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FIRST PUBLIC HEARING

BEFORE

COMMISSION ON OUT-OF-STATE TAXATION OF
NEW JERSEY RESIDENTS (created under
Senate Concurrent Resolution No. 25-1957)

Held:
Assembly Chamber
State House
Trenton, New Jersey
June 3, 1958

Members of Commission present:

Senator Wayne Dumont, Jr. (Chairman)

Assemblyman C. William Haines

Assemblyman Elmer M. Matthews

W. Seward Lyon

Arthur L. Gleason

Paul J. Strayer

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SENATOR DUMONT: We will now open the first hearing of the Commission on Out-of-State Taxation of New Jersey Residents. We have an agenda of witnesses who will be present throughout the day, or statements that will be read into the record from witnesses who will not personally appear.

I would like, first of all, to introduce the members of the Commission who are present here this morning: To my left is Assemblyman William Haines of Burlington County, and also Dr. Paul Strayer, Professor from Princeton University; on my right, Mr. Arthur Gleason of Montclair, and Mr. Seward Lyon of Plainfield. I don't see any other members here at the moment. We expect more of them to arrive throughout the day. Also present are the Counsel and Secretary to the Commission, William Miller of Princeton, and the Recording Secretary to the Commission, Samuel Alito, head of the Research Staff of the State Library.

Now, I am sure that the subject will be fully developed throughout the day. Primarily this first hearing was called for the purpose of getting witnesses to come not only from New Jersey but also from outside of New Jersey so that we could have a better understanding and information as to the laws that are in effect in other states surrounding us or in cities in other states where there is no state income tax, such as in the Commonwealth of Pennsylvania. We will also hear this morning from the Director of Tax Research of the State of Connecticut where there is a similar problem for their residents to the one that faces ours.

We would like to hear first this morning from a very fine public servant of the State of New Jersey - and I am not saying this because he is about to retire but because all of us who have

had the opportunity of working closely with him for a long time feel this way about him. I believe he is completing something like 43 years of State service and he very appropriately heads the State Department of the Treasury and is known as the State Treasurer. I would like to present at this time the Honorable Aaron K. Neeld who will make his statement and also be open to questions thereafter. Mr. Neeld.

MR. AARON K. NEELD: Thank you, Senator Dumont. My name is Aaron K. Neeld, Treasurer, State of New Jersey.

Now the issues here I think can be pointed up -- and I will follow rather closely the statement which I have prepared and which has been submitted to the Members of the Commission. I think the issues are pointed up very clearly by the facts that appear in the first paragraph of this statement.

An estimated 155,000 New Jersey residents pay approximately $20 million in non-resident income taxes annually to the State of New York on income earned in that State and about 17,000 Connecticut residents pay another $7 million. While 50,000 New Yorkers working in New Jersey pay no income taxes here, their income is, of course, subject to tax in New York. A substantial number of New Jersey residents also pay sizeable sums yearly to the City of Philadelphia under its wage and net profits tax ordinances and to the State of Delaware under its personal income tax law.

These are the basic facts which pose the questions now before this Commission, viz.; (1) Can New Jersey residents be wholly freed of the burden of these income, wage and net profits taxes imposed by surrounding taxing jurisdictions and, if not, (2) Can the burden of these taxes be lightened by enlarging the area of allowable deductions in determining the amount of the tax liability?

Perhaps it is appropriate at this point to mention the fact that there are two conflicting theories on the question of power to tax personal income. One theory is to the effect that the state of situs of the income - where the income in fact originates - has the paramount right. The other is that the state of residence of the person earning the income should prevail. Seemingly it has not been possible to resolve this conflict with the result that practically all of the personal income tax laws of the 31 states which now have such legislation apply to the income of non-residents when earned within the state as well as to all of the income of residents wherever earned.

The major concern of these states has not been whether non-residents should be exempted, but rather how to protect their own residents from double taxation on out-of-state income. There are several approaches to that problem which need not be discussed here since Mr. Alito, Research Associate of your Commission, has submitted an excellent report which, among other things, details the various crediting devices now in use.

The authority of a state to impose a non-discriminatory tax upon income earned within the state by a non-resident is clearly established by the decisions in Shaffer v. Carter - 252 U. S. 37 (1920) and Travis v. Yale and Towne Mfg. Co. - 252 U. S. 60 (1920).

While a state, in the imposition of personal income taxes, cannot discriminate between residents and non-residents in the allowance of personal exemptions, as has heretofore been held in the Travis Case, it can, and many do in fact, limit allowable deductions to those incurred in the production of income within the state - citing the case of Goodwin v. New York State Tax Commission - 286 App. Div. 694, 146 N.Y. Supp. (2d) 172, aff'd

1 N. J. (2d) 680, appeal dismissed 352 U.S. 805 (1956).

Since the decisions upholding the power of a state to tax in-state income of a non-resident have prevailed for nearly 40 years, the likelihood of a judicial change of mind seems a rather remote possibility, so that relief for the non-resident in this direction appears improbable. The same conclusion is reached in reports of the Special Committee on Interstate Taxation of the Federal Bar Association of New York, New Jersey and Connecticut, and the Sub-committee of the State Taxation Committee of the New Jersey Bar Association.

Apparently accepting the fact that relief by judicial action is not likely, several proposals dealing with the problem are now pending in the United States Senate and the House of Representatives. Mr. Alito's report to the Commission fully analyzes the various resolutions which have been introduced. It is sufficient to say here that several of them, by varying language, would amend the Federal Constitution so as to preclude the states, and in a couple of instances their political sub-divisions, from taxing the personal income of non-residents earned within the state. Another one proposes a study of the problem by the House Committee on the Judiciary and still another suggests compacts between the states of Connecticut, Massachusetts, New Jersey, New York, Pennsylvania and Rhode Island, providing for the - and I am quoting from the resolution - "uniform tax treatment of non-residents through agreement not to discriminate between residents and non-residents in the levying and collection of taxes."

While constitutional limitation of the power of the states to tax personal income to that of residents would most effectively deal with the issue, it should be recognized that this

solution will be most difficult of accomplishment since amendment of the Federal Constitution requires the vote of two-thirds of the membership of each House and ratification by the legislatures of three-fourths of the states. As previously mentioned, most of the 31 states presently tax the in-state income of non-residents and it is probable that they would not readily accept the proposed change.

Though reversal of the long standing decisions of the United States Supreme Court appears highly improbable and relief by constitutional amendment seems very doubtful, there is an area within the reach of legislation where some benefit can be provided for the non-resident taxpayer. This relates to a broadening of the deductions allowed to non-residents under the New York personal income tax law so as to make them more nearly comparable to those allowed residents. It has no application to the Philadelphia wage tax since in determining that tax no deductions are allowed from gross wages to either residents or non-residents, nor to the Delaware personal income tax as identical deductions are allowed to both residents and non-residents in that state.

In determining the amount of the income tax of a resident of New York, there are deductible from gross income, the municipal taxes on his residence property, federal amusement, telephone and safe deposit box rental taxes, sales taxes, motor fuels taxes, interest on his residence property mortgage and personal loans, medical expenses for him and his family within specified limits, premiums paid for hospitalization insurance, life insurance premiums paid up to $150, alimony payments and gifts for charitable, religious and benevolent purposes.

As to the non-resident, however, he may deduct from his taxable gross income in New York only an amount equal to 10%

of such gross income or $500 whichever is less. While he may itemize his deductions, in lieu of taking the standard deduction, nevertheless, if he elects to do so he may claim only those expenditures incurred in the production of income in New York, alimony payments if included in the wife's New York taxable income, and gifts to charitable, religious and benevolent corporations if organized or operated under the laws of New York.

From an equitable point of view it would seem that the non-resident taxpayer should be permitted to claim as deductions not only those expenses incurred in connection with income arising in New York, but also, on an apportionment basis, those deductions ordinarily allowed resident taxpayers, such as taxes on his residence property, interest on the residence property mortgage and personal loans, general and selected sales taxes and federal telephone, amusement and safe deposit box rental taxes, medical expenses within limits, hospitalization insurance premiums, life insurance premiums up to $150 and gifts within the specified limits to religious, charitable and benevolent corporations wherever organized or operated.

It is argued by some that these expenditures are not directly incurred in the production of the New York income and, therefore, they should not be allowed in determining the non-resident tax. It is true, of course, that such expenditures are not directly related to the production of New York income, but neither are such items directly incurred in the production of income of the New York resident. Deductions for taxes, interest on indebtedness, medical expenses, gifts to charity, etc., are allowed so as to provide a more equitable basis upon which to determine the extent of the tax liability.

Where the non-resident's sole source of income is from employment in New York, he should not be required, by curtailment of deductions, to pay a greater personal income tax than he would pay as a resident. If the non-resident has income not subject to tax in New York because it did not arise from a business, trade, profession or occupation within the State, then the amount of allowable deductions should be prorated on the basis of gross income arising in New York to the taxpayer's total gross income.

While this change will provide only a relatively slight reduction in the average tax payment of the non-resident, it will, however, remove one of the inequities quite generally charged against the tax.

That concludes the statement and I will be happy to submit to questions of members of the Commission, although I would like to emphasize that New Jersey being a non-broad-base tax state I profess no special expertness in the field of either personal income taxes or general sales taxes.

SENATOR DUMONT: Any questions by members of the Commission? Mr. Miller, have you any questions?

MR. MILLER: I just want to say that, as usual, Mr. Neeld has covered the ground so well there aren't many questions that I could ask. I might ask whether he has any view on the possibility of retaliatory taxation by the State of New Jersey so as to equate the burden that New Jersey residents would pay in this State and in New York.

MR. NEELD: There are several phases of the over-all problem which I did not incorporate in this statement because I guess I assumed they were so generally accepted and well known

that perhaps the Commission would not care to waste its time reading detail on them. One of them, of course, is the matter of retaliatory taxation. It has been proposed from time to time, by I guess the informed, that New Jersey should adopt a non-resident personal income tax in order to, even though not lighten the burden of the New Jersey resident working in New York, nevertheless, impose a similar burden on the New York resident working in New Jersey.

Now, it's quite well accepted, I believe, that such taxation is not possible under our Federal Constitution because of the necessity of uniformity and the fact that you cannot discriminate against the non-resident in relation to the resident.

For that reason I made no mention in the statement of that phase of the problem.

Does that answer your question, Mr. Miller?

MR. MILLER: Oh, yes. One other question, Mr. Chairman. I wonder whether any information might be available as to the cost to the State of New York if it allowed equal deductions, in the manner you suggested, to New Jersey residents and, I assume, to Connecticut residents on this basis.

MR. NEELD: Well certainly we have no cost figures and to my knowledge none have been developed by the Research Division of the New York State Tax Department. I do believe, however, as I indicated at the end of the statement, that the amount of revenue involved - that is, the revenue loss to New York - would be relatively slight. Although I should point out in that regard that the matter of broadening the deductions for the non-resident involves some rather serious questions of uniform treatment between the resident and the non-resident. Take the area of deductions for taxes paid on the resident's property. Since the New York resident

is subject to a capital gains tax on that property in the event of sale or is subject to any income which the property may produce, such as a rented room or just one apartment in the total residence property, there are problems involved there and how that would be worked out does involve some question.

MR. MILLER: Thank you.

SENATOR DUMONT: Mr. Neeld, suppose in the course of reviewing the possibility of enacting a broad base tax in New Jersey, the Legislature and the Governor should decide on a personal income tax, about how much of this $20 million that now is paid by our residents to New York State could we hope to recover or get, rather, for our own treasury in the State? In other words, could we expect that out of the taxation of New York residents who work in New Jersey, which I understand is about one-third as many as would be true of New Jersey residents working in New York State - would we, therefore, get about one-third of the income, assuming the tax, if it ever were imposed here, were imposed at about the same rate as New York State? or if, instead of that, we would get some kind of reciprocity between New York State and New Jersey, which as I understand it would probably require a change in the present New York State Income Tax Act -- which would be likely and how much could we possibly recover or recapture here that is going out of the State of New Jersey to New York State now?

MR. NEELD: I would like to think that New York State would retain its present crediting provision which would be, of course, most favorable to the State of New Jersey because their crediting provision now would allow a credit on the non-resident - that is, the New York non-resident tax for taxes paid to the state of residence. And since, as you have seen from figures in

the opening part of the statement, 155,000 New Jersey residents working in New York as against 50,000 working in New Jersey, we would be far better off under that plan. Now, admittedly, that will result in a substantial tax loss to the State of New Jersey (sic) because we will be picking up a large part of that $20 million which is now going into New York under a tax credit, which would be payable by our New Jersey residents as a domiciliary income tax to New Jersey. New York allows no credit to its residents for taxes paid elsewhere. I believe I'm right on that statement.

SENATOR DUMONT: You said it would result in a substantial loss, if I heard you rightly, to New Jersey. You mean to New York, I think.

MR. NEELD: To New York. I'm sorry if I said New Jersey.

SENATOR DUMONT: Is there any federal decision on this point that the Goodwin v. New York State Tax Commission deals with, referred to at the bottom of page 2 of your statement?

MR. NEELD: That is a federal case.

SENATOR DUMONT: That's right. I'm sorry. It started in the State of New York and went up to the United States Court.

MR. NEELD: It was never heard by the United States Supreme Court. On a jurisdictional statement the United States Supreme Court dismissed the appeal for lack of a substantial federal question.

SENATOR DUMONT: Are there any further questions of Mr. Neeld? Mr. Alito, any questions?

MR. ALITO: No.

SENATOR DUMONT: I might add that I forgot to announce this in the beginning - if there is anybody here in the audience

who would like to submit questions to a witness, we would prefer that you have us do it; that is, we will be glad to submit any questions that you may have to the witness but, so that we might have an orderly procedure, we prefer not to have you arise in the audience because it may make it difficult to keep the record straight.

Does anyone, on that basis, have any questions you would care to have us put to Mr. Neeld?

Is there anything you want to add, Mr. Neeld?

MR. NEELD: Just an expression of appreciation to Mr. Alito for the very helpful material which he made available to the Department of the Treasury.

SENATOR DUMONT: Right, he has done a splendid job for this Commission. Thank you very much, Mr. Neeld.

I would like now to introduce Assemblyman Elmer Matthews of Essex County, a member of this Commission. We are glad to have him with us.

The next witness is Mr. Ernest Whatmough of the Wage Tax Protest League, which is assisting in the conduct of a very interesting case in South Jersey now and supporting that fight, and we will be glad to hear from you, Mr. Whatmough.

MR. ERNEST WHATMOUGH: Senator Dumont, Chairman of this Commission, and members of this Commission: The Wage Tax Protest League, of which I am a former President, has asked me to appear before this Commission and submit their views in the controversy of residents of New Jersey being compelled to pay the Wage or Income Tax, more particularly in its application to Federal Employees working at the United States Naval Base of the 4th Naval District which is known as League Island.

What is usually referred to as the Wage and Income Tax Ordinance was passed by the City Council of Philadelphia, Pennsylvania, on December 13, 1939, as a temporary measure for one year, to relieve the precarious financial situation of that City. It became operative the 1st of January, 1940.

The rate of 1½% of the gross earnings was the percentage of the tax, and this amount was withheld by the employer from the employee regardless of residence or domicile, and applied to everybody performing services, paid services, within the corporate limits of the City of Philadelphia.

At the end of the temporary period of one year, the Ordinance was again enacted, and is still in operation, the temporary period apparently having sunk into oblivion.

The rate has fluctuated since its inception. In 1943 the rate was reduced to 1%. In 1949 it was increased to 1¼%. In 1957 it was back to the original figure of 1½%, and that is the rate at the present time.

Although it is generally understood that all persons, regardless of their place of residence or domicile, who perform any services within the City of Philadelphia for which they receive remuneration are subject to the Wage and Income Tax, a distinct exception has been made for visiting members of the Major League Baseball Clubs, and they are exempt - I believe by agreement with the taxing authorities and not through the medium of the Ordinance.

In the case of Federal Employees, and Commonwealth of Pennsylvania Employees working in Philadelphia, the tax is not withheld, a feature of great annoyance to the City officials. And, while I do not know what efforts the City of Philadelphia has made to have the State of Pennsylvania withhold the tax from its

employees, it is common knowledge that strenuous efforts have been made to influence the United States Congress in favor of withholding the tax from Federal Employees, and contrary to the statements of His Honor, Mayor Dilworth, and other highly placed City officials, New Jersey residents are opposed to having the tax withheld by the Federal Government.

Employees of the U. S. Navy Department at the Naval Base appear to be a special target for the City, particularly those living in New Jersey. Yet, from the standpoint of common sense, they should be the least affected insofar as they are not dependent upon the municipality for any services whatsoever, not even the services of the icebreaker on the river, which was a point stressed by the City in the law courts as a measure of service supplied by Philadelphia to the Base. Since the icebreaker was sold some years ago and has not been replaced, it is hard to see what the City has to offer in services at this time.

A privately operated ferry operates between National Park, New Jersey, and the Naval Base, solely for the benefit of Naval personnel, civilian and military. So by no stretch of imagination can it be visualized what services are gained from the City.

It is only fitting at this time that this Commission should have some knowledge of the activities of the Wage Tax Protest League in its long and so far unsuccessful fight against this Wage Tax.

This organization was formed in December of 1943 as a result of the decision of the Pennsylvania Supreme Court in what is known as "The Kiker Case". The decision was given in 1943 with a split decision in which the late Supreme Court Justice Maxey wrote the dissenting opinion.

At this meeting and subsequent meetings it was decided to engage Counsel and fight this tax in its application to Federal Employees. The legal services of Thomas B. McBride, Esq., presently Attorney General for the State of Pennsylvania, were obtained.

In its attempt to enforce payment of the Wage Tax, the City had summonses issued to appear in the local Magistrate's Court but Mr. McBride opposed this move successfully and, as a result, recourse was made to the Court of Common Pleas and a Capias was issued by that Court and the defendant was apprehended by the Sheriff's Officers outside the gate of the Naval Base after being conducted to the gate by the Security Officers of the Naval Base. The "Prisoner" was then escorted by the Sheriff's Officers to the Moyamensing Jail and held there like a common criminal until the amount of the cash bail demanded by the City was produced.

The local courts, in all cases, found for the City and an appeal was made to the Superior Court of Pennsylvania and, with the consent of that Court, the case of Mr. William Barnes was held out in the event that an appeal should be made to the United States Supreme Court.

The Decision of the United States Supreme Court is a controversial one even among the legal fraternity. A Writ of Certiorari was refused by this Court and that is where the matter stands at this time.

May I at this time explain what I mean when I say, "a controversial decision even among the legal fraternity". The Honorable Richardson Dilworth, Mayor of Philadelphia, has stated before a Congressional Committee that this Court, the United States Supreme Court, has ruled this tax on non-residents to be legal, while our present Counsel, Mr. J. J. O'Dowd, before the same

Congressional Committee stated the contrary and was supported in his claim by another Lawyer, the Honorable Charles A. Wolverton, Member of Congress.

In the face of all this, just what is the layman, a harassed plain citizen, to believe? Must he, under the law of the land, pay a tax which in the eyes of one school of thought has been ruled legal, and in the eyes of the other school of thought has been ruled not legal? Either the highest court in the land must make a decision which the people can understand, or those people who by their legal training should know what it means, and cease making confusion worse confounded.

From the uncertainty of the law courts, the Wage Tax Protest League sought recourse for justice in the National Legislative Assembly in Washington. Bills for the relief of payment of income taxes in the states or political sub-divisions of a state by non-residents have been introduced in the House and also in the Senate and, on occasions, have reached the floor of the Chamber only to be objected to by a Representative from Philadelphia and, under the Rules of the House, the Bill has never had an opportunity of being either discussed or voted upon.

These, Gentlemen, are the obstacles we have been trying to overcome in the struggle to uphold the doctrine of No Taxation Without Representation.

Residents of Pennsylvania, but not of the City of Philadelphia, also have been similarly treated and they also have appealed to their Legislature for relief from this odious measure. Bills have been introduced into the Pennsylvania Assembly, passed and forwarded to the Senate, which eventually passed it but it did not become law on account of the veto by the Governor of

Pennsylvania, The Honorable George Leader.

At the present time a new legal avenue is being explored by a "Test Case", presently under consideration by the United States Court of Appeals, in which the right of the City of Philadelphia to make an arrest within the confines of the United States Reservation, the United States Naval Shipyard, is to be decided. Note: If this most favorable factual case cannot be determined in favor of New Jersey residents, what hope have other cases? The City of Philadelphia claims that in the terms of the Deed ceding the land to the United States, the City reserved the right to serve warrants and other legal papers within the Base. But, strange as it seems, this right which the City claims exists has never been exercised, until the Test Case mentioned on the previous page, in the serving of Capias, Warrants, etc., for people arrested as wage tax delinquents. Note: The Supreme Court has declared that this provision only applies to fugitives - Boyd v. U.S.

The procedure has been that the arrest takes place outside the confines of the Base, and the Security Department of the Base has been instrumental in the wanted persons being taken to the rendezvous, the main gate, and there the actual arrest takes place.

In the event that the wanted person refuses to accompany the Security Officers to the Gate for the purpose of being arrested, that person is subject to disciplinary action by the Naval authorities, and may lead to his or her summary dismissal.

This, sir, in brief is a resume of the history and activities of the Wage Tax Protest League in opposing the imposition of this Philadelphia Wage Tax.

You will observe that no legal steps have been neglected and all proceedings have been instituted on the advice of Counsel. But we have been limited in the initial stages to courts which, rightly or wrongly, we look upon as hostile, where the pecuniary benefits to the City of Philadelphia have been considered rather than a sense of justice to the individual.

The League has also exercised its right to petition the Legislatures, both national and state, for relief from this oppression but, as of the present time, with little or not success. And again we are inclining to the belief that the rights of the individual are being sacrificed to the greed and avarice of a large municipality.

When the cold facts are faced, non-residents of Philadelphia are being fleeced of amounts averaging $80.00 per year, no small sum when added to the taxes levied within the individual's own town or state, and simply for the dubious privilege of working in Philadelphia.

In closing this statement let me reiterate that the officers and members of this League are law-abiding citizens, their credit ratings in business dealings are as high as any other comparable group, but there is a considerable difference between a just debt and an unjust debt.

The residents of New Jersey are strongly of the opinion that this Wage Tax is, without a shadow of a doubt, an unjust debt when it is imposed upon non-residents of the City of Philadelphia.

May I at this point, Mr. Chairman, have a few moments for a little oral comment?

SENATOR DUMONT: Yes, sir.

MR. WHATMOUGH: I want to draw your attention to the Court of Appeals' hearing on the 12th of May. At that particular

hearing, and I am quoting from newspapers, Mr. Berger, Assistant Solicitor of Philadelphia, made the statement that they supplied to the United States Naval Base certain services and we should pay these taxes in order to offset the cost of these services. And I am reading now from the Philadelphia Inquirer of Tuesday morning, May 13th, and the City Solicitor said that: "Since the Wage Tax was adopted in 1940 the Pennsylvania Supreme Court has upheld the law and the United States Supreme Court has twice refused to hear the case."

Now, I have been a member of this Organization since its inception and I do know that the United States Supreme Court declined a hearing or refused a writ of certiorari in the one case that was presented before it. Now whether or not Mr. Berger, the Solicitor is confusing this with something else, I do not know, but I must say that only on one occasion has this Wage Tax, so far as Philadelphia is concerned, been before the United States Supreme Court and the hearing was refused.

He further goes on to say, and I am quoting now from the Camden Evening Courier of Tuesday, May 13th: "Mr. Berger noted that the Yard has come within the City's jurisdiction because the City supplies fire protection, sewage disposal, water and trash collection."

I checked very, very carefully on that point yesterday with the Yard officials and I find that our trash is taken to the Philadelphia incinerators by United States employees and a flat charge is made for weight of all of that trash which is delivered there and that payment is made by the United States Government. What amount of water we receive from them is also billed and the United States Government pays for that water which

is supplied. The same applies with regard to sewage disposal and in fire protection - well now, fire protection - I have seen several pieces of fire apparatus within the confines of the Naval Base but there is not one piece of that apparatus that has on it the words, "City of Philadelphia". It's all United States Navy Department throughout the Navy Yard. And the only fire protection which they can claim is a reciprocal arrangement in the event that a fire should take place in the Base beyond the facilities of the Yard people and then we could call on Philadelphia, and vice versa - should Philadelphia be in a position where she needed more help, the United States Navy Department Ship Yard would provide that service.

I can remember, not quite a few years ago, a fire taking place within the confines of the City of Philadelphia but outside the confines of the United States Naval Base - it was on the Pennsylvania Railroad property. The nearest fire department to that particular fire was the Navy Yard and, without any "if-ing" "and-ing" or "but-ing", the Navy Department went and put out that fire.

I am merely quoting these to show that, when they claim that they give us these services, those services are paid for separately by the United States Government in their entirety.

I would like to take up the point of wrongful arrests and persecution because I refer to wrongful arrest and persecution in one and the same light. In 1948, a man down there who was not in too good health was arrested for the non-payment, or it may be the more legal term, to say failing to file a return. However, he was taken from his place of employment, was left in Moyamensing Jail over night despite his protests that he was paid up in his

taxes. The man to whom I am referring is a Mr. Durham. This happened in 1948. He was refused the right to use a phone in order to call his wife and he was kept in Moyamensing Jail over night, without even a cot to lie down on, and was held there until the following morning when his wife came and presented the receipt showing that Mr. Durhman's taxes were paid up to date. Mr. Durham thought he had a case of wrongful imprisonment and he went to a New Jersey lawyer by the name of Mr. French - perhaps you gentlemen may know him - and Mr. French not being licensed, shall I say if I may use the term, to fight this in Philadelphia passed this matter on to the firm of Paxson, Kalish, Dilworth and Green to institute proceedings in the federal courts. And under date of September 30, 1949, this particular firm of lawyers writes and says: "I wrote you asking that you contact me with reference to Mr. Wernick's petition to reopen the City Hall case against you. As yet, I have not heard from you. It is extremely important that you get in touch with me as soon as possible so that I may know what action you desire to take and what position you wish to play in the matter. Very truly, Marcus Manoff."

Now, I am only reading that to give you how long this has been continued. In the case of Durham vs. Del Rossi and Julian, Civil Action No. 8839 - this is January 7, 1949: "This is to inform you that I have arranged to take a deposition in the above entitled matter on Friday, January 21, 1949." Signed again by this man, Manoff.

This case up to the present time has never been brought to light. It is still laying somewhere in the federal court pigeon-holes. As a matter of fact, the two people mentioned have passed on. That's what happens. It went from that firm, the

Dilworth firm, on to the McBride firm. But it doesn't matter who it goes to, it's still hanging up there.

We also have the case of a Mr. Leydon. I would like to bring this to your attention, Mr. Chairman, and I would like to perhaps show you some of the documents. This to me appears more like, if I may use the term without giving offense, legal skullduggery, that's what I would term it. I'm reading from this piece of paper and it says: April Term of 1957, No. 20 Municipal Court of Philadelphia, City of Philadelphia vs. Joseph J. Leydon - Bail $300." That's on that page. On the opposite page it has the same thing again, excepting that there's a date here, the 8th of April, 1958 - the 7 has been stricken out, the printed 7, and 8 has been put on by the typewriter. Now this was supposed to have been written in April of 1957. A man by the name of Mr. Joseph Leydon - let me read that just a moment - "We command you that you take Joseph J. Leydon, 21A West Holly Avenue, Oaklyn, New Jersey, and Philadelphia Naval Ship Yard, League Island, Pennsylvania, Defendant, if he shall be found in your bailiwick and him safely keep until he shall have given bail or made deposit according to law, so that he be and appear in our Municipal Court of Philadelphia on the first Monday of May, next."

Now, I don't know which date applies. It's 57 on that side and 58 on that side. But Mr. Leydon appeared before the taxing authority on the 24th of April and he paid those taxes - at least the receipt is dated the 24th. He had a check which had been cancelled April 8th, 1957. Unfortunately, when Mr. Leydon made these payments there was a small balance which he had overlooked of $4.40 in making these payments. I am referring now to April of 1957. In 1958 this, which was originally issued for the term of

'57, was presented to Mr. Leydon and he was taken bodily to Philadelphia from the Yard for the munificent sum of $4.40, increased by various additions to, to $34.60 all told.

Mr. Chairman, I suggest to you that if they will go to the extent of using what to me looks like a spurious document to collect $4.40, I think that would come, sir, under the verbage of persecution. May I put these before you, sir?

SENATOR DUMONT: You certainly may. Mr. Whatmough, do you want these made a part of the record or do you want them back? Do you want them returned to you today or do you want them entered as a part of the record of this hearing?

MR. WHATMOUGH: Well, if they can be returned to me, sir, at a near future date, because after all they are really not my property, I would appreciate that. Under the circumstances they are very valuable documents to Mr. Leydon.

SENATOR DUMONT: You would like to have these copied and made a part of the record. (See pp. 80-A, 81-A, 82-A, 83-A)

MR. WHATMOUGH: I would appreciate it very, very much.

SENATOR DUMONT: The members would like to look these over. In the meantime, you go right ahead, sir.

MR. WHATMOUGH: The City has also stooped so low that the widows of people who have passed on have received letters from the taxing authorities of Philadelphia telling them that their departed husbands owed so much money and that they should take the necessary steps to pay. They have asked even how much they were insured for, who the undertaker was. That's just an example of these people trying to collect this tax. Is it any wonder that we are incensed against them? Is it any wonder that we don't know which way to turn in order to get some relief from this situation?

I have brought with me, sir, two people who have seen the inside of Moyamensing Jail. I have also brought with me another prisoner who was treated somewhat differently. Instead of him being escorted by the police, etc., to the gate and turned over to the authorities - I have brought along with me Mr. Thompson who, on this occasion, shall I say almost had a distinguished visitor's guard - he was taken out with some gold braid in the United States Navy Station Wagon. But he was Mr. Thompson who is the victim in this Test Case. Mr. Thompson, would you care to arise, please? (Mr. Thompson arose.) Seated on his right, Mr. Chairman, is Mr. George Fries, Secretary of our Organization, who knows what the inside of Moyamensing Jail is; and also Mr. Fred Devine, here, also knows what the inside of that jail is. These people, sir, were arrested immediately, or almost immediately after the Test Case hearings were held in Philadelphia, and I don't know whether you will have time to hear them or not. That's entirely at your discretion.

SENATOR DUMONT: Mr. Whatmough, we have a schedule to follow this morning but this afternoon it looks like we might have time because of the fact that some of the witnesses who have been asked to attend have sent statements rather than come in person. Now, the only question is - would you and the gentlemen with you, and we are glad to see all of you here today, care to wait until this afternoon?

MR. WHATMOUGH: If it's agreeable to them.

SENATOR DUMONT: Then they can testify this afternoon, I think, if they care to. We do have some others from outside New Jersey and we don't want to delay them unnecessarily. You go right ahead and finish your testimony.

MR. WHATMOUGH: The only thing that I would like to say in conclusion, sir, is that we are a group of people and we are not too much endowed with that money which is necessary to go in to various courts of law and we are hoping, sir, that through your efforts here you will be able, or our own state may be able to come to the assistance of these taxpayers. Whether they are on the border of the Delaware River, whether they are on the borders of the Hudson River, or the lower portion of the Delaware River, I do think and I earnestly entreat you, sir, that the State of New Jersey should place the whole of its resources in order to protect our own citizens from these grabs at our pay pocket week after week or month after month.

I'll read, Mr. Chairman, if I may, the closing paragraph in my statement: On behalf of the Wage Tax Protest League, I wish to thank you, sir, as Chairman of this Commission, and also your colleagues for giving us this opportunity of presenting our case. Your kindness and forebearance is greatly appreciated. Thank you.

SENATOR DUMONT: Any questions by members of the Commission?

DR. STRAYER: It seems to me that there is a distinction between the Navy Yard case and the general applicability of the wage tax to non-residents.

MR. WHATMOUGH: Undoubtedly.

DR. STRAYER: I think this point must be kept in line in this particular case.

MR. WHATMOUGH: Yes. I agree with you there. This is entirely a case within itself.

DR. STRAYER: The Navy Yard is separate from the general applicability of the wage tax on non-residents.

MR. WHATMOUGH: Yes, but at the same time we would like it clearly understood that we do not like the thought that all those people traveling across the river working in private employment should also have to submit to this seizure of money. We are still, of course, hoping that the whole question of non-residents will be decided in favor of our New Jersey residents.

SENATOR DUMONT: Any other questions? Mr. Miller?

MR. MILLER: I would like to return to Dr. Strayer's point, Mr. Whatmough, if you please. We have received a statement from Mayor Richardson Dilworth of Philadelphia, which will be read into the record later this afternoon. But he makes two broad points, one is - and this is the major part of his statement, - the great services, many municipal services the City of Philadelphia renders to non-residents and residents alike, to those who work there and to those who do business there; secondly, that the City, because of the cost of these services, very desperately needs to have the revenues from the taxation of non-residents and especially from the proceeds of the wage tax which he says, you may be interested to know, is "fair and equitable".

I wonder whether you would care to comment on those arguments from your point of view.

MR. WHATMOUGH: Mr. Chairman, my local body is desperately in need of money to carry on its services. Our own state is desperately in need of money to carry on its own services here. Must we go and ask someone else to help pay to meet our obligations? If I travel from here to Indianapolis or to Georgia, or any other part of the 48 states or its two territories, do I not receive the same services in those various remote parts of the

United States without having someone pushing a box under my nose in order to pay something. If Mayor Dilworth were here now and he wishes to use the facilities of our State, would we expect Mayor Dilworth or anybody else to, let me use a localism, chip in, in order to have the use of those facilities? Those facilities, Mr. Chairman, are open to all the people of this country, regardless of where you go. You have people on this side of the river that reside on that side of the river and it's all right if they wish to use the water, or they wish to use our highways, or have occasion to call on your police. Do you submit the question to them - are you a resident of New Jersey? No, sir. Those things, Mr. Chairman, the broad acceptance of those services is universal all over.

I haven't had time to read the Mayor's statement.

MR. MILLER: You'll see it in today's newspaper, sir. May I ask a further question along the same line? Am I correct, Mr. Whatmough, that your view is that the City of Philadelphia doesn't provide any more services to those who work there and are, therefore, subject to the tax, than it does to any other non-resident who happens to be in the City for purposes of pleasure or business?

MR. WHATMOUGH: None whatsoever. None whatsoever.

MR. MILLER: Would you say that those who work there actually contribute to the City more than other non-residents?

MR. WHATMOUGH: Undoubtedly, insofar as while they are over there they are purchasing. Forgive me if I say so, but I feel so strongly on this point that for the last ten years I have not spent a nickel in Philadelphia, nor will I do so. I make that public statement. But there are people who travel into that City from the New Jersey side and in the course of their travel to their

place of employment they spend money, they will go somewhere to eat, they will purchase all kinds of things. By the same token, would you put it this way, those people who go from New Jersey into Philadelphia on the busses, who go there to visit the stores, who go there to visit the places of amusement, etc. - would you put it this way, that insofar as you are using our facilities you must pay us something for that. Now immediately when you do that, what happens? Well the people will say, "I'll go somewhere else for it." As a matter of fact, it is on record that the City of Philadelphia has been trying to have the City of Camden, New Jersey, declared as a suburb of Philadelphia so that they can tax $50.00 a bus for every bus that goes into it. Now, of course, that doesn't concern this Commission but that is the point to which they are going.

SENATOR DUMONT: Any further questions? Mr. Whatmough, how many residents of New Jersey would you estimate work in the City of Philadelphia and, therefore, are subject to this wage tax by the City?

MR. WHATMOUGH: I would estimate, Mr. Chairman, - you are taking now all of these, regardless of whether federal employees or --

SENATOR DUMONT: Well, could you break it down between the number of residents of our State who work in the Navy Yard and those who work in the City of Philadelphia outside of the Navy Yard?

MR. WHATMOUGH: I would say approximately 1500 residents of New Jersey work in the Navy Yard.

SENATOR DUMONT: Now, do any of them technically set foot on the soil of Philadelphia in getting to and from their residence in New Jersey and the Navy Yard?

MR. WHATMOUGH: Technically, since the opening of the Walt Whitman Bridge, a group would have the use of the street from the bridge approach up to the main gate of the Navy Yard.

SENATOR DUMONT: But those who go by ferry?

MR. WHATMOUGH: In no shape or form do they every touch any part of the City of Philadelphia.

SENATOR DUMONT: And how many of those -- how many are there who use the ferry to go from National Park or some other place --

MR. WHATMOUGH: I would say approximately 1,000 to 1200.

MR. FRIES: I would like to answer that question, Mr. Chairman. The recent receipts from the ferry boat show that there are about 2200 now crossing the river. I only asked that question the other night of the owner of the ferry.

SENATOR DUMONT: And none of those 2200 technically set foot on the soil of Philadelphia in getting from their residence over to the Navy Yard and back home again?

MR. FRIES: That's correct. And I would say that another thousand probably use their cars and ride over to the Navy Yard.

SENATOR DUMONT: Now, how many are there, aside from the approximate 3,000 there who work in the Navy Yard and either go there by ferry or use their cars, - how many other residents of New Jersey, approximately, work in the city of Philadelphia?

MR. WHATMOUGH: Oh, I would make a rough estimate and say anywhere from 15 to 20 thousand. That's covering all your local private employees.

SENATOR DUMONT: And the majority of those come from Camden, Burlington and Gloucester Counties. Would that be correct?

MR. WHATMOUGH: I would say so.

SENATOR DUMONT: Any other questions? Mr. Alito, any questions?

MR. ALITO: No questions.

SENATOR DUMONT: Thank you very much, Mr. Whatmough. And if you and your associates will stay until this afternoon, we would like to hear particularly from Mr. Thompson who is the subject in the Thompson Case.

MR. WHATMOUGH: Thank you, gentlemen.

SENATOR DUMONT: Thank you.

Assemblyman John R. Brook from New York State. Assemblyman Brook, we are delighted to have you here and we appreciate your taking the time to come here. Assemblyman John R. Brook from the 9th District, New York County.

MR. JOHN R. BROOK: Mr. Chairman and members of the Commission on Out-of-State Taxation of New Jersey Residents: First, let me say it is indeed an honor and a pleasure to be here and appear before you and be permitted to express my views and I want to thank you very much for the opportunity. Now, I appear before you in my own individual capacity, I express my own personal views, and my comments and views are not to be taken as that of the State of New York, either the administration or the Legislature.

I first became interested in this subject matter of taxes on non-residents in 1952. Frankly, I'm indebted to the New York Telegram and Sun for that because there was a reporter by the name of Jerry King who called my attention to a number of specific instances with reference to New York State taxes on non-residents that had come to his attention. I looked into the matter

and my interest was whetted by the fact that there seemed to be an apparent discrimination against non-residents in the application of our New York State Income Tax.

Now, your Chairman has very kindly suggested to me that I attempt to give you an appraisal of the legislative situation in New York State on this very broad question and I say"kindly" because it is always nice to have some suggestion made whereby you can limit yourself to a specific element of such a broad subject as out-of-state taxation.

I am told that you can't utter the word "fairness" and "taxes" in the same breath. However, I refuse to admit that a tax statute cannot be so drawn as to permit fair and equal treatment to all individuals and all taxpayers, irrespective of their particular residence. I also refuse to admit - or rather, I refuse to support or approve of any tax law which will discriminate on the basis of the residence of the taxpayer.

Now, in the course of my research I discovered that there are approximately 174,000 New Jersey residents working in New York and producing from New York a total income of a billion, ninety-seven million dollars. I discovered also that all non-residents working in New York total approximately 214,000.- these figures may be of interest to you - producing a New York income of approximately a billion, four hundred million dollars. The total tax dollars paid in the form of income taxes for all non-residents working in the State of New York is approximately $34 million, of which approximately $23 million is paid by New Jersey residents.

Now, when I introduced legislation first in 1952 and then repeated in 1953, I then recognized the impracticability of

releaving all non-residents from the imposition of all New York State income taxes, but I felt that a step forward would be accomplished if I could achieve for non-resident taxpayers equal treatment with residents in the allowance of deductions. My legislation, therefore, treated solely with that subject. This year I want to again introduce the same bill. I was informed by our Tax Commission that it would cost the State of New York approximately four and three-quarter million dollars.

You are aware, I am sure, that our two Governors and the Governor of Connecticut, have appointed a three-man committee to study this entire subject matter. Personally, I thought it was a little foolish on the part of my Governor to go into a situation such as that when we have two states that don't impose income taxes but do have approximately 200,000 non-residents working in New York and New York does impose the income tax on all of those non-residents. It is rather obvious to me that the report will not be filed and made available to the public prior to this fall's election, and it is likewise obvious to me, at least, that when such report is filed the majority of that committee will recommend that the State of New York should treat non-residents more equitably than they are treated under our present law and practices.

Now, in each of the three years that I have introduced my legislation the bill was referred to the Ways and Means Committee which failed to act upon it favorably. I am certain that the greatest opposition comes from the New York State Tax Commission, primarily, and I am also just as certain that the reason for the opposition is loss of revenue.

I can say bluntly to you, and of course this again is my own personal opinion, that there will be no bill, the enactment

of which will result in the loss of $34 million of revenue, benefiting solely non-residents and, therefore, non-voters in the State of New York, - no such bill will ever be passed. Certainly it won't be passed until the states of New Jersey and Connecticut, along with Massachusetts, Vermont and Pennsylvania, impose similar taxes on the same number or nearly the same number of residents of New York who might work in those states.

Now, the suggestion I am going to make or the thought I am going to express now I know is abhorrent to a lot of New Jersey residents, but I have told some of my confreres in the Legislature that we ought to look forward, that it is not beyond the realm of possibility that the states of Connecticut and New Jersey might at sometime in the future impose a tax, whether it be an income tax, upon their non-residents - by that I mean New York residents working in both of those states. And if you should stand in the Pennsylvania Station at 8 o'clock in the morning or at 5 o'clock at night, or in the Hudson Terminal, or at the ferry docks, you will be surprised and amazed at the number of New York residents that work in New Jersey. I am told by certain members of the Port of New York Authority that the amount is almost equal. I doubt that very much but I have no specific figures on it. So, I have cautioned and suggested that we might be more considerate of the non-residents who contribute to our economy in New York State at the present time and attempt to give them some relief in view of the fact that at the present, in my opinion, they are not so fairly treated as residents are.

Now my friends, at times, are critical of me for having taken up the torch for non-residents and jokingly remind me that there isn't a New York vote in a carload of them. But when I

approach them from the standpoint of fairness and equal treatment, they are extremely sympathetic toward my efforts. The average American Citizen, in my opinion, is a fair-minded individual and believes in equal treatment for all. And if progress is to be made toward more equitable treatment from the New York State standpoint then the appeal should be toward that particular type of logic.

When I first introduced the bill in 1952 and again in 1953, I received a number of communications, not alone from New Jersey and Connecticut residents but from New York residents. One in particular I recall. He had had extremely large medical expenses during the immediate past year and he said that his situation was this, that both from choice and from necessity he was moving from New York to New Jersey. He said that he consulted a tax expert and found, to his amazement, that his tax bill as a nonresident was going to be $300 more than it was as a resident of the State of New York. He still, of course, retained his position in New York City.

I received many communications from other New York residents who have friends and relatives in both New Jersey and in Connecticut and they point out to me that it isn't quite true to say that there is no appeal to supporting legislation such as I have because they are influenced to some extent in the fall of each year, or every other year for that matter, as to how they vote and what candidates they will support.

Now, I am not unmindful of the fact that, if New York State loses four and three quarter million dollars annually, that four and three-quarter million dollars will have to be made up by an increased tax burden upon the residents of my State. But

four and three-quarter million dollars is a mere drop in the bucket in a budget of over a billion dollars, and I venture to say that with fairer treatment to non-residents more of such non-residents will find work and employment in New York City contributing to the economy of New York City and creating more tax dollars, perhaps even enough to make up the difference.

Now it has been suggested to me that it would be unfair to New York taxpayers to allow the full amount of all deductions allowed residents when in a great many instances only a portion of the total income of non-residents is earned in New York State. Because this suggestion has, in my opinion, a certain amount of merit, I propose next year to introduce a bill which will allow to all non-residents that proportion of all of the deductions that their income in New York bears to their unearned income which would have its situs in New Jersey. In other words, if an individual worked in New York State and had a salary of $6,000 and had unearned income of $3,000 in New Jersey or Connecticut then they would be permitted to take two-thirds of all of the deductions. At present there are only 1 or 2 they can take and then they must be related to New York, New York charities or to deductions for expenses that occur in their business, or $500. And, as in the instance that I just told you about, moving from New York to New Jersey would cost this one particular taxpayer $300.

I am not an advocate of a repeal of all taxation on all non-residents. Non-residents working in New York are the beneficiaries, of course to a lesser extent than residents are, of the public services furnished by New York and provided for the benefit and protection of all citizens, equally. The policeman on the street doesn't inquire as to the residence of a

particular individual that's about to be robbed before he attempts to protect him; nor does the fireman; neither do the park attendants, the attendants at public beaches, golf courses and other recreational facilities; our museums and other cultural centers are available to all, equally; and the roads are available to all, equally; and disposal facilities. And it is only fair that where there is a benefit there should be some assumption of the burden to pay for it.

Now, I do know that there are a great many residents from Connecticut and New Jersey and other states that enjoy these same benefits without having to pay any taxes because they don't work in New York. But, of course, they enjoy them to a much lesser extent because they are only casual visitors to New York, whereas the worker in New York who is a non-resident is there daily through the week.

Now, I feel, in concluding my appraisal of the legislative situation in New York, I can make these three comments: At present an outright repeal of New York State Income Taxes on non-residents is impractical and impossible, certainly at this time.

2. The possibility is remote that the legislature will grant to non-residents the right to take 100% of all deductions allowed to residents.

3. That there is a fair possibility, based upon the right of all citizens to equal treatment before the law, that some legislation might be favorably considered which would grant non-residents the right to take deductions in proportion - all of the deductions in the proportion that their New York income bears to their unearned income or their New Jersey income.

Now, I can't say that upon the introduction of my legislation, either in 1952 or 1953, or in this year, 1958, there

was created any great amount of support for it. As I said, my friends say, "If you relieve non-residents of some of their taxes that means that we have to pay more." Well, immediately that might possibly be true, but I feel that in granting to non-residents a better break, more equitable treatment in the application of our present tax laws, we will eventually benefit by it - New York will eventually benefit by it and that there will flow back to New York an equal amount of tax dollars through, perhaps, the greater effort made and the greater contributions made by non-residents toward the economy of New York City, of New York State, thus creating greater tax dollars.

I want to point out in concluding that the bill that I have introduced in the past will, in accordance with the estimate made by our Tax Commission, cost the State of New York four and three-quarter million dollars; that the bill I propose to introduce this coming year will not cost the State quite so much because there will not be allowed the full amount of all the deductions, which my present bill does. So, I cannot estimate, I cannot get an estimate from our Tax Commission because we have no knowledge whatsoever of the amount of income unearned by New Jersey residents.

Again let me express my deep appreciation for your permitting me to appear before you andexpress these views. I have enjoyed it very much. I enjoyed also listening to the previous gentlemen here and, if I might, I would like to sit back here until you conclude for the lunch hour because I do find it so interesting and because I am so deeply interested in it myself. Thank you very much.

SENATOR DUMONT: Well, we are very grateful to you for

coming here and we will be glad to have you stay as long as you want to.

MR. BROOK: I will be glad to answer any questions.

SENATOR DUMONT: It is very kind of you to come here and express a very honest and forthright opinion about this matter. Now, are there any questions by any members of the Commission? Assemblyman Haines?

MR. HAINES: I would like to ask one. Those citizens that live in New York and work in New Jersey, they have to pay a New York income tax on their earnings from New Jersey?

MR. BROOK: Yes, sir.

SENATOR DUMONT: Any other questions? Assemblyman Elmer Matthews.

MR. MATTHEWS: Assemblyman Brook, I am from the northern part of New Jersey and a great number of the constituents in my County are commuters to New York and are people very greatly affected by the New York State Income Tax. I am very, very interested in what you propose to introduce in the next session of the New York State Legislature, the bill that you propose to introduce. I would like to know exactly what it will tend to cover and how it will vary or be different from the bill you put forth in recent years.

MR. BROOK: It will be different to this extent, Assemblyman, that Section 360 of our New York State Tax Law, I think, has something like 19 or 20 sub-divisions, each one of which prescribes certain deductions that may be taken from gross income. Section 11, I believe, of that law, provides that these deductions shall not be available to non-residents unless the deductions, the expenses or whatever they were, were in connection with the earning

of New York State income. Broadly speaking, that's what our present law is. The final section, I believe, does allow all taxpayers a deduction of $500.

Now, I propose to repeal sub-division 11 of section 360 and, in its place, provide that non-residents may take any one of the deductions but only in such proportion or to the extent that their New York income bears to their total income. In other words, as I gave you the example before, if a man earns $6,000 in New York but he has unearned income, the situs of which is New Jersey, then he can take two-thirds of each of the deductions.

MR. MATTHEWS: Assemblyman Brook, I certainly admire your candor in your testimony before this Committee. It certainly is a refreshing thing to hear. The thing that has concerned me quite a bit, though, - we talk about New Jersey residents who work in New York and they are paying this New York Income Tax but that isn't the only tax, is it, that they are paying to the State of New York or to the City of New York? Aren't there other taxes imposed?

MR. BROOK: Well, they pay a sales tax in New York City whenever they purchase anything there. I suppose, if they have businesses there themselves they are paying all the other local taxes that we have. If they own real estate there, they pay their share of the real estate tax. All of those taxes, yes. But they are directly related to the earning of the New York income and all of those would be a proper deduction and a proper deductible expense against their gross income.

MR. MATTHEWS: It seems to me that many of the arguments used in favor of taxing the non-resident are based upon the fact that the non-resident avails himself of the facilities that are put forth for the use of people in the area. Now, in the

case of New York City, I understand that the majority of the New Jersey residents who work in New York work in an area between the Battery and 59th Street -

MR. BROOK: I would say that I think that is proper.

MR. MATTHEWS: - wouldn't it be reasonable to say that, even if New York State did not tax the income of New Jersey residents, a substantial bit of revenue would still be derived from their payment of sales taxes or business taxes or what-have-you taxes that they pay currently in New York?

MR. BROOK: I don't think I can agree with you that it would be substantial, Mr. Assemblyman. If New Jersey residents pay now $23 million, and those facts and figures came from my State Tax Commission -- They have been making a study of this. It has been going on for a good many years, for that matter. -- I don't think that the contribution made by New Jersey residents in the form of sales taxes and the like taxes, amusement taxes, etc., would make a very large dent in that $23 million.

MR. MATTHEWS: Well, not necessarily in the $23 million. I don't want to monopolize this questioning period either, Senator. I am not only talking about denting this $23 million, I'm talking about the non-resident who works in New York and I'm talking about the non-resident who shops in New York and pays your New York Sales Tax. It's my opinion, and I feel rather strongly about this, that the average non-resident who goes into New York City, every time he goes in makes some kind of contribution to the tax structure of New York, either through the sales tax or, in cases of people who have business enterprises there, in the business tax or what-have-you tax.

MR. BROOK: I agree with you, there are more taxes that non-residents contribute than just the tax on their income earned in New York State. But I don't think - certainly, I have never quarreled with that, - if I go outside of New York City and pay a tax which is a local tax, a municipal tax of some kind, I don't complain about that. I think they are fairly treated in that respect but I do feel that in connection with the tax on the income, when they earn the income in New York State and New York State does have an income tax, they should be allowed a larger portion of the deductions, have more equitable treatment there.

Now, let me just make one final comment because I realize there is a certain argument that can be used against me in connection with what I am attempting to do in New York State for non-residents, and that is that the full amount of the exemption is allowed to non-residents no matter where their income is earned, so long as any portion of it is earned in New York State, which would be $2500 for the head of a family and $1,000 or $1200, I guess it is, individually, and $400 or $500 for each dependent; and they could rightfully say, if I use this apportionment basis, well, then, they ought to apportion the exemption. But I think there is a distinction that can be made between the exemption and a deduction, even though under an old Supreme Court Case, I think in the early 1920s, authority could be found for apportioning the deductions. I don't think that we intend to raise that point over there in New York and I do feel that within the last two years there has been some real progress made in educating the public and getting a different viewpoint on this subject of taxation of non-residents. I have been in the Legislature for 15 years and it took me 7 years finally to get through some semblance of a form

of permanent personal registration but I never gave up on it. So, I don't think that you can accomplish anything substantial overnight here, but your efforts, I am sure, are contributing a great deal toward what I feel will be the ultimate success of what you are trying to do.

Again, thank you very much.

MR. MATTHEWS: I am sure your efforts are helping quite a lot too, Mr. Assemblyman.

MR. BROOK: Thank you.

MR. GLEASON: Assemblyman, you are familiar, I presume, with the fact that Delaware imposes a non-resident tax but that non-residents are treated in exactly the same manner as residents, full exemptions are allowed there?

MR. BROOK: Full exemptions, right.

MR. GLEASON: One further question, and that is, have you any indication as to what reception your proposed bill might hope to have in the Legislature next year? In other words, what assistance we might get from Albany.

MR. BROOK: Well, I think you will get more assistance than you did this year because this happens to be a gubernatorial election.

MR. GLEASON: Thank you, Mr. Brook.

SENATOR DUMONT: Just a minute please, Assemblyman Brook. Following up what Mr. Gleason was asking you, do you think that if, for example, our Commission were to make a trip to Albany during the early stages of your 1959 legislation that we could be helpful? or do you think that we would hinder the success of your legislation?

MR. BROOK: No, I think it would be helpful, Senator. I really do. At the present time not too many of our legislators are interested in the subject matter. I will say this that before I introduced the bill again this year I spoke both to the Speaker and my Majority Leader and they thought that it would be a good idea to put it in.

SENATOR DUMONT: When would you suggest would be the best time? I know you have a compact legislative session, usually you are through, I think, by the end of April or the latter part of April.

MR. BROOK: March.

SENATOR DUMONT: March - excuse me. When do you think it would be the best time for us to come to Albany?

MR. BROOK: That is really a difficult question, Senator, because not very much happens in our legislative sessions until we adopt the budget --

SENATOR DUMONT: That sounds familiar.

MR. BROOK: Well, that's one contribution that I think Tom Dewey made to the administration of the affairs of State. He moved the fiscal year back to April 1st so that we are always guaranteed that we will have a budget by April 1st, otherwise nobody gets paid beyond that period, including legislators. But that occurs around the end of February and I would think that shortly after that would be the time.

SENATOR DUMONT: Then we will keep in touch with you and arrange a date when we could come to Albany and discuss this problem with you and anybody else you might care to have there.

MR. BROOK: I think that's a splendid idea.

MR. MILLER: I would just like to ask Mr. Brook one question with reference to Section 363 of the New York Tax Law, dealing with reciprocity, generally and also on the theory of being fair to non-residents. That authorizes a resident of another state to take credit again his New York State Tax liability to the extent that he pays an income tax to the state of his residence and which state in turn grants similar reciprocity to New York State residents. I wondered whether you would care to advance an opinion as to whether New York State would keep that reciprocity provision in the very unlikely possibility that both Connecticut and New Jersey were to adopt individual income tax laws containing such a provision?

MR. BROOK: Well, I think it would be extremely embarrassing for them to attept to repeal it. We grant it to other states at the present time.

MR. MILLER: I see.

MR. BROOK: My opinion would be that it would be tough for anyone to attempt or to take a position that that reciprocity statute should be repealed. That would be a great step backward, in my opinion, in connection with the terrific cooperation that we are attempting to develop between all the states.

MR. MILLER: Of course, there the entire $34 million from non-residents would be in danger.

MR. BROOK: It would be.

SENATOR DUMONT: Thank you very much, Assemblyman. We are deeply grateful to you and will be glad to have you stay as long as you can or would like to.

MR. BROOK: I think I have to get back, Senator. Again I am very grateful to you for letting me come here and I enjoyed it very much.

SENATOR DUMONT: Is there anyone in the audience, by the way, who wants to submit a question to Mr. Brook?

Thank you very much. We appreciate it.

MR. BROOK: Thank you.

SENATOR DUMONT: Our next witness is the Honorable John F. Tarrant, Director of Tax Reseach of the State of Connecticut, where a similar problem exists with regard to their residents. We are very happy to have you here, Commissioner, and we appreciate your coming all this distance.

MR. JOHN F. TARRANT: Mr. Chairman and members of the Committee: The legal problems involved here have been adequately discussed by your Treasurer and other speakers and I think they are probably fairly well known to all you gentlemen so I will pass them by and attempt to go into the human side of this problem to some short extent.

The situation is, gentlemen, that tens of thousands of residents of Connecticut commute daily to New York and work at salaried positions. The salaries of these Connecticut residents, much as people from your State, are taxed by New York State at the same statutory rate and with the same personal exemptions allowed New York State residents. A gross discrimination, however, occurs when we come to the matter of deductions allowed. Two people, one a New York resident and one a Connecticut resident, working at identical jobs and with identical salaries and no other income, are called upon by New York to pay vastly different taxes on these salaries. As a matter of computation, it generally amounts to a 20% super-tax on the resident of Connecticut working in New York at the same income and the same family situation.

The New York resident is entitled to deduct from his salary all of the humanizing deductions allowed under the New York Income Tax Law, some of them are $150 per annum for insurance premiums, taxes on his home, medical expenses, etc.

Now, it is understandable to a tax man, when New York denies the deduction of taxes on his home in Connecticut, but it is hardly understandable from a human point of view - and New York uses the term "humanizing amendments" when it puts these amendments in -- it is hardly understandable from a human point of view not to allow $150 annual insurance deduction because that goes straight to the ability of the worker to perform his task in New York City and straight to the ability of his family to carry on if he should die.

The second humanizing amendment that we feel is the least the State of New York can do for us - and we realize that we have to come to New York "hat in hand" in this situation because there is nothing illegal about what New York is doing - is the deduction for illness. We all know that man can have an impoverishing family illness that will wipe out his entire annual salary and that is why the federal government and the State of New York for its residents only have the provision whereby they can deduct for medical expenses above a certain percentage of their income. That is one of the humanizing amendments that we feel should apply to non-residents - your New Jersey residents and our Connecticut residents, if you will.

The Connecticut resident, on the other hand, gets none of these deductions but even in the face of this family illness he gets merely a $500 exemption or 10% of his salary, whichever is less. You may want to consider that today $500 exemption,

with the inflationary period and the necessity to earn larger salaries in order to keep the family alive, is not enough.

Now, here are a few specific complaints chosen at random from the many letters that we have received on this problem and, if I may with your forbearance, Mr. Chairman, I will quote a few of them. They may have some interest. I am sure you have hundreds of such letters here.

> "I am not very sanguine that your efforts will be rewarded by any action by New York. New York is exceedingly laggard in making refunds. My refund for 1955 just reached me in April of 1957."

Well, that may be understandable to an administrator with a heavy load and a tight budget but, nevertheless, that's a quote from a taxpayer's point of view.

> "My New York State Tax" another one says, "exceeds the amount of all the direct taxes that I pay to the Town of Greenwich and to the State of Connecticut combined. I can understand New York State's need for some kind of tax revenue from the thousands of people who work there and do not live there, I simply believe that they are exacting too much from us helpless commuters."

Another one writes:

> "A very unfair situation as the result of which many of us must pay to New York State a considerably higher income tax than we would if we resided in that state."

And I think that's generally true. I think Representative Brook had the fairness to point that out in his remarks.

> "It seems to me that there may be good arguments for taxing non-residents on their income earned in New York but only when the benefit of the same deductions for essential expenses which New Yorkers can deduct are extended to non-residents."

Another man says:

> "As a lawyer, I have always felt that although the tax itself may have been held to be constitutional by the Supreme Court it is certainly discriminatory against out-of-state residents not to permit us to take advantage of the same deductions New York residents do."

I only have one or two more of these:

> "Each year I get a letter from New York State not allowing certain deductions otherwise allowed on my federal tax return and which were formerly allowed on my New York tax return when I was a resident of that State."

Another one:

> "This taxation without representation which I have been forced to endure for 17 years has been a continual source of irritation to me and I know it has to many other Connecticut residents who commute to New York to work."

Then the last man says:

> "The only benefit I receive from the State of New York, or it may be from the City, is that the streets are paved from the Grand Central Terminal to the RCA Building."

Now those letters and their contents perhaps have more color than weight in advancing our position but many Connecticut residents working in New York have written in complaining about the inequity of having to pay the State of New York a tax on the income that they earn there. Their big complaint, of course, is that they are not allowed similar deductions that a New York resident is allowed, and this is manifestly unfair.

In an attempt to remove this discrimination against Connecticut residents, our Governor conferred with Governor Harriman, as previous speakers have mentioned, and as your own Governor has conferred with Governor Harriman. Following this conference, he appointed a nationally recognized tax counsel to act as his representative in negotiating with a representative named by Governor Harriman. We have found, unfortunately, that so far, at any rate, New York has no intention of yielding an inch on this problem but that the Taxing Authority, particularly, of that State intends to persist in exacting a heavier tax from Connecticut people than they do from their own.

One of the remedies suggested is that we urge an amendment to the federal constitution seeking to bar one state from taxing the income of residents of another. But, in any event, that is a slow process and it probably would never get by the Federal Congress because of the representatives in that Congress from the 31 states that now tax incomes.

This is a pressing problem, however, and some sort of action is needed. For that reason I suggested at one time - I personally suggested that we impose a similar tax on residents of New York working in Connecticut.

That question was asked by my friend, Bill Miller, of my friend, Aaron Neeld, here at the beginning and Aaron's answer was correct but I, as a lawyer, feel that we probably could impose a service charge on New York people working in Connecticut and we might just possibly get it by the constitutional provision. I have had that matter looked over by eminent tax counsel in New York who feel as I do that possibly it would be constitutional. However, our Governor feels that that is definitely a negative approach and he would have nothing to do with it and he probably is right because it doesn't do anything for our people, it's just erecting a spite fence and that doesn't do anybody any good.

The better approach to this problem probably is the one that Representative Brook mentioned as being the subject of the bill he intends to introduce into the next session of the Legislature and that is that we pro-rate the exemptions. A pro rata suggestion was made by the tax officials of your State at a meeting that we had with them in New York some months ago and it is a good one. For instance, "A" gets all of his income from a salary of $10,000 earned in New York City and on taxes on the $10,000 he gets the same deduction benefits that a New York

resident does; "B" gets a salary of $10,000 earned in New York City but has out-of-state income of $30,000, let's say in Connecticut or in New Jersey, the tax as pro-rated, since the $10,000 income is earned in New York, is one-fourth his total income, then he gets the same deductions as a New York resident does pro-rated as to one-fourth because one-fourth of his total income was earned in New York State.

There is a possible warning, however, connected with this proposal. It is conceivable that with a small income the $500 now allowed, or 10%, whichever is less, on a $5,000 salary under a pro rata system might be a detriment. For instance, if his total allowed deductions only amounted to $300 and he has $1,000 in income that he earns working week-ends in Connecticut, the place of his residence, then he would only, under the pro rata system, be able to take five-sixths of $300 or $250, whereas he now gets $500. That would be a problem that you would have to watch for the many thousands of people who work in New York State who are not in the high salary bracket.

There is also the fear, as Representative Brook also pointed out, that New York might want to pro-rate the exemptions. They now grant the same exemptions to residents and non-residents but as I read the Yale & Towne case, which forced that situation, it seems to me that there is nothing in that case which would prevent New York from pro-rating exemptions - at least it's debatable, and that's something I am sure we wouldn't want to have happen.

Now then, an alternative suggestion, Connecticut has come along with the idea of electing a form. New York has a short and a long form and the short form, as you well know from your

federal experience, just allows a standard deduction and that is what the non-resident is permitted to file at $500 or 10%, whichever is less. Under that proposed system of electing a form that we are proposing here, "A" would elect to use the long form - that is, "A" the $10,000 man who gets all his income from his salary in New York - and would then get the benefit of the same deductions as a New York resident; "B" would elect to use the short form and would still get the same benefit of the $500 deduction - I mentioned before that he would be losing $250 under the pro rata system or he could lose $250, but under this system he wouldn't.

This would, of course, result in the greatest tax loss to New York State because the greatest number of Connecticut residents, paying a New York State Income Tax, pay on a big salary and have little other income. These people would all, of course, elect to use the long form, and the others who have large incomes over and above their salaries would elect to use the short form, thus causing the greatest revenue loss to the State of New York and, therefore, it would be the idea that New York would be least ready to accept.

I think that the suggestion for pro-rating the tax is the better of the two because there is some chance that "B", the gentleman in the second situation mentioned, may benefit if one-fourth of his deductions amounts to more than $500, but there is no chance that "B" will benefit under the election suggestion for he must subject all of his income to New York State in order to use the long form and that's what a man with a large unearned income would, of course, refuse to do under the election system.

I know that Assemblyman Brook has gone but when this thing was in flower several of his constituents wrote to us and

called the fact to our attention that he had the courage to introduce legislation in the New York Legislature. And, incidentally, I understand he is a Manhattan Republican. I didn't know there were many of those. He had courage enough to introduce this legislation in the Assembly and I think that his courage was not in vain because we have had several letters from residents of New York referring to us the fact that he had introduced such legislation. I wrote to him at that time and asked him, very much along the lines that the Chairman asked him a little while ago, if he would welcome some help up there, feeling the way the Chairman did that perhaps it would be not a help but a hindrance. But he very graciously wrote back and said that if he could get his leaders to agree to let the bill out he would be glad to have us and he would let us know at the proper time so that we could come to Albany and voice our opinions. But, as he told you himself, the bill never got out of Committee and we had very little hope that it would.

Thank you, gentlemen, very much. I will be glad to answer any questions.

SENATOR DUMONT: Thank you, Commissioner. Any questions? Mr. Miller?

MR. MILLER: I wonder whether Mr. Tarrant would like to explore another facet of this retaliatory experience that he has been through, that is, whether Connecticut has ever considered a broader form of retaliatory tax including its own residents as well as residents of New York.

MR. TARRANT: I can assure you, Counsel Miller and members of the Committee, that Connecticut has no intention of going into the personal income tax field either now or in the foreseeable future.

MR. MILLER: I am well aware of that.

MR. TARRANT: I thought that was your question.

MR. MILLER: No. Whether you have considered limiting an income tax to residents of Connecticut who work in New York and then furnishing the reciprocity provision which would automatically give them the benefit of New York's reciprocity provision.

MR. TARRANT: Well, I think that probably is what I discussed when I said that I thought we could constitutionally impose a service tax.

MR. MILLER: I see. I thought you were limiting your tax to residents of New York who work in Connecticut.

MR. TARRANT: I was, yes.

MR. MILLER: I was wondering whether you had thought of extending it to residents of Connecticut who work in New York and have those two classes the only ones taxable.

MR. TARRANT: In answer to that, and I think it's a facet of the problem that I first stated that under no conditions will Connecticut go into the personal income tax field. Does that answer your question?

MR. MILLER: Well, one other question then. I am very much disturbed by some figures here.- the ones that Mr. Brook gave us, also confirmed by our own figures submitted by Mr. Neeld previously, namely, that the average tax paid by a resident of Connecticut to the City of New York runs anywhere from $275 to $353 annually; and the average tax paid by New Jersey residents to the State of New York, if these figures are correct, is about $130. How do you account for the difference?

MR. TARRANT: I sympathize with you in your impoverished condition. However, I have no knowledge of the origin of these figures and I neither affirm nor deny them.

SENATOR DUMONT: Here is a question that has come from a member of the audience, Commissioner: What happens if a delinquent taxpayer continues to be delinquent?

MR. TARRANT: I don't know whether there are any admirers of Westbrook Pegler in this audience but in last night's paper he had the answer to that problem. We have a lady manufacturer in our state who is quite a girl. She is very anxious to give her opinion on public matters, including taxation, particularly taxation, and Westbrook Pegler's article pointed out that the State of New York is looking for an income tax on her brother, who is part of her firm, and the Attorney General of New York, or somebody connected with his office, threatened to bring criminal proceedings and extradite the man for an income tax matter. That would be an extreme situation, I must say. That was what Westbrook Pegler said, not I. I don't think they could do anything if the taxpayer stays at home and stays out of New York State. I think everybody will agree with that.

SENATOR DUMONT: Do you have any thoughts or proposals to make as to how we might cooperate with you folks in Connecticut on this common problem regarding New York State?

MR. TARRANT: Well certainly, if this group intends to go on safari to Albany we will be glad to attach our vehicles to yours and attach our thoughts to yours when we get there.

SENATOR DUMONT: Very good.

Any other questions? If not, we will recess now for approximately one hour, until about 1:40 for lunch and then we will resume for this afternoon.

(recessed for lunch)

AFTERNOON SESSION

SENATOR WAYNE DUMONT, JR. (THE CHAIRMAN): We will resume this afternoon's hearing with a reading into the record of a letter from the Honorable Alexander R. Abrahams, Tax Commissioner of the State of Delaware.

Mr. Miller, will you read the letter, please, into the record?

MR. WILLIAM MILLER: Mr. Chairman, the letter is dated June 2, 1958:

> "Referring again to yours of May 9, I am still very busy with work concerning the new Corporation Law and the Income Tax Law. I think you are aware that the Corporation Bill and the bill changing the rates as to income tax were passed December 20, 1957. The passage of these two bills created considerable work for the Tax Department. New forms, instruction sheets, copies of the bill and various other data had to be prepared, mailed and distributed to taxpayers. At least 1,000 letters pertaining to the corporation bill had to be answered.
>
> "As stated in my letter of May 22, these bills were passed by the Legislature and I, as Tax Commissioner, must see that the tax due is collected in accordance with the two laws.
>
> "You state in your letter of May 9 that I have given serious thought to this matter of taxes, especially to the collection of same from residents of other states. This, I have done, as have the members of the Legislature. I have talked to a few of them recently and they are of the opinion that our state income law is a fair one."

Perhaps I might interpolate here, Mr. Chairman, since the Commissioner does not, that the Delaware law makes no distinction between residents and non-residents in so far as the application of their tax is concerned.

> "The law defines on pages 12 and 13 of the attached copy of the original Act, what a nonresident shall pay. Many members of the Legislature feel that this section should not be changed as a nonresident working here is earning or making his living in this state. Some of them are frank enough to say these these particular non-residents do not have to work in Delaware and that they

must realize they are much better off holding their positions with Delaware firms and paying the Delaware tax than they would be if they were working for a firm, for instance in New Jersey, and not paying the Delaware tax. Some of them have perhaps been transferred to Delaware, but most of them accepted or sought positions in Delaware, having knowledge of the income tax law. The original law was passed in 1917.

"In many cases, when a resident of another state visits any nearby state, there are some taxes he is likely to have to pay, such as a sales tax. Of course, I realize that New Jersey does not have a sales tax, neither does Delaware; however, every state has a gasoline tax and a person on vacation or even on a business trip, when buying gasoline in another state, naturally pays the State Tax on the purchase.

"I emphasized in my previous letter that the members of the Delaware Legislature passed a Delaware income tax law, and another session approved the amendment in December, 1957. It is, therefore, my duty to collect this tax. You are aware that in many cases the tax is deducted by the taxpayer's employer and the W-2 tax forms and a check for the total amount of the deductions are mailed to us. In other cases, the taxpayer submits his tax report and pays us the tax due if no tax has been deducted from salary or private income.

"I assure you that I desire to give all communications and requests for information courteous and sincere attention but I doubt whether attending your meeting of Tuesday, June 3, I could explain the circumstances in any more detail than I have in this letter. I naturally realize that the members of your Commission are opposed to the tax collected from your residents by the States of Delaware, New York and the City of Philadelphia, and I doubt very much whether my presence at the meeting would convince you that the residents of New Jersey should pay the Delaware tax.

"Obviously, I would insist that under the Delaware Law I must collect taxes from all persons receiving compensation for services rendered in the State of Delaware and residents of New Jersey working in Delaware certainly come under the provisions of the law.

"I am sending you another copy of the Delaware Law, the amendment passed December 20, 1957, and several tax forms and instructions for out-of-state taxpayers. These, your Committee can use in explaining why the Tax Commissioner of Delaware must collect income tax from all persons receiving salaries or wages in Delaware, no matter where they live. There are no provisions in the law for the Tax Commissioner to make any exceptions whatever as to collecting taxes due.

"It might be in order for your commission to send a report of your June 3 meeting to Governor J. Caleb Boggs and to the President and Members of the Senate and also the Speaker and Members of the House. Address these communications to the above at Dover, Delaware.

"I trust you see from the foregoing that until the Legislature amends the law all income tax must be collected in the same manner as it is at present.

Sincerely,

(signed) Alexander R. Abrahams
Tax Commissioner"

We have some other letters, Mr. Chairman. I wonder if you want to put them in the record at this time or at the time they were originally scheduled to be heard?

SENATOR DUMONT: I think perhaps you had better hold the other letters for the present. But aren't there some attachments to this letter that should be made a part of the record also?

MR. MILLER: We have, in addition to the letter, attachments which give the text of the legislation to which the Commissioner refers, which was enacted by the General Assembly of Delaware, changing the tax rate. We also have the forms which are used in Delaware and which, as I said, make no distinction between the calculation of income of residents and nonresidents; and we have a copy of the Delaware Income Tax Law in full, which is also furnished by the Commissioner.

SENATOR DUMONT: Well, could we just put in the record perhaps, aside from his letter - I think it's one page, isn't it, having to do with a section of the Delaware Income Tax Law, or is that the amendment made in 1957?

MR. MILLER: What we have is the amendment made in 1957.

SENATOR DUMONT: Perhaps that could be attached, and any pertinent section or sections that he referred to in the

law, but not that whole booklet of the law in detail.

MR. MILLER: The Commissioner referred to pages 12 and 13 of the booklet. I might say that those two pages set forth the definitions of "income" of what are called "taxable" in Delaware, essentially taxpayers, and do no more than that.

SENATOR DUMONT: As long as we are exploring the law of Delaware and other states and municipalities today, it might be well to put the one or two pages referred to in his letter in the record, and then that amendment of 1957. That would be sufficient. I don't think there is any reason to attach the forms in the record.

MR. MILLER: There is one particular section of the Delaware law - section 1106 - which might be inserted. That sections reads as follows:

> "Officers or employees of the United States who are citizens or residents of another State but, by reason of their assignment of duty, are stationed in Delaware, are exempt from the payment of tax under this chapter."

SENATOR DUMONT: It sounds like a reference to the Philadelphia Navy Yard by Delaware, or some similar situation. That would be a good thing to have in the record.

Mr. Neeld, I wonder if you would mind resuming the stand. Mr. Lyon has a question or two he would like to ask you about the Bethlehem Wage Tax.

MR. W. SEWARD LYON: Well, Mr. Neeld, I appreciated very much your comments this morning and I was wondering if you would also comment on the situation which exists in Bethlehem, where there is an overlapping school district, which overlaps the municipal situation.

MR. AARON NEELD: At the expense of displaying my ignorance of the subject, I will make these observations:

I checked on it during the lunch hour and I doubt very much that it's a question of an overlapping school district. It's probably any school district to which a person taxable in Bethlehem may also be subject to a tax in a school district which imposes a similar tax. In Pennsylvania, the districts can apply their tax (1) at the situs of the income, or (2) at the residence of the income earner, so by that procedure he can be subjected to taxes on the same source of income. In order to avoid that, there is apparently this provision - in some districts in Pennsylvania limiting the districts to assessing one-half of the percentage, which is one per cent - a half of per cent in the place where earned, and a half of per cent in the place where the person resides . However, that apparently does not prevail in Philadelphia, for instance. A wage earner in Philadelphia may be subjected to the wage tax in the City of Philadelphia and, on the other hand, subjected to a similar tax in the place where he may reside, which may be another school district, and no off-setting provision.

I don't know whether Mr. Alito has any more detail on that particular phase or not, but in relation to the effect of this splitting of the tax, I frankly don't quite see how it discriminates against the nonresident except to the extent that in the case of dual taxation, that is, where you have a taxation based on situs of the income and taxation based on residence where they permit you to split, there is in the one district solely a tax for the specific purpose of education which, in the case of a nonresident, could never be availed of because he is precluded from making use of that benefit. But I am not so sure that that runs to the legality of the tax. It may run

to the equity of it.

MR. LYON: However, the resident pays a certain amount of taxes for the municipal operation of the City of Bethlehem; a nonresident pays twice that amount for that same operation. That's what I'm driving at.

MR. NEELD: No, I think not. In the case of the resident of the City of Bethlehem, if he is not subjected to a tax in a school district, he then pays the one per cent in Bethlehem, the same as the nonresident would pay. He pays no more than one per cent in the event that he has a tax liability at his place of residence, as distinguished from the place of the origin of his income.

Now, I must qualify all I have said by - not a studied view of the Bethlehem tax problem, but I think that is probably the way it works.

MR. LYON: It is a separate handling, though, from the City of Philadelphia? the way Philadelphia handles it?

MR. NEELD: I understand the City of Philadelphia and the City of Pittsburgh, I believe, in the way they are treated are a little like our counties on the Atlantic Ocean; they are subjected to special treatment by the Legislature of Pennsylvania. The classification seems to be based that way. But I think it is so that the wager earner in Philadelphia may be subjected to another tax where he resides, on that same income.

MR. LYON: Thank you very much, Mr. Neeld. Mr. Alito, do you have any questions along this line?

MR. SAMUEL ALITO: As I understand the Bethlehem Tax, the municipality of Bethlehem is congruent with the school districts of Bethlehem, and both impose a wage tax. The school districts may not impose their wage tax on nonresidents. The

municipality may impose its wage tax on both residents and nonresidents on wages earned in the municipality. The effect of the two taxes - at least in the instance of the residents of Bethlehem and the nonresidents - is that the nonresident would be paying 1/2 of 1 per cent wage tax to the municipality, and the nonresident would be paying a full 1 per cent wage tax to the municipality. Do you understand it that way, Mr. Neeld?

MR. NEELD: I am not quite sure whether I followed that. I wonder if I might repeat it for clarity. Did I understand you to say that in the case of the Pennsylvania resident that if he is subject to tax in Bethlehem and also subject to the tax in the school district, he would pay 1/2 of 1 per cent to Bethlehem - right?

MR. ALITO: Only if he were a resident of Bethlehem - not a resident of Pennsylvania.

MR. NEELD: Well, I'm still a little confused. The 1 per cent tax applies to the resident of Bethlehem, or the wage earner in Bethlehem, no matter where he resides. Is that correct?

MR. ALITO: Are you talking about the municipality or a school district?

MR. NEELD: Well, both, because I am coming to that eventually; the point being that as long as you are a resident of Pennsylvania and if you live in Bethlehem, you pay a 1 per cent payroll tax, if you are not subject to any tax in any other district in Pennsylvania on the basis of payroll withholding. Is that correct?

MR. ALITO: For the municipality of Bethlehem.

MR. NEELD: That's right. Well, no-- actually there can be no less than a 1 per cent payment by a resident of Pennsylvania. Now, if he happens to work in Bethlehem and

reside in a taxing district, or vice versa, he then pays half to each, but in any event he pays 1 per cent. Is that correct?

MR. ALITO: I assume that that's what I have said; I don't know.

MR. NEELD: It would still be a 1 per cent tax; the only question being that he is not required to pay 1 per cent tax to two districts. He splits the tax.

MR. ALITO: Well, the alleged discrimination there, and I think this is the point Mr. Lyon is giving, is that the non-resident would be deriving no benefits from the school district.

MR. NEELD: No question about that. Neither does the nonresident in New York derive any benefit from that part of the tax which he pays and which is applied to education, because he is precluded from sending his children, as a nonresident, to the schools in the City of New York and the City of Philadelphia - or the State of New York and the City of Philadelphia. It does pinpoint it when you specifically make the tax applicable for school purposes; there is no question about that, but I don't know that there is legal discrimination resulting from that situation.

SENATOR DUMONT: Are there any further questions? If not, thank you very much, Mr. Neeld.

This may be a good time to read into the record the letter from Mayor Earl E. Schaffer of the City of Bethlehem.

MR. MILLER: Senator, we have a letter from Mayor Schaffer, addressed to yourself as Chairman of the Commission, dated May 12, 1958, which is in response to an invitation to the Mayor to appear at this hearing. It reads as follows:

"Dear Senator Dumont:

"Because of conflicting engagements, it will not be possible for the City of Bethlehem to be represented at the hearing of the Commission on Out-of-State Taxation on June 3rd.

"I doubt that Bethlehem can contribute very much toward resolving the question, since only comparatively few of the nonresidents taxed by us are bi-state commuters.

"Basically, however, we find our problems in alignment with those of all other communities which, because of industrial or commercial activity within their corporate limits, serve to stablizie the economy of contiguous areas by providing employment for large numbers of non-residents. In so doing, they are called upon to provide services for the benefit of non-resident workers. The added cost of these may be negligible by comparison to normal costs as, for example, water and sanitary sewer services. Others, such as those relating to street maintenance, construction of arterial highways and feeders, traffic control, industrial parking, and relief of traffic congestion, involve heavy expenditures upon the community in which non-residents are employed. Our records indicate that our annual operational costs in Bethlehem are increased approximately $100,000 over normal by these latter items alone.

"The problem resolves itself, therefore, into the question of whether it is equitable for the non-resident worker to enjoy complete immunity from contributing to the added costs, at the expense of the local taxable.

"I realize that this letter will be of little value in solving your problem. It is, however, an honest statement of the situation we face in the City of Bethlehem."

I might say that following the receipt of that letter, your counsel addressed another letter to Mayor Schaffer, reading as follows:

"At the last meeting of this Commission, your letter of May 12, addressed to Senator Dumont, was read to the membership.

"The Commission wishes to thank you for your frank statement and to assure you that it appreciates the situation you face.

"The Commission has asked me to inquire whether you might wish to amplify your statement on the specific question of whether or not a nonresident might not be

entitled to the 1/2 of 1 per cent rate for city purposes just as much as a resident where the amount that the nonresident pays for school purposes in the school district of his residence is at least equal to 1/2 of 1 per cent of his earnings, whether or not he pays it in the form of an earnings tax or property tax.

"With much appreciation of your interest and courtesy in providing us with a statement of your views....."

There has been no reply to that request.

SENATOR DUMONT: The next witness is Benjamin M. Taub, Chairman of the Taxation Committee of the New Jersey State Bar Association. Mr. Taub we will be glad to hear from you at this time.

MR. BENJAMIN M. TAUB: Senator, I don't know what you want me to tell your Committee that you probably don't already know in so far as the Committee on State Taxation of the New Jersey State Bar Association is concerned. I understand that you have a copy of our report which we submitted to the Annual Session at Atlantic City, at which time a resolution was adopted and which resolution is at the end of our report.

We have certain excerpts of two United States Supreme Court cases attached to the report relative to the authority of a State to tax nonresidents, and we only concerned ourselves, I might state, Senator, with the wage tax law of Philadelphia and the income tax law of New York, because I presume that the theory of taxation would be similar no matter what States do the taxing and the power given to a State or a municipality would be similar.

Of course, that theory goes all the way back to the time of Chief Justice Marshall in the McCullough v. Maryland case, which propounded the principle that a sovereignty has

a right to tax its individuals and its property.

One feature that I think can be corrected is the conciliatory feature that the New York State Tax Law does not permit the same deductions to a nonresident as it does to a resident of New York.

SENATOR DUMONT: And your recommendation is, then, principally in connection with that, that the same deduction should be granted to nonresidents.

MR. TAUB: Yes. And that can be done by legislation whereby it would give a nonresident the right to file a return - at his option, of course - and, of course, it might not be to his advantage to take the same position as a resident, because then he would probably have to include additional income which might be more than what he would benefit by the deduction that he would be permitted to take if he were permitted to file a return the same as a resident of the State of New York.

I don't know whether our report is to be made a part of your record but, if you want me to, I can read the report.

SENATOR DUMONT: We all have copies of this report, and I think we can just make it a part of the record without your having to read it. You have given us the highlights of it there briefly, or is there something you would like to add?

MR. TAUB: Well, I might say that this matter, especially the wage tax law, was gone into back in 1949 by the then Attorney General, Theodore D. Parsons. Of course, that was never testified - that Dole case, which was a Supreme Court case in the State of Pennsylvania, was never taken up in the Supreme Court of the United States. Is that right, Bill?

MR. MILLER: Right.

MR. TAUB: And at that time we felt that under the Travis v. Yale and Towne case and the Shaffer v. Carter case, it would be useless to have the State of New Jersey spend all that money in an effort to try to reverse the Supreme Court decision of the State of Pennsylvania. Those cases were started way back; one was 1940 and one was prior to that time, I think. However, there was an editorial that appeared in the Philadelphia Inquirer, I think, some weeks ago which stated that the State of New Jersey ought to attempt to reverse that Dole case in that it was an excise tax case and not an income tax case and did not come within the purview of the opinion of the Travis v. Yale and Towne case and the Shaffer v. Carter case. However, I disagree with the editorial.

SENATOR DUMONT: Are you familiar with this Thompson case that is now pending in the 3rd Circuit Court of Appeals?

MR. TAUB: Somewhat.

SENATOR DUMONT: And the case you are referring to here, the Dole case, I take it that that did not deal with a person working at the U. S. Naval Base?

MR. TAUB: Yes, I think that Dole case was-- I'll tell you what it was about. You are referring now, Senator Dumont, to the fact that where a man works on a federal reservation or what is purported to be a federal reservation--

SENATOR DUMONT: That's correct.

MR. TAUB: I don't think the Dole case treated with that point. But that is one of the minor points involved in the law because there are so few of them who work in the shipyards, which I presume is what you are referring to. There are so many working in the City of Philadelphia.

SENATOR DUMONT: Well, there are still quite a few, according to the testimony of this morning from the representatives

of the Wage Tax Protest League of South Jersey. I think the number was 2200 who cross by ferry each day from New Jersey to the Navy Yard and never actually set foot on the soil of Philadelphia at all.

MR. TAUB: That's right. That was a case that I personally handled in 1949 for the State of New Jersey but at that time I think we only had about 600 and some odd wage earners employed in the shipyard.

SENATOR DUMONT: Are there any questions? Mr. Gleason?

MR. ARTHUR L. GLEASON: Mr. Taub, were you here this morning when Assemblyman Brook from New York testified before the Commission?

MR. TAUB: No, I didn't come in until two o'clock.

MR. GLEASON: He indicated that he proposed to introduce a bill into the Legislature of New York next year which would grant to nonresidents, thinking of those in New Jersey particularly, and those in Connecticut, the same right of exemptions as presently obtain in the case of residents, with the provision that the proportion of the income earned in New York, as a percentage of the whole income, would be applicable to the exemptions. Well, I know you would know what your committee would recommend, but would your personal opinion be that that might be an equitable way to settle this matter?

MR. TAUB: I would think so, yes. That is what we concluded in our studies by the committee, that New Jersey residents should at least get an exemption to the extent of their income in New York the same as an exemption is given to a New York resident. In other words, you would not expect to apply an exemption in New Jersey; for instance, let's say, well, we dealt with medical bills, we dealt with charitable deductions.

In New York, a nonresident can only deduct as charitable deductions those charities that he gives to a New York corporation or an individual. Now, we thought that it should go further than that, that it should apply to all charitable deductions whether given to a New Jersey, federal, or state institution or individual.

MR. GLEASON: In proportion to the extent to which the earned income in New York is applicable to the total of the whole income.

MR. TAUB: Yes, that's right.

MR. LYON: Mr. Chairman, Mr. Gleason spoke of exemptions; I think he meant deductions.

MR. GLEASON: Yes, I did mean deductions. Of course, the law is that if we had an income tax law and we granted an exemption to New York, our residents would not have to pay any tax in New York, because we would be entitled to the same exemption as we give them, under the federal law.

ASSEMBLYMAN ELMER MATTHEWS: Mr. Taub, I see by your report here that you have submitted and which you are going to make a part of the record that your sub-committee recommended to the State Bar Association that a resolution be adopted memorializing the Legislatures of the states involved. Has such action been taken?

MR. TAUB: That action has been taken and we will send that resolution to the President of the Senate of New Jersey and to the Speaker of the House and to individual Assemblymen and Senators, and then we will do the same thing in New York and also in Pennsylvania. But I don't think it applies so much in Pennsylvania under our wage tax law.

SENATOR DUMONT: Are there any other questions? Mr. Miller, do you have a question?

MR. MILLER: Well, I don't know whether Mr. Taub would want to comment on this, but I notice that the Committee Report relies on three cases, really - two old ones, Shaffer v. Carter, and Travis v. Yale and Towne Manufacturing, U. S. Supreme Court, and a fairly recent one, Goodwin v. State Tax Commission, New York.

MR. TAUB: Yes. That one went to the Court of Appeals only in the State of New York. It didn't go to the Supreme Court of the United States.

MR. MILLER: I think the appeal was denied.

MR. TAUB: It was affirmed.

MR. MILLER: It was?

MR. TAUB: Yes, the decision of the Tax Commission was affirmed.

MR. MILLER: In the Court of Appeals?

MR. TAUB: Yes.

MR. MILLER: I think an effort to bring it to the Supreme Court, it was rejected by the court under one of the alternative procedures.

MR. TAUB: We didn't find that.

MR. MILLER: Well, however that may be, you have a situation where the resident of New York, admittedly taxable on his income from whatever source in or out of the State, is not required, if he has only income from sources within the State, to apportion his deductions to such deductions as are attributable to the earning of that income. Conversely, the nonresident, even though he has all his income from New York,

is required under the New York statute essentially to apportion his deductions to the earning of that income.

MR. TAUB: That's right.

MR. MILLER: Do you think these cases forclose a constitutional question based upon discriminatory treatment and a denial of equal protection?

MR. TAUB: Well, the cases specifically held that there wasn't a denial of equal protection under Article IV of our Constitution or Article XIV, the due process law. They specifically hold that.

MR. MILLER: Well, as you point out in your report, the Goodwin case involved an effort to claim medical expenses and an interest on a mortgage on a New Jersey residence. As you read the opinions in that case of the Appellate Division, Court of Appeals, I wonder whether you saw any way of distinguishing the Goodwin case from a square issue of two taxpayers, each earning all of their income within the State of New York, one required to apportion his deductions, the other not? Do you think the Goodwin case would cover that?

MR. TAUB: I think the Goodwin case would come within the purview of the Travis case, which very, very emphatically decided that point in the language of the Supreme Court.

MR. MILLER: Do you think there is any development in the U. S. Supreme Court cases since 1919 dealing with double taxation which might cast any doubt upon the continued authority of those two cases?

MR. TAUB: Well, we discussed that quite at length, Mr. Miller, and our committee, which is composed of about 30 lawyers, and, in my opinion, with all due respect and very humbly I say they are pretty good tax lawyers, came to the

conclusion that this court as constituted today would not reverse the Travis or the Shaffer case, and we discussed that very, very fully and we spent an awful lot of time on it. Certainly, I for one would like to see that Travis case reversed and probably see to it that our citizens aren't taxed.

SENATOR DUMONT: Thank you. Any questions? Mr. Kingsley?

MR. WILLIAM KINGSLEY: I would just like to say that my recollection of the Goodwin case is, and this is apropros to the question that Mr. Miller asked, that in that case it was asserted and it was undisputed that all of the income of Mr. Goodwin was earned within the State of New York.

SENATOR DUMONT: Mr. Kingsley, will you talk into the microphone, please?

MR. KINGSLEY: All right. Apropos of the question that Mr. Miller asked of the previous witness as to whether or not the constitutionality, that is , the constitutional question still remained as to whether the deductions would be allowable if all of the income of the nonresident were earned in the State of New York: It appears that in that Goodwin case, it was asserted by the taxpayer and undisputed that all of the taxpayer's income was earned within the State of New York, being exclusively from the practice of law in New York in compensation for services to a New York corporation, and that the deductions would have been allowed in full to a resident. So I think that the court had before it in that case, that is, the New York court and in turn the U. S. Supreme Court, at the time that it denied a review of the decision of the New York court. It had before it the allegation that all of Mr. Goodwin's income was derived from New York sources, that all of Mr. Goodwin's income was taxable in New York, and that nevertheless

each of the courts in turn sustained a finding by the State Tax Commission that Mr. Goodwin would not be permitted the same deductions as a resident would have been permitted.

SENATOR DUMONT: Any further questions?

MR. MILLER: Mr. Chairman, I have been asked by one of the spokesmen for the Wage Tax Protest League to make a note of an extract from the Income Tax Regulations and Ordinances of the City of Philadelphia, revised edition 1954. The preface by the Revenue Commissioner George S. Ford makes this statement, for what value it may have. In describing the ordinance which levies the Philadelphia income tax, he says:

> "It is of the utmost significance to remember that the tax imposed by this ordinance is not a personal income tax. It is a property tax."

I would like to ask Mr. Taub if that would make any difference.

MR. TAUB: I don't think so. I think they have a right to tax property and the person.

MR. ALITO: I think possibly that was there because the courts in Pennsylvania had outlawed income taxes as unconstitutional under their State Constitution. I think that possibly that is the reason for that comment in the preface.

MR. MILLER: The trouble is that in Kelly v. Klaudner, I think - some case in the Pennsylvania Supreme Court, they had outlawed a progressive rate income tax, for the reason that they have a uniformity clause in their Constitution, similar to our old one, requiring that all tax on property be levied uniformly.

MR. TAUB: I don't remember now, Mr. Miller, whether or

not the charter of Philadelphia gives Philadelphia the right to pass such an ordinance taxing wages. Now, I don't recall now; I may have looked it up way back, but I don't know. But if the charter doesn't give the power to the municipality, then the tax is unconstitutional.

MR. MILLER: Well, there they can levy any tax that the State of Pennsylvania has not already levied.

SENATOR DUMONT: That was that "tax anything law" that they passed about a dozen years ago.

MR. MILLER: Yes. They have reduced it - not quite "anything," but still almost that.

SENATOR DUMONT: Any other questions?

Thank you very much, Mr. Taub. We appreciate your coming.

Mr. Katz? Mr. Norton I. Katz, Special Committee on Interstate Taxation of the Federal Bar Association of New York, New Jersey, and Connecticut. Mr. Katz, we appreciate your coming here today.

MR. NORTON I. KATZ: I am very happy to be here, sir.

SENATOR DUMONT: Do you have any statement, or do you want to rely on the report or outline it to us? How do you want to do it?

MR. KATZ: Well, I'll meet your pleasure. I have made up, mostly for my own use but it is available in the number of copies that I have with me, a statement. I think perhaps it would be more helpful to the Commission if, instead of merely submitting the statement, I, by reference to it, spoke with respect to the questions that you are studying, and then I will be glad to try to answer any questions that any of

the members of the Commission or other of the spectators wish to ask.

SENATOR DUMONT: We would be glad to have you do that. Would you mind submitting a copy to the stenographer, please?

MR. KATZ: I'll be happy to do that.

First of all, I think I should say that I am a New Jersey resident and I earn all of my income, or substantially all of it, in the State of New York where I practice law as an attorney. The circumstance that brings me before the Commission today is that I recently served as Chairman of a Special Committee of the Federal Bar Association of New York, New Jersey and Connecticut, which, as you can judge from the name, numbers among its members people from those three states. The Special Committee was designated by the President of the Association for the purpose of inquiring into the very question which you have before you in respect to the New York tax; that is, income tax on New Jersey and Connecticut residents. The Committee consisted of four other lawyers besides myself - Mr. Myron Friedman, Mr. Frederick B. Lacey, Mr. Max K. Lerner, and Mr. Joseph Winston. Mr. Friedman and Mr. Lerner live and practice in New York; Mr. Winston lives in Connecticut and practices in New York, and Mr. Lacy lives, as well as practices, in New Jersey. The Association felt that this makeup of the Committee would be helpful in arriving at a cross-section of views on the subject.

After a somewhat extended study, the Committee presented its report to the Association, and that report was released to the various interested agencies. The full text of our Committee's report appears in the New Jersey Law Journal of February 27, 1958. They were kind and helpful enough to

reprint this in full.

In the course of the study, as I say, we attempted to analyze and evaluate the objections that had been voiced on the part of the Governors of New Jersey and Connecticut and by legislators and other persons in both states to the imposition of the New York tax on nonresidents and to certain claimed disparities in the tax treatment of residents and nonresidents. In the course of our work on the report, I might say we had a considerable amount of helpful cooperation from Senator Walter H. Jones of Bergen County and from Mr. Samuel A. Alito of the New Jersey State Library Legislative Reference Bureau.

My own interest in the question of nonresident taxation arises not only from my interest in it as a lawyer but also that I am one of the persons affected by the tax. I think I should make it clear that this expression of my views today is an expression of my own point of view rather than that of any of the committee or of the Bar Association as a whole However, I don't know of any respect in which my view differs from the view of the Committee as expressed in our report.

With respect to the basic question whether New York may properly impose an income tax on those who don't live in the State, I believe that the critics as well as the supporters of New York's position almost uniformly recognize that the legal basis for such a tax is unassailable, or virtually so. The Supreme Court of the United States, as has been noted earlier today, has at least twice upheld the constitutional validity of the tax, and the authorities in other states have taken the same position. Critics of the New York tax have directed their arguments mostly to the charge that it is inequitable

rather than that it is illegal to tax out-of-state residents. Well, I disagree wholeheartedly with these criticisms. I am talking now about the basic question of whether a tax not only can but whether a tax should be imposed by a State such as New York on those who do not live within the State. My reasons for disagreement with those who feel that it would be unfair that any such tax exist at all are: First, I think it would be unfair, if not unconstitutional, and it may very well be unconstitutional, to create a New York State tax structure in which two competing businesses, with no distinguishing characteristic between them, other than that the proprietor of one is a New York resident and the proprietor of the other a nonresident, should be treated so differently as to give the nonresident-owned business a tax exemption, while the resident proprietor would be subjected to the full impact of the New York tax. I feel also that a nonresident employee working in a New York employment, side by side with a New York resident, should not be favored by a tax exemption denied to his co-worker. Secondly, I think that the sovereign power of a State, as well as of the federal government, to tax income earned within the State even though earned by an alien in the case of the federal government, or by a nonresident in the case of the State, is well established as a matter of traditional tax law and practice. Third, I think even our own New Jersey courts have recognized in the past, in cases dealing with the New Jersey personal property tax, that the factor of nonresidence is not a valid ground for withholding application of the tax. As early as 1901, the New Jersey Supreme Court concluded that the tax on manufactured goods, which was applicable to residents, must be applied to nonresidents as well, because

"our own citizens cannot be discriminated against - they are entitled to equal protection with nonresidents." New Jersey's personal property tax today is not limited to taxing property owned by New Jersey residents. I don't mean by that last parallel to indicate that I equate a personal property tax with an income tax on every level. However, I think with respect to the consideration about which I am speaking now that if the power of the State would exercise its taxing power, the considerations are much the same.

I think I should say something about what I consider to be a much abused criticism of the New York tax, and that is that it constitutes taxation without representation. This was a pre-Revolutionary slogan that was directed by the colonists against an attempt by the Crown to impose the Stamp Tax on transactions within the colonies, and that to my mind is a far different situation than exists in the case of New York exercising its sovereign taxing power on transactions occurring within its own borders.

While it is my view that a New York tax on New York income of nonresidents is a proper levy, it is also my conclusion that there are some provisions of the New York Tax Law which unfairly discriminate against nonresident taxpayers. I recognize, too, that those provisions which I regard as discriminatory have very recently been sustained by the Courts in the Goodwin case, and it is therefore my view that some ameliatory legislation is called for. It seemes to me that the legislative body that should be called on to enact this legislation is the New York Legislature, though I recognize that from a theoretical standpoint a constitutional amendment could be so framed

as to limit the power of states to tax their residents more favorably than others.

I don't think I need to enlarge on the difficulties and practical probablities of having such a constitutional amendment enacted, especially in light of the fact that there are 31 states which now have personal income tax laws and which tax nonresidents.

Now, while I say that there are differences in the tax application of the New York Law as between residents and nonresidents, I do not believe that all of them are discriminatory. It must be recognized that the nonresident taxpayer, that is, the New Jersey commuter who goes to New York and earns his income there, is not subject to the New York Tax on all of his income. He does not pay a tax on his bond interest, on his dividends, on his bank interest, on annuities that he may receive; he does not pay a tax on rental if he rents his residence in New Jersey; he does not pay a capital gain on the sale of his residence or other property in New Jersey; the impact of the tax is limited to certain specific items which the New York Law characterizes as income arising from sources or properties within the State of New York. In a great number of cases, the exclusion of those items of income from New York taxable income is a substantial exclusion, though I recognize that this Commission is concerned with the problem of the taxpayer who does not have any non-New York income but who receives 100 per cent of his income in New York. But the difference in the impact of the New York tax must be recognized because it creates a necessity for a corresponding difference in the allowance of deductions to the nonresident taxpayer. For example, one of the criticism that was leveled at the New York tax in the Goodwin case, and which

has since been a major target, is the denial to a nonresident taxpayer under the New York Law of a deduction for mortgage interest paid on his residence mortgage, and for the local real estate taxes that he pays. Now, a New York resident is permitted a deduction for those local real estate taxes and is permitted a deduction for the mortgage interest on his residence mortgage. Those deductions are wholly denied to a nonresident. In evaluating that difference in trying to determine whether it is discriminatory, it must be recognized that if a New York resident sells his house and realizes a gain, that is taxable income for him, though it is not for the nonresident, and if he rents his house and realizes rental income from that house, that too is income on which the New York resident must pay a tax but the non-resident is not required to pay a tax.

Now, there is an over-all provision in the New York Law which applies to residents as well as to non-residents and that is, that no deduction is allowable to either category of taxpayer where the property to which the deduction may be allocated is not itself taxable - that is, where the income from that property would not be taxable. And I think that over-all overriding and equally applicable statutory rule in New York would operate to prevent the allowance to a nonresident of the deduction for the residence mortgage interest and residence taxes.

Similarly, another focus of the criticism has been on the fact that a resident is permitted non-business casualty loss deductions, whereas a nonresident is not. There again it must be recognized that the income from property, if it does not have a situs in New York is not taxable to a nonresident, whereas it is taxable to a resident. Consequently, the disallowance of that deduction to a nonresident is also appropriate

under the overriding consideration that I have mentioned, namely, that where the income from property is not subject to tax it's equally true that no deduction allocable to that property should be permitted.

So there are a number of categories that I think the reasoning that I have just enunciated applies to other deductions, as for example the life insurance premium deductions and the bad debt deductions. In the case of the life insurance premium the reason is that - I am not speaking about the event of life insurance falling in on death, but rather that the excess of proceeds of a life insurance policy over the cash surrender value during life of that policy, over the amount paid in premiums, would be taxable as a gain to the New York resident but would not be taxable to the nonresident. Consequently, I feel that there is a justification for the disallowance of the life insurance premium deduction to the nonresident, on the same ground; that is, that he doesn't pay a tax on the income from the property and accordingly should not be permitted a deduction relating to that property.

On the bad debt deductions, the reasoning is somewhat more complicated. It relates to the fact that the New York resident, on recovery of a bad debt, must treat it as income, whereas there would be no provision in the tax law which could require that the recovery of a bad debt be treated as income as to a nonresident.

But there is another category of deduction, other than those I have referred to, where the New York law grants so-called personal deductions, such as those for medical expenses, alimony deductions, interest on personal loans, sales taxes, admissions

taxes and social security taxes on domestics' pay. As to those deductions, even as to the New York resident, they are not keyed to any income-producing activities, and it is, therefore, my view that the same treatment should be accorded the nonresident taxpayer; and the New York law, in order to be fair both to residents and nonresidents, requires a modification to the extent of allowance for those deductions.

In the report of the Special Committee of the Bar Association, to which I have referred, we felt that the argument that the medical expense deduction which, as to a resident, is permitted not only for personal medical expenses but also for medical expenses of other members of the family, should not be accorded the nonresident. The reasoning there was the reasoning on balance rather than anything. It was felt that the extension of the medical expense deduction to persons other than the taxpayer himself would be carrying it too far beyond the bounds of any matters that concerns New York State.

That, as I say, was a decision on balance and that was the Committee's view on it, though I recognize that there could well be a reasonable argument made to the contrary.

Now, with respect to the charitable contribution deductions under the New York law, I do not believe that the claimed discrimination is substantially unfair. It is true that the New York law permits a deduction to nonresidents only if the donee is "organized or operated under the laws of the State of New York". I believe that that definition would include most national charities.- The American Red Cross and the Community Chest, in my view, would be regarded as operated under the laws of the State of New York. That's a view that I have not originated but that has been enunciated by several other taking authorities.

Now, on the other hand, it is true that the nonresident may not deduct contributions to local churches and charities at his place of residence outside the State of New York. And my feeling and the feeling of the Committee at the time the report was rendered was that these deductions concern purely local benefits and should not be deductible in computing a nonresident tax which is limited in its application to income from sources in New York. Those deductions appear to me to be related exclusively to the state of the taxpayer's residence.

So that by way of summary, it is my opinion that substantial fairness to the nonresident taxpayer requires that the right to deduct some tax payments, but not all; certain interest payments, but not all; the medical expenses of the taxpayer and alimony payments should be extended to nonresident taxpayers. I feel that the other deductions that are not now permitted to nonresidents are not required by any considerations of fairness to be extended to them.

As to all of the deductions, with the exception of the deduction for contributions, I believe that the amount of the allowable deduction should be based on an apportionment which in turn is based on the ratio of in-state and out-of-state income. I think that is the least arbitrary method of arriving at a fair deduction allowance without conferring an exceptional advantage on nonresidents.

The instance which is most frequently cited by those who are opposed to the New York law is that of the New Jersey or Connecticut resident who earns all of his income in New York State, and who has no non-taxable bank interest, bond interest, dividends or income from other intangibles. In such a case, the

difference in allowable deductions may mean a real discrimination. One suggestion that has been made to remedy this problem is that any non-resident taxpayer should be permitted to elect to be taxed as a resident on all of his income from any source and thereby be permitted to deduct the same items as would be applicable in the case of a resident taxpayer. I believe that this is a fair proposal and one that I would recommend as being worthy of serious consideration.

Now finally, I think it must be recognized that one of the reasons why the problem of nonresident taxation, when applied to New Jersey residents, is an acute one is that New Jersey does not have a personal income tax law. The New York law expressly provides for tax credit against the New York tax for the amount of any tax that is paid to the state of the taxpayer's residence on New York income, provided a reciprocal credit is granted. Now this provision, which is existing in the New York law right now, would become operative in the event New Jersey enacted a personal income tax law. I don't say that other problems would not arise as a result of the enactment in New Jersey of a personal income tax law but at least one of the problems that would be virtually eliminated by reason of enactment of such a law would be this problem that I am now discussing.

Now, Senator Dumont, that is all that I have in mind to say now and I will be glad to submit to any questions that any members of the Commission may have and from anybody else, for that matter.

SENATOR DUMONT: Do any of the Commission Members have questions?

This report of your Committee was dated about March of this year, Mr. Katz?

MR. KATZ: I believe it was in February. It was, because it appeared in the February 27th issue of the New Jersey Law Journal.

SENATOR DUMONT: This morning, Assemblyman Brook from New York State, in his testimony said that he was planning to introduce a bill in the next session of the New York Legislature which would apportion deductions according to the amount of income that was earned in New York State in relation to all of the income a person earned, regardless of where it was earned. He thought that such a bill might have a fair chance of success as contrasted with the lack of success that he has had with the bills where he tried to give nonresidents the advantage of all the deductions, regardless of where their income was earned, that he tried in other years.

Now, I take it from your conclusions here that you would be substantially in support of such legislation as he plans to introduce next year. Is that correct?

MR. KATZ: Well, the one point that I didn't quite get in your summary of Mr. Brook's proposal, Senator Dumont, was whether he intended that allocation to apply in the case of residents as well as in the case of nonresidents.

SENATOR DUMONT: The allocation, Mr. Gleason points out, is only for nonresidents.

MR. KATZ: Well, if that were so, then I would not agree with Assemblyman Brook's proposal. The reason for my disagreement is that in framing a tax law the obligation is not to swing the pendulum too far the other way and create an unfair discrimination in favor of nonresidents. Both nonresidents and residents have the right to the protection of the equal protection

clause and the privileges and immunities clause of the Constitution of the United States. And any provision of the tax law which would create an undue and an unequal benefit in favor of a nonresident over a resident would be equally objectionable.

Now, in the instance you speak of, if we take for example the deduction for residence taxes and if Representative Brook's proposal were enacted into law we would have the situation where a nonresident would (a) not be required to pay any income tax on gain from the sale or rental of his residence; (b) would be permitted a deduction, albeit not the entire reduction, relating to that residence for his taxes, whereas the New York resident would be required in full to pay a tax on any gain from the sale or rental of the residence and he would also be entitled to a deduction in a slightly larger amount. I feel that the net result of such a proposal would be to create a discrimination against the resident who would be required to pay a higher tax, limiting my remarks to this particular question of residence taxes, than would the nonresident. I don't think that solution when carried out in detail with respect to each of the permissible deductions is feasible.

I might say also, Senator Dumont, that I think the only way this problem can be approached is by an analysis of the specific deductions. I don't think that any over-all consideration, which may attempt to arrive at a broadcast solution of the entire deduction question, can be worked out - at least I haven't found one and we have made a sincere effort to try to reach it.

MR. GLEASON: Mr. Katz, assuming the point you just raised about the fact that the profit from the sale of property

outside of the state would not be taxable to a nonresident in New York State. As I understand Assemblyman Brook's proposal, his proposal would be that the nonresident would be entitled to a pro rata share of the deduction as the total income earned in the State of New York was to the total of his income. Now, that other - let's assume a case where he had a $10,000 income and he had a $2,000 profit from the sale of his property, he would then have a total of $12,000 income and he would be entitled to five-sixths of the exemption on his New York State tax. Would that be any discrimination?

MR. KATZ: I feel that it would create a discrimination, Mr. Gleason, and the reason that I say that is, I think it is necessary to view each deduction separately and that, I think, is the way the courts have viewed it. In other words, we would be faced with a situation where residents of New York would go into court and make an effort to overturn the tax law and say that "I had $2,000 of income from the sale of my residence - gain from the sale of my residence, and I am now being asked to pay a tax on that gain, whereas there is a provision in the law which says that a nonresident is not required to pay a tax on that gain" and, in addition to that, the nonresident is being given some dollar deduction relating to his expenses on that property."

Now, it doesn't make any difference in my view of the discriminatory aspects of the situation, that the deduction being permitted the nonresident is less than the whole. The fact is that there is a difference.

SENATOR DUMONT: Mr. Miller?

MR. MILLER: I would like to have you pursue that a little more, Mr. Katz. If what you say is to be carried out

in legislation, that we must look at each deduction separately, isn't it almost necessary to have a separate tax law for every taxpayer because, if you look for the kind of uniformity you suggest, each individual has different components of his income and the value of the deduction will be so much greater for those with more income in a progressive rate tax, as the New York one has, coming off the top rather than the bottom. I don't quite follow how you can design a tax law, taking each deduction separately and appraising it in terms of its own individual tax, without taking each taxpayer separately and appraising it in terms of the impact on him, which, of course, I know you don't propose.

MR. KATZ: No. I would say, taking the last part of your question first, that I do not propose any such solution. I think that that may be one of the errors in some of the criticisms that have been directed at the tax law as it now stands. That is, for example, the very kind of selection that selects the 100% New York income taxpayer, and tries to evaluate the tax law because of its possible unfair impact on him. The answer is, as you suggest, Mr. Miller, that one does not tailor tax laws to individual cases; that one tries to approximate the fairest solution applicable to all taxpayers.

However, with respect to the first part of your question, that is, the analysis of each deduction individually, I certainly did not mean to suggest that each deduction on each taxpayer's return should be analyzed individually. What I meant was, that the fairness of a particular treatment of the medical expense deduction must be analyzed with respect to the medical expense deduction, and that the fairness of the

alimony deduction must be analyzed with respect to that deduction. I haven't spoken about the alimony deduction. Incidentally, I think it is set forth extensively enough in the report. But my feeling is that we must analyze each of those separately in order to work out a fair rule with respect to each of them because different considerations apply. And even as to the tax deduction, for example, I think that different considerations apply to a deduction for taxes when the tax can be allocated to some specific item of property, that is, for example, a sales tax on a piece of machinery that's located in New Jersey as contrasted with a sales tax on a meal that's bought in New York. I think that the kind of deduction must be separately analyzed because it requires separate treatment, just as I think that in the two tax situations, to which I have just referred, different considerations apply. Where we can allocate a deduction to a specific piece of property, I think the deductability of the item depends on whether the income from the property is or is not subject to tax.

MR. MILLER: Well, aren't you really developing an argument which parallels the old argument of separate accounting versus unitary enterprise in corporate tax law? If you did, wouldn't it be equally logical to say that if every taxpayer, resident and nonresident, would compute his income without regard to its source or without regard to the nature of the deduction and arrive at a net income for him, and then allocate that net income to New York and outside of New York in the proportion that his gross is earned in New York or outside of New York? What inequity would you have there?

MR. KATZ: I don't believe I quite followed your

suggestion. Was this a hypothetical case whereby you were trying to arrive at a proper allocation of income as between in-state and out-of-state income by disregarding deductions and equating net income and gross income in the same proportion?

MR. MILLER: No, I was first going to arrive at net income regardless of whether the man is a resident or not and then if he is a nonresident permit him to allocate a proportion of his net to the State of New York for taxation in the same ratio that his earnings in New York are to his earnings everywhere. What inequity might you then produce.

MR. KATZ: Well, I'm really not equipped to answer that hypothetical case, Mr. Miller. I don't see its applicability, frankly. So far as the inequity that is involved in it, I would say that it is rather an arbitrary method of arriving at any tax situation and I don't think that anybody would seriously propose it.

MR. MILLER: Oh, I don't know. I think we had, in a sense, in the discussion of Mr. Brook's proposal this morning an approach which wasn't very different. In fact, the advantage of that approach might well be that you don't have to worry about these deductions, one by one, but would rather treat them as to whether or not they were applicable within or without the state after you arrived at net income. You automatically dismiss them, in other words, as you would in a corporate net income determination. You arrive at the net income first and then apply an allocation factor.

MR. KATZ: If you will pardon me, I don't mean to interrupt, my only feeling about that, Mr. Miller, is that all that can be said of it is that it is a solution. Obviously

it is an arbitrary solution. It solves the problem if you are concerned with merely solving the problem, without solving it equitably. I would, incidentally, say with respect to Mr. Brook's proposal - and remember I asked Senator Dumont whether Mr. Brook proposed to apply the allocation in the case of a resident as well as in the case of a nonresident, because if that were so and if that were his proposal, I would be inclined to substantially go along with the proposal.

MR. MILLER: Specifically, he referred to sub-division 11 of section 360, which he proposed to repeal and to put in its place a proportional deduction section related to residents.

MR. KATZ: You mean nonresidents?

MR. MILLER: Well, yes. I mean where the residence was.

MR. KATZ: Yes. Well, section 11 of section 360 is the section which deals only with taxpayers other than residents and, therefore, Senator Dumont's response was accurate with respect to summarizing Mr. Brook's view. But I would suggest that a better treatment of the suggestion would be to incorporate it as a provision of some other section applying equally to residents and nonresidents. In other words, my view is that there should be no disparity in treatment one way or the other between residents and nonresidents. A nonresident should be treated the same as a resident but, conversely, a resident should be treated the same way as a nonresident to the extent that that is practicable, and I recognize that there are many practical obstacles to carrying that into effect.

SENATOR DUMONT: Mr. Kingsley.

MR. KINGSLEY: Mr. Chairman, through you may I address a question?

SENATOR DUMONT: Yes, sir.

MR. KINGSLEY: I should like to address myself to the reasoning of Mr. Katz in rejecting the proposal in the hypothetical case of a nonresident owning property outside the state, on the grounds that the deductions that might relate to such property should not be allowed because the income that might accrue to the nonresident from such property would not be includable within the taxable income.

Now, I believe we all recognize that we are starting out from a premise that legally the taxing state can deny all deductions, just as they did in the Goodwin Case. However, our discussion is with respect to what would be an equitable amendment to the deduction provisions in the New York Law. And there, I think, we are getting down to other questions, questions of fairness. Now Mr. Gleason asked a question as to whether or not the fact that there would be an apportionment of the deduction, based upon the ratio of out-state income to in-state income, would accomplish fairness in that case. And I believe the answer to that by the witness was that there still remain a residue of disproportionate benefits as between the nonresident and the resident in favor of the nonresident and, therefore, the resident was being unfairly dealt with.

Now, while we are on the question of fairness, do you think, Mr. Katz, that the fact that there might be an occasional instance, certainly in the case of the capital gain by reason of the sale of an out-state residence that would not be includable in New York, - wouldn't that occasional instance be sufficiently counterbalanced by the fact that the nonresident would perennially, year after year, not enjoy the benefits of

fire and police protection, sewage and water, and schools, and all those other services for which the nonresident pays in his state of residence. It seems to me that when we try to weigh respective equity we must recognize all those other factors that also relate to the benefits enjoyed by residents and nonresidents, other than those strictly involving the allocation or non-allocation of income.

MR. KATZ: Firstly, before I answer your question, Mr. Kingsley, I think I should say that the Goodwin case, in my view, does not establish that legally a state can deny all deductions because I think what the Goodwin Case stands for is that the particular categories of deductions that were involved in that case were more properly attributable to the state of the taxpayer's residence. But I do not, for example, think for a moment that if New York State were to decide that a New York business could not deduct the same items -- a nonresident operated business could not deduct the same items that a resident operated business would deduct in arriving at its net income; I think, within the framework of the Goodwin Case that provision would be stricken. I think, for example, that if New York were to say, notwithstanding the Goodwin Case, that if a nonresident's property had a situs in New York and therefore it was subject to taxation in the hands of a nonresident, that the expenses incident to the maintenance of that property were not deductible, I think there again the provision would be stricken and the Goodwin Case would have nothing to say about it. The tenor of the Goodwin Case, in my opinion, was to suggest that these so-called personal deductions, deductions falling into the category of the court in regard to this "personal", were so closely allied to the area of the

taxpayer's residence that they were not allocable to the area where the taxpayer worked and earned.

MR. KINGSLEY: If you will pardon this observation, I was addressing myself specifically to a residence owned by a nonresident outside of the state. That is what I meant by the reference to the Goodwin Case also because there there was that specific deduction.

I agree with you as to the business deduction that would be available to a nonresident of the state.

MR. KATZ: Now, with respect to your characterization of the possible inequity in the case of the resident's tax deduction as being occasional, I regard that as a valued judgment and, since we are talking about equity and fairness, I think that reasonable men can and do differ as to what might be regarded as reasonable or fair in a given circumstance, but the factor that induced me to answer Mr. Gleason's question as I did and to remain firm in my position that this is more than an occasional unfairness is that one cannot lump deductions as a whole, that deductions have nothing in common other than that they are deductions, that there's a theory in tax law for each deduction, that the alimony deduction has a different theory behind it than the tax deductions, that some deductions are designed for the relief of taxpayers, some deductions are designed to prevent double taxation and that each deduction and its allowability must be evaluated separately; and I don't think it is an answer to say that because this taxpayer pays somewhat more than a resident would in the infrequent occasion when he might sell or rent his residence, it would all come out in the wash eventually. That did not appear to me to be an answer.

It seems to me to go a little closer to Mr. Miller's suggestion that we take some arbitrary method of arriving at a net income regarding deductions, only as deductions, without trying to view them from the standpoint of what they are deductions for.

That's my view and, as I say, I certainly recognize that when we are dealing with conveniences and equities and the balancing of conveniences there is ample room for a difference of opinion.

SENATOR DUMONT: Any further questions? Mr. Neeld has a question.

MR. NEELD: Mr. Katz, I follow your reasoning with reference to deduction of taxes on residence property and also in relation to the deductibility of interest on a residence mortgage but I do have difficulty in understanding the theory on which you would separate or divide medical expenses between those for the taxpayer and those for his family since, in the case of the New York resident, he is allowed a medical deduction for his family as well as himself and, admittedly, that is one of those personal or human deductions, as we might refer to them, as distinguished from an expense that is directly incurred in producing the income which is subjected to tax. I was wondering whether you might enlarge just a little bit on that reason for distinction and extend it also, if you will, to the life insurance premium deductibility up to $150.

MR. KATZ: Well, with respect to the medical expense deduction, first, Mr. Neeld, I can't justify the distinction because I don't agree with it. My view at the present time is that there are not substantial considerations to warrant a difference in treatment between the medical expenses of the

taxpayer himself and the medical expenses of his family.

It is true that the Committee, of which I was Chairman, in its report said, in somewhat guarded fashion, that it found some substantial justification for the view that such a distinction should be made, but the justification for that view was one that was based on a question or a consideration which I might characterize as being remoteness from the taxing base. At some point it was felt that a line of delineation had to be established beyond which the concern of the taxing base didn't go, and it was felt that that line existed at the separation between personal medical expenses and medical expenses of the family.

My own feeling about it is that your point is well taken and that this is one of those so-called merciful deductions which one cannot justify on logical grounds and, consequently, no logical reason exists for making the distinction to which you have referred.

However, a different consideration applies with reference to the life insurance premium deduction. As you point out, residents are permitted a deduction up to $150 for life insurance premiums paid. The reason that the distinction is made between residents and nonresidents as to the deductibility of those premiums is that, while it's true that in the event of death, which is a great leveler, of course, the same considerations apply to residents as to nonresidents in that the proceeds on death are not taxable; in the event that the policy is paid during life the situation that ensues is that the difference between the cash value realized on the policy and the amount that was paid in premiums is a gain on which a resident must pay

a tax, whereas, as to a nonresident, that gain is not taxable under the New York Law. Consequently, that difference in income treatment, again under the overriding provision of the New York Law which expressly provides for the distinction, - under that difference in income treatment it was felt that the deduction had to be correspondingly denied.

SENATOR DUMONT: Any other questions? If not, thank you very much, Mr. Katz. We appreciate your coming here.

The next witness is Mr. Cyril F. Brickfield, representing the Judiciary Committee of the United States House of Representatives; also, I believe, representing Congressman Peter Rodino.

MR. CYRIL F. BRICKFIELD: Mr. Chairman, I do not have a prepared statement. I do have several documents that I would like to submit for the record or submit for the Committee's file, whichever way you so decide.

I appear here this afternoon -- first, Mr. Chairman, my name is Cyril F. Brickfield. I am Counsel with the House Judiciary Committee and I appear here on behalf of Congressman Rodino and also on behalf of the Committee, in order to advise you of the present status of legislation now pending in the Congress seeking a constitutional amendment which would prohibit states from taxing the incomes of nonresidents.

Back in December of last year, which is about six months ago, the State of New Jersey petitioned the Congress of the United States, Senate Concurrent Resolution No. 40, to adopt a constitutional amendment which would prohibit states from taxing the income of nonresidents. As a result of this petition, Congressman Rodino introduced House Joint Resolution

No. 493 which would carry out that intent.

Thereafter, and about a month ago, the State of Connecticut also petitioned the Congress, Senate Joint Resolution No. 9, asking that the Congress convene a Constitutional Convention for the purpose of amending the Constitution to prohibit states from taxing the incomes of nonresidents.

In addition and supplementing these petitions, some twleve additional bills were introduced, Mr. Chairman, principally from the Members in Congress who are from New Jersey. As a result of this legislation which was referred to the Judiciary Committee, I was directed to make a preliminary study of some of the pros and cons, the arguments for and against the constitutional amendment. I have this memorandum here, Mr. Chairman, and I would like to submit it to the Committee for its consideration.

(Memorandum submitted)

At the moment, Mr. Chairman, the Committee is up against a real hard practical political question. The bills seek a constitutional amendment and that is far from the easiest thing to obtain. The Constitution itself has only been amended ten times in the last 168 years. In addition, in order to obtain a constitutional amendment it must pass the Congress by a two-thirds vote, instead of a simple majority, and in addition, when presented to the states, it must be ratified by the legislatures of three-fourths of the states. Realizing that there are 31 states which presently tax the incomes of nonresidents, it would be necessary to have many of those states which now have such income taxes - to have the legislatures of those states vote in favor of such an amendment.

The other approach is by way of a constitutional convention. That requires that Congress on the application of

two-thirds of the states convene a constitutional convention for the purpose of amending the constitution. I might point out that there has never been a constitutional convention except for the very first constitutional convention in 1787 which promulgated our constitution.

However, in recent years there has been quite a movement among the states to repeal the 16th Amendment to the Constitution relating to income taxes. Some 32 states have petitioned the Congress for a convention revising the 16th Amendment.

Now, Mr. Rodino is now working on two approaches to seek some sort of favorable attention to this legislation, - one is, to interest the governors of some 15 or 16 states which do not now have state income taxes under which they would tax nonresidents - and through them interest the members of Congress in those particular states in order to start the movement off within the Congress for favorable consideration of this legislation. The second channel of approach is, to seek to have the various state legislatures themselves adopt petitions, not asking the Congress to propose a constitutional amendment but asking the Congress to convene a convention for the purpose of taking up this subject of income tax and taxation.

As I say, some 32 states have already petitioned the Congress and there is a good question as to how many of these petitions are still valid because some of them were made, oh, 30 years ago. But, in any event, there must be a sufficient number and if those states, like New Jersey and Connecticut, which are interested in this legislation would also adopt legislation asking for a convention, Mr. Rodino is of the opinion that there will be some kind of favorable consideration given

to this material.

The only other thought that has come to the Committee is the fact that if an amendment were adopted, it wouldn't be in the present form that the State of New Jersey has submitted to the Congress, namely, that no state may tax the income of any nonresident. It would probably a compromise on that. It would probably be that the states may continue to tax nonresidents but it would have to provide fair and equitable reciprocal legislation, equitable deductions, and things of that nature, which in truth and in fact is probably no more than what the present law is on the subject, namely, that the states are taxing and they are allowing deductions;whether or not they are equitable, of course, is a question on which reasonable men reasonably differ.

They feel too that if this amendment is adopted it would help only a few, namely, nonresidents who work in states where there is taxation of their incomes. They also point out that the federal government does the same kind of taxation, taxing the incomes of nonresident aliens.

They feel, too, - at least the argument has been made - that it is unfair in many instances to the residents of the state which is levying the tax because if you take, for example, a New Jersey resident who is the proprietor of a business in New York, such an amendment as is contemplated here would relieve the Jerseyite from taxation, yet the New Yorker would have to carry the burden. Still the New Jersey man doing business in New York would seek all the protections of the law that the State of New York offers.

As I say, it isn't a question so much of legal technicality but one of policy because, if you amend the Constitution

you don't get into legal questions. The law or at least the Supreme Court decision in the Yale & Towne Case has been on the books for 40 years. Apparently, the states can tax nonresidents and, apparently, it can discriminate just so long as the discrimination is so-called reasonable.

In any event, Mr. Chairman, the present status of the legislation in the Congress is that studies are presently going forward, that it's a practical question of interesting enough state legislatures and members of Congress in the goodness of this legislation and the need for it and, as I say, it will just take time. Constitutional amendments are, on an average, adopted between - the minimum is a year and a half, the average is four years, and, of course, as you know there are some constitutional amendments proposed by the Congress that have never been adopted, that have been floating around for almost 150 years.

Now, if the members have any questions on the present status of this legislation, anything which I could answer, I will be happy to attempt to answer it.

SENATOR DUMONT: Isn't there a time limit on the adoption of an amendment, that is passed by Congress, to the constitution, namely, that 75% of the states have to act within seven years?

MR. BRICKFIELD: No, sir. Congress itself, in the last three amendments, has put in a provision that the amendments had to be approved or ratified within seven years or else the proposal was withdrawn. However, the constitution itself puts no time limitation and the Supreme Court has said that that is a political question and it depends on what time Congress wishes to set.

SENATOR DUMONT: You would recommend then that New Jersey - and I take it that New Jersey is not one of the states that has already petitioned for a constitutional convention, is that right?

MR. BRICKFIELD: That's right, New Jersey is not one of them.

SENATOR DUMONT: You would recommend that that be done by this Legislature?

MR. BRICKFIELD: Yes, sir.

SENATOR DUMONT: And put New Jersey on record as petitioning for such a convention?

MR. BRICKFIELD: That's right.

SENATOR DUMONT: -- which would then study the 16th Amendment?

MR. BRICKFIELD: And any other subject matter pertaining to taxation.

SENATOR DUMONT: I see. Now, you spoke about reciprocal legislation. Did you imply by that that every state would then have a personal income tax or otherwise the reciprocity would only apply to what? deductions and exemptions?

MR. BRICKFIELD: No. If I recall my testimony, it would be a constitutional amendment which would authorize or continue to authorize taxation of nonresidents provided that there were reciprocal provisions whereby you would get credit for the amount of tax you have paid to a particular state or whereby you would be given certain deductions. But then you would still come down to the question, "What is reciprocal?" and that's a question of opinion. For example, New York recognizes or admits on motion, attorneys who were admitted in the District of Columbia, and the District of Columbia has a reciprocal

provision, admitting on motion without taking an exam attorneys admitted in New York. But in New York you only need to be admitted, I think, three years and in Washington, D. C. you have to be admitted five years; and in New York it's just admitted to practice and in the District of Columbia it means actual practice. In New York you need only two years of pre-law and in the District of Columbia you need a college degree, yet they call those reciprocal agreements.

SENATOR DUMONT: Any questions by the members? Mr. Miller? Mr. Alito?

Did I understand you to say that 32 states have already petitioned for such a convention?

MR. BRICKFIELD: Have petitioned the Congress for a convention, yes, Senator. But, as I say, there is a good question as to how many of those petitions are still validly pending. It is a question, does a petition, once made, remain alive forever? or does it remain alive only for a reasonable time?

SENATOR DUMONT: Well, if they were all assumed to be alive, there are 32 of them, then you actually would already have two-thirds.

MR. BRICKFIELD: That's right.

SENATOR DUMONT: But you have a question as to whether some of those are still in good health.

MR. BRICKFIELD: That's right, plus this further question that, having made 32 petitions, can you force the Congress to act? Suppose Congress just refuses to act? Actually, I don't think that you could make Congress act. I know you couldn't. But I do think that public opinion could be

such, where you have 32 petitions pending, that Congress would act.

SENATOR DUMONT: Are any of the 32 states that have petitioned any of the eastern states or are they mostly middle-western, southern and far-western states?

MR. BRICKFIELD: Well, I don't have that information readily available but I would say that it is spread quite evenly across the United States.

SENATOR DUMONT: We only have about 17 states that don't have any personal income tax, is that right?

MR. BRICKFIELD: I believe so, or 16.

SENATOR DUMONT: Sixteen. So that actually then, even if all those states who do not have income taxes had applied you would still only have half of the total that have already applied, although some of those applications may be so old that they preceded the enactment of income tax within some of the states, I suppose. Is that right?

MR. BRICKFIELD: That's right.

SENATOR DUMONT: Mr. Neeld has a question.

MR. NEELD: I don't know that it's a question, Senator, but as you may know New Jersey is one of those petitioning states. Incidentally, those petitions date back 25 years or so and we are not much nearer a tax convention today than we were then. I think since, New Jersey has repealed or has withdrawn its petition. But remember that those were all specific petitions to limit the federal income, gift and estate taxes to 25% - that is, a rate of 25%. It wouldn't deal with this problem we are dealing with now in any way, although there is the open question - there not being any precedent for a tax convention, there is the open question as to whether once the convention is

called the whole tax problem gets thrown on the table, so that you might well have anything or everything considered by a convention if it were once convened.

MR. BRICKFIELD: I would like to comment on Mr. Neeld's observations. It is true that some are 25 years of age, some petitions, but not all of them, in fact the vast majority of them are of less vintage. Secondly, it is also true that some of the petitions are specific, namely, for a 25% tax limitation, however, there are others that call for a convention to revise and amend-the constitution generally, and there are still others that call for a convention to revise generally the question of federal taxation of income. So that, while possibly, I'm sure not 32 of them would go to this particular subject matter, I'm sure that at least half of them would be valid and would be pertinent to the particular question that is before this Committee.

SENATOR DUMONT: Mr. Neeld, as to the rescission of that resolution, didn't that rescission only pass in about the last three or four years?

MR. NEELD: Well, recollection is always dangerous but my memory is that we adopted the petition back in the early '40s and it was rescinded in the last four years or five years, I would say.

SENATOR DUMONT: And the original petition had to do with fixing a maximum limit, didn't it? on some taxes?

MR. NEELD: Twenty-five percent on income, estate and gift taxes.

SENATOR DUMONT: Well, what you have in mind, Mr. Brickfield, is a petition calling for a constitutional convention that would explore the whole field of taxation or just income tax?

MR. BRICKFIELD: No, it would be a petition which - I don't know what the exact subject matter would be or what its limitations would be, but it could be a petition to the Congress, either specifically on this particular question, namely the taxation of nonresidents, but I point out that you would be the first state to initiate such a program, and probably a better approach would be to broaden the request to the general question of taxation of income in order to take advantage of the petitions which are presently pending which would reach this particular matter.

SENATOR DUMONT: There is no other state that has a petition in now which is actually asking for a constitutional convention on the question of limiting income tax to the residents of a state?

MR. BRICKFIELD: Just the State of Connecticut. That's the first one and that was put in about a month ago.

SENATOR DUMONT: And at the moment you don't have any optimistic prospects for any of these resolutions that have been introduced by Congressman Rodino or other Congressmen or United States Senators from New Jersey, as to their passing. Is that right?

MR. BRICKFIELD: Well, certainly not in this Congress, Senator, but Mr. Rodino was hopeful although it is going to be a long hard fight and it is just a question of developing a proper atmosphere. And, as I said earlier, it would be a question of inducing or at least approaching the governors of those states which do not have such taxation and asking their support and through them the support of members of Congress to support this measure in order to get the whole subject rolling within the Congress itself.

SENATOR DUMONT: Any other questions? Thank you very much, Mr. Brickfield. We appreciate your taking the time and effort to come all the way here from Washington.

Mr. Miller, do you want to read into the record at this point a letter from United States Senator Clifford P. Case?

MR. MILLER: Senator, this is a statement that Senator Case has sent, in lieu of a personal appearance. He says:

(SENATOR CLIFFORD P. CASE): "Mr. Chairman, I am most grateful to you and to the Commission for your invitation to present this statement. I only wish that official duties in the Senate had not precluded my personal attendance at this important meeting of the Commission.

"The subject matter of interest to you -- the taxation of bona fide nonresidents working in New York State, Delaware, Philadelphia, and other Pennsylvania municipalities by those jurisdictions -- is a matter of very real concern to New Jersey's representatives in the Congress, as well as to the Legislature of our State.

"In my letter to the Chairman of April 11th, I urged the Legislature to make common cause with New Jersey members of the Congress in seeking to obtain relief from these inequities for the residents of our State.

"Individual members of the Congress have recognized the essential problem here. It now remains for us to act in concert, inasmuch as an amendment to the United States Constitution itself is involved in order to abolish or limit the power of a state or municipality in taxing nonresident income.

"I have introduced Senate Joint Resolution 139, a copy of which is attached hereto. This proposes a Constitutional

amendment to limit the nonresident taxing power.

"I have just recently written Senator Estes Kefauver, Chairman of the Sub-committee on Constitutional Amendments of the Senate Judiciary Committee, urging a public hearing so that New Jersey's story may be carried to the Congress. I am hopeful that such a hearing will be granted.

"It seems to me imperative that those of us who believe that this system needs changing keep this issue before the public. In that manner, regardless of immediate success, the Governor of New York and his Legislature and other governing bodies involved elsewhere will have as a constant reminder the needs and the rights of those who are without right of protest in the taxing state, even though taxed.

"Others in the Congress who have authored appropriate legislation include Senators Bridges and Cotton of New Hampshire; Representatives Kean, Rodino, Osmers, Widnall, Dwyer, Wolverton and Addonzio of New Jersey, and Representative Morano of Connecticut.

"As I understand it, 141,434 residents of New Jersey made income tax payments to New York State amounting to $18,634,143 for 1954. This year, New Jerseyans are expected to pay more than $20,000,000.

"Taxing non-residents is, in my judgment, unfair from several standpoints. Not the least of these is the fact, apparently not realized by the State of New York and the City of Philadelphia, that New Jersey and its municipalities finance their necessary functions without taxing nonresidents. It is unfair of New York State and Philadelphia to deny the right of reciprocity to residents of New Jersey simply because our state

has found other means of meeting its needs than by an income tax. Moreover, as you know, New York State does not permit New Jerseyans working in New York to take the same tax deductions as New York residents and in many instances, this failure is manifestly unfair.

"Drafting my Resolution, S. J. Res. 139, involved several problems. For example, a person may qualify as a resident of a state while he is actually domiciled in another, and perhaps also has a place of abode in another. The tax laws of some states define a resident for tax purposes as either (1) a person domiciled in the state on a certain date, or (2) a person who maintains a place of abode in the state for a certain number of months per year.

"My resolution recognizes this problem, and limits the power of a state, in taxing salaries and wages, to persons who are domiciled in the state at some time during the tax period or who reside in the state for at least one-half of the tax period.

"Further, practical problems arise in determining the types of income to which the limitation should apply. While the basic proposal could apply to income derived from all personal services (such as the income derived by a proprietor or partner from a business or profession which is primarily one of furnishing personal services), it is evident that its application and enforcement on this broad scale would lead to a number of practical problems. Thus, my resolution would apply the limitation to salaries and wages paid to an employee by his employer. I believe that the limitation stated in that fashion would reach the vast majority of cases in which it is inequitable for a state to tax the income received for personal services rendered within the state by non-residents.

"Many states apply a tax on salaries and wages (both of residents and non-residents), not only for general revenue-raising purposes, but also to implement particular state laws, such as unemployment insurance. It was felt desirable to exclude this type of state taxation from the limitation which would be imposed by Section 1 of the proposed amendment to the Constitution. Section 2 of the proposed amendment contains such an exclusion, but only if the proceeds of the state tax are used to provide benefits for which all persons who are subject to the tax may become eligible to receive.

"It should be clear even from this brief explanation that I fully recognize the complexities of the problem. The answers are not simple, but the demands of simple justice require our concerted efforts. It will be a long and difficult struggle, for the power to accomplish our right purposes is not in our hands alone.

"Another area which your Commission will carefully explore is the discrimination against tax deductions taken by non-residents.

"Here, the complaints of New Jersey residents center chiefly on New York State tax law. A resident taxpayer of that state is entitled to all the specified deductions, but the non-resident taxpayer may claim either 10 percent of his taxable gross income or $500, whichever is less, or, in general, only those deductions connected with income arising from sources within New York State and taxable to the non-resident. Moreover, non-residents are not permitted deductions unless they declare on their returns their total gross income both within and without New York State.

"Another departure in the treatment of non-residents arises from the withholding tax required for all salaries, wages, commissions, etc., earned by them in New York State. Employers are not required to withhold the taxes of residents.

"There are many specific areas of discrimination in the allowability of deductions which your Commission may already be exploring.

"These areas of different treatment include: for business deductions, for non-business deductions -- including deductions for such taxes as sales taxes, state gasoline taxes, admission taxes, customs duties and excise taxes, including Social Security taxes paid for domestics; for medical expenses; for casualty losses; for life insurance premiums; for alimony payments; for bad debts, and for charitable contributions.

"As has been pointed out by a Special Committee on Interstate Taxation of the Federal Bar Association of New York, New Jersey and Connecticut, real care should be exercised in reconsidering those provisions which do seem inherently unfair to non-residents. This Committee has found several instances of special treatment fully justified. It would seem that our best efforts in this narrower question of allowable deductions will be best served by adhering to a fair position -- fair both to New Jersey residents and the people of New York.

"In Philadelphia and Delaware, no such basic determinations appear necessary. In Delaware, for example, deductions apply to residents and non-residents alike, for example a New Jersey resident may deduct allowable taxes, contributions, interest, personal losses and medical expenses incurred in New Jersey.

"Mr. Chairman, there are many other aspects of this complicated picture which I hope to present to the U. S. Senate. I specifically refer to the situation in other states of the Union and how those problems may be met jointly. Thirty-one of the 48 states impose a personal income tax. It is my hope that you and any other members of the Commission so desiring will have an opportunity to come to Washington and testify on New Jersey's experience. Thank you for my own opportunity here today."

SENATOR DUMONT: Now, we also have a statement to be presented on behalf of Mayor Richardson Dilworth of Philadelphia, who was invited to come here both by letter, as were the other witnesses, and also personally, I believe, by a member of this Commission, namely, John Henry Reiners, Jr., who is unable to be with us today.

Would you now read into the record Mayor Dilworth's statement, Mr. Miller.

MR. MILLER: Yes, sir. (reads statement as follows:

(MAYOR RICHARDSON DILWORTH): The City of Philadelphia, acting under the powers granted it by an act of the Pennsylvania General Assembly known as the Sterling Act, levies a flat tax on earnings of all residents of the city, as well as non-residents whose wages and salaries are earned in Philadelphia.

As to the legality of the tax, the sovereign right of the Commonwealth of Pennsylvania to authorize its political subdivisions to levy such a tax has been upheld many times in the Federal courts and the U. S. Supreme Court has refused to accept an appeal from the divisions of the lower Federal courts. Currently, the tax is again being contested in Federal court.

Apart from the legal aspects of this tax, the non-residents who attack the equity and justice of levy generally do so from the standpoint that they, as individuals, do not utilize municipal services to a sufficient degree to justify the imposition of the tax on them; or that they pay taxes to the municipalities in which they reside to support such municipal services and are there subjected to double taxation.

What must be borne in mind is that this is a tax imposed on non-residents by virtue of the fact that they work in Philadelphia, and it is the continued health and well-being of business and industry in Philadelphia which makes it possible for them to work here and earn their livelihood.

It is incontestable that unless Philadelphia can be maintained in a state of municipal health which will make it possible for our businesses and industries to operate effectively and profitably, the entire metropolitan area, of which Philadelphia is the core city, and which extends across state borders, will wither away. Ghost cities do not maintain prosperous suburban counties.

It is also incontestable that municipal services of the type we must provide to make it attractive for business and industry to operate here - such as water, sewage, sanitation, police and fire protection, streets and highways, transit services and the whole complex of planning and improvements are extremely expensive.

If Philadelphia does not furnish them in optimum quantity and quality, these businesses and industries will move to a large city elsewhere which is only too willing to do so. Obviously, the non-resident who works in Philadelphia has a stake in seeing to it that these services are maintained at a high level.

As the core city of the great metropolitan area, it has also fallen upon Philadelphia to furnish certain services and facilities which serve the entire metropolitan area and which are essential to its very existence.

For example, consider the Philadelphia International Airport. It is up to the City of Philadelphia alone to maintain and improve this airport, but not for the city alone - for the entire area. In the six-year period beginning with 1952, we have completed or commenced projects at International Airport costing $23 million. During the next six years some $14 million more will be spent, much of it on preparation for the jet age. Surely, this facility deserves the support of the entire metropolitan area. But, there is no way of assuring area support other than through the imposition of a wage tax on those who earn their livelihood here.

The same is true of City-owned port facilities. In the six years up until 1957, almost $14 million has been spent to improve these facilities. Current plans call for the expenditure of over $10 million more. Certainly, here again is an example of facilities whose well-being and improvement mean a great deal, not just to the citizens of Philadelphia, but to the people of the entire Delaware Valley.

Our Free Library system, including the vast resources of our Main library, are available free of charge not only to residents of Philadelphia, but also to non-residents who work here. For those who do not work here and do not pay any taxes to the City of Philadelphia, these library facilities are also available upon payment of a token sum.

We plan to spend in the immediate future some $6 million on the improvement and expansion of the Free Library and its branches, and think it is just and reasonable that non-residents who work here and have these facilities available to them should help to support this improvement and expansion.

No suburban community can duplicate such facilities, nor can such cultural institutions as the Art Museum and Robin Hood Dell, both of which are helped with tax monies, be duplicated. It is obvious that these institutions and others are unique to the metropolitan area, and serve this entire area.

Our various redevelopment programs require the outlay of City funds, yet it is clear that the end product of most of them is designed to benefit the entire metropolitan area. This is particularly true of what we hope to accomplish in industrial redevelopment, which will create more jobs - not just for Philadelphians, but for the whole area labor force. It is also true of the help we render our educational institutions in their expansion plans; clearly, Penn, Temple and Drexel have an educational role to play for the entire area - and even beyond.

We have indicated a willingness to spend City funds on the improvement of cross-river transit, which will benefit South Jersey and Philadelphia alike.

In short, substantial portions of our operating and capital budgets are devoted to discharging our very great responsibility as the core city of the metropolitan area.

The cities of Pennsylvania are severely limited in the type of taxation that they can levy. They cannot impose any tax which is levied by the Commonwealth of Pennsylvania. Most of the other taxes

which are levied have been pre-empted by the Federal government. We can therefore impose a local real estate tax, a gross receipts on business and a wage tax on the earnings of individuals.

We cannot impose much more of a burden on property owners in the form of real estate tax without driving more of our residents into the suburbs, thus further undermining our capacity to furnish decent municipal services. Also, real estate taxes are a further item in the cost of business and industry and reduce the capacity for operating profitably here.

The uniformity clause of our State Constitution makes the gross receipts tax on business applicable to businesses whether they are operating profitably or not. This works a hardship on some businesses and while we feel that the business community must pay its share of the cost of municipal services, we cannot look to this tax for additional revenues.

The third major portion of our tax structure is the wage tax. It is the only tax imposed by the City on non-residents. It is my considered judgment that the imposition of the wage tax on non-residents is fair and equitable. More and more, the core cities of metropolitan areas throughout the Nation are turning to this type of tax, for unless a city can require the non-resident to shoulder some share of responsibility for maintaining its municipal health, no major city in America can continue to survive. And if the heart city of any metropolitan area dies, its suburban body dies with it.

SENATOR DUMONT: Now, Mr. Whatmough, you have some of your associates with you today and you mentioned this morning that you would like to have one or more of them testify. You can have that opportunity right now.

MR. WHATMOUGH: All right, I will call Mr. Fries.

SENATOR DUMONT: Mr. Fries, if you are going to testify, will you please give your full name for the record.

MR. GEORGE FRIES: I would like to give my time to Mr. Devine who is a co-worker because any remarks I would make are contained in his testimony and he has a prepared statement.

SENATOR DUMONT: All right. Mr. Devine.

MR. FRED DEVINE: To begin with, this morning there were a couple of statements made that, to my way of thinking, I think are very significant, in fact I think we are going to have to face it someday that that probably is the only way. One that was the most important to me was made by the gentleman from New York - I think it was Senator Brook, was it?

SENATOR DUMONT: Assemblyman Brook.

MR. DEVINE: He said something about, if you give the nonresidents a break it will come back. I think therein may be some of our answer. Another thing which was encouraging to me was the fact that in New York something is going to be done about this nonresident taxation, at least they are making an effort.

And the gentleman from Connecticut made a statement about taxation without representation. A year or so ago I met the Solicitor of Philadelphia and made a transcription with him and he brought this subject up - I hear some statements made that this is taxation without representation. The fact of the matter is that since 1943 it has been known that the highest courts of Pennsylvania have upheld this act and that the United

States Supreme Court has refused to reverse the decision of the Pennsylvania Supreme Court. Therefore, everybody who has come in, especially since those days, knows that he comes in and earns his money here in Philadelphia subject to this tax. In other words, taxation without representation seems to be a little bit passe. However, the United States Supreme Court has never passed on our situation with respect to the Naval Base.

Now, at the same time the Solicitor made this statement, he said, "If you people who work here in Philadelphia get the benefit of the services which we supply to you, we are talking now about the streets, the airport, the various facilities, the fire protection - as a matter of fact, people who live in New Jersey and come over the Delaware on a ferry get the benefit of the dredging and the other things, the navigation, which are undertaken at the expense of the City of Philadelphia." I believe that everyone is aware of the fact that the United States Government dredges the river and takes care of any aides to navigation.

I have a letter here from the Department of Justice of the United States Government:

> "The assessment and collection of State and local taxes are matters regulated by the State laws. The Federal Government does not intervene or advise private individuals in such cases."

Now, it would seem that the Congress of the United States has certainly intervened in the assessment of this tax when they threw us under that jurisdiction and as far as the collection goes, it seems that the United States Government is being used as a collection agency with respect to the Naval Base for this tax.

Now, may I enter these various exhibits that I have here into the record? Here's one, a wage tax delinquency card,

which I got through the Commander of the Philadelphia Naval Shipyard several weeks ago. When I received a notice from the City I wrote to my Senator, Senator Martin, asking him what he could do for me and he said, "there is no Federal relief for you." In other words, the United States Government can do nothing for me in this situation.

Now, here's what has been going on with respect to the Philadelphia Naval Base for the past 16 years. Now, these headlines appear periodically. This one says, "Five Naval Base Workers Have Been Jailed." We have one here, "U. S. Aide Jailed for Tax He Paid," this was 1948 and this other one was just this past year; and we have one here, "Philadelphia Seizes 10 New Jersey Men for Pay Tax", this is from the Courier of February, 1955.

Now, we have been fighting this tax for a period of 16 years, ever since its inception, and here's something interesting, a list which is 13 years old now, back to 1945, members who are fighting them and contributing our dollars, our five dollars, to fight this tax. And just as recently as last year, we had a little sampling, as far as this withholding bill goes, and that's what we took down to Washington, just a little sampling to show the attitude and the thinking we have behind this today.

A few years back, in the Philadelphia Bulletin we read this:

> "If imitation is the sincerest form of flattery, Philadelphia should feel highly honored among American cities by reason of the spread of its income tax idea. Other cities are beginning to get over the original astonishment that Philadelphia could levy such a tax, though they still find it hard to believe that no special legislative authority was necessary, that the approval of the voters was not necessary, and that there is no limit on the rate that may be imposed.

"Not only in levying such a tax has Philadelphia been a pioneer, its law department has distinguished itself for the ingenuity in which it has worked out techniques of collection."

Governor Leader and Governor Meyner met in a Bulletin Forum a few months back. The Governor of New Jersey said to the Governor of Pennsylvania:

"Other states choose an income tax or a sales tax. I think we could work out a better adjustment so that we get better credit but I doubt whether the Philadelphia people would be willing to do it. Certainly in the case of the Naval Shipyard where people move from New Jersey to the Shipyard and back and never avail themselves of any Philadelphia services, I think its rather unfair to collect the tax."

In reply, Governor Leader said:

"Well, I think the same thing is true, Governor Meyner, if somebody buys liquor in New Jersey and drinks it in Philadelphia, they really haven't taken very much advantages of your services."

Now, as to my statement: My name is Fred Devine. I am a resident of Glenolden, Delaware County, Pennsylvania, a career employee of the Philadelphia Naval Shipyard for eighteen of the past twenty years. I, like the thousands of non-residents employed on the Naval Base, have never been able to believe the Philadelphia Wage Tax a just, legal or Constitutional debt. We have fought this levy since its inception. We continue to fight it. It is the only State or local law or ordinance applicable to that Federal Reservation. On October 8, 1943, the following appeared in the Evening Bulletin:

"The Pennsylvania Department of Justice has ruled that the Philadelphia Navy Yard is not subject to the State Liquor Laws. The ruling, in answer to a request from the Liquor Control Board, was prepared by Deputy Attorney General William M. Rutter, and places the Navy Yard, the Middletown Army Air Depot and the Carlisle Medical School outside jurisdiction of the State Laws, as Federally owned properties. Rutter's opinion, however, did not include the Indiantown Gap Military Reservation, which is owned by the State although it is leased to the Army."

made a radio transcription with a city representative and I stated that we had finally been granted the right to a test case. The gentleman said that we had not been granted the right to a case. As American citizens we have always had the right. The question then obviously became, why have we been blocked for so many years? It is my sincere belief that at that moment we were no longer beggars. We were citizens with rights. The city should have assumed a moral obligation to stay away from us until the Federal Courts decided the issue, but the arrests continued. They are still being made. Three weeks ago I and five other nonresidents were arrested and placed in the jail cell. Two of those jailed and myself have petitioned the Federal Court for removal of our case from the Philadelphia Municipal Court to the Federal Court. At the time of our arrest we had a petition, An Affidavit in Support of Application for Release on Personal Recognizance. It was denied. In turning us down, we were told:

1. Let the Federal Court keep its nose out of the wage tax. (At this same time the city is before the Federal Court seeking the right to tax buses from New Jersey, claim Camden as a suburb).

2. Our legislators are deceiving us. They are playing us for votes on the wage tax issue.

3. If that paper were honored, all future arrests would be accompanied by a similar paper.

4. The gentleman to whom we presented the paper informed us he was prejudiced for the tax, we were prejudiced against the tax. (That is not true. All we have ever asked for is a decision in the Federal Court as to our liability).

5. I asked a question. I said that each morning there are some sixty Philadelphians who pass through or near my

borough on their way to work in Prospect Park, Pa. They leave no wage tax in Prospect Park. I was told, "Why doesn't that community put a tax on them?" On April 10, 1957, I asked the same question only at that time I inquired about the Philadelphians who cross the bridge to work in Camden. I received the same answer, "Why doesn't Camden put a tax on them?"

There seems little doubt that there is a great amount of bad thinking on the part of the city in this issue. Does the city really need this tax from its nonresident workers? In February of 1956 I called a member of the city government to ask for mercy. I asked the city to take a look at the discharge of a 62 year old machinist employed at the Naval Base. He was discharged because he wouldn't go to the gate and submit to arrest for wage tax delinquency. I was told, "You people wanna work in our city, you gotta pay." We are still fighting for the man's reinstatement. The man was Odie Geiger. His case is about ready to go before the Circuit Court in Washington, D. C.

The rights of the individual are secondary to the desires of the State. Today is election day in the City of Los Angeles. The people will vote for or against a contract between the City of Los Angeles and the Brooklyn Dodgers involving 300 acres of real estate. This parcel of land is known as Chavez Ravine, former home of the Mexican-American residents of that city. It was to be redeveloped and they were to be given their choice of new homes. The promise was broken. A similar situation exists in Philadelphia. The real estate involved is some 2,500 acres, the number of people, perhaps, 10,000, some 2,300 families.

Now, what has this to do with wage tax? In the 1957 session of the Pennsylvania Legislature two bills to tame the Philadelphia wage tax were passed. They were vetoed. In the veto message for the exemption bill we find these words from a Philadelphia organization, "They urge, 'In the strongest manner possible a veto of House Bill 39. This bill, if enacted, would have dire consequences for the City of Philadelphia. The fact is that the economy of the City of Philadelphia simply could not stand the shock of a tax loss of from twelve to fourteen million dollars.'" A Philadelphia legislator on the floor of the House stated, "I am not convinced in my mind that it is entirely equitable that they should pay to a city where they do not reside, but I must vote against this bill because, very frankly, the city needs this eleven or twelve millions of dollars.

In September of 1957 a Philadelphia councilman had this to say about the Eastwick redevelopment:

"This involves such a gigantic expenditure of money, in other words, the City of Philadelphia will ultimately have to pledge itself for in excess of 50 millions of dollars and, therefore, this concerns very much all the taxpayers, not only the people who live in Philadelphia but those who live outside Philadelphia and who pay wage taxes. Because if we're not careful in how we spend our money and not sure in how we spend our money it means that there's going to ultimately be a revolt against paying taxes to Philadelphia from the outside. Now, in each session of the legislature we find that the people get rather upset when they have to pay these wage taxes and there's a strong movement against paying it and if the legislature were to have passed an act that would prohibit it and you had a

favorable governor who'd sign the bill that would be the end of it and we'd lose 17 or 18 millions of dollars every year."

The City of Philadelphia has embarked on a vast building program. It shall become the cultural center of the world. A question is asked of a member of the city government on radio. In the answer we find these words in answer to the non-resident question about wage tax.

"They want the best of hotels here, they want the best of restaurants here, they want the finest kind of an orchestra, they want the finest kind of universities, they want the finest kind of entertainment of every kind. That cannot be maintained on the kind of tax base they'd like to leave in this city, which is just the low wage, low income people."

A working mother's plea in the Inquirer, October 16, 1957, states: "So 'Jay Ell' is against working mothers? If Mr. Employer would hire men over 40, we would not have to work. My husband has a job, but it pays $35 per week. Can you pay high rent, buy food, carfare, medicines and clothing out of that? There are hundreds in this same boat." This mother makes $12 per week to supplement the income. Out of the combined income of $47 a tax of 71¢ must be paid. Should the tax go to 2½% then the amount required would be $1.18 per week. These people could hardly partake of the fine things they are being taxed to build.

A Philadelphia Congressman stated before the House Ways and Means Committee in Washington, D. C., on August 27, 1957, that the wage tax rate of one and one-half percent is so low. It is not a low rate. It is a rate of 50%, 75%, 100%, that is, it represents that percentage of the amount the nonresident pays in his home community for all taxes. Should the rate go to

two and one-half percent then I will be paying a one hundred twelve and one-half percent tax to the City of Philadelphia. For that tax I receive absolutely nothing in return not available to any nonresident not working in the city.

The people of Philadelphia are told that if nonresidents don't pay wage tax then the real estate tax will be doubled. The Philadelphia Inquirer reveals, April 30, 1957, that the nonresidents contribute but 25% of the wage tax take. The total wage tax income for 1957 was quoted as but $55 million. We were told in November of 1957 that the take would be $75 million. For that vast sum of money the city gets fear, hate and resentment. In the City of Pittsburgh, Pennsylvania, there is a wage tax. It is not liked there. It is tolerated. The rate is but one-half of one percent and the annual take is but $5,700,000. Pittsburgh has reciprocity and lives in a state of good will with its neighbors.

I had a letter from one of the officials of the City of Philadelphia. It is now in possession of the Deputy Attorney General, Mr. Boyan. They have no trouble with wage tax in Pittsburgh.

Something is being done, things have been done about double taxation in other parts of the country. Last year the State of Maryland abandoned it retroactive to the first of the year. This year it was the States of Indiana and Kentucky. The City of Denver in the fall of 1957 had a recall election impending over the passing of an occupational license tax by its city council. The tax was thrown out. In Denver the people threw the tax out. They had the press against them, they had the government against them, but they threw the wage tax out and here are some clippings from the Denver paper, very interesting

reading. Kansas City has rejected it. Now, we are told that in Pennsylvania there can be no exceptions made to wage tax. The City of Allentown, Pennsylvania, has recently exempted its children's part-time earnings from that city's tax.

Philadelphia is seeking billions from Washington. They seek millions from Harrisburg. The non-residents in Pennsylvania are hit from three sides. The non-residents of New Jersey working in Philadelphia are taxed at two levels.

When the City of Philadelphia has a problem with a law it has a method, a device to cope with it. In January of 1957 we heard these words, "If there is one thing clear, it is that free people refuse to knuckle under the laws which completely ignore their welfare and desires." The statement reflected the official attitude on the Sunday Law. On August 3, 1957, we again listen, "It's just like these Sunday Laws, which are perfectly ridiculous in this State as far as big cities go, so I just directed that we're going to go our own way on the Sunday Law, and that any legitimate activity we are not going to prevent and I just don't think the State will quite have the nerve to come in and try to prevent it either." The Law Department of the city states the law is not being ignored. It is merely being interpreted according to the popular demands of the people today. Now, the Naval Base workers make a plea to the city to take it easy until the Courts have decided their liability for wage tax. They are told, "They will be arrested and put in the Pokey till they pay the tax. We find that when they are arrested, they pay."

The people of Eastwick section of Philadelphia make a plea to keep their homes. They cite the Declaration of Independence, the Constitution of the United States and the fact that Philadelphia is the birthplace of Democracy. A city

representative tells them they are "waving the flag." A prominent Philadelphia law firm goes to Harrisburg to defend men charged with making Sunday sales. The law firm states the Sunday laws are Unconstitutional, State and Federal.

Gentlemen, I thank you for the opportunity extended to me to present these facts. It is my firm belief that if the City of Philadelphia would change its thinking there would no longer be a need for wage tax.

SENATOR DUMONT: Any questions of Mr. Devine? Thank you very much.

I understand, Mr. Neeld, that you want to make a short statement.

MR. NEELD: I would just like to call the Committee's attention to two or three sources of information which I am not sure are presently in your possession. I believe that they do refer to the subject matter that you have before you and I think Mr. Alito, your Research Associate, can develop the facts. One is, the Buck Act, a Federal Statute which permits the states and the sub-divisions of states to levy sales and personal income taxes on Federal areas. That Act was passed, I believe, in about 1940 or 1941.

Number two, two or three years ago, I believe it's roughly in that period, there was an Executive Order relating to the responsibility of federal employees to meet their debts, including taxes.

And, three, two articles, one appears in the May, 1955, issue of "Taxes", and the other is a Special Report of the State Tax Commission of the State of New York, prepared by Andrew M. Tully on the tax credit - particularly chapters five, six and seven, which deal with this question of double taxation

and also the equitable taxation of nonresidents. I am not sure that the last two are in print today but it may be that the Library can make them available to members of the Committee. I think you will find them helpful.

SENATOR DUMONT: Thank you, Mr. Neeld. Mr. Alito?

MR. ALITO: I'll see that the members of the Committee get those.

SENATOR DUMONT: All right. Thank you. One other thing, there has been reference made to the resolution passed by the State of Connecticut. Do you have that?

MR. ALITO: I gave it to you.

SENATOR DUMONT: All right. I just thought we should have it in the record, that's all, the official copy from the State of Connecticut calling for a Constitutional Convention.

Is there anyone else who desires to be heard? Mr. Whatmough?

MR. WHATMOUGH: I would like, if you are closing now, to thank you and your colleagues for giving Mr. Devine an opportunity to appear and speak before you. Mr. Devine is a resident of Pennsylvania, of course, as you know, and they have a similar organization on their side of the river to what we have on our side, but this is the first time that he has had the opportunity, outside of the Court of Magistrate, of being able to state an opinion, as he sees it, in reference to wage taxes. I would certainly like to express our appreciation for your kindness and your consideration, and that goes for your colleagues.

SENATOR DUMONT: We thank you for coming today, all of you from the Wage Tax Protest League and also Mr. Devine.

MR. DEVINE: With reference to the Buck Act, what we

are attempting to prove in the Federal Court is that the Buck Act does not apply to a federal installation such as the Naval Base. There are four little words in the Buck Act, "having jurisdiction to tax" and we claim that the City of Philadelphia has absolutely no jurisdiction over the Philadelphia Naval Base for tax purposes.

SENATOR DUMONT: Thank you, Mr. Devine. Is there anything else now?

MR. NEELD: I would just like to make it clear, in view of the statement that has just been made, that I did not refer to the Buck Act in one way or another. I just called the Committee's attention to the existence of this Act.

SENATOR DUMONT: All right. Anything else?

MR. RAYMOND H. ROSS: Gentlemen, I want to thank you for this opportunity to inform this Committee --

SENATOR DUMONT: Your name is?

MR. ROSS: Raymond H. Ross, Legislative Chairman of the Wage Tax Protest League. I would just like to take about one minute and go to the real basis of our trouble, and we will find that in the Ten Commandments and if we would comply with them we would eliminate a lot of our troubles -"Thou shalt not covet - Thou shalt not steal."If all the states would keep that in mind, I think there would be much to gain by it.

Another very difficult situation which we are confronted with is - What legal right have the naval officers or the Naval Department to order a man out of one jurisdiction into another jurisdiction without some reasonable extraditionary procedures? I believe you will only find such things as that

through Russia and through the Balkan countries where they are subjected to anything the burgomaster might want to impose on you if you step over his borders. Therefore, we don't believe that the Navy Department or the legal officers have a right to deny a man from working on a government reservation and forcing him into another jurisdiction.

My last remark has to do with what might take place one month from tomorrow. I believe they are going to have a celebration at Independence Hall. The Governors of the several states will be invited there - the Governors of New York, Maryland, Delaware and New Jersey. I would like to see them all stand in front of City Hall with their hands in one another's pockets and sing "America."

Thank you for your kindness.

SENATOR DUMONT: Thank you. Anything further, now? Well then, the hearing will stand adjourned.

I just might make this one comment that in the fall, after the summer recess, we shall probably hold hearings in different parts of New Jersey, if not in Trenton, and go into the areas where the people who are affected by this problem actually live.

We thank you for coming. The hearing stands adjourned.

(Hearing adjourned)

March Session, 1958

SENATE JOINT RESOLUTION NO. 9

Resolution Concerning Application to Congress to call a Convention for Proposing an Amendment to the Constitution of the United States

RESOLVED BY THIS ASSEMBLY:

That pursuant to the provisions of Article V of the Constitution of the United States, the Legislature of the state of Connecticut applies to the Congress to call a convention for the purposes of proposing an amendment to the Constitution of the United States preventing the taxation of the income of the residents of one state by another state.

Be It Further Resolved, That the Secretary of the State cause copies of this resolution to be sent to the President of the United States Senate, the Speaker of the United States House of Representatives, and to the respective clerks of the several state legislatures.

Certified as correct by

/s/ Robert A. Wall
Legislative Commissioner

/s/ John L. Gerardo
Clerk of the Senate

/s/ John Wassung
Clerk of the House

THE INCOME TAX
STATE OF DELAWARE
1953

CHAPTER 11. INCOME TAX

SUBCHAPTER 1. GENERAL PROVISIONS

DEFINITIONS

Section 1101. As used in this chapter—

"Taxable" means—

(1) a natural person, including a minor, with a gross income of $600 or more, who is a resident of the State of Delaware or who has been a resident of the State at any time during the income year;

(2) each spouse, in the case of a married couple living together with a combined gross income of $1200 or more;

(3) a guardian of a resident of Delaware;

(4) an executor or administrator of a deceased resident of Delaware;

(5) a trustee, if but only to the extent that, the net income of the trust for the income year (i) is distributed or irrevocably set aside for future distribution in whole or in part to a person who at any time during such income year was a resident of Delaware, and/or (ii) may be distributed in whole or in part to the creator of the trust upon the happening of some event or the exercise of any power which he reserved thereunder if at the time of creation of the trust and at any time during such income year he was a resident of Delaware;

(6) any officer or employee of the State of Delaware or any political subdivision of Delaware;

(7) every natural person who is a non-resident of the State of Delaware if but only to the extent that such person re-

ceived income during the taxable year as compensation for personal services rendered in the State of Delaware as an employee in the conduct of the business of an employer and/or to the extent that such person derived net profits from a profession vocation, business, trade or commerce conducted in the State of Delaware.

"Resident" means only natural persons and includes any person domiciled in the State, except a person who, though domiciled in the State, maintains no permanent place of abode within the State, but does maintain a permanent place of abode without the State, and who spends in the aggregate not to exceed 30 days of the taxable year within the State; and, in addition, it includes any person who maintains a permanent place of abode within the State and spends in the aggregate more than 7 months of the taxable year within the State, whether or not domiciled in the State during any portion of said period, and such a person shall be taxed the same as though he had been domiciled in the State during the entire taxable year;

"Income tax" means the tax imposed by this chapter;

"Income year" means the calendar year or the fiscal year on the basis of which the income is computed under this chapter;

"Net income" means gains or profits and income derived and actually received into possession of or credited subject to withdrawal by, a taxable from any source whatever, and includes, less the aggregate of the exclusions, exemptions and deductions provided for in sections 1117-1119 of this title—

(1) the aggregate of all gains, capital gains, profits, salaries (including salaries or emoluments of State officers);

(2) wages and compensation for personal services of whatever kind and in whatever form paid (including bonuses, honorariums and fees);

(3) dividends and interest derived from maturity or cancellation of shares in building and loan associations, and endowment contracts;

(4) income derived from professions, vocations, business, trade, commerce, sales, exchange or other disposition of or dealings in real or personal property growing out of the ownership or use of or interest in such property or otherwise;

(5) income derived from interest, dividends, securities or the transaction of any business carried on for gain or profit;

(6) the share of the profits of any taxable in an unincorporated association of persons, syndicate, joint venture or copartnership whether such profits have been divided or otherwise;

(7) all amounts recovered during the income year from bad debts, overpayment of taxes, or capital losses that have been deducted from income in any return of income to this State, and shall be accounted—

COUNTY OF PHILADELPHIA, ss ALIAS **Capias ad respondendum.**

The Commonwealth of Pennsylvania

TO THE SHERIFF OF THE COUNTY OF PHILADELPHIA, GREETING:

S

WE COMMAND YOU, That you take Joseph J. Lydon

21 A West Holly Avenue, Oaklyn, New Jersey and
Phila. Naval Shipyard, League Island, Philadelphia, Pa.

defendant if he shall be found in your bailiwick, and him safely keep, until he shall have given bail or made deposit according to law, so that he be and appear in our Municpal Court of Philadelphia, on the first Monday of May next, then and there to answer City of Philadelphia plaintiff in an action of Assumpsit in our said Municipal Court at the suit of the said plaintiff or until the said defendant shall by other lawful means be discharged from your custody. And have you then and there this writ.

Witness the Honorable Hazel H. Brown, President Judge of our said Court, at Philadelphia the Eighth day of April in the year of our Lord one thousand nine hundred fifty ~~seven~~ eight.

D. BARLOW BURKE,
Clerk.

A true copy
attest
John Walker
Deputy Sheriff

D. T. DONOVAN

Per.....

28-124

80-A

[illegible]

[illegible]

[illegible]

DEPARTMENT OF CORRECTIONS

[illegible]

CITY OF PHILADELPHIA
DEPARTMENT OF COLLECTIONS

TAX RETURN OR BALANCE BILL

(Use as original E-2, or as part payment on E-2, NP3, M-4, GBT, W-1, W-5)

DATE 33 4/24/58

TYPE OF TAX (E-2, NP3, M4, GBT, W-1, W-5)	TAXABLE YR.	QUARTER
E2	1957	

TAX ACCOUNT NO. 2-97-68339 B

PREPARED BY G. MANGO

ACCOUNT NO. VERIFIED BY

TAXPAYER'S NAME LAST LYDON FIRST JOSEPH MIDDLE J.

ADDRESS NUMBER 21 A STREET W HOLLY AVE

CITY OAKLYN ZONE STATE NJ.

THIS BILL IS A RECEIPT ONLY WHEN VALIDATED BELOW BY CASHIER.

1 Earnings (if original E-2)		
2 Tax or Balance Due	4	40
3 Tax Paid this Return	4	40
4 Interest and Penalty	1	91
5 TOTAL PAID THIS RETURN	6	31
6 Tax Balance (Item 2 Less 3)	—	
7 Interest and Penalty		
8 Total Due ON OR BEFORE THIS DATE		

IF BALANCE IS NOT PAID BY DATE SHOWN ON LINE 8, ADDITIONAL INTEREST WILL ACCRUE EACH MONTH UNTIL PAID.

Make Check or Money Order Payable to: CITY OF PHILADELPHIA
Mail to: Department of Collections, City Hall Annex, Phila. 7, Pa.

TAXPAYER'S COPY

83-T-25 (REV. 10/57)

PAID 23 9 APR 24 6.31 D59

CITY OF PHILADELPHIA
DEPARTMENT OF COLLECTIONS

RECEIPT 11- 22493
83-F-3 (REV. 10/55)

DATE (USE NUMERALS) MONTH 4 DAY 24 YEAR 58

RECEIVED FROM Joseph J. Lydon

ADDRESS 21 A West Holly Ave, Oaklyn - N.J. (CITY) (ZONE) (STATE)

THE SUM OF Twenty-Four and 30/100 DOLLARS

☐ LICENSE ☐ PERMIT ☐ INVOICE ☐ PLAN NUMBER

FOR — GIVE PARTICULARS M.C. April Term 1957 No. 30

FUND	DEPT.	DIV.	SOURCE	AMOUNT	
0106	36	65	7103	$ 10.00	Prothonotary's Costs
0106	36	70	7113	14.30	Sheriffs Costs. (A/125)
				24.30 COSTS ONLY	

GAPIAS

ISSUED BY — (DEPT., DIV., SECTION) HARRY R. GARDNER

☐ CASH ☐ CHECK ☐ M. O. TOTAL $

NOT VALID UNLESS CERTIFIED BY THE DEPT. OF COLLECTIONS

THIS IS NOT A LICENSE

PAID RT 2 4 0 APR 24 2 4.3 0 D59

55-470
312

THE FIRST NATIONAL BANK
OF WESTVILLE

WESTVILLE, N. J. April 8 1957 No. 289

PAY TO THE ORDER OF City of Philadelphia $ 142 14/100

One hundred forty two and 14/100 DOLLARS

Margaret R. Lydon

Wage

STEWART WARNER & BENSON CORP. N.Y.

(53-54-55)

82-A

APR 24 1958

Received from Joseph J. Lydon
the sum of $3.50 for Pros costs

Harrison Booth
Deputy Sheriff

B 15457 **CLERK OF MUNICIPAL COURT**

M.C. Mc **TERM** 19 57 **No.** 20

Pl. Clerk 3.50
3.50

CLERK

APR 20 1958 3.50

5-2 REV. 4/55