky [Mr. ERNST].

I also wish to state that the senior Senator from California [Mr. JOHNSON] is necessarily absent. He is paired with the senior Senator from Arkansas [Mr. ROBINSON].

Mr. McKELLAR. I was requested to announce that the Senator from West Virginia [Mr. NEELY] is unavoidably absent. If present, he would vote "yea."

Mr. COPELAND. The junior Senator from New Jersey [Mr. EDWARDS] is unavoidably absent. If he were present, he would vote "yea."

Mr. CAMERON (after having voted in the negative). I have a pair with the junior Senator from Washington [Mr. DILL]. I transfer that pair to the senior Senator from Iowa [Mr. CUMMINS] and let my vote stand.

Mr. JONES of Washington. I wish to announce the following general pairs:

The Senator from Connecticut [Mr. BINGHAM] with the Senator from Nevada [Mr. PITTMAN];

The Senator from Illinois [Mr. McKINLEY] with the Senator from Virginia [Mr. SWANSON];

The Senator from Colorado [Mr. MEANS] with the Senator from Texas [Mr. MAYFIELD];

The Senator from Vermont [Mr. GREENE] with the Senator from Montana [Mr. WHEELER];

The Senator from California [Mr. JOHNSON] with the Senator from Arkansas [Mr. ROBINSON];

The Senator from New York [Mr. WADSWORTH] with the Senator from West Virginia [Mr. NEELY];

The Senator from Iowa [Mr. BROOKHART] with the Senator from Arkansas [Mr. CARAWAY];

The Senator from Ohio [Mr. FESS] with the Senator from Mississippi [Mr. STEPHENS];

The Senator from Vermont [Mr. DALE] with the Senator from Tennessee [Mr. TYSON]; and

The Senator from Idaho [Mr. GOODING] with the Senator from Montana [Mr. WALSH].

The result was announced—yeas, 26, nays 28, as follows:

YEAS—26

Bayard	Frazier	King	Sheppard
Blease	George	La Follette	Shipstead
Bratton	Glass	McKellar	Simmons
Broussard	Harris	Norris	Smith
Copeland	Harrison	Nye	Trammell
Ferris	Heflin	Ransdell	
Fletcher	Kendrick	Reed, Mo.	

NAYS—28

Butler	Harreld	Moses	Sackett
Cameron	Jones, Wash.	Norbeck	Smoot
Deneen	Keyes	Oddie	Stanfield
Edge	McLean	Pepper	Warren
Fernald	McMaster	Pine	Watson
Goff	McNary	Reed, Pa.	Weller
Hale	Metcalf	Robinson, Ind.	Willis

NOT VOTING—42

Ashurst	Dill	Jones, N. Mex.	Shortridge
Bingham	du Pont	Lenroot	Stephens
Borah	Edwards	McKinley	Swanson
Brookhart	Ernst	Mayfield	Tyson
Bruce	Fess	Means	Underwood
Capper	Gerry	Neely	Wadsworth
Caraway	Gillett	Overman	Walsh
Couzens	Gooding	Phipps	Wheeler
Cummins	Greene	Pittman	Williams
Curtis	Howell	Robinson, Ark.	
Dale	Johnson	Schall	

So Mr. HARRISON's amendment was rejected.

Mr. KING. Mr. President, I had intended to offer an amendment to the provision dealing with the Board of Tax Appeals, reducing the salaries from $10,000 to $7,500. I shall await a more propitious moment and will offer the amendment tomorrow.

Mr. FLETCHER. Mr. President, I desire to offer several amendments. I send the first one to the desk. I think there will be no objection to it. It is an amendment which provides for certified copies of returns in certain cases. There is no provision in the bill for a certified copy.

Mr. SMOOT. Has the Senator's amendment been printed?

Mr. FLETCHER. It has not been printed. I referred it to the department.

Mr. SMOOT. Let the amendment be read.

The VICE PRESIDENT. The amendment will be read.

The CHIEF CLERK. On page 113, line 2, after the word "inspection," insert "and certified copies thereof shall be furnished," so as to read:

They shall be open to inspection, and certified copies thereof shall be furnished only upon the order of the President.

Mr. SMOOT. I see no objection to the amendment.

Mr. REED of Pennsylvania. It is perfectly all right. It will be a great help to heirs where the ancestor may have lost his return.

Mr. FLETCHER. I think so. There are certain regulations covering it, but this will put a provision in the law authorizing certified copies.

Mr. REED of Pennsylvania. Would the Senator from Florida accept a modification providing for a proper fee for the preparation of such certified copies? That seems to be only reasonable.

Mr. FLETCHER. I have no objection to having it furnished at the expense of the applicant.

Mr. REED of Pennsylvania. Yes; or provide that it shall be furnished for a reasonable fee to be fixed by the commissioner.

Mr. FLETCHER. I have no objection to that modification.

The VICE PRESIDENT. The clerk will report the amendment as modified.

The CHIEF CLERK. On page 113, line 2, after the word "inspection," insert "and certified copies thereof shall be furnished for a reasonable fee, to be fixed by the commissioner," so as to read:

They shall be open to inspection and certified copies thereof shall be furnished, for a reasonable fee to be fixed by the commissioner, only upon the order of the President.

The VICE PRESIDENT. The question is upon agreeing to the amendment as modified.

The amendment as modified was agreed to.

Mr. FLETCHER. I offer another amendment, which I send to the desk.

The VICE PRESIDENT. The amendment will be stated.

The CHIEF CLERK. On page 53, after line 13, insert:

(11) A reasonable addition to a reserve for future expense liabilities, under such regulations as the commissioner, with the approval of the Secretary, may prescribe, if in the opinion of the commissioner such reserve or such addition thereto is necessary in order clearly to reflect the income.

Mr. KING. I wish the Senator would explain the amendment.

Mr. FLETCHER. It enables a reasonable reserve to be provided for under regulations by the commissioner and where the commissioner finds that it is necessary in order clearly to reflect the income, these reserves being such as are contracted for and not mere suppositious reserves, but reserves that are actually contracted for. The amendment provides for "a reasonable addition to a reserve for future expense liabilities." I can see no possible objection to it, since it leaves the whole matter in the hands of the commissioner under such regulations as he, with the approval of the Secretary, may prescribe, if in the opinion of the commissioner such reserve is necessary in order clearly to reflect the income.

Mr. REED of Pennsylvania. The effect of the amendment would be to suspend from current income a reserve to take care of expenses that might last over so long a period as a hundred years. Let me illustrate, and Senators will understand thoroughly what is meant. Where a corporate mortgage is made to a trustee it is customary for the compensation of the trustee to be paid at the moment when the mortgage is executed. And yet the agreement of a trustee is to register bonds and take care of the certifying of bonds and the satisfaction of the mortgage throughout, perhaps, a hundred years of the life of the bonds. This provision would allow that corporate trustee to set up a reserve against its receipts at the time of the execution of the mortgage to take care of a hundred years of expenses in the performance of its duties as trustee. I think the provision goes altogether too far.

As I understand the motive of the Senator from Florida, it is particularly to take care of those casual cases where a person who is not in a business that entails the doing of the same thing over and over again undertakes future liabilities, and against that there would not be the same objection; but take a concern like a trust company that is acting as trustee under a bond issue.

They do such things every week or so, and the expenses and the current receipts wash themselves out as they go along. It is all wrong to set up a complicated system of bookkeeping which requires a return to be kept open for decades to come. It is much better to let the current expenses and the current receipts set themselves off one against the other. I am sure the Senator from Florida will not insist on going as far as this amendment does. It is not necessary to take care of casual sales by any such provision as this.

Mr. FLETCHER. I had not contemplated extending this amendment so far as the Senator from Pennsylvania seems to apprehend. I am trying to cover cases where there is an apparent profit on sales, for instance, or in any financial transaction, but that profit is not a real profit because the party engaged in the transaction, the seller, for instance, of property has an obligation outstanding to make certain improvements upon that property or incur certain liabilities in respect to the transaction over a period of years and has not made a profit this year because apparently there is a profit in the transaction he is engaged in because he has obligations which he must incur and which will call for expenditures on his part in the future.

I have offered this amendment simply to provide for reasonable reserves, such as the commissioner will approve, in order to take care of expenditures it is necessary to incur before any profit is made at all. I do not think it would cover such an extensive case as the Senator from New York has in mind. I believe the amendment is thoroughly safeguarded by provision for regulations to be made by the commissioner, with the approval of the Secretary. It is only in cases where he is clearly convinced that it is intended to reflect the real income that it is intended to be availed of.

Mr. EDGE. Mr. President, will the Senator from Florida yield to me?

Mr. FLETCHER. I yield.

Mr. EDGE. It is the Senator from Pennsylvania particularly to whom I desire to address my suggestion. I am wondering if the Senator from Pennsylvania would not agree to accept the amendment and let it go to conference? It seems to me that the amendment proposed by the Senator from Florida covers a very necessary field in some parts of the country where development and investment are being carried on on a large scale. If the amendment could be reworded so as thoroughly to protect any future situation, would not the Senator from Pennsylvania accept it and permit it to go to conference?

Mr. REED of Pennsylvania. If the Senator from Florida would present an amendment which covered such a case as he has described, I think there would not be so much difficulty about it. This amendment goes much too far. It is perfectly proper to set up a reserve, I think, against such an undertaking as the Senator has described, if the taxpayer will give bond to protect the Government for the payment of taxes if he should not apply his income toward the performance of his undertakings.

Mr. EDGE. I agree with that thought. I think that there should be a protection in the way of entering bond or some other method; but, with that protection, I do think the bill should provide for the setting up of a reserve to encourage development of that character. I think it is a step in the right direction. I think there should be something in the bill that would permit the conferees, at least, to try to work it out in a businesslike manner.

Mr. REED of Pennsylvania. I understood the Senator from Florida had under consideration an amendment which would more specifically take care of the case. If he has, I would be interested to hear it.

Mr. FLETCHER. I have another amendment, but it only applies to a casual sale, to isolated transactions. However, I have no objection to having it read.

Mr. SIMMONS. Why does not the Senator apply the principle of this amendment to the case that he has just stated?

Mr. REED of Pennsylvania. May we have the alternative amendment of the Senator from Florida read, Mr. President?

The VICE PRESIDENT. The clerk will read the amendment.

The CHIEF CLERK. On page 53, after line 13, insert the following:

(11) In the case of a casual sale or other disposition of real property, a reasonable addition to a reserve for future expense liabilities, incurred under the provisions of the contract under which such sale or other disposition was made, under such regulations as the commissioner, with the approval of the Secretary, may prescribe, including the giving of a bond, with such sureties and in such sum (not less than the estimated tax liability computed without the benefit of this paragraph) as the commissioner may require, conditioned upon the payment of the tax (computed without the benefit of this paragraph) in respect of any amounts allowed as a deduction under this paragraph and not actually expended in carrying out the provisions of such contract.

Mr. REED of Pennsylvania. Mr. President, it seems to me that that exactly covers the necessities of the case and does it with a proper safeguard to the Government. I hope the Senator will agree to substitute that for the first amendment which he sent to the desk.

Mr. FLETCHER. There is one objection to it, Mr. President. Of course I know the term "casual sale" is used in the bill, but I do not like that expression very well.

Mr. SIMMONS. The Senator inserted something else in addition to the words "casual sale," I think. What was that addition?

Mr. FLETCHER. It was "or other disposition of real property."

Mr. SIMMONS. Does not that cover it?

Mr. FLETCHER. That covers the disposition of real property.

Mr. REED of Pennsylvania. It seems to me that does cover it. If it is not a casual sale, then the thing washes itself out in the current operations of the taxpayer, but if it is a casual sale, then it needs the protection the Senator has in mind.

Mr. FLETCHER. I would rather have the first amendment suggested, and I would be willing to add, if that would meet the view of the Senator from Pennsylvania, a provision for a bond in the first proposal.

Mr. REED of Pennsylvania. I do not think it ought to apply except in cases of casual sale such as the Senator has provided for.

Mr. FLETCHER. Mr. President, I should like to get the sense of the Senate on the first amendment proposed by me. I offered the first amendment. I simply referred to the other amendment so as to give notice that I would offer it.

The VICE PRESIDENT. The question is on the first amendment submitted by the Senator from Florida.

Mr. EDGE. Mr. President, will not the Senator perfect his first amendment by including a provision for a bond?

Mr. FLETCHER. I will add to the first amendment after the word "income," the last word in the amendment, the words:

upon the giving of a bond, with such sureties and in such sum (not less than the estimated tax liability computed without the benefit of this paragraph) as the commissioner may require, conditioned upon the payment of the tax (computed without the benefit of this paragraph) in respect of any amounts allowed as a deduction under this paragraph and not actually expended in carrying out the provisions of such contract.

I add that to the first amendment to come in after the word "income," being that portion of the second proposal I submitted with regard to the giving of bond. That meets the suggestion of the Senator from New Jersey, does it not?

Mr. EDGE. I think that would be entirely safe to the Government and would be an encouragement to business development.

The VICE PRESIDENT. The question is on the first amendment of the Senator from Florida, as modified.

The amendment as modified was rejected.

Mr. FLETCHER. Then, Mr. President, I offer the second amendment, and I think there will be no objection to it.

The VICE PRESIDENT. The amendment will be stated.

The CHIEF CLERK. On page 53, after line 13, it is proposed to insert the following:

On page 53, after line 13, to insert:

"(11) In the case of a casual sale or other disposition of real property, a reasonable addition to a reserve for future expense liabilities incurred under the provisions of the contract under which such sale or other disposition was made, under such regulations as the commissioner, with the approval of the Secretary, may prescribe, including the giving of a bond, with such sureties and in such sum (not less than the estimated tax liability computed without the benefit of this paragraph) as the commissioner may require, conditioned upon the payment of the tax (computed without the benefit of this paragraph), in respect of any amounts allowed as a deduction under this paragraph and not actually expended in carrying out the provisions of such contract."

The VICE PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Florida.

The amendment was agreed to.

Mr. FLETCHER. Mr. President, I desire to offer an amendment now with reference to cigars.

I will say that as the bill comes to the Senate there has been a reduction provided in the tax on cigars. In the act of 1924 the tax on cigars manufactured to retail between 5 cents and 8 cents was $6 a thousand. The House bill made the tax $4.50 a thousand and the committee has reported in favor of $3 a thousand, which is right, in my judgment.

On cigars "manufactured or imported to retail at more than 8 cents each and not more than 15 cents each" the act of 1924 imposed a tax of $9 a thousand; the House bill made it $7 a thousand and the Senate committee has reported in favor of $5 a thousand. I think that was a very fair and proper reduction to make. Those amendments have been agreed to.

My amendment now is to strike out the figures "$10.50" in line 5, on page 213, and insert "$7." I have always had in mind that it ought to be $6, which would be a 50 per cent reduction from the present law, and that is what ought to be done. We have made such a reduction in the two classes I have mentioned; classes A, B, and C have been allowed practically a 50 per cent reduction from the present law. Remember that the tax prior to 1917 was only $3 a thousand flat on classes A, B, C, D, and E. In 1917 the tax was increased. During the war—these were war taxes, mind you—we made the tax on class A cigars, those that sell for 5 cents each, $4 per thousand. We made the tax on class B cigars, those selling for more than 5 cents and not more than 8 cents each, $6 per thousand. We made the tax on class C cigars, those that sell for more than 8 cents each and not more than 15 cents each, $9 per thousand. We made the tax on class D cigars, those that sell for more than 15 cents each and not more than 20 cents each, $12 per thousand—mind you, from $3. On class E cigars, those that sell at retail for more than 20 cents each, we made the tax $15 per thousand. It has almost destroyed the industry. Those taxes are simply utterly unreasonable. They are inexcusable except in war times. They are war taxes.

Now we are trying to get away from those war taxes; and the committee have been very wise in the reductions they have made, only they have not gone far enough. They have taken care of classes A, B, and C quite well. The reductions there amount to practically 50 per cent. I am simply asking that we give the same reduction to classes D and E. Those classes are higher priced cigars. In the case of class D, for instance, the act of 1924 provided for a tax of $12 per thousand. The House bill makes it $10.50. There is a reduction of 12½ per cent—not 50 per cent, as it ought to be, but 12½ per cent. The reduction on the cigars that retail at more than 20 cents made by the House bill is from $15 to $13.50, a reduction of only 10 per cent.

You have reduced the taxes on classes A, B, and C 50 per cent; you have reduced the taxes on class D 12½ per cent, and you have reduced the tax on class E only 10 per cent. That is not fair. It is not fair to a great industry that has been built up, particularly in Florida. In Tampa the industry gives employment to some 30,000 people. There are enormous sums of money invested in cigar manufacturing—I am speaking of Tampa alone—and they have built up a class of goods somewhat different from and a much higher grade than are manufactured anywhere else in the country.

That industry in Tampa is terribly stricken by the high taxes imposed upon this kind of goods; and now you propose to perpetuate those war taxes in this time of peace, when you are reducing the taxes on other industries. There is not any industry concerned in this bill where you have not made a greater reduction than 10 per cent from the war taxes except this.

Mr. SMOOT. Oh, yes there is, Mr. President.

Mr. FLETCHER. I doubt it.

Mr. SMOOT. The tax on corporations is not reduced at all.

Mr. FLETCHER. From the war-time taxes?

Mr. SMOOT. Yes; from the war-time taxes—12½ per cent.

Mr. COPELAND. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Florida yield to the Senator from New York?

Mr. FLETCHER. I yield.

Mr. COPELAND. Is the Senator suggesting a change also in line 8?

Mr. FLETCHER. The first amendment that I am offering is to strike out "$10.50" in line 5, page 213, and make it "$7.00." It ought to be $6. Then I propose to strike out "$13.50" in line 8, and make it "$8." It ought to be $7.50, just half of what the present tax is. The present tax is $15 per thousand.

Now let me very briefly explain this matter. I will not take up much of the time of the Senate. I will hurry right through.

On cigars of classes A, B, and C, the reduction is practically 50 per cent, as I have stated; but when you get to classes D and E the reduction is only 12½ per cent as to class D, and 10 per cent as to class E. One of the manufacturers writes me as follows:

We desire to impress upon you and your colleagues that the manufacturer has no desire for any direct gain to him in asking for the 50 per cent reduction in tax on cigars. His only benefit will arise in the increase in business brought about by a well-satisfied consumer creating a larger demand for cigars of a standard quality at reasonable prices, and this increased consumption of cigars will bring in an increased revenue to the Government that will in a great measure offset the reduction in tax.

It is not for the benefit of the manufacturer, except that it enables him to live. He proposes to make a better cigar that you will get at 15 cents than you are able to get now. That will increase the demand for his goods, that will increase the consumption, and that will increase the revenues to the Government.

These factories have been falling off in recent years. Twenty-seven per cent of the cigar-manufacturing establishments in this country have gone out of business in the past year.

Mr. SMOOT. Cigarettes have taken their place.

Mr. FLETCHER. Very largely cigarettes are taking their place, because people are not willing to pay the prices that you make necessary by these high taxes. This industry has to pay not only the stamp tax of $15 a thousand on cigars, for instance, but it has to pay the customs duties on all the raw material it uses. Practically all that material comes from Habana. It is imported. Why, just think for a minute what it means to the Government. I will show you the figures.

These figures are for the Tampa district alone, if you will allow me to speak of that. I am not localizing this thing, because these cigars are manufactured in other parts of the country also; but I know the conditions in Tampa, and I have the figures as to the industry there. Therefore I am obliged to refer to Tampa; but the same remarks apply to New York or Pennsylvania or Chicago or St. Louis or anywhere else where these cigars are made.

In the Tampa district alone the Government income from its two major taxes—that is, without regard to the capital tax, the two major taxes being the revenue tax and the customs duties—in 1924 amounted to $3,856,766 internal-revenue tax and $1,857,077 customs duties. In other words, in Tampa alone, where this industry, and particularly the making of

these class D and class E cigars, is established on the highest possible basis of efficiency and good work, this industry paid to the Government in 1924 $5,714,743. I think we are entitled to some consideration here. That industry alone pays that much to the Government, and that is without regard to the capital-stock tax.

Mr. SIMMONS. Mr. President, I desire to ask the Senator a question:

The VICE PRESIDENT. Does the Senator from Florida yield to the Senator from North Carolina?

Mr. FLETCHER. I do.

Mr. SIMMONS. The committee, I think, was constrained to make the reduction on these low-priced cigars because the cigarette has come into violent competition with that class of cigars. I desire to ask the Senator if the cigarette has come as much into competition with the high-class cigars embraced in these two sections that he wishes to have amended?

Mr. FLETCHER. I think not.

Mr. SIMMONS. It was the competition of the cigarette, I think, that moved the committee chiefly to make these first two reductions, and I think the impression of the committee was that these higher class cigars were not met by the same kind of competition; and I think that is a very important fact in connection with the proposition which the Senator now advances.

Mr. FLETCHER. I think undoubtedly people largely got in the habit of smoking cigarettes when good cigars cost too much money.

Mr. SIMMONS. But do the people who smoke these high-class cigars resort to the cigarette because it is cheaper, as the people who smoke these low-class cigars do? Of course, the people who use the low-priced cigars are people of very moderate means, and they have to consider the cost of their smoke; and if they find they can get a smoke from the cigarette much cheaper, they resort to the cigarette. Therefore the demand for the low-class cigars has fallen off so much that the industry is not profitable. The man who buys the 20-cent cigar or the 25-cent cigar, however, does not care particularly about the price of his cigar. He is not disposed to discontinue his use of that high-priced cigar because he can get the cigarette a little cheaper, as is the case with the man who uses the low-priced cigar.

Mr. COPELAND. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Florida yield to the Senator from New York?

Mr. FLETCHER. I yield to the Senator.

Mr. COPELAND. There was a very distinguished predecessor of the present Vice President who said that the great need of this country was a good 5-cent cigar.

Mr. SIMMONS. That is the reason why we reduced the tax on the 5-cent cigar.

Mr. FLETCHER. That is all right. I have no complaint to make of that at all. That is a good end of the business. When, as a war measure, you increased the taxation on the 5-cent cigar 33⅓ per cent, you ought to get back somewhere to the half of that; and then you increased the taxation on these cigars that sell for more than 20 cents 400 per cent. I am simply asking you to get back to 200 per cent.

Mr. SMOOT. Mr. President, does the Senator think that a man who smokes a 20-cent cigar is going to cease smoking that cigar because of a tax of half of 1 cent on the cigar? Does the Senator think he is going to quit smoking because it costs him half of 1 cent?

Mr. FLETCHER. He is not going to quit smoking unless you drive the manufacturer of that kind of cigar out of this country. You are tending here to crush out a great industry.

Mr. SMOOT. No; the manufacturer charges to the cost of his cigar just what it pays in taxes. Let me tell the Senator this: Take, for instance, cigarettes. Their use has increased 1,000 per cent in the last few years.

Mr. FLETCHER. I do not doubt it.

Mr. SMOOT. There has been an increase of 1,000 per cent in the use of cigarettes in the United States. That has naturally affected the cheaper-cigar market; and the Finance Committee cut the taxes below those that the House provided.

Mr. FLETCHER. Somewhat.

Mr. SMOOT. Now the Senator is pleading here, after I thought the committee had gone to the very limit——

Mr. FLETCHER. The committee has not touched this item.

Mr. SMOOT. We have reduced the taxes $17,000,000 on cigars.

Mr. FLETCHER. You get $44,000,000 out of this industry.

Mr. SMOOT. We got out of cigars $43,000,000, and the House reduced that to $31,000,000, and the Finance Committee reduced it to $26,000,000, leaving a reduction from the present law under the committee bill as reported to the Senate of $17,000,000.

Mr. FLETCHER. Yes; that is all right. That ought to have been done. Your taxation, as I say, has been on a war basis. There has been an increase ranging from 33⅓ per cent in the case of the low-grade cigars to 400 per cent in the case of these cigars that I am talking about. It is absurd. You do not want to drive out of the country an industry that is manufacturing these high-class goods, and let the people who enjoy that kind of goods be dependent upon Habana and other foreign places for their supply.

Mr. SMOOT. I have all of my mail separated in accordance with the demands made for the reduction in the tax on cigars, beginning with the 5-cent cigar, then the 10-cent cigar, then the 15-cent cigar. I have all of those letters, hundreds and hundreds that I have received, classified, and there was not one single letter asking for a reduction of the tax on the higher-priced cigars.

Mr. FLETCHER. That is most astonishing.

Mr. SMOOT. If the Senator wants to come over to the committee, I will be glad to show him all of the letters. I thought that was rather astonishing, too. Most of them were in relation to the 5-cent cigar.

Mr. FLETCHER. Most of them; yes.

Mr. SMOOT. Next in number were those relating to the 10-cent cigar.

Mr. FLETCHER. Those classes, class A, class B, and class C constitute the main production, I know, and I am not finding any fault with the committee. On the contrary, I am commending them for their wisdom in making those reductions. But my position is that it is not fair to stop there. I think the committee should include the other classes. The Senator speaks about the letters he has received. I have received any number of letters and petitions of all sorts asking a reduction, and I think that this association, known as the Tobacco Merchants' Association, an organization representing cigar manufacturers all over the country, applied to the Committee on Finance, as they did to the Ways and Means Committee in the House, urging in the hearings a reduction of 50 per cent all down the line, in classes A, B, C, D, and E. That is the request they made, and that is what they urged before the Committee on Ways and Means in the House, a reduction of 50 per cent.

I am not asking quite that. Where the tax is $12 a thousand under the act of 1924, I am asking that it be made $7. Where it was $15 a thousand under the act of 1924, I am asking that it be made $8. So I am not asking even as much as this Tobacco Merchants' Association has asked, an organization which has a membership all over the country and represents this great interest generally. They ask for a reduction of 50 per cent.

Mr. REED of Pennsylvania. Mr. President, will the Senator yield for a question?

Mr. FLETCHER. I yield to the Senator.

Mr. REED of Pennsylvania. The Senator has stated that this business of manufacturing the high-priced cigars has been cut down by the high taxes. I would like to call his attention to the actual figures of production since 1918 and ask him to explain them.

The low-priced cigars, class B, which sell for from 5 to 8 cents apiece, were produced in 1918, we find, to the number of 4,167,000,000, and the output of those cheap cigars, which we were taxing at $6 a thousand under the war taxes, declined to 1,273,000,000 in 1924, a reduction of more than 66 per cent. On the other hand, these class D cigars, about which the Senator is now talking, the 15 and 20 cent cigars, which we taxed at $12 a thousand, actually increased from 16,000,000, in 1918, to 116,000,000, in 1924.

The committee cut the tax on the cheaper cigars in half, from $6 to $3, and they cut the tax on the more expensive cigars less. They cut it from $12 to $10.50. In view of the fact that the number of cheap cigars was declining, that the industry was on the wane, while the cigars about which the Senator talks have increased in number sevenfold since 1918, does not the Senator think that what the committee did was substantial justice? That is a pretty long question, but, perhaps, the Senator will give it a long answer.

Mr. FLETCHER. I think that what the committee did, as I said a while ago, is most commendable; but they have not gone far enough. It may be that the consumption of these high-class cigars has increased. I have not the figures as to that. I have the figures as to the increase in population from 1917 to 1925, namely, 11,320,875, an increase of 11.1 per cent. The total consumption of cigars decreased 1,349,436,790, or 16.3 per cent, and the per capita consumption decreased 24.1 per cent.

Mr. REED of Pennsylvania. But the decrease came in the cheap cigars, where we have given the relief, and the consumption of these expensive cigars has increased sevenfold.

Mr. SMOOT. The consumption of even class E cigars has increased 29 per cent, the cigars costing 20 cents and above, while as to the class D cigar, as the Senator has said, the consumption of that has increased 700 per cent.

Mr. FLETCHER. There has been an increase in population, and there has been an increase in demand. The people have been able to pay a higher price for cigars, and they want something good. I am not so sure that we might not have an improvement in the output of Cabinet meetings if they smoked clear Havana cigars instead of West Virginia stogies. I am inclined to think the meetings might be much more agreeable and better, with a possibility of getting better results. The people are learning gradually that in order to enjoy a satisfying smoke they have to have the Havana goods, and they are being consumed more and more where the people can afford to get them. Some people have not yet learned about these clear Havana goods which we make a specialty of making in bond in Tampa.

Mr. SMOOT. Advertise more.

Mr. FLETCHER. During 1925, it is interesting to note, Tampa produced, in round figures, 490,000,000 cigars, of which 84,000,000 were sold under class B, and 3,300,000 under class E.

Mr. NEELY. Mr. President, will the Senator yield?

Mr. FLETCHER. I have not the complete figures available for the United States, but I estimate that during the year approximately 150,000,000 class D cigars were produced throughout the country, with perhaps 40,000,000 class E cigars.

The VICE PRESIDENT. Does the Senator from Florida yield to the Senator from West Virginia?

Mr. FLETCHER. It is a general industry, scattered over the United States. I yield. I did not mean to get a rise out of the Senator from West Virginia by that piece of pleasantry, but I yield to him to defend West Virginia smokes.

Mr. NEELY. I heard the Senator say something that sounded as if he were slandering West Virginia cheroots. His back was turned to me, and I did not hear all he said, but if he has any criticism to make of anything produced in West Virginia, I want to protest against it. Would the Senator please repeat——

Mr. FLETCHER. I think people do very well to smoke West Virginia smokes, or cheroots, if they can not get anything better, and do not know anything about clear Havana goods. [Laughter.]

Mr. NEELY. Mr. President, a large number of our people who have recently gone to Florida and lost their money in real-estate deals down there came back so poor that they could not buy anything else but the cheapest cigars which we produce in West Virginia—which, by the way, are better than the high-priced cigars produced in many other States—and these returning wanderers find their health better after they smoke West Virginia tobacco than it was when they were smoking the expensive cigars produced farther south.

Mr. FLETCHER. I found any number of West Virginia citizens, very fine people, located permanently in Florida when I was down there in November, and they seemed to be very prosperous and happy, with no idea of ever returning to West Virginia.

Mr. NEELY. That is because Florida has abolished the inheritance tax. After we get through with this revenue bill, if the coalition spoken of by some of my colleagues stands, I assume there will be not quite so much attraction in Florida as there is at the present time. Then your citizens, Mr. President, and West Virginia's citizens will stop dodging taxes and come back home, not only to live but to die, and finally go to heaven.

Mr. FLETCHER. Of course, if they had had any estates worth while they could have gotten rid of the inheritance tax all these years in Florida ever since 1845.

Mr. WATSON. Mr. President, will the Senator yield?

Mr. FLETCHER. I yield.

Mr. WATSON. The late Tom Marshall said that what this country most needed was a good nickel cigar. The tax we put on them drove them out. This tax we provide will enable us to again have a reasonably good 5-cent cigar.

Mr. FLETCHER. I hope so.

Mr. WATSON. Driving out the cigar led to the manufacture and consumption of the cigarette. In the last year we manufactured 72,000,000,000 cigarettes in the United States, partially because the cheap cigar was driven out, partially because the boys, as well as the girls and the women, began to smoke them.

Mr. SMITH. Smoke what?

Mr. WATSON. Cigarettes; not West Virginia cheroots.

Mr. NEELY. The women did not smoke any of these 20-cent cigars the Senator from Florida has been talking about, did they?

Mr. WATSON. No.

Mr. NEELY. I understand those cigars are so strong that nobody but an unusually strong man can survive the smoking of them.

Mr. WATSON. Seriously, I think the committee undoubtedly did the right thing.

Mr. FLETCHER. I thoroughly agree. I am not asking that they go quite as far as they did with reference to the 5-cent cigar. In that case they reduced the tax 50 per cent. I am asking that they approach that all down the line, as to all these classes, that is all.

Mr. WATSON. But inasmuch as the manufacturer of that particular class has gradually increased, there is no occasion for an increase in the tax.

Mr. FLETCHER. Apparently the consumption has increased.

Mr. WATSON. Manyfold.

Mr. FLETCHER. But the industry is to-day struggling under the highest prices they have ever paid for raw materials. They have to pay the customs duties on this material, wages are higher than they have ever been, and I say to the Senator frankly that one of the largest manufacturers of these cigars in Tampa told me he was not making to-day 1 per cent on his investment in his business. Yet the committee propose to tax this industry 20 per cent on its yield. Twenty per cent of all the gross returns from this manufacturer's establishment must go in taxes to the United States Government. Does the Senator know any other industry struggling under such taxes as that?

Mr. SMOOT. I think the Senator has made a wonderful defense of the cigar business. Are there any more figures the Senator wants to put in?

Mr. FLETCHER. I am glad to have the suggestion that I ought to quit; and I am willing to do so. I have plenty of statements here bearing directly on the justice of this amendment, but I will not take the time to read them, as I want to hurry on with the bill. But I do want a fair, square understanding of just what is being done here, and a vote on the committee's conclusions as to whether they are treating this industry right or not. It is not a question of luxury any longer in the smoking of good cigars. People generally are smoking good cigars where they can get them, and this reduction would not go so much to the benefit of the manufacturer as to the improvement of the class of goods and the increase of consumption. Whereas the reduction I have asked for might mean a possible decrease in revenue, on the face of it, to the amount of something like a million dolars or so, if the committee will consider the increased consumption that will follow the increased demand for these goods that will follow they will find that the Government will not lose anything by making this reduction.

The VICE PRESIDENT. The question is on agreeing to the first amendment of the Senator from Florida in line 5, on page 213.

Mr. FLETCHER. To save time, I am willing to have both amendments considered together, if it is the desire that we do so, the amendment in line 5, page 213, to change $10.50 to $7, and on line 8, page 213, to change $13.50 to $8.00, and consider the two propositions together.

Mr. TRAMMELL. Mr. President, my colleague has entered into the subject very thoroughly and I believe it is fully understood by the Members of the Senate, but I desire to add merely that the city of Tampa has built up the greatest cigar manufacturing industry in the United States. Also in Key West, Fla., there is very extensive manufacturing of clear Havana cigars. The committee, in considering the question of the tax upon cigars, saw fit to make a reduction of approximately 50 per cent on the cheaper grades of cigars. The cheaper grades of cigars are not manufactured in Florida to any great extent. It is the higher classes of cigars costing from 10 to 25 cents that are manufactured principally in our Florida cities. We are contending that the industry within our State, and also, of course, in New York and some other sections of the country, is entitled to the same consideration as the cheaper classes of cigars.

I believe manufacture of the cheaper classes of cigars has diminished largely on account of the increased cost due to the revenue tax and to the increased cost of manufacture, resulting in poorer grades of cigars, and that fact has driven people more to the smoking of cigarettes.

This situation also prevails in regard to the higher classes of cigars. Before the expenses were so great attaching to clear Havana cigars, one could purchase a splendid cigar

for 10 cents; but now, with the customs duty and the internal-revenue tax as imposed by law and as proposed to be imposed by the pending bill, it is and will be almost impossible to purchase a clear Havana cigar for less than 15 cents or two for a quarter. Of course, the price runs as high as 20 and 25 cents. It is the contention of the industry in Florida, and I believe throughout the country, that if the duty is reduced or the tax is reduced there will be an increase and expansion in the manufacture of the higher classes of cigars. That is the position which has been taken, I am sure, by the Florida manufacturers. I am told that the industry is struggling under the expense imposed by revenue taxes and by the customs dues. We are pleading that those who conduct this industry in Florida should have the same consideration as those who manufacture the cheaper grades of cigars; that is all.

Why should the manufacturers of cigars costing 5 to 8 or 10 cents in other States have a 50 per cent reduction while the manufacturers of the higher classes of cigars, which are the product of Florida manufacture, are only granted a reduction that amounts to not in excess of 12½ per cent.

Mr. NORRIS. Mr. President, will the Senator yield?

Mr. TRAMMELL. Certainly.

Mr. NORRIS. I presume the Senator is referring particularly to Florida?

Mr. TRAMMELL. I am.

Mr. NORRIS. That is the State where Congress has decided to establish an untaxed reservation for millionaires. So why should they not pay a higher tax than the rest of the country on the cigars they smoke?

Mr. TRAMMELL. There is no reason why they should pay more. I know the whole attitude of the Senator from Nebraska would indicate that he does not think a man who has $1,000,000 should live anywhere unless he has higher taxes imposed upon him than are imposed upon anyone else.

Mr. NORRIS. We can not tax him there upon his inheritance or his income, but we can tax him on the cigars he smokes.

Mr. TRAMMELL. The Senator's attitude is that we have to bear down very heavily on the wealthy of the country, whether in Florida or Nebraska or anywhere else. He wants to drive them from Nebraska, and we are glad to have them in Florida.

Mr. NORRIS. That is all the more reason why they should pay the taxes on their cigars.

Mr. TRAMMELL. We do not want to discriminate against them on the cigar question. These cigars are sold all over the country and not simply in Florida. A great business has been established throughout the country by virtue of the enterprise and industry of the manufacturers of clear Havana cigars in the city of Tampa and the city of Key West in particular, and also through the efforts of manufacturers in other places in Florida.

Mr. BLEASE. Mr. President, may I inquire of the Senator where the tobacco comes from?

Mr. TRAMMELL. The Havana tobacco is brought from Cuba, and the manufacturers, as has been stated by my colleague, pay to the Federal Government more than $3,000,000 a year in customs duties. The wrapper, of course, comes more or less from other sections of the country. They use quite extensively a wrapper produced in the northern part of our State, where we produce a most excellent quality of wrapper. It is a class of wrapper that is also produced in Connecticut and other sections of the country. But the Havana filler, so-called, comes from Cuba; it is imported to Florida from Cuba.

What we insist upon is that the higher class cigars should have the same consideration when we come to making reductions and that the industry deserves that recognition at the hands of Congress. If we maintain the higher duties on the better grades of cigars when we have lowered the tax on the cheaper class cigars, we will come near to hampering and interfering with the expansion and enlargement of the industry engaged in the manufacture of the higher priced cigars.

Mr. SIMMONS. Mr. President, I only want to say a few words. I dislike very much to have to antagonize my good friends from Florida, but there must be some proportion in the taxes imposed upon competing products. Cigars compete with cigarettes. The two Senators from Florida represent a cigar-producing State and I represent a cigarette-producing State. The tax imposed on cigarettes is $7.50 a thousand, more than the tax imposed in the pending bill on the cheap cigars, and within $1.50 or $2 of the tax imposed upon the high-grade cigars. That is out of proportion.

I would be tempted, if the Senate should go any further in these reductions, to urge a reduction in the high tax upon cigarettes. There never has been, from the peak prices of the war, 1 cent of reduction in the tax on cigarettes. I am not asking, and I do not want to ask, for any reduction, but it is a competing product, and if we are going on down the line cutting the taxes off of cigars, I would be forced to ask for some reduction in the tax on cigarettes.

Mr. FLETCHER. I call for the yeas and nays on agreeing to my amendment.

Mr. SMOOT. Let us have a division.

Mr. FLETCHER. Very well.

On a division Mr. FLETCHER's amendment was rejected.

Mr. LA FOLLETTE. Mr. President, I ask unanimous consent to have printed in the RECORD an article by Thomas Reed Powell, of the Harvard Law School, on "The abolition of the Federal inheritance tax."

The VICE PRESIDENT. Without objection, it is so ordered.

The article is as follows:

THE ABOLITION OF THE FEDERAL INHERITANCE TAX

(By Thomas Reed Powell, Harvard Law School)

The publication in the November Bulletin of "Extracts from report of special committee of the trust company division of the American Bankers' Association," giving reasons for the abolition of the Federal estate tax, prompts me to offer a few comments on some of the reasons advanced in favor of the abolition advocated. These comments are designed not as an argument in favor of the retention of the tax, but rather as an inquiry into the canons of judgment that should be applied in passing upon an important issue of public policy. When I find what seem to me foolish reasons urged by presumably picked minds, I am tempted to believe that the reasons are not the inducing cause of the conclusion, but are put forward to rally support for a conclusion founded on other considerations.

I

After describing the Federal estate tax and the Federal gift tax, the report affirms that "the Federal estate tax is not based on the same logical right as the State inheritance tax." This is true in a sense. The States have a special power over inheritance not possessed by the Federal Government. This special State power to regulate the devolution of the property of a decedent has been referred to by the courts in condoning State inheritance taxation that violates accepted constitutional canons of property taxation. The recent Frick case indicates a wholesome modification of the general latitude shown toward State inheritance taxation, and bids us hope that in time the idea of inheritance as a State-controlled privilege will no longer appeal to the Supreme Court as a sufficient basis for sustaining State taxation that in substance is taxation of extraterritorial values.

This special State power over inheritance has been seized upon as a justification for some State taxation that is undeniably unfair.

It does not follow, however, that without this special State power over the devolution of property, the States would not have power to levy inheritance taxes. This special power has not been the necessary basis of the power to tax. It has been the necessary basis merely of certain excrescences in State inheritance taxes. Without any such special power the Federal Government has authority to impose estate and legacy taxes, as the report recognizes by its citation of New York Trust Co. *v.* Eisner. Whatever difference there is between State and Federal power over the devolution of property has logical relation only to possible special features of inheritance taxation. The logical difference is not the broad, logical difference that the report assumes it to be.

The argument of the report on this point, if carried to its logical conclusion, would deny to the Federal Government the power to impose an excise on doing business in coporate form, an excise on manufacture or on sales. The States have the power over corporate charters, the power to regulate manufacture, and to regulate intrastate sales. The United States has no one of these powers. Yet, the United States may tax all these operations. It may tax them because they take place within its borders. So it may tax inheritances because of the relation of the inheritance to the geographical area of the United States or the relation of the decedent to the sovereignty of the United States. With the special issue whether Federal taxes on these subjects are direct taxes or indirect taxes we need not be concerned. They have been authoritatively adjudicated to be indirect taxes. The distinction between direct and indirect taxes goes, not to the power of the United States to tax the subject, but to the necessity of apportioning the tax among the States according to population.

II

The second proposition of the report is that "the Federal estate tax should be reserved for emergencies only." This is supported by the facts that in the past Federal inheritance taxes have been of brief duration. This is of slight significance. The conditions of the past are not the same as the conditions of the present, as the needs of the past are not the same as the needs of the present. The appeal to history is ineffective without a concrete comparison of the past and the present. This comparison is not undertaken by the report. There is the assertion that "it is believed that" Federal inheritance taxation

"should be an emergency source of revenue, to be done away with as soon as the emergency has passed," followed by the assertion that "we consider that that situation has now arrived." It is hard to say that the fiscal emergency of the war is over when the United States still owes some twenty billions of dollars borrowed because of the war. In the past, when the Federal inheritance tax has been lifted, there was no such indebtedness still unpaid.

There are excellent reasons why an inheritance tax should not be regarded as a peculiarly appropriate emergency tax. Emergency taxes should be related to enterprises that have some relation to the emergency. Folks die whether the Government has special need of revenue or not. From any standpoint, other than that of a need for revenue that outweighs all considerations of fairness to taxpayers, it is whimsical in the extreme to put taxes on estates, depending upon whether the decedent dies in one quinquennium or another. Those who feel the grasp of an inheritance tax because their decedent died before January 1 have solid justification for feeling that they have been grievously discriminated against if others have escaped entirely because their decedent dies after January 1. From the standpoint of equality between individuals, the argument in favor of long-time continuity of inheritance taxation is much stronger than that in favor of an inheritance tax that goes on or off as some governmental need rises or falls. The report would have been more weighty on this point if it had urged that the Government should not, because of an emergency, impose higher inheritance taxes than it imposes over a long period of years.

III

The third proposition of the report is that "the Federal estate tax is no longer needed as a source of Federal revenue." This is supported by figures showing that the annual yield of the estate tax is less than the annual surplus of the Federal Government. The report does not mention the fact that the Federal Government still owes some $20,000,000,000. Such taciturnity tempts one to question the candor of the authors of the report. The question whether we should increase the rate of reduction of the national debt is one about which there can be no difference of opinion from the standpoint of the welfare of the National Treasury. Everyone would agree that the debt should be reduced as fast as possible, provided the reduction might be painless to taxpayers. Any effort to alleviate the pain of reduction, on the ground that reduction is not desirable, is quite patently more sensitive to the pain than to the public fiscal problem. Federal estate taxes may be painful and bad in other ways, but they are not bad because the Government wouldn't know what to do with the proceeds.

IV

The fourth proposition is that "the abolition of the Federal estate tax would increase inheritance-tax revenue in the States." The report states that 29 of 45 States now deduct Federal inheritance taxes from the estate taxable by them. Under such statutes the State taxes would be larger if there were no Federal tax to deduct. They would be equally larger if the 29 States adopted the rule of the *other 16* and declined to allow the deduction of the Federal estate tax. The States have no need whatever of the abolition of existing Federal estate taxes. In so far as the report goes on to suggest that the States with a broader tax base might use lower rates and that the abolition of the Federal estate tax would reduce the bother and expense of administering estates, it points to undeniable truths. These truths, however, are not pertinent to the caption that the abolition of the Federal estate tax would increase inheritance-tax revenue in the States. They show merely that it would be nicer for those who have to pay taxes if they didn't have to pay them. No one doubts this. Yet while it may have played some part in the minds of the promulgators of the report, it is not put forward as one of the heads of the argument.

V

Another aspect of the self-interest of the taxpayer is, however, chosen as the keynote of the fifth proposition of the report. This says that "the administrative burden on estates is heavier in the case of the Federal estate tax than in the case of State inheritance taxes." The reason given is that Washington is farther away than the State capitals. This is a reason why it might be well for the National Government to decentralize its administrative machinery for assessing and collecting Federal estate taxes. It can hardly be a reason why the National Government should forego a tax. Such a reason, if a good reason, would apply to many other forms of national taxation. The National Government must live, even if its Capital is not in the immediate vicinage of taxpayers.

VI

The report then goes on to present objections to five arguments advanced in support of the retention of the Federal inheritance tax. All the arguments thus picked out for refutation may be foolish arguments, and still the Federal estate tax may be a wise tax. The arguments may severally be weak and yet collectively strong. No one argument may give a sufficient reason for the tax, but each may give one-fifth of a sufficient reason. Or a sufficient reason may be found in the underlying fact that the tax yields revenue to a Government which has need of it and in the collateral fact that the arguments urged against the particular tax are arguments against taxation or arguments based on private interest rather than on public welfare.

(a) The first argument set up to be knocked down is the claim that the Federal estate tax rounds out a complete system of taxation and enables the Federal Government to overcome to a degree the obstacles to getting revenue from exempt sources. Estate taxes may be measured by assets invested in State and municipal bonds, whereas the Federal income tax may not.

This isn't a very compelling argument in favor of the retention of the Federal estate tax, and the objections urged against it in the report are sufficiently satisfying.

(b) The second prop of the estate tax which the report seeks to fell is the "claim that war debts should be paid from capital." To this the report answers:

"All Government debt is simply postponed taxation. The taxation levied to meet it should fall within such rate limits that it can be paid by taxpayers from their current income. It should not require a tax derived from the sale of capital assets of estates which arise through such fortuitous circumstances as deaths occurring during the term of the debt."

This is a general argument in favor of income taxation as against inheritance taxation. A judicious mixture of the two is so firmly settled a canon of taxation that a complete condemnation of either element in the compound need not be considered. The final sentence of the refutation deserves fuller consideration. It is an argument against inheritance taxes as emergency taxes, though the report elsewhere insists that such taxes are emergency taxes. If "deaths occurring during the term of the debt" are "fortuitous circumstances," how much more fortuitous are the deaths occurring during a two-year war and for six years thereafter, while $20,000,000,000 of the debt are still unpaid.

If the argument were that death itself is a fortuitous circumstance and therefore should not give rise to a tax, it could readily be met. Inheritance taxes generally are not to be swept away by such a zephyr. The windfall to the recipients of the assets of decedents is fortuitous and fiscally fortunate. These are compelling justifications of inheritance taxation when the Government needs money or can use it wisely. What the recipient gets comes not from his own efforts but by the chance of having someone leave it to him. The fact that it comes by such a chance is a fortuitous fact, but it affords a solid reason why the Government should get some of it in order to take less from what comes through sweat of brain and brawn, or from capital acquired by sweat of brain or brawn.

The report does not directly controvert this. The fortuitous circumstances it has in mind are not deaths, but deaths occurring during the life of the war debt. It finds fortuitous inequality in confining the Federal estate tax to such period.

This is an argument why an inheritance tax should never be imposed or else an argument why an inheritance tax once imposed should not be lifted. The situation is that we have a Federal inheritance tax. Q. E. D. Clearly enough, to justifiable fortuitousness is added unjustifiable fortuitousness, if the chance occurrences of deaths give rise to taxation only in spasmodic periods. It is fairer all around to tax inheritances over a long term of years than over a short term of years. The life of the national debt bids fair to be a sufficiently long period, so that we need not push this "fortuitous" argument to its limit that estate taxes like death itself should be perennial.

Somewhat collaterally the report argues that the longer the Federal estate tax is retained, the more likely it is to be permanent, and that, if it is permanent, it needs supplementary forms of taxation, thereby increasing the machinery of Government and the annoyance of taxpayers. The report cites the gift tax as an effort to prevent the evasion of the estate tax. These are reasons why those who inherit should prefer the abolition of the estate tax. They are not sufficient reasons why it should be abolished.

(c) The claim that the Federal estate tax should be retained for social purposes is met by saying that "we do not believe it is the function of the Federal Government, through the instrumentality of taxation, to accomplish alleged social reforms." The unconstitutionality of the Federal child-labor tax is cited and it is then avowed: "It is believed that the only tests which a legislator or the public should apply to this question should be, 'Does the United States Government need the money to balance an intelligent budget, and is this the best method of raising it?'" One wonders how many of the favorers of this report favor a protective tariff. More generally, it may be said that any scheme for raising revenue necessarily has social results as well as fiscal results. No discerning person can find it possible to believe that the Federal Government can tax without producing social results. Discerning persons may disrelish "the alleged social reform" of getting ratably more money from those who have much than from those who have little, where they do not disrelish the alleged social beneficence of endowing American manufacturers and American laborers at the expense of American consumers; but they can not object to taxation by the Federal Government because it has social results.

True enough, the Federal child labor tax was held unconstitutional. But the Federal estate tax was held constitutional. Beyond doubt it is predominantly a fiscal measure, as the child labor tax was not. The regulatory features of a Federal estate tax are collateral. They must be compared with the regulatory features of alternative forms of Federal taxation. The report asks the right question in its concluding sentence under this head, but it does not tell us why more rapid debt reduction should be excluded from "an intelligent budget," and it does not compare the estate tax with the automobile tax and the tariff and the many other forms of Federal taxation to show why the estate tax should be the one to be abandoned—except as it shows its inconvenience to those who have to pay it.

(d) The claim that the Federal estate tax should be retained to get revenue to give grants in aid to the States for highways, education, National Guard, etc., is answered by a disrelish for grants in aid and for Federal expenditures which encourage State expenditures. Neither the claim nor its disapproval has close relation to any particular form of tax.

(e) The claim that the Federal estate tax is needed to correct State inheritance tax policies is next considered. Let us agree that correction by way of credits on the Federal tax of payments of State taxes would be incomplete and uneven. The report does not object to the allowance of a larger credit for State taxes. It objects to the retention of the estate tax for this sole purpose. Whether the tax, if retained, can be made a successful instrument for reducing to a satisfactory degree the inequalities resulting from the varying inheritance tax policies of various States is a subordinate question. If the favorers of the report do not attain their major end of abolishing the Federal estate tax entirely, we may then be grateful for their contribution of reasons why the allowance of credit for State taxes will not go far toward correcting the inequalities resulting from the diversities of State inheritance tax policies.

VII

Part II of the report condemns the gift tax. It says that many constitutional lawyers think it unconstitutional and that President Coolidge has called it of doubtful legality. The report does not go into reasons. Thereby it avoids some of the pitfalls it has stumbled into elsewhere. It says that legal difficulties of construction and the administrative difficulties of collection are out of proportion to the amount to be collected. These suggestions would be worth consideration if they were made specific.

Two contentions made separately may be considered together. The report says that the gift tax prevents normal donations and is not needed to eliminate loss of Federal taxes through gifts to reduce income taxes and estate taxes. No statistics are given. None can be given. The report seems to overlook the facts that would-be donors who are restrained because of the gift tax subject themselves to continued restiveness in the higher brackets of the income tax and subject their legatees to estate taxes on what goes by will instead of by gift inter vivos. Any father desiring to endow his son for other reasons than reduction of taxation would be a hard father if he refrained because of the gift tax and left the son to wait to suffer from an inheritance tax. The report refrains from mathematics and does not affirm that the gift tax makes gifts inter vivos a more expensive method of donation than gifts by will. If it does, this might be a reason for reducing the rate of the gift tax. It would not be a reason for abandoning it so long as the income taxes and the estate taxes remain in force.

The cream of the argument comes in the concluding paragraph, which concedes that gifts inter vivos have been increased by reason of the high rates of the income tax and the estate tax, and then proceeds:

"The remedy, however, is not to continue an additional economic evil—the gift tax—but to reduce the rates of income tax and to abolish the estate tax, so that these taxes will no longer seriously disturb the ordinary economic life of the Nation."

This is the answer to the claim on behalf of the gift tax that it prevents the evasion of other taxes. The way to prevent the evasion of the estate tax, says the report, is to have no estate tax to evade.

The way to prevent the evasion of the income tax is to reduce it, and thereby reduce the temptation to evade it. The way to prevent a man from killing his wife is to have some one else kill her, and thus to have no wife to kill.

A gentle word may be said about the position of the report that "those who believe the estate tax serves a purpose of social economics by aiding the diffusion of wealth can not at the same time logically advocate a gift tax which stops the voluntary diffusion of wealth." The diffusion of wealth, which is the "purpose of social economics," in an estate tax is not a diffusion by a father among his offspring. The estate tax does not promote that diffusion. The diffusion it promotes is a diffusion of the wealth of a decedent not among his family but among many other families by the abstraction of a part by public authority to be devoted to public uses. The same sort of diffusion is promoted by the gift tax. No one ever thought that an estate tax had for its object, or for one of its objects, some inducement to a man to leave his money to his family. That inducement arises aliunde, and may be trusted to continue in spite of estate taxes. If gift taxes are no heavier than the ensuing relief from income taxes and from estate taxes, gift taxes will not thwart any natural inducement of a father to be a live donor instead of a dead one. Gift taxes will, however, thwart inducement to give him gifts for the sole object of reducing income taxes and estate taxes.

Here endeth the consideration of the argument of the report against the gift tax.

VIII

This paper, as confessed at the outset, is an effort at destructive criticism of a memorandum put forward to urge the abolition of the Federal inheritance tax. It is not designed directly as an argument in favor of the retention of the tax. As may be surmised, I am not convinced by the report under review that the arguments it gives are solid arguments. The report, however, may be as feeble in argument as it seems to me, and still the estate tax and the gift tax may be unwise or unnecessary taxes. This, however, is a relative matter. The evils of these taxes should be weighed in comparison with the evils of alternative taxes and the evils of continuing heavy public indebtedness.

That the Federal estate tax is annoying to those who have estates to administer may be conceded. The administrative annoyances of any inheritance tax are hard enough for tax officials and hard enough for executors. The annoyance added by Federal taxation is not great compared to that inflicted by the varying and cumulative demands of the various States. One may sympathize with officials of trust companies in their desire to reduce the annoyance wherever may be. One may sympathize with taxpayers in their desire to abandon that uncongenial rôle by elimination of the tax rather than by admission to the worthy but not select group of those who have nothing to tempt taxation. Such sympathy, however, can not blind us to the fact that inheritance taxation is a well-established means of getting revenue for National as well as for State Governments, and that it takes strong arguments to justify the relinquishment of such a tax by a government indebted to the extent of $20,000,000,000.

What I should like to know from the authors of the report under review is why it is better to prolong heavy income taxation in order to hasten the abandonment of estate taxation. I am the more curious when I find them also urging the reduction of income taxation. I am curious to know how far they think we can go in reducing income taxation to save those in the higher brackets from temptation to split their wealth by gifts to members of their families and still get revenue enough to maintain the present rate of debt reduction. I should like to know what they mean by "the ordinary economic life of the Nation" which is to be saved from serious disturbance by the abolition of the estate tax and the reduction of the income tax. I had thought that the ordinary economic life of the Nation included taxation for the reasonably rapid reduction of heavy public indebtedness. Recent reading of the ticker has not revealed to me the serious disturbance of the ordinary economic life of the Nation by either the income tax or the estate tax.

Recent reading of income-tax levies has revealed a degree of prosperity among lenders, makers, and vendors that has not seemed to me disheartening. I have even assumed that men with large incomes enjoy paying high taxes, for I observe them applauding the position of the Secretary of the Treasury that lower rates on rich men will make rich men pay higher taxes. It has seemed to me that the reports of the settlement of large estates show that governments can get good-sized taxes thereon and still leave something fairly adequate to the needs of widows and orphans. I still need more light on this serious disturbance to the ordinary economic life of the Nation.

I need, too, a fuller consideration of the problem of the national debt than the authors of this report have given me. To me the slogan of tax reduction by debt reduction makes a strong appeal. I read in the report that "no one would expect a business corporation which sees reasonable prospects of an early retirement of its emergency debt out of its current earnings to sell part of its plant to pay that debt after the emergency has passed." I agree. Yet I question the analogy. I have not seen any proposal to sell the National Capitol, the Yellowstone Park, or the Panama Canal. Is the National Government selling part of its plant when it imposes an estate tax, not on itself but on some one else? How early are we going to retire the debt by income taxation and still hope for reduction of income taxation? The war to end war may leave in its train another war to end war. No nation, even one with the wealth of ours, is best prepared for war or for peace with a debt of twenty billions of dollars.

Taxation is in part at least a public problem, and only in part a private problem. In so far as the report of the trust company division of the American Bankers' Association touches upon the public aspect of the problem it seems to me woefully weak. In so far as it hints at or is responsive to the private aspect of the problem I find in it no flaw.

Mr. SMITH. Mr. President, I desire to submit an amendment, which I ask may be printed and lie on the table. I ask that the clerk may read it.

The VICE PRESIDENT. The clerk will read as requested.

The CHIEF CLERK. On page 134, after line 23, insert the following new paragraph:

1. The amount of income taxes imposed by this act shall be assessed within two years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

And, on page 135, in line 3, strike out the words "and by this act."

The VICE PRESIDENT. The amendment will be printed and lie on the table.

THE COAL SITUATION

Mr. COPELAND. I ask permission to have printed in the RECORD an article by Father John J. Curran, which is entitled "The big stick is needed," published in Collier's National Weekly, and also a leading editorial in the New York World of to-day, which is entitled "The art of doing nothing—and some reasons."

There being no objection, the matter referred to was ordered printed in the RECORD, as follows:

[From Colliers', the National Weekly, for February 13, 1926]

THE BIG STICK IS NEEDED

(By Father John J. Curran, for 40 years a potent mediating force between coal miner and operator)

One punch from the White House would reopen the coal mines, send 158,000 men back to work, and alleviate the terrible winter suffering of more than a million women and children. Let's have that punch from the President!

All yearn for peace.

President Coolidge well might be guided to-day by the spirit of Theodore Roosevelt. In the summer of 1912, when Colonel Roosevelt came to Wilkes-Barre to attend my silver jubilee, we recalled the strenuous days of 1902, when we worked successfully to end the so-called Mitchell strike, that kept the anthracite miners idle for six months.

"Father Curran," my dear friend said to me then, "if the operators and the men had not agreed to arbitration in 1902 I would have put the United States Regulars into the mines to dig coal. I would have seized a pick and gone with the Army. And you would have been at my side. Perhaps I would have been impeached, but we would have moved the coal out of the mines and into the bins!"

Vital differences prolonged the stubborn deadlock of 1902. No such condition exists now. There are but two substantial points of difference between the opposing factions. The miners insist upon arbitrating wages upward only. The operators wish to arbitrate downward also at any time within the proposed five-year life of a board of conciliation. The miners demand the "check off"—a deduction of union dues from each pay envelope. The operators refuse this demand in toto.

The miners, upon the recommendation of Governor Pinchot, have receded materially from their original stand as regards arbitration and wages. I have talked with representatives of the operators, and I feel certain that a strong word from the President would bring to an end this intolerable suspension of mining.

This is the time for the President to move decisively and firmly.

I speak from experience. For my memory goes back to the six-months strike of 1869, when I marched out of a mine near Pittston in protest over threatened reduction in wages. I was 10 years old and a mule driver. A year before I had been promoted from my job as breaker boy. I earned a nickel an hour picking slate out of the coal as it raced through the chutes.

As a mule driver I earned more than 70 cents a day! I worked from 7 in the morning until 6 in the evening, six days a week, and I never saw the sun from Sunday to Sunday.

Conditions are different to-day. Spiritually different, too, thank God. There is no longer the bitter personal hatred so marked, for instance, in the strike of 1902.

That strike, President Roosevelt truly said, "threatened the Nation with disaster second to none which has befallen since the days of the Civil War."

Often the colonel and I talked over the 1902 days. I remember when he stayed with me during my jubilee. One morning at breakfast he wanted another cup of coffee. He astonished the serving girl by leaping from the table and carrying his cup into the kitchen to be refilled.

The colonel was always very much interested in advice I always gave strikers: Observe the law; avoid liquor as you would the plague; go into the fields and work.

I don't believe in coercion. Suggestion is a more powerful agent in making men do the right thing.

The time is now at hand for a bit of suggestion from the White House to the warring factions in the present strike. Moral pressure from the President of the United States would reopen the mines.

Apply this pressure, Mr. Coolidge!

[From the New York World, February 11, 1926]

THE ART OF DOING NOTHING—AND SOME REASONS

This is the second coal strike and the third session of Congress since Mr. Coolidge became President. Twice in general terms he has recommended legislation which would go far to prevent strikes in the future. And yet Mr. Coolidge sits coolly in the White House and has not even written a letter to a Senator or given out an anonymous hint through his spokesman that he favors any particular coal bill before Congress and would like to see it enacted. Practically, Mr. Coolidge has done nothing and is doing nothing about the most serious industrial question of his administration. His half-hearted recommendations made in 1923, forgotten in 1924, and renewed even more timidly in 1925, do not count as action. Until the administration has a bill backed by the White House and the Republican majority in Congress, it is fair and it is true to say that the President is not seriously trying to do anything.

It is pertinent to ask why Mr. Coolidge is so little interested in his own recommendations. One explanation, of course, is that, temperamentally, Mr. Coolidge always prefers doing nothing. He hates to commit himself to a definite course of positive action, he dislikes the trouble and worry of trying to lead his party, he is afraid of rows, and he is gun-shy after the repeated drubbings administered to him by his party in Congress. Never having made a success of his leadership in Congress, he does not wish to risk another failure. To do anything about coal would involve certain risks, and Mr. Coolidge does not like to take risks. He is shrewd enough to know that in about six weeks mild weather will be here, and then the agitation about coal will die down. By next winter the strike will probably be settled, and the next strike may not come for some time.

There are other reasons why Mr. Coolidge is not ardent about his recommendations. The brunt of the strike is borne by the State of Pennsylvania, which is so solidly Republican that it can't squeal. The inconvenience of the strike is felt chiefly in New England and in the Middle Atlantic States, where Mr. Coolidge is so well intrenched among conservatives that he can afford to defy the discontent of the people of small means in the cities, who are generally Democratic anyway. The profits of the strike accrue to the soft-coal interests in politically doubtful States like West Virginia, Kentucky, Ohio, Indiana, Illinois, Missouri, which is very satisfactory from the point of view of party strategy.

Above all, the recommendations include provision for publicity of the coal operators' accounts under Federal supervision, and that is not the sort of thing that Mr. Coolidge, or Mr. Mellon's pretorian guard of industrial captains, cares to see enacted into law. He has sworn not to interfere with the prerogatives of big business and to defend it against all inspection and regulation by the Government. The coal proposals made by the Hammond commission and sponsored by Mr. Coolidge in effect declare coal a public utility and subject the coal companies to Federal regulation. Calvin Coolidge does not see himself gladly as the sponsor of legislation which Mr. Mellon's following must regard as almost bolshevist in its implications. That at bottom is the compelling reason why Mr. Coolidge is determined to do nothing to protect the public against recurrence of the strikes. The proposals he is committed to are contrary to his philosophy, and as a precedent they are objectionable to the large interests which Mr. Coolidge has set himself to please.

RECESS

Mr. SMOOT. I move that the Senate carry out the order previously made with reference to a recess.

The motion was agreed to; and the Senate (at 10 o'clock and 8 minutes p. m.), in accordance with the order previously entered, took a recess until to-morrow, Friday, February 12, 1926, at 11 o'clock a. m.

HOUSE OF REPRESENTATIVES

THURSDAY, *February 11, 1926*

The House met at 12 o'clock noon.

Rev. S. Carroll Coale, McKendree Methodist Episcopal Church, offered the following prayer:

Almighty God, before whom we bow in humility and reverence, unto whom the heart of humanity must always turn, wilt Thou be pleased to smile upon us with smiles of approval as we, Thy children, pray. Grant that upon this gathering here assembled there might come that assurance of Thy guidance and care. Be pleased to direct and prosper all of their consultations that out of them there may come glory to the church, advancement to the Kingdom of God, and safety and protection to Thy children, that down through the years Thy children may have piety and religion, honor and happiness, justice and peace. May each person in Thy presence know the intimacy of Thy fellowship so that in the years to come we may know that there is One who stands by us in our problems,