50TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 46.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING,

In response to Senate resolution of December 20, 1888, information relative to amount required to pay George F. Roberts and others for money erroneously collected.

JANUARY 3, 1889.—Referred to the Committee on Appropriations and ordered to be printed.

TREASURY DEPARTMENT,
January 2, 1889.

SIR: In compliance with the resolution of the Senate of the 20th ultimo—

That the Secretary of the Treasury be, and is hereby, directed to estimate the amount required to pay George F. Roberts, administrator, etc., Silas Q. Howe, and Henry W. Smith the alleged excess money erroneously collected as set forth in Senate bill No. 2001, first session, Fiftieth Congress, and report the amount for the information of the Senate—

I have the honor to transmit herewith the information called for as furnished by the Commissioner of Internal Revenue on the 31st ultimo

Respectfully, yours,

C. S. FAIRCHILD,
Secretary.

The PRESIDENT PRO TEMPORE U. S. SENATE.

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, December 31, 1888.

SIR: I have the honor to return herewith a resolution of the United States Senate and other papers submitted by you, calling for information relative to Senate bill 2001, with the following report:

The amount paid by W. T. Pate & Co., on distilled spirits, in excess of the quantity withdrawn by them from the United States bonded warehouse between July 1 and December 31, 1864, stated in Senate bill 2001 at $19.622.19, is the difference between the actual amount originally claimed, $19,908, and $245.81 allowed as leakage *in transit* in December, 1864. (See letter from Commissioner Raum to Secretary Folger, dated May 18, 1882.) A careful auditing of the claim of Pate & Co. at

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

that time showed that $19,662.19 was the true amount paid on spirits lost in warehouse.

The claims of Thayer Brothers and T. and J. W. Gaff & Co. have not been audited, and as the Senate resolution calls only for an estimate of the "alleged excess money erroneously collected," I am prepared to say, without waiting for a thorough auditing of the accounts, that the sums named in the Senate bill 2001 appear to be the probable amounts paid by the respective firms for taxes on distilled spirits in excess of the quantity withdrawn by them from warehouse.

Should the bill become a law the amounts to be actually refunded will be determined afterward by an examination which shall show to the satisfaction of the Commissioner of Internal Revenue the amounts paid.

Respectfully, yours,

E. HENDERSON,
Acting Commissioner.

Hon. C. S. FAIRCHILD,
Secretary of the Treasury.

WASHINGTON, *December* 21, 1888.

DEAR SIR: As the attorney for the claimants mentioned in the resolution of the Senate of the United States, passed December 20, 1888, submitted by Senator Turpie, to wit:

"*Resolved*, That the Secretary of the Treasury be, and is hereby, directed to estimate the amount required to pay George F. Roberts, administrator, etc., Silas Q. Howe, and Henry W. Smith the alleged excess money erroneously collected as set forth in Senate bill No. 2001, first session, in Fiftieth Congress, and report the amount for the information of the Senate,"

I beg leave to submit the following: The amount required to pay George F. Roberts, administrator of Thayer Brothers, the "alleged excess money erroneously collected" will be shown by reference to the following records on file in the Bureau of Internal Revenue, viz: Claim on Form 46; affidavit of claimant; certificates of the assistant assessor, the assessor, and the collector of internal revenue; affidavit of the United States inspector and keeper of the Government bonded warehouse, and the original receipts, etc.

Also by reference to Congressional proceedings: See H. R. bill 8253, Report 2609 from the Committee on Ways and Means, Forty-eighth Congress, second session, February 18, 1885. H. R. bill 1264, Report 1122 from the Committee on Claims, Forty-ninth Congress, first session, March 17, 1886. S. bill 559, Report 1230 from the Committee on Claims, Forty-ninth Congress, first session, May 26, 1886. H. R. bill 2127, Report 513 from the Committee on Claims, Fiftieth Congress, first session, February 15, 1888. S. bill 2001, Report 278 from the Committee on Claims, Fiftieth Congress, first session, February 15, 1888.

The records having reference to the estimate required by the Senate resolution in the matter of S. Q. Howe, of Pate & Co., are on file in same Bureau. See Commissioner Jos. S. Miller's letter to the Secretary of the Treasury. Extract. "The case of Pate & Co. and Thayer Brothers appear to be in all essential respects similar."

This claim has been examined in the Office of Internal Revenue, and submitted for allowance, July 7, 1880. See indorsements on same. See letter of Commissioner Raum to the Secretary of the Treasury of May 18, 1882. See letter of Commissioner Miller to chairman Senate Committee on Claims, of February 10, 1888.

The required estimate in the case of Henry W. Smith can be made by an examination of the aforementioned records, together with the accompanying certified copy of the original papers and proofs on file before Congress.

Sworn statement on Form 46 of the claimants. Certificates of the deputy collector, the collector, and the United States assistant assessor of internal revenue, together with the certificate of the clerk in charge of the division of accounts. Affidavits of United States inspectors and certificate of the late deputy collector.

To facilitate the Department in furnishing the required information to the Senate, I submit herewith the following, viz: (1) H. R. bill 8253 and Report 2609; (2) H. R.

bill 1264 and Report 1122; (3) S. bill 559 and Report 1230; (4) H. R. bill 2127 and Report 513; (5) S. bill 2001 and Report 279.

Certified copies of proofs, etc., in the H. W. Smith case and also written copies claimants' petition; claimants' affidavit; form 46, certified by deputy collector, clerk in charge of division of accounts, late collector, late assistant assessor, and the present collector of internal revenue; affidavits of United States Inspectors W. F. Sanks and John Gill; certificate of late Deputy Collector Thomas Patterson; affidavit of H. W. Smith, and sworn statement showing quantity of spirits removed from United States bonded warehouse, quantity shipped, and leakage allowed in transit and taxes collected.

Respectfully submitted.

V. B. EDWARDS,
Attorney for Claimants.

The SECRETARY OF THE TREASURY.

[Indorsement.]

TREASURY DEPARTMENT, *December* 24, 1888.

Respectfully referred to the honorable Commissioner of Internal Revenue in connection with Senate resolution referred on the 22d instant.

C. S. FAIRCHILD,
Secretary.

To the Senate and House of Representatives of the United States in Congress assembled:

Your petitioner respectfully represents that he is the surviving partner of the firm of T. & J. W. Gaff & Co., of the city of Aurora, Ind.

That between July 1, 1864, and December 31, 1864, said firm placed in a bonded warehouse in the fourth collection district of Indiana, in said city, 4,254 barrels of distilled spirits; that when the same were withdrawn from said bonded warehouse there had leaked or evaporated of said spirits by a fair and reasonable estimate of 9,375 proof gallons, the tax at $1.50 amounting to $14,062.50, which was assessed, collected, and paid; as they were required by the collector of said district to pay on the quantity placed in the bonded warehouse, except 2,176 proof gallons, which the collector allowed in the settlement of the bonded account, but which item of 2,176 gallons ought not to be taken into account in the refunding of the loss by leakage while in bonded warehouse, for the reason that the loss by leakage while *in transitu* would amount to this item, and the leakage making up this was only calculated on the quantity out of bonded warehouse and shipped to the wholesale market.

Your petitioner says that about the year 1866 said firm employed V. B. Edwards, an attorney at law, to prosecute the claims of said firm for leakage of distilled spirits while *in transitu*, and the Government allowed the leakage *in transitu*, occurring during a specified time, as provided by regulations. Your petitioner is informed that said employment of said Edwards also included the claim for loss while in bonded warehouse, and that the said Edwards did not present the same to the Commissioners of Internal Revenue for a refund for the reason that he had another claim similar to this and was only waiting a final decision in that case, and that the similar case was only decided recently, in the year 1882. That your petitioner is informed that the Court of Claims had no jurisdiction of such claims (7 Wallace, 122; 9 Court Claims, 367), and that the United States circuit court had none (9 Wallace, 560).

That, in corroboration of this statement, he files herewith as part of this petition Exhibit A, certified to by the officers of internal revenue, who are cognizant of the facts before stated.

That said spirits, while stored in said bonded warehouse, were under the control of the collector of internal revenue for said district, or the storekeeper appointed by said collector. Your petitioner is informed that the regulations issued and the law allow the loss by leakage, etc., while in bonded warehouse and that the United States Supreme Court has decided that the tax could only be assessed and collected on the quantity actually sold or removed for sale (97 U. S., 268).

Your petitioner therefore prays that a bill pass to pay said sum.

HENRY W. SMITH.

Subscribed and sworn to before me this 18th day of August, A. D. 1885.

[SEAL.] D. LOSTUTTER, Jr.,
Notary Public.

[Form 46—Revised June 3, 1880.]

United States internal revenue.—Claim under series 7, *No.* 14, *for taxes improperly paid.*

STATE OF INDIANA, *County of Dearborn, ss:*

Henry W. Smith, of the city of Aurora and State and county aforesaid, being duly sworn according to law, deposes and says, that he is the surviving partner of the firm of T. and J. W. Gaff & Co.; that they were engaged in the business of distilling spirits; that upon August 31, 1864, and December 31, A. D. 1864, they were assessed an internal-revenue tax of three hundred and nine thousand eight hundred and fifty-eight dollars and seventy-five cents upon distilled spirits placed in a bonded warehouse, which amount they afterwards, on August 31, 1864, and December 14, 21, 31, A. D. 1864, paid to James L. Yates, esq., collector of internal revenue for the 4th district of Indiana, $14,062.50, of which assessment and payment of the aforesaid tax was, as this deponent verily believes, erroneous and improper for the following reasons, viz: That between July 1, 1864, and December 31, 1864, they deposited in a bonded warehouse, approved by the collector of said district, 4,254 barrels of distilled spirits, containing 208,748½ gallons; that when the same were withdrawn by average they only contained 199,373½ gallons, making by average the loss by leakage and evaporation 9,375 gallons; that the loss occurred while said spirits were stored in said bonded warehouse and under the control of the collector, and the identical barrels of spirits in which occurred the loss, and the tax assessed and collected, and could not be sold or removed for sale or enter into the consumption of the county, except 2,176 gallons deducted from the quantity out of bond and shipped, and which would only cover the loss while in transit before reaching the wholesale market.

And this deponent now claims that, by reason of the aforesaid erroneous assessment and payment of the said sum of fourteen thousand and sixty-two and $\frac{50}{100}$ dollars, he is justly entitled to have the sum of fourteen thousand and sixty-two and $\frac{50}{100}$ dollars refunded, and he now asks and demands the same. And this deponent further makes oath that he has not heretofore presented any claim for the refunding of the above amount or any part thereof.

HENRY W. SMITH.

Sworn and subscribed before me this 18th day of August, A. D. 1885.

[SEAL.] D. LOSTUTTER, Jr.,
Notary Public.

DEPUTY COLLECTOR'S CERTIFICATE.

I, George Phalgraf, deputy collector, 2nd division, 6th district, do hereby certify that I have personally investigated the statements made in the within affidavit by comparing the quantity claimed for leakage with the quantity actually allowed for leakage during subsequent years, and from the best information I can obtain, after careful inquiry, I believe such statements to be in all respects just and true.

Dated Lawrenceburg, Ind.

GEORGE PHALGRAF,
Deputy Collector, 2nd Division, 6th District.

25th day of August, A. D. 1885.

CERTIFICATE OF CLERK IN CHARGE OF RECORDS IN OFFICE OF COMMISSIONER OF INTERNAL REVENUE.

I hereby certify that the records in this office show that receipts on Form 61 were given by late Collector J. L. Yates, covering the amounts mentioned on the first page of Collector Hunter's certificate, and that his reports on Forms 86 and 87 show that the same was collected.

B. H. COLLINS,
In charge of Division of Accounts.

Division of Accounts, September 30, 1885.

COLLECTOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the matters set forth in the within affidavit and am satisfied that the statements are, in all respects, just and true; and I further certify, upon personal examination, that I find the sum for July, $57,415.50; Aug., $55,524, and Sept., $79,206.00, reported against the said T. and J. W. Gaff & Co., on page 1, line 1, of the list on Form 60, for July, Aug., and Sept., 1864; and also the sum for Oct., $72,331.50, Nov., $48,291.75, and Dec., $115,109.25, reported against T. and J. W. Gaff & Co., on page 1, line 1, of the lists on Form 60, for December, 1864, now on file in my office; and that the same was paid to me on August

31 and Sept. 16, 1864, and on the 2, 15, 22, 21 days of December, 1864, and are included in my aggregate receipts for said lists, the receipts amounting to $643,209.00, and transmitted to the Commissioner of Internal Revenue; and that no claim for the assessment herein complained of has heretofore been presented. The money herein claimed was not paid on a compromise, and that I was the collector of internal revenue in 1864, during the time said spirits were deposited and withdrawn from bonded warehouse.

JAMES L. YATES,
Late Collector, 4th District, Indiana.

Dated October 12th, 1885.

ASSISTANT ASSESSOR'S CERTIFICATE.

I hereby certify that I was assistant at the time said spirits were bonded and withdrawn from bonded warehouse in 1864; that I was well acquainted with the members of the firm of T. and J. W. Gaff & Co., in 1864, and from their high standing and careful investigation of the facts set forth in the within affidavit, I believe the statements to be in all respects just and true.

P. LOUIS MATHEWS,
Late Assistant Assessor, —— Division, 4th District.

Dated August 25, 1885.

UNITED STATES INTERNAL-REVENUE
COLLECTOR'S OFFICE, 6TH DISTRICT, INDIANA,
Lawrenceburg, Aug. 25th, 1885.

I hereby certify from present personal examination and the personal knowledge of said firm, I believe the statements to be in all respects just and true, and that I find the sum of $427,878.00 reported against T. and J. W. Gaff & Co., on page one, line one of the lists on Form 60, for the following months, to wit: July, $57,415.50; Aug., $55,524.00; Sept., $79,206.00; Oct., $72,331.50; Nov., $48,291.75; Dec., $115,119.50; and are included in the aggregate receipt for said lists, the receipts amounting in July, $114,537; in Aug., $106,431; in Sept., $126,576; in Oct., $108,277.50; in Nov., $66,978; in December, $120,409.50, which were transmitted to the Commissioner of Internal Revenue, and that I do not find that any claim for the assessment complained of has heretofore been presented, nor do I find anything going to show that the money herein claimed was paid on a compromise.

WM. D. H. HUNTER,
Collector.

August 25th, 1885.

UNITED STATES INTERNAL REVENUE,
COLLECTOR'S OFFICE, SIXTH DISTRICT, INDIANA,
Lawrenceburgh, September 11, 1885.

I hereby certify that I find from present personal examination that the amounts stated in my certificate dated August 25, 1885, and reported against T. and J. W. Gaff & Co., on page 1, line 1 of lists on form 60, for the year 1864, as follows, viz:

July	$57,415.50	October	$72,331.50
August	55,524.00	November	48,291.75
September	79,206.00	December	115,109.25

and covered by aggregate receipts, form 61, as follows, viz:

July	$114,537.00	October	$108,277.50
August	106,431.00	November	66,978.00
September	126,576.00	December	120,409.50

which receipts were duly transmitted to the Commissioner of Internal Revenue, were paid as appears from daily record of internal-revenue collections for the fourth district of Indiana, as follows, viz:

August 31, 1864	$11,726.25	December 15, 1864	$48,890.25
September 16, 1864	3,704.25	December 22, 1864	76,391.25
December 2, 1864	9,470.25	December 31, 1864	273,540.75

WM. D. H. HUNTER,
Collector Sixth District, Indiana.

[No. 4340.]

DISTILLER'S LICENSE.

Record of materials used and spirits distilled, removed to other collection districts, exported and sold or removed for consumption or sale, at the distillery carried on by T. and J. W. Gaff & Co., in the city of Aurora, county of Dearborn and State of Indiana.

Date of distilling.	Quantities of grain, or other vegetable productions, or other substances, put into the mash tub, or otherwise used.						Spirits distilled.		
	Malt.	Barley.	Rye.	Corn.	Mill feed.	Total.	Wine, gallons.	Strength.	Proof gallons.
1864.	*Bush.*	*Bush.*	*Bush.*	*Bush.*	*Bush.*	*Bush.*			
Dec. 1	17	.....	8	256	119	400	821½	156	977½
2	17	.....	8	256	119	400	4,122	860	4,982½
3	17	.....	8	256	119	400	.....	.....	.....
5	34	.....	17	512	237	800	4,141½	967	5,108½
6	17	.....	8	256	119	400	.....	.....	.....
7	34	.....	17	512	237	800	.....	.....	.....
8	17	.....	8	256	119	400	.....	.....	.....
9	17	.....	151	180	52	400	.....	.....	.....
0	17	.....	151	180	52	400	.....	.....	.....
	187	.....	376	2,664	1,173	4,400	9,085½	1,983	11,068½
	17	.....	151	180	52	400	2,542	153	2,695
13	17	.....	8	256	119	400	.....	.....	.....
14	34	.....	17	512	237	800	2,151½	495	2,646½
15	17	.....	8	256	119	400	2,136½	513	2,649½
16	17	.....	151	180	52	400	1,248	300	1,548
17	34	.....	302	360	104	800	3,188	129	3,317
19	17	.....	151	180	52	400	.....	.....	.....
20	34	.....	302	360	104	800	3,949½	254	4,203½
	187	.....	1,090	2,284	839	4,400	15,215½	1,844	17,059½
21	17	.....	151	180	52	400	941	116	2,057
22	17	.....	151	180	52	400	2,075	457	2,532
23	34	.....	17	512	237	800	3,021	665	3,686
24	17	.....	8	256	119	400	1,493½	90	1,583½
25	51	.....	25	768	356	1,200	3,053	672	3,725
26	34	.....	17	512	237	800	3,108	746	3,854
27	17	.....	8	256	119	400	2,638½	660	3,298½
28	51	396	25	560	168	1,200	4,122	989	5,111
29	68	.....	34	1,024	474	1,600	3,260	Proof	3,260
30	68	.....	34	1,024	474	1,600	4,147	924	5,071
31	85	.....	42	1,280	593	2,000	4,447½	878	5,325½
	459	396	512	6,552	2,881	10,800	33,306½	6,197	39,503¼

Dec. 5.	Out of bond 90 barrels shipped	4,521
8.	Out of bond 100 barrels shipped	4,976½
9.	Out of bond 100 barrels shipped	4,853½
10.	Out of bond 152 barrels shipped	7,527
		21,878
	Deduct leakage	242
		21,636
Shipped	11,068½	
Less leakage	111	
		10,957½
		32,593½

32,594½ proof gallons, at $1.50 per gallon, equals $48,890.25.
Paid amount of the above tax to Thomas Pattison, deputy collector.
December 14, 1864.

H. W. SMITH, *Distiller.*

Out of bond 690 barrels shipped		34,369
Deduct leakage		433
		33,936
	17,059½	
Less leakage 6,844	68	
		16,991½
		50,927½

50,927½ proof gallons, at $1.50 per gallon, equals $76,391.25.
Paid amount of the above tax to Thomas Pattison, deputy collector.

H. W. SMITH, *Distiller.*

Out of bond 2,962 barrels	144,684	
Less leakage on 124,511 gallons shipped	1,501	
		143,183
	39,503½	
Less leakage on 32,603 gallons shipped	326	
		39,177½
		182,360½

182,360½ proof gallons, at $1.50 per gallon, equals $273,540.75.
Paid amount of the above tax to Thomas Pattison, deputy collector.
December 31, 1864.

H. W. SMITH, *Distiller.*

I, H. W. Smith, do swear that the annexed entries were made by me on the respective days specified and that they state, according to the best of my knowledge and belief, the whole quantity of spirituous liquors distilled, removed to other districts, exported, and sold or removed for consumption or sale, at the distillery carried on by T. and J. W. Gaff & Co.

H. W. SMITH.

Sworn before me—

P. L. MATHEWS.

STATE OF INDIANA, *County of Dearborn, sct:*

Henry W. Smith, of the city of Aurora, State and county aforesaid, being duly sworn according to law, deposes and says that the foregoing is a true and complete copy of the distiller's book, kept by the firm of T. & J. W. Gaff & Co., of said city, for the month of December, 1864, showing the quantity withdrawn from bonded warehouse in said month; that said spirits were shipped to Cincinnati, Ohio, a distance under 100 miles, and to Louisville, Ky., a distance under 150 miles, the greater portion thereof to Louisville, Ky., and that they were not diverted to any other point than the ones named in the bills of lading, so far as affiant knows.

HENRY W. SMITH.

Subscribed and sworn to before me this 26th day of August, 1887.
[SEAL.] D. LOSTUTTER, JR.,
Notary Public.

LATE DEPUTY COLLECTOR'S CERTIFICATE.

I hereby certify that I was deputy collector in the fourth collection district of Indiana at the time the spirits mentioned in the affidavit of Henry W. Smith, of date of August 18, 1885, were bonded, and withdrawn from bonded warehouse in 1864; that I was well acquainted with the members of the firm of T. and J. W. Gaff & Co. in 1864; from their high standing, and the careful examination of the facts set forth in the affidavit of said Smith, I believe the statements to be, in all respects, just and true. The taxes therein specified were paid to me as deputy collector, in person, and the number of gallons deducted for leakage, as set forth in the distiller's book of said firm for the month of December, 1864, was 1 per cent. allowed on the gallons shipped (see circular No. 13, March 12, 1864), and the actual loss on said spirits, while stored in United States bonded warehouses, was not deducted or allowed by me when said taxes were paid as aforesaid.

THOS. PATTISON.

CHICAGO, ILL., *October* 27, 1887.

STATE OF TENNESSEE, *County of Hamilton, sct:*

Personally appeared before me, Francis E. Tyler, a notary public in and for said county, William F. Sanks, of Chattanooga, Tenn., being duly sworn according to law deposes and says, that he was an assistant inspector of distilled spirits, and had in charge the distillery in Harrison, Ind., for the years 1863 and 1864; that he inspected all the spirits at Dair & Co. distillery, and inspected 2,707 barrels which were deposited in a bonded warehouse from July 1 to December 31, 1864, and also inspected the quantity to refill the barrels that had leaked, and from his experience in actual inspection as aforesaid, he is of the opinion that 4,254 barrels of spirits, containing 208,748½ gallons, deposited in bonded warehouse from July 1 to December 1, 1864, and remaining therein until December 31, 1864, the loss by leakage and evaporation would be 9,375 gallons, as stated in the affidavit of Henry W. Smith, of date of August 18, 1885, and certified to by the United States internal-revenue officers, and that a claim for the loss by leakage and evaporation of 9,375 gallons would be fair and reasonable, as it is a well-known fact that all spirits stored in a bonded warehouse will evaporate and leak in proportion to the time they are in warehouse. Affiant is not related to the claimants, and has no interest, direct or indirect, in this claim.

W. F. SANKS.

Subscribed and sworn to before me this 31st day of August, A. D. 1887.
[SEAL.] FRANCIS E. TYLER,
Notary Public.

STATE OF MISSOURI, *County of Jackson, sct:*

John Gill, of Kansas City, State aforesaid, being by me duly sworn according to law, deposes and says that he was a United States inspector of distilled spirits, in and for the third collection district of the State of Indiana, from January, 1863, to the latter part of the year 1866, that he also had charge of United States bonded warehouses in said district, in which large quantities of distilled spirits were deposited and also withdrawn from July 1, 1864, to December 31, 1864, and from his personal knowledge, derived from actual inspections and re-inspections of distilled spirits deposited and withdrawn from bonded warehouses, he would estimate the loss by leakage and evaporation, while in bonded warehouse, on 4,254 barrels of distilled spirits, deposited in August, September, October, November, and December, 1864, and if they contained 208,748 gallons, and remained in warehouse until December 31, 1864, to be 9,375 gallons, and a claim for that quantity would be fair and reasonable, as it is a well-known fact that there is a loss by leakage and evaporation of spirits while in warehouse, and the loss by leakage and evaporation of spirits in warehouse the length of time indicated would be considerable, if not more, than the estimate. Affiant says he has not interest in this claim, and is not related to the claimants.

JOHN GILL.

Subscribed and sworn to before me this sixth day of September, A. D. 1887.
[SEAL.] W. J. STRONG,
Norary Public.

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, October 3, 1885.

SIR: In replying to yours of the 28th ultimo you are informed that the records of this office show that late Collector J. L Yates gave receipts on Form 61, covering the amounts mentioned on the first page of the certificate of Collector Hunter, dated September 11, 1885, submitted by you, and that the collector's reports on Forms 86 and 87 show that the said amounts were collected.

Respectfully,

H. C. ROGERS,
Acting Commissioner.

V. B. EDWARDS, Esq.,
Attorney at Law, Washington, D. C.

[Senate Report No. 279, Fiftieth Congress, first session.]

The Committee on Claims, to whom was referred the bill (S. 402) for the relief of George F. Roberts, administrator of the estate of William B. Thayer, deceased, surviving partner of Thayer Brothers, and others, beg leave to report as follows:

A similar bill was before this committee at the first session of the Forty-ninth Congress, at which time the following report, submitted by Senator Whitthorne, was agreed to:

Thayer Brothers, Pate & Co., and J. W. Gaff & Co., in the year 1864, had deposited a large quantity of distilled spirits in a United States bonded warehouse, then under the control of officers of the Government charged with the collection of the internal revenue. That it further appears that the quantity so deposited is correctly stated in the petition of said parties filed with said bill; that it further appears that the quantity originally deposited is correctly stated, as is also the quantity withdrawn; and that during the time said spirits were so deposited, and the time at which the said spirits were withdrawn, there was a percentage of leakage, whereby, as is shown in the case of Thayer Brothers, there is a loss of 7,193.53 gallons; in the case of Pate & Co. a loss of 13,272 gallons; and in the case of J. W. Gaff & Co. a loss of 9,375 gallons. And that it further appears, under directions of the Commissioner of Internal Revenue, these parties severally paid the tax required by law on the quantity originally deposited, without regard to fact of loss by leakage in the year 1867; and that against this said parties then and ever since protested in mode and manner as from time to time they have been advised was best to secure relief, their last resort being to Congress for such relief; their appeal being a protest that such collection of taxes was against a proper construction of the act of Congress, June 30, 1864 (section 55), and was against the practice and rulings of the Internal Revenue Office.

Under this enforced collection of taxes upon the quantity lost whilst in the custody of the Government it is claimed, and shown by the proof correctly claimed, that Thayer Brothers paid $10,790.32, Pate & Co. paid $19,662.19, and J. W. Gaff & Co. paid $14,062.50.

There is no question about the facts involved, but there is one as to the proper construction of the act of Congress referred to.

Section 55 of act of Congress approved June 30, 1864, enacts "that in addition to the duties payable for licenses herein provided, there shall be levied, collected, and paid on all spirits that may be distilled and sold, or distilled and removed for consumption or sale of first proof, on and after the 1st day of July, 1864, and prior to the 1st day of February, 1865, a duty of one dollar and fifty cents on each and every gallon." (13 U. S. Stat. L., 243.)

The rules and regulations prescribed by the Commissioner of Internal Revenue, with the sanction of the Secretary of the Treasury, and as acted on by the office and by subsequent Commissioners and Secretaries, notably Secretary Sherman and Commissioner Raum, show, in the language of Secretary Sherman (of date November 14, 1877):

"There can be no doubt that the assessments for leakage were erroneous and improper."

This in the Whalley case, where the tax was refunded.

The decisions of the Supreme Court sustain the efficacy of power of rules so made and acted on. These facts and law, taken in connection with the decision of the Supreme Court in Lillenthal *v.* United States, 1877 (97 U. S., 268), which, in construing a different section of same act of Congress, by analogy and logic settle the proper construction of section 55, and support the opinion of Secretary Sherman, that the assessment of taxes in such a case as the pending one was erroneous, and hence this committee believe that the taxes collected as aforesaid were illegally collected and should be refunded.

In this conclusion they are supported by favorable reports made from time to time from committees in the House of Representatives, one of which, because of its fullness in detailing the facts, etc., of these cases, they here refer to and adopt as a part of this report, to wit, the report of Mr. Howard, Forty-ninth Congress, first session, H. R. No. 1122. (See Appendix A.)

Your committee add that the same question involved herein was presented under Senate bill No. 1839 (old bill 520), for relief of Richard C. Ridgeway and others, and a report made thereon by Hon. H. E. Jackson in behalf of this committee, and, as thus giving the views of this committee, is here and now referred to as persuasive. (See Senate report No. 219, first session Forty-ninth Congress.)

Appendix A.

[House Report No. 1122, Forty-ninth Congress, first session.]

The Committee on Claims, to whom was referred the bill (H. R. 1264) for relief of George F. Roberts, administrator of Thayer Brothers, Silas Q. Howe, surviving partner of W. T. Pate & Co., and Henry W. Smith, surviving partner of T. and J. W. Gaff & Co., have had the same under consideration, and now report it back to the House with the recommendation that it be passed.

The report made by the Committee on Ways and Means of the Forty-eighth Congress, second session, states the facts connected with the claim of Thayer Brothers, and your committee adopt the same.

The material facts in the case of Thayer Brothers are that, during the period from July 1 to December 31, 1864, they deposited in a bonded warehouse in the fifth district of Illinois, which was under the control of the collector and the store-keeper, 3,100 barrels of distilled spirits, containing when deposited, as shown by the certificates of the inspector, 190.182.12 gallons; that when said barrels were withdrawn and re-inspected there were, as shown by the re-inspection, only 182,988.58 gallons, making an actual loss while in said warehouse of 7,193.54 gallons; that they were required by the collector to pay the tax of $1.50 per gallon upon the quantity placed in the bonded warehouse, making the tax paid on the quantity lost by leakage while in warehouse $10,790.32. They filed their affidavit on the regular form (46) with the Commissioner of Internal Revenue for a refund of said tax July 18, 1867, averring the facts to be as above stated, and that the tax paid on the quantity lost by leakage while in warehouse was illegal, erroneous, and improper, and ought to be refunded, and to this affidavit was affixed the certificates of the proper internal-revenue officers.

The assistant assessor certified to the facts as follows:

ASSISTANT ASSESSOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the facts set forth in the within affidavit, and that I believe the statements to be in all respects just and true.
August 22, 1867.

THOMAS ELLIS,
Assistant Assessor, Fourth Division, Fifth District.

The assessor also certified to the facts as follows:

ASSESSOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the facts set forth in the within affidavit of William B. Thayer, and that I believe the statements to be in all respects just and true; and I further certify that, from present personal examination, I find the sum of $10,790.32 is part of $432,976.09 reported against the said Thayer Brothers on page 1, line 15, of the list on Form 60, for December, 1864, now on file in my office, and that the tax is included in the collector's aggregate receipt for the said list transmitted by me to the Commissioner of Internal Revenue, and that the claim has not heretofore been allowed in any form. Said receipt amounts to $713,632.23.
September 10, 1867.

GEORGE I. BERGEN,
Assessor, Fifth District, Illinois.

The collector of the district at the time the tax was paid certifies as follows:

COLLECTOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the facts set forth in the within affidavit, and am satisfied that the statements are in all respects just and true; and I further certify, upon personal examination, that the name of the claimant and the amount claimed are found reported on Form 60, for December, 1864, now on file in my office, and that the same was paid to me on the 20th, 23d, 24th, 28th, 30th, and 31st days of December, 1864, and are included in my aggregate receipt for said list, the receipt amounting to $713,632.23, delivered to the assessor to be transmitted to the Commissioner of Internal Revenue.
September 11, 1867.

JOHN H. BRYANT,
Late Collector Fifth District, Illinois.

The United States inspector for said district during the time such spirits were stored in the bonded warehouse swears that he had in charge the bonded warehouse of Thayer Brothers, as the United States store-keeper, and said spirits were under his control and in his possession; that he personally inspected and re-inspected said spirits, and that he was present when they were deposited in the bonded warehouse, and also present when they were withdrawn from said bonded warehouse; that there were deposited in said warehouse from July 1, 1864, to December 31, 1864, 190,182.12 gallons, making the tax paid $285,273.18, which included the leakage, and that the quantity actually withdrawn was only 182,988.50 gallons; showing by actual gauging that the quantity lost by actual leakage and evaporation while said spirits were stored in said bonded warehouse, and while under his control and in his possession, was 7,190.50 gallons, and that the tax paid upon the quantity so lost by leakage and evaporation was $1.50 per gallon, and amounted to $10,790.32, and paid upon the identical spirits in which the leakage, evaporation, and soakage occurred. His tabular statement shows in detail the quantity inspected and re-inspected. This claim was, by the Commissioner of Internal Revenue, June 13, 1868, suspended until a decision should be had in the similar claim of Pate & Co., and the Commissioner of Internal Revenue did not take action in this similar claim of Pate & Co. until May 18, 1882, when he recommended that this claim of Pate & Co. be allowed and paid. These claimants, or their legal representatives, have been almost constantly urging its allowance, either before the Departments, the courts, or Congress, ever since the same was assessed and collected. The Committee on Ways and Means at the Forty-eighth Congress unanimously recommended the payment of this claim, and reported a bill for its payment. Your committee therefore recommend the passage of the accompanying bill.

In the claim of Silas Q. Howe, surviving partner of W. T. Pate & Co., the material facts are, that during the period from July 1 to December 31, 1864, Pate & Co. deposited in a bonded warehouse in the third district of Indiana, which was under the control of the collector and store-keeper, 4,196 barrels of distilled spirits, containing when deposited, as shown by the certificate of the gauger's inspections, 213,885½ proof-gallons; that when said barrels were withdrawn upon re-inspection and regauge there were only 200,613½ proof-gallons, making the actual loss 13,272 proof-gallons; that the collector required them to pay the tax of $1.50 per gallon upon the quantity deposited in the bonded warehouse, making the tax paid upon the quantity lost by actual leakage while in bonded warehouse $19,908.

On the 26th day of October, A. D. 1866, and the 27th day of July, A. D. 1871, they filed with the Commissioner of Internal Revenue their affidavit, on the regular Treasury Form 46, averring that the facts were as above stated, and that the tax paid upon the quantity lost by leakage while in bonded warehouse was illegal, erroneous, and improper, and ought to be refunded; to these affidavits were affixed the certificates of the proper internal-revenue officer, in corroboration of the aforesaid facts.

J. S. Smith Hunter, the collector of internal revenue at the time said spirits were in bonded warehouse, in his deposition filed in the Court of Claims, testifies that he was collector of internal revenue from July 1 to December 31, 1864; that during said time Pate & Co. deposited in bonded warehouses, approved by him, 213,885½ proof-gallons; that on the 15th, 25th, and 30th days of December, 1864, he required the tax of $1.50 per gallon to be paid on all the spirits stored in the warehouse, amounting to $320,828.25, which sum he paid over to the United States; that said bonded warehouses were under his control and subject to his orders all the time said spirits were stored (see printed deposition).

The deposition of S. Q. Howe, October 2, 1867, proves the quantity deposited, withdrawn, leakage, and tax-paid, to be as before stated (see printed record). The deposition of W. T. Pate, taken at same time, proves the facts to be as stated, and that the cooperage was bad. William Emerson, in his deposition, swears that the cooperage was bad.

The United States inspector or gauger, in his deposition taken October 1, 1867, and his affidavit of date of June 10, 1868, swears that in person he inspected or gauged all the spirits distilled by Pate & Co. from July 1 to December 31, 1864; that the bonded warehouse was in his custody, and the spirits in his possession as United States store-keeper; that he was present during the time aforesaid, and Pate & Co. deposited 4,196 barrels of distilled spirits, containing 213,885½ gallons, first proof, in bonded warehouse, and the tax paid thereon amounted to $320,828.25; that in December, 1864, he was present when the same were withdrawn from bonded warehouse; that he in person re-inspected or regauged the 4,196 barrels aforesaid, and they only contained 200,613½ proof-gallons; that the quantity lost by leakage and evaporation was 13,272 gallons proof-spirits; that the cooperage was bad, and that the tax was paid after the evaporation had occurred in the quantity deposited, including the quantity lost by leakage.

In his detailed statement, dated June 10, 1868, giving the inspections or gaugings, and the re-inspections or regauges, the same shows that 13,272 gallons, first proof, was lost while in bonded warehouse; and in his affidavits of April 17 and 27, 1882, he gives the manner how he inspected and re-inspected, and that the instruments used were those provided by the United States Government, and that the leakage stated in his affidavit of June 10, 1868, actually occurred, and that W. T. Pate & Co. lost the whisky and paid the tax upon it besides; that he was particular in gauging and regauging.

To the application, verified by affidavit of W. T. Pate setting forth the facts as stated, dated August 31, 1870, and filed with the Commissioner of Internal Revenue, the collector at the time said tax was assessed and collected affixed his certificate thereto as follows:

I hereby certify that I have carefully investigated the facts in the within affidavit, and am satisfied that the statements are in all respects just and true, and I further certify upon personal examination that the name of the claimant and the amount claimed are found reported on page 1, line 1, of the list on Form 60, for December, 1864, heretofore now on file in my office, and that the same was paid to me on the 15th, 25th, and 30th days of December, 1864, and are included in my aggregate report on Form 60, which aggregate amounted to $350,957.62, which were delivered to the assessor to be transmitted to the Commissioner of Internal Revenue on or about the 23d day of January, 1865, and that the sum collected in said month from W. T. Pate & Co., and reported as aforesaid, amounted to $320,828.25.

J. S. SMITH HUNTER,
Late Collector Third District, Indiana.

BLOOMINGTON, IND., *July* 28, 1871.

On the back of the application for a refund, verified by affidavits filed in the Internal Revenue Office, July 27, 1871, was indorsed:

"Examined and submitted for allowance July 7, 1880, by Breckenridge, who was chief of the refunding division."

The Commissioner of Internal Revenue, General Green B. Raum, in person examined this claim, and in his letter, dated May 18, 1882, says:

"Pate & Co., from July 1 to December 31, 1864, deposited in bonded warehouse 4,186 barrels distilled spirits, containing 213,855½ gallons proof-spirits; when these packages were removed from warehouse they contained, by actual inspection, only 200,613½ proof-gallons. This tax of $1.50 was collected on the full quantity deposited, amounting to $320,828.25. The tax due on the 200,613½ gallons actually found in the packages on withdrawal was $300,920.25, showing an excess of $19,908 collected. In computing the leakage in transit, the sum of $245.81 was computed on the full quantity bonded. I propose to allow the claim for the remainder of the tax appearing to have been paid by these claimants in December, 1864, as set forth, on spirits lost by leakage and evaporation while stored in bonded warehouse, to wit, $19,662.19.

"Very respectfully, your obedient servant,

"GREEN B. RAUM,
"*Commissioner.*"

There is a great deal of other evidence in the record not necessary to be stated here as it merely corroborates that of the assessor, collector, and inspector. Upon this testimony, and after a very careful examination of all the facts contained in this voluminous record before us, the committee are of opinion that there was an erroneous assessment and collection of $19,662.19, and that it ought to be refunded, as recommended by the Commissioner of Internal Revenue. The claimants have been continually urging a refund ever since said sum was paid, and your committee therefore recommend the passage of the accompanying bill.

The material facts in the claim of Henry W. Smith, surviving partner of T. and J. W. Gaff & Co., are that during the period from July 1 to December 31, 1864, they deposited in a bonded warehouse, in the fourth district of Indiana, which was under the control of the collector and storekeeper, 4,254 barrels of distilled spirits, containing, when deposited, 208,748½ gallons; that when said barrels were withdrawn they only contained 199,373½ gallons, as shown by the evidence, making the actual loss 9,375 proof gallons; that the collector required them to pay the tax of $1.50 per gallon on the quantity deposited in bonded warehouse, making the tax paid on the quantity lost by leakage while in the bonded warehouse $14,062.50. In the year 1866 these claimants employed the attorney who was prosecuting the Pate and Thayer claims before the Departments to prosecute their claim, and while waiting for a decision in the Pate claim the time expired in which to file the same, without fault of these claimants.

The affidavit of Henry W. Smith sets forth the facts as before stated, and avers that the assessment and payment of the tax is illegal and erroneous, and assessed upon a quantity that did not exist when collected, and that the tax was assessed after the loss occurred.

The certificates of the officers of internal revenue are affixed thereto.

The deputy collector of said district certifies as follows:

DEPUTY COLLECTOR'S CERTIFICATE.

I, George Pfalzgraf, deputy collector second division, sixth district, do hereby certify that I have personally investigated the statements made in the within affidavit by comparing the quantity claimed for leakage with the quantity actually allowed for leakage during subsequent years, and from the best information I can obtain after careful inquiry I believe such statements to be in all respects just and true.

GEO. PFALZGRAF,
Deputy Collector, Second Division, Sixth District, Indiana.

LAWRENCEBURGH, *August* 25, *A. D.* 1885.

The clerk in charge of division of accounts in the office of Commissioner of Internal Revenue certifies as follows:

"I hereby certify that the records of this office show that receipts on Form 61 were given by late Collector J. L. Yater, covering the amounts mentioned on the first page of Collector Hunter's certificate, and that his reports on Forms 86 and 87 show that the same was collected.

"Division of Accounts, September 30, 1885.

"B. H. COLLINS,
"*In charge of Division of Accounts.*"

The collector of the district at the time said tax was paid certifies as follows:

COLLECTOR'S CERTIFICATE.

I hereby certify that I have carefully investigated the matters set forth in the within affidavit, and am satisfied that the statements are in all respects just and true; and I further certify, upon personal examination, that I find the sum for July $57,415.50, August $55,524, and September $79,206, reported against the said T. and J. W. Gaff & Co., on page 1, line 1, of the list on Form 60, for July, August, and September, 1864, and also the sum for October $72,331.50, November $48,291.75, and December $115,109.25, reported against T. and J. W. Gaff & Co., on page 1, line 1, of the lists on Form 60, for October, November, and December, 1864, now on file in my office, and that the same was paid to me on August 31, September 16, 1864, and on the 2d, 15th, 22d, and 31st days of December, 1864, and are included in my aggregate receipts for said lists, amounting to $643,209, and transmitted to the Commissioner of Internal Revenue, and that no claim for the assessments herein complained of has heretofore been presented; the money herein claimed was not paid on a compromise, and that I was the collector of internal revenue in 1864, during the time said spirits were deposited and withdrawn from bonded warehouse.

October 12, 1885.

JAMES L. YATER,
Late Collector Fourth District, Indiana.

The assistant assessor at the time said spirits were in bonded warehouse certifies as follows:

ASSISTANT ASSESSOR'S CERTIFICATE.

I hereby certify that I was assistant assessor at the time said spirits were bonded and withdrawn from bonded warehouse in 1864; that I was well acquainted with the members of the firm of T. and J. W. Gaff & Co. in 1864, and from their high standing and the careful investigation of the facts set forth in the within affidavit, I believe the statements to be in all respects just and true.

August 25, 1885.

P. LOUIS MATHEWS,
Late Assistant Assessor, ——— Division, Fourth District, Indiana.

The present collector of internal revenue certifies as follows:

UNITED STATES INTERNAL REVENUE,
COLLECTOR'S OFFICE, SIXTH DISTRICT, INDIANA,
Lawrenceburgh, August 25, 1885.

I hereby certify from present personal examination and the personal knowledge of said firm, I believe the statements to be in all respects just and true, and that I find the sum of $427,878.50 reported against T. and J. W. Gaff & Co. on page 1, line 1, of the lists on Form 60, for the following months, to wit: July, $57,415.50; August, $55,524; September, $79,206; October, $72,331.50; November, $48,291.75; December, $115,109,25; and are included in the aggregate receipts for said lists, the receipts amounting in July, $114,537; in August, $106,431; in September, $126,576; in October, $108,277.50; in November, $66,978; in December, $120,409.50; which were transmitted to the Commissioner of Internal Revenue, and that I do not find that any claim for the assessment complained of has heretofore been presented, nor do I find anything going to show that the money herein claimed was paid on a compromise.

August 25, 1885.

WM. D. H. HUNTER,
Collector Sixth District of Indiana.

And said collector, under date of September 11, 1885, certifies that the same was paid, as appears from daily record of internal-revenue collections for the fourth district of Indiana, as follows: August 31, 1864, $11,726.25; September 16, 1864, $3,704.25; December 2, 1864, $9,470.25; December 15, 1864, $48,890.25; December 22, 1864, $76,391.25; December 31, 1864, $273,540.75. There is also a certified copy of the bonded warehouse books, showing the quantity deposited and the quantity withdrawn, which, like other evidence produced, corroborates the evidence already referred to. We therefore recommend a bill to pay said claim.

Hon. John Sherman, while Secretary of the Treasury, in a letter to Hon. Green B. Raum, Commissioner of Internal Revenue, dated November 14, 1877, in speaking of distilled spirits stored in a United States bonded warehouse, says, "there can be no doubt that the assessments for leakage were erroneous and improper."

The Court of Claims found as a fact that the practice had been uniform to only assess the tax upon the quantity withdrawn from bonded warehouse prior to 1869. (18 Court of Claims, 709, Finding 3.) It is admitted that the Court of Claims had no jurisdiction of tax cases (7 Wall., 122; 9 Court of Claims, 367), and that the circuit court of the United States had none (9 Wallace, 560). It is also admitted by the Commissioner of Internal Revenue that it was the general practice to allow similar claims for the loss by leakage while in bonded warehouse under the act of 1864, and that the instructions and regulations of the Commissioner, approved by the Secretary, provided for such allowances, and that the collectors' bonded accounts were settled by crediting the loss for leakage while in bonded warehouse. In a letter of Commissioner Raum, dated May 18, 1882, proposing to allow one of these claims, all being taxed by the same law, he says:

"The allowance for loss by leakage while in warehouse was allowed, and collectors instructed to allow under the act of 1864, but that in some few cases the collectors misunderstood the law and collected the tax on the spirits that had been lost by leakage while in warehouse."

And from his letter it would appear that there are only four refunding cases that have not been allowed under the act of 1864. Commissioner Walter Evans, in his letter of March 17, 1884, says:

"That it was the general practice to allow the loss of spirits by leakage while in warehouse under the act of 1864, and this accounts for so few cases for refunding being presented."

The Hon. Salmon P. Chase, Hon. Hugh McCulloch, and Hon. William P. Fessenden, while they were Secretaries of the Treasury, as also the Hon. Joseph J. Lewis, Hon. E. A. Rollins, and Hon. Green B. Raum, while they were Commissioners of Internal Revenue, each, by letters, opinions, regulations, and circulars, held that the tax was only to be collected on the quantity withdrawn from warehouse, or sold, or removed for sale, etc., and their interpretation of the law was sustained by the Supreme Court of the United States in 97 United States, 268, October term, 1877, where the court decides that no tax can be collected under the act of 1864, section 94, unless *sold* or removed for *sale*, and this section 94 is the same as section 55 of the act of 1864, which levied the tax upon these claimants' spirits, and the Committee on Ways and Means of the Forty-sixth Congress, second session, Report No. 1119, page 15, made by Hon. John G. Carlisle, M. C., says "that the act of 1864 only taxed the quantity sold or removed for sale, and only taxed the quantity sold." And the same construction was again given to the same law by the same committee of the Forty-seventh Congress, first session, Report No. 1277, page 14, made by Hon. William D. Kelley (chairman), and the Attorney-General of the United States, in 16 Opinions of Attorneys-General, 667, decides that under the act of 1864 the tax can only be collected on what was sold or removed for sale, etc., and was only collectible when it was removed into private hands. Therefore, as it is shown that the law allows, as also the regulations of the Department, and that the invariable construction of the act of 1864 was that it only taxed what was sold, etc., or the quantity withdrawn from bonded warehouse, and, in accordance with the construction given, all loss by leakage while in bonded warehouse was allowed. The bonded accounts of the collectors of internal revenue were settled by allowing them credit for the loss by leakage while in bonded warehouse, and several claims for such loss have been allowed and paid by the Treasury Department, and a large number of such claims have been abated, and it appears from the letters of the Commissioner of Internal Revenue that only three remain unsettled besides the Thayer case. Therefore it would be but just and right to allow these remaining claims, and your committee are of the opinion that there was an erroneous assessment and collection of these taxes, and that they ought to be refunded.

We therefore recommend the passage of the accompanying bill.

The foregoing report sets out the facts correctly and states the law truly, and there is no hesitation in declaring that claimants are entitled to a refund of whatever tax they have paid on any amount over and above the number of gallons actually withdrawn.

Your committee, however, are of the opinion that the question of the ascertainment of such amount should be submitted to the Commissioner of Internal Revenue. They, therefore, report back the accompanying bill as a substitute for Senate bill 402, and recommend its passage.