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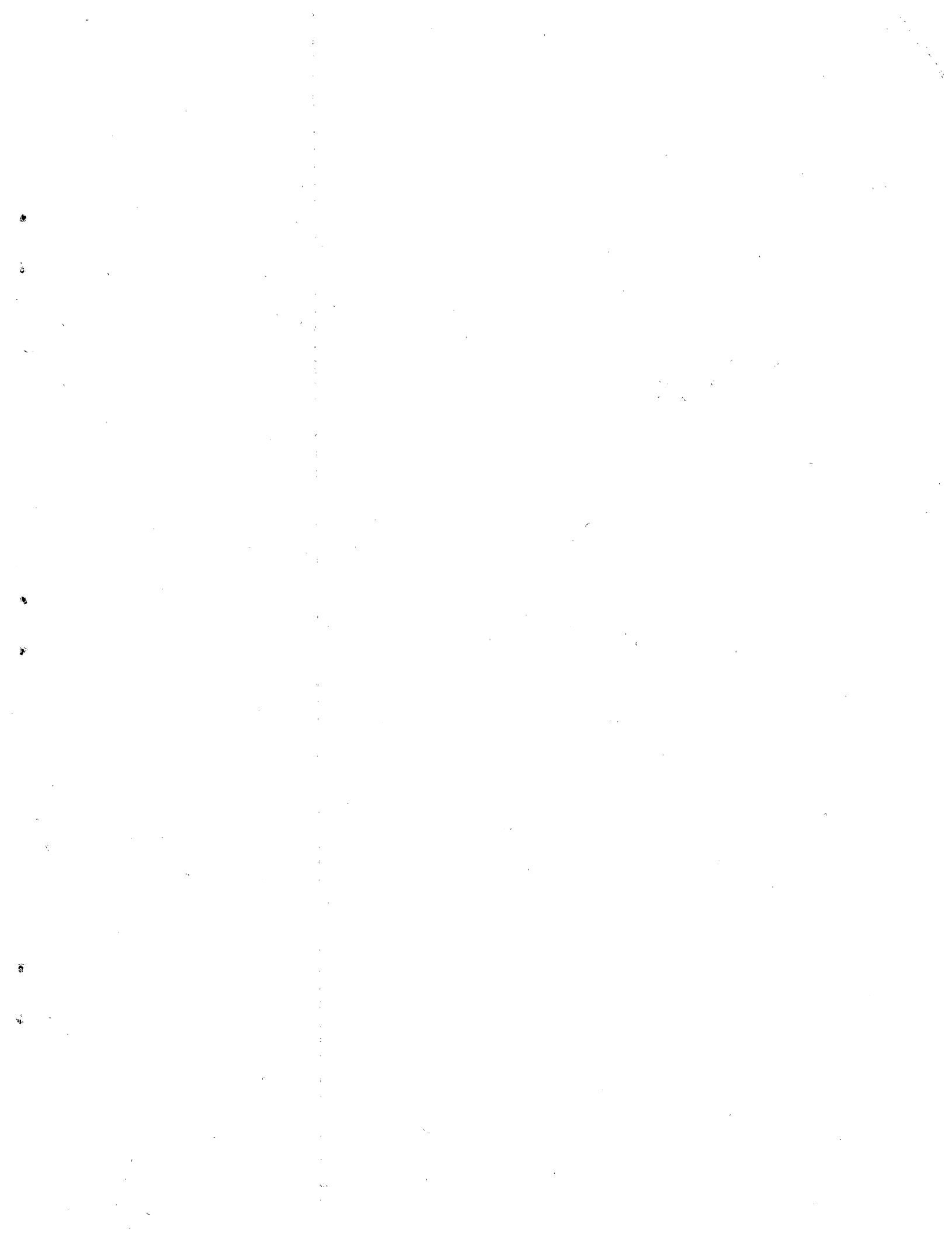
PUBLIC HEARING  
BEFORE  
APPROPRIATIONS COMMITTEE OF THE ASSEMBLY  
ON  
ASSEMBLY BILL NO. 65  
EMERGENCY TRANSPORTATION TAX ACT

Held:  
May 20, 1960  
Assembly Chamber  
State House  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman William V. Musto (Chairman)  
Assemblyman Herbert H. Tate  
Assemblyman John J. Wilson

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ASSEMBLYMAN WILLIAM V. MUSTO (Chairman):

Gentlemen, if I may, I would like to call this public hearing to order.

I am Assemblyman William V. Musto of Hudson County, Chairman of the Appropriations Committee of the General Assembly to which Assembly Bill No. 65 has been referred for consideration.

Before proceeding with the hearing, there are several matters on which I would like to comment. First, I wish to emphasize the importance of the matter under consideration. On one thing I believe we will all agree -- there is a crisis in rail transportation in New Jersey and particularly in commuter transportation. The Legislatures of New Jersey and New York have been wrestling with the problem for years and many proposals have been made.

Although there have been divergent views as to the method to be used in solving the problem, most have lacked the necessary financing. Those plans that have included financing proposals have not met, as you know, with general approval.

Assembly Bill No. 65 constitutes an approach which does not involve additional taxation but the diversion of existing taxation upon those residents of New Jersey who work out of State and whose incomes are thereby subject to personal income taxes. Such diversion will benefit those who pay it by providing better facilities for their daily commutation.

In order to have orderly procedure and a minimum of interruption we will allow no questioning of those testifying except by members of the Committee. I ask that you extend courtesy to each person who speaks by maintaining a reasonable silence.

Of course, judging by the crowd in attendance here this morning, ladies and gentlemen, we won't have too much difficulty.

At this time I would like to call as our first witness, Commissioner Dwight R. G. Palmer. Commissioner Palmer.

COMM'R DWIGHT R. G. PALMER: Assemblyman Musto, it is a privilege to testify before your Committee. I will go through the formality of stating that my name is Dwight Palmer, I reside in Short Hills, New Jersey, and am presently employed in Trenton. But I wish to speak on the basis of my long and former affiliation as a taxpayer in New York City, although still a resident of New Jersey.

Over a considerable period I and my associates, in the company with which I was associated, had to pay substantial taxes to the State of New York. And we objected, not because of the fact that taxes were to be paid but because, selecting the old historical background of "No taxation without representation," we were receiving nothing in return.

On various occasions, through official channels, we conferred in respect to what the advantages were that

we were the recipients of. We were told, in essence, that if we passed out on the street we might be picked up by an ambulance; also if we got on fire due to our excitement that the conflagration might be extinguished; but other than that, that they could not apprise us of any benefits. As a matter of fact, identical benefits accrue to us in whatever city in the United States that we visited. So that, in essence, New York was not giving us anything for what we contributed.

As time went on and we had other situations developing between the States of New Jersey, Connecticut and New York, we were doubly conscious of the fact that we were paying taxes and not getting anything for our payments.

The question as to whether a man objects to paying a tax - there are people, of course, that do, that would like to be freeloaders, but basically our citizenry and the men that I was associated with, and from my own viewpoint, were glad to pay a logical share for something that they were receiving a return for. And so far as New Jersey is concerned, under this bill A-65, I cannot conceive of any thinking citizen who commutes to New York and realizes the extremity of the transportation situation but what would be delighted to have that sum of money that he is presently paying to the State of New York devoted to clearing up the situation here in New Jersey.

There are people who claim, and I have talked

with some recently, that generally people don't like to pay taxes, as I referred to previously. But that is not the case. The died-in-the-wool situation is that people want to be the recipients of something for what they pay out. And with New Jersey's great need at the present time, and with the demise of the railroads, from my official capacity, if you will, and in two parts, just around the corner, unless assistance is obtained, it is exceedingly essential that sufficient funds be made available to forestall that situation and the beneficiaries in the main will be the commuters, the people who go back and forth to the City of New York and even those people who come from New York to New Jersey.

And we feel, in the other situation in the Division of Transportation, that unless sufficient funds are forthcoming to contract with the railroads, not just for one bite of a cherry, one year, but from year to year for a period, that we are faced up not only to a great regrettable seance such as has transpired in San Francisco, has transpired in Los Angeles, the Boston area, and which presently is being largely cured, or attempting to be cured, in the Philadelphia area.

If we lose mass transportation of passengers in this State, the sums of money that the State would have to put up in order to build highways to take care of these hundreds of thousands of individuals, not only commuters but all passengers, would be impossible of acquirement. And were it to be acquired, it would take

too long to construct these roads. And furthermore, with a state as small as ours, already pretty well networked with highways and the planning for highways, it would be a pretty sorry spectacle.

So this source of revenue which will basically accrue to the people who are paying it and to their other associates, their families and the people they are in business with, and their property values, etc., they, I am positive, would be perfectly willing and anxious to see the diversion of this money from the State of New York and for it to accrue to the State of New Jersey.

That, sir, in essence is my observation from a long experience of paying the tax, and even paying it under circumstances where my check originated in New Jersey but because I was in New York so many days a year I had to pony up, as many other thousands had to do.

Thank you, sir.

CHAIRMAN MUSTO: Commissioner, I want to thank you, first of all, for the tremendous job you are doing, I know with a most difficult problem. And on behalf of the Committee I want to thank you for taking time off from your busy schedule to appear before us here this morning to express your views.

Thank you very much.

COMM'R PALMER: Thank you, sir. It is a great privilege. And if I may be excused now, sir?

CHAIRMAN MUSTO: You may be excused Commissioner, yes.

The next witness will be Stephen B. Wiley, representing the Executive Office.

STEPHEN B. WILEY: Thank you, Mr. Chairman.

For the record, my name is Stephen Wiley. I am Counsel to the Governor and I appear today on behalf of the Governor, representing him and the Executive Office.

On May 2, 1960, when the proposed commuter tax plan was first mentioned, a memorandum was distributed explaining some of the background of it, entitled: "Memorandum -- Proposed Commuter Benefit Tax" May 2, 1960. If I may, I should like to submit that to you, Mr. Chairman, for the record.

CHAIRMAN MUSTO: You may submit it, Counsel.

(Memorandum handed to Chairman)

CHAIRMAN MUSTO: I am now submitting for the record a memorandum on the proposed commuter benefit tax. (See page 32)

MR. WILEY: A great deal has been said, a great deal has been written in the weeks since this plan was first announced. To cover all of the ground again would be repetitious and unnecessary. But there are some aspects of the controversy concerning the plan which I believe merit particular attention and perhaps are worthy of comment today.

May I say to you, Mr. Chairman, I appreciate the opportunity to be here and have the opportunity to present them. Thank you.

The transportation problem has been stated accurately and forcefully by Commissioner Palmer. One of the major things that faces New Jersey today, and has faced it for some time, is a critical transportation problem, the problem of the movement of people, a problem that is especially acute in a highly urbanized state such as New Jersey.

And within that problem area, the most severe aspect of it is, of course, the problem in the New York-New Jersey metropolitan region.

You, Mr. Chairman, and other members of the Legislature and other public-spirited citizens have devoted a great deal of time and a great deal of effort to try to find a solution.

Some years ago, before I was very well acquainted with it but I have since learned, there was the Metropolitan Rapid Transit Plan which captured the imagination and the allegiance of a considerable number of people offered some hope of a solution. But, as we know, it was rejected and failed of passage. Then, last year, the Governor proposed the use of the Turnpike surplus for transportation purposes and, as we know well, that was defeated on public referendum.

It seemed from that defeat, among other things, that the people of New Jersey did not feel that motorists' funds should be used for the solution of this transportation problem which, as they knew, was most acutely present in the New York-New Jersey metropolitan region.

That has been the analysis given to the failure of the referendum by a number of people, and there seems to be a good deal of substance to it, at least that's one of the major reasons.

It seems fair to say that the people have taken the position, right or wrong, that while perhaps this problem must be solved, it is not to be solved by the use of either general state revenue, on a long term basis at least, or by any other special fund derived from sources unrelated or at least not closely related to the problem which the revenues would be used to solve.

Now that narrows the field pretty sharply. If you cannot depend on general state revenues, if you cannot depend on motorists' funds, Turnpike surplus, or any other special fund, and yet if you still must solve the problem and if you must have money to solve the problem, all of which seem axiomatic, you then are forced to consider raising the money to solve this problem from the area, and even more particularly from the people, where the problem exists - from the area where the problem exists, from the people who go to create the problem, and even more specifically from the people who would benefit most appreciably by the solution of the problem.

Now to be exact, the problem arises or is most critical because of the peak hour traffic, because of the business done in New York State by New Jersey people and in New Jersey by New York State people - these two hundred and twenty odd thousand going back and forth between the

two states. These then, if we follow this reasoning, constitute the group from which the money must be raised to solve the problem which they create and which must be solved in their interest. That is to say, the money must be raised from the commuters. In other words, there must be a commuter tax. And the tax revenue derived from it must be used for their benefit in order to sustain it.

The result, it seems to me, is perfectly clear. That, given the attitude that the public has taken and the recognition of this problem, certainly a reasonable solution, if not the only solution to it, is a commuter tax for the benefit of commuters which may be called a commuter benefit tax.

And, Mr. Chairman, that's what A-65 is.

Now I go through that background for this reason: I have heard this referred to in recent weeks as a gimmick, as a clever and ingenious scheme, with the apparent public impression that this is a remarkable idea, it's lots of fun to talk about it but really it doesn't meet with our experience, it doesn't come down to the problem in a hardheaded way.

I want to point out that the Governor and his aides have worked on this for more than a year, considerably more than a year. It has been carefully studied. It is, I submit, extremely well designed. And, I submit, it is a thoughtful if not the only reasonable means by which this problem can be solved.

I think the "gimmick" label that has been given to it by some people derives from people feeling that

money doesn't grow on trees, that you don't get something for nothing, and that any plan that proposes to give to New Jersey \$40 million, more or less, for which the taxpayers are not going to have to pay anything, just doesn't jibe with our experience. And I think perhaps people are suspicious of it, they think that this is a fancy scheme, they think it's a windfall to New Jersey and they don't trust it. And I think they are completely wrong, although quite understandably so.

The reason is this: I would like it to be broadcast far and wide, I think it should be in the interest of public information, that this is not a windfall to New Jersey. It is true that if this is imposed \$40 million that is now going into New York State will accrue to New Jersey. But I insist this is not a windfall. And I insist for this reason: Back in 1919 New York enacted a tax with a clause that said - it's called a reciprocal clause - the clause says that in effect New York isn't going to tax the income of any nonresident if that nonresident is taxed in his home state. New York fully anticipated that other states were going to do the same thing, they were going to enact an income tax of some kind and that they then would be getting the revenue from the incomes of their own citizens working in other states.

It happened that New Jersey was fortunate enough, and it still is, not to be in position where they had to impose the tax, an income tax. But one unfortunate aspect of this was that New York got something which now

amounts to \$40 million a year which they didn't expect, which by any theory of tax equity between states they didn't deserve, but which nevertheless they have been getting at increasing rates for 41 years.

The windfall, I submit, Mr. Chairman, is a 41 year windfall to New York. We are not getting something which doesn't belong to us. We are not getting \$40 million for nothing. We are simply 41 years late getting what we should have gotten all the way along.

And the beauty of this plan is that it puts us in a position where we should have been all the time. That is to say, not that we should have had an income tax but that the money from our residents should have been New Jersey's money.

There is no windfall to New Jersey, not in any sense. The reason that this tax is creating a public impression of a gimmick is that it works out so nicely, it works out so beautifully - here we are getting \$40 million that we had not been getting before. But the cards fall in place not because of a gimmick but for the very, very sound reason that this is the way they are supposed to be and this is the way New York designed it.

I would like to point something out to you, Mr. Chairman, on that score. I say that New York enacted this tax back in 1919 with that anticipation, with that reciprocity clause. It is not widely known that in March of this year, I believe it was, New York re-enacted that reciprocity section in even more favorable

language. And in April Governor Rockefeller signed it, reaffirming the policy of the State of New York that this was to be the case and that if another state had such a tax the other state was entitled to the revenue from its residents. New Jersey is simply taking up New York on what is a very sound and thoughtful position, a position, incidentally, which New York has maintained with fifteen other states and offers to maintain with any one of the other 49 states.

If I may take the time, I would like also to comment on the relation of this tax to the tax equity situation between New York State and New Jersey.

In recent years, as long as I have been here at least, New Jersey residents with the increasing rates of the New York income tax and the reduced exemptions have been hard hit by the New York income tax. And they have been especially hard hit because they are given unequal treatment in the sense that they don't get the same itemized deductions. And New Jersey has been doing everything it can to try to right this. It progressed to the point last December or last January where the Governor of New York State announced that he would support an amendment, he would endorse an amendment to the New York Income Tax Law to give equal treatment to New Jersey residents.

Interestingly enough, and I think understandably so, the bill never moved in either house, both of which are controlled by persons of the same political alignment

as the Governor of the State of New York.

The fact is that New York doesn't have any interest in giving up \$5 million - whatever the figure may be - that would be involved if they were to give New Jersey residents these itemized deductions. They had every opportunity. They had the endorsement of the Governor and yet nothing happened.

One objection that I have heard raised to the Commuter Benefit Tax is that it does not solve the tax equity problem.

There are several very important things to be said on that score. The first is that it is not designed to solve it. And I point out again that the Commuter Benefit Tax is designed to solve the transportation problem, most particularly in the New Jersey-New York metropolitan region. The effects it may have in relation to the taxes of other states are incidental effects, though nevertheless important. It is independent of the tax equity problem in New York. But having said that, it must also be said that, if this plan were enacted, I am satisfied that the probability or the likelihood of New Jersey getting tax equity from New York in points of the itemized deductions would be far greater than it is now. It is now just about nil. If the plan were enacted the chances would be very, very good for some interesting reasons. The reasons can be stated in two parts:

One is that under the Commuter Benefit Tax,

as written in A-65, New York residents working in New Jersey and New Jersey residents working in New York are going to be treated equally in points of itemized deductions. But they are going to be treated equally at the level at which New Jersey residents are now treated by New York, that is to say that everyone who pays this tax is going to be given the same itemized deductions that New Jersey residents now get under the New York law and which they are complaining about.

Well now, this doesn't harm them in any way because they are paying the money in any event, but it has some interesting effects because the seventy odd thousand New Yorkers who are paying the New York State Tax now get full itemized deductions whereas, under this law, they are going to get the same limited itemized deductions that our residents are now getting. And, for the first time, we will have a voter in the State of New York to exercise some influence with the New York Legislature to do something about this tax equity problem, about the itemized deductions, whereas now we have none. We have no votes and that, quite frankly, seems to be the reason why we haven't gotten any action.

If they are put in this position, we will then have 70,000 New York residents urging a vote for tax equity.

And the second phase, the second part is this: that if this plan is enacted, the reason for New York's resisting the change in the itemized deductions will have

gone. We are now getting resistance from New York, resistance of such force that that bill was not passed, and it probably never would pass under these circumstances, because - it's a very simple reason, and that is that New York gets \$5 million because of this inequity and they are not inclined to give it up.

If the Commuter Benefit Tax is imposed, not only that \$5 million but the other \$35 million would then come to New Jersey.

New York's now vested interest in this \$5 million will be divested. It will then make no difference to them. There will be no reason for them to maintain their unequal treatment for nonresidents.

And as against this neutrality, this neutral feeling which would come from the divestment of their interest in this \$5 million, you would have working on the New York Legislature 70,000 people, residents of the State of New York, who would want to have the full itemized deductions.

I submit to you, if this bill were passed, you would see action in New York so fast it would make your eyes blink.

Mr. Chairman, I won't take any more of your time. I would say this: There are many questions that people have raised and there are answers, good, sound responsible, constitutional answers to each of them and to all of them, - questions concerning the reciprocity clause, questions concerning the constitutionality of the

tax, questions concerning the applications of the money, - these are questions that arise, I am completely satisfied, from a misunderstanding and a misapprehension, misconstruction of the act or of its implications or of its application.

I have found no one with whom I have been able to sit and explain it who has come out of the conversation or conference with any reservations at all.

I would be pleased to answer any questions that you or the Committee may have, Mr. Chairman, and if you do not I will conclude then and once again say, thank you very much.

CHAIRMAN MUSTO: Counsellor, on behalf of myself and the Committee, we are grateful and appreciative for your views expressed here today.

Thank you very much.

MR. WILEY: Thank you.

CHAIRMAN MUSTO: The next witness will be Mr. Frank Tilley, Chairman of the Transit Committee of Bergen County.

FRANK E. TILLEY: Mr. Chairman, for the record, my name is Frank E. Tilley. I am, as you have indicated, Chairman of the Transit Committee of Bergen County, and also Chairman of the Susquehanna Transit Commuters Association. The latter group, as its name implies, is a commuters' organization composed of residents of Bergen, Passaic and Morris Counties who commute on trains of the New York, Susquehanna and Western Railroad from stations

in those three counties to their places of employment in Paterson, Hackensack, Jersey City, and New York City primarily.

The Transit Committee of Bergen County, on the other hand, is not a commuter organization in the commonly accepted sense of the term. It is a semi-official group composed of officially appointed delegates, appointed by the mayor or council of the various municipalities in Bergen County, 43 of which are full-time, paid-up members of the Committee. The Committee holds at least one monthly meeting at which time matters of common interest to the residents and the governing bodies of the municipalities of Bergen County are discussed. Action is planned to correct situations as they come to our attention in the field of transportation and related fields. We act as a quasi-official advisory body to the Board of Chosen Freeholders of Bergen County.

Incidentally, our monthly meeting will be held tonight in Hackensack and it had been our plan, at our meeting tonight, to discuss in some detail the very matter that is before us today.

In view of that fact, I must point out that I do not speak at this time for the full Transit Committee but I have consulted with members of our Executive Board and am prepared to speak for them.

It is pretty hard to follow two such able speakers as we have heard already this morning. They have covered the ground so thoroughly and touched on

so many of the points that I would have touched on had I been the first witness, but I would like to say that it is our feeling that this transportation problem is considerably broader than being merely a transportation problem, merely a commuter matter.

After all, transportation is something that practically everybody engages in to some extent, almost every day of his life. And in the critical North Jersey-New York metropolitan area, from which I come, anybody who does get out on the highways today, at any hour of the day, pretty soon finds out how difficult it is to get from one place to another because of the highway situation which, through no fault of anybody, it's just the way the beast has grown and we haven't been able to keep up with the increased flow of traffic in the construction of highways, and in the peak hours, of course, the stagnation on our highways is something to behold, particularly on summer weekends.

Naturally, the commuter who does have a prescribed daily round trip between two designated points is the fellow who most directly understands this transportation problem, and yet as I have talked to persons in my own area who are not commuters, in the accepted sense of the word, I find that more and more people are beginning to realize how necessary it is that something be done to solve the general transportation problem, the nub of which seems to lie in the field of rail transportation.

You might wonder why this is so. Real estate

men in my area, in the Northwest Bergen Area, have explained to me how difficult it is becoming to interest prospective property owners in locating in an area where transportation is inadequate, slow and really a burden. Our realty people have told me that they have actually had persons who, when they found out what the transportation story was, - these persons, these prospective buyers decided to locate elsewhere, frequently across the State line in Rockland County, New York.

Obviously then, if transportation is a problem and if present transportation needs are not being adequately served, all property owners stand to suffer and to lose.

And this is true not only of the area which I am here to speak for this morning, it is in a sense a matter of concern to everybody in the State of New Jersey. After all, we are a community. What affects one area is bound, at least indirectly, to affect all areas.

I have had this brought to my attention very forcibly in an entirely unrelated capacity, and that is as a member of the Board of Education in the town in which I reside where, a few months ago, we found that once again our State Aid to Local Education has gone down, presumably because other areas of the State which are more needy are benefiting where we are losing.

Well, that doesn't disturb us overly when we realize that at least somebody is getting some benefit from it, but it does serve to show how within the State we are a community

of neighborhoods, and what affects one neighborhood directly is bound to at least indirectly affect all neighborhoods. Hence, this concern about the difficulty in the realty field if we can't attract new residents into New Jersey simply because our transportation is inadequate.

There is another phase to this entire problem, completely apart from the matter of transportation there is the problem of taxation.

I don't think there is anyone who, having gone through the earliest years of elementary school, didn't learn that one of the precipitating causes of the American Revolution was taxation without representation.

Today we rebel against the concept of taxation without representation as being basically un-American and yet that is the situation that has confronted the New Jersey resident who is employed in New York State. When you talk tax equity to one of these New Jerseyites commuting to New York, and related to this matter of using that tax income for the benefit of New Jersey's transportation problem, it has been my experience that the New York commuter isn't overly disturbed on the whole because he feels that he will be getting some benefit now, at last, from the money that he has been paying out in the form of taxes and been unable to get any tangible evidence of direct benefit to him.

My conversations with typical commuters, with representatives of groups of commuters, as for example train chairmen on our commuter railroads, tell me that

by and large they will favor any move of this kind which will accrue to the improvement of the general mass rail and general transportation situation in the metropolitan New York area.

And this is true, incidentally, also of bus commuters. Let me assure you, less there be any concern, that this is a proposal only for the relief of the rail commuters, that fortunately our bus commuters in Bergen County are alert enough to realize that if there is any further deterioration of rail service the bus commuter is going to suffer even more than he does now. Highways which are already clogged with jammed buses are going to be jammed even more with more standees, fewer seats and increased traffic stagnation. And I am happy to report that, from bus commuters from whom I have heard, there is a recognition that the proposal before you gentlemen in this matter is something that stands to benefit all commuters, not merely those who use the railroads.

So there we have it. Commuters, regardless of the method of transportation, feel they stand to benefit, and from the reports of realty people even the non-commuter is going to benefit when something is done to preserve rail transportation in the New Jersey area.

I happen to live in a section which is unique in this day and age in that, although it is within 30 miles of New York City, the people in my municipality and the two neighboring ones depend exclusively on the

services of a railroad for mass public transportation. There is no bus transportation in Wyckoff, Franklin Lakes and Oakland in Northwest Bergen County. And this can be said of no other area in the metropolitan region today, an area depending totally and exclusively on the trains of a commuter railroad. Incidentally, there are four in number in each direction. After the last train has gone down in the morning at 7:30, there is no more rail service until 5:30 or 6 o'clock in the afternoon. All other public transportation is completely absent from our area. And you can appreciate from this that it is imperative that what little transportation we have, at least that be maintained. And we see in this proposal a means of assuring that that transportation will be preserved.

No doubt you gentlemen are aware of the sorry situation in that area of Bergen County formerly served by the passenger trains of the West Shore Division of the New York Central. Without taking your time to go into the deplorable situation today where a heavily populated area depends entirely on the services of several bus lines, all of which are slow, over-crowded, and follow circuitous routes, here is an excellent example of the need for preserving every possible avenue of mass transportation available to us today.

I am looking over my notes here to make sure that I don't bore you with repetition of points that have already been made.

I would, in conclusion, urge this upon you, that as we see it the important thing is that something be done, that something be done quickly, and that it be done effectively so that our mass transportation facilities will be preserved, maintained and improved.

We see in this proposal possibly the last best hope of achieving that necessary end.

May we urge upon you every activity necessary to see that something is done to preserve this necessary transportation.

We understand that legal questions have been raised. I am not a lawyer. I don't appreciate the fine points. But I am tremendously impressed by the fact that the Governor's Counsel and his staff have studied this matter for well over a year and I am certain that they would not offer any proposal that had obvious legal loopholes in it. We would prefer to see some positive legal action taken. If there have to be kinks ironed out later on, let's iron them out as we come to them, but for the present let's get started.

Thank you, gentlemen.

CHAIRMAN MUSTO: Are there any questions of the witness by the Committee? If not, Mr. Tilley, I know the sacrifice you made in coming here today and on behalf of the Committee I want to thank you very much.

MR. TILLEY: Thank you. I was happy to do it.

CHAIRMAN MUSTO: The next witness will be Mrs. Kenneth D. Smith, Vice President of the League of Women Voters of New Jersey.

MRS. KENNETH D. SMITH: May I express my appreciation for the more than eight thousand women in the Leagues in New Jersey for this opportunity to speak before you.

As you know, for more than ten years the League Members have been deeply concerned with the growing backlog of unmet needs in New Jersey and you gentlemen have listened to us in the past in terms of our proposals so we are happy to appear before you now.

This proposal, along with proposed increases in the cigarette and inheritances taxes and the bond issue for institutional buildings, indicates a recognition of needs in the particular fields for additional revenues. These and other urgent needs do exist.

The League of Women Voters believes it is time to abandon the desperate search for tax gimmicks and turn from hand-to-mouth financing to a sound, long-range solution which will be adequate to meet not only the commuter crisis but other requirements of the State. These include more state aid for schools, increases in college faculty salaries, institutional buildings and highway construction.

The League of Women Voters opposes the proposal for a commuter income tax because:

1. It will be regarded as a hostile act by

New York. Restraint and cooperation are important in relations between states and retaliation tends to breed retaliation.

2. It is discriminatory taxation because it makes a special class of persons who derive income from New York State to pay for services which benefit all New Jersey residents. Much of the economy of our State is based on the inter-state movement of commuters.

3. Since dedication of a tax is contrary to the State Constitution, commuters cannot be assured that this money will be used by future Legislatures for commuter benefits.

4. New York could void the effect of this tax merely by making its reciprocity clause apply only to the states having a general income tax.

5. There is serious question of the constitutionality of the tax. If it is challenged, there will be a delay before the funds can be used for services which are needed immediately.

6. Enforcement would be difficult and costly.

7. This measure would not remove the discrimination in the New York State tax law against New Jersey residents, but would tend to perpetuate those inequities by arousing hostility in our neighboring states.

8. Future metropolitan and regional cooperation of great importance to New Jersey would be endangered by this tax warfare.

It is time for New Jersey to adopt a statewide graduated personal net income tax. The League believes that a new tax should be levied on a broad segment of the population, should be related to ability to pay and should be sufficient to raise the revenue needed for all essential services of the State.

A graduated net personal income tax at reasonable rates on all New Jersey residents would meet this criteria. It would not only keep in the state the taxes now paid to New York, but would retain an estimated \$68 million of the tax now paid to the Federal Government. Most significantly, New Jersey would be choosing an equitable tax based on its citizens' ability to pay.

Thank you.

CHAIRMAN MUSTO: I would like at this time to point out that we now have with us Assemblyman John Wilson from Union County, on my left; and Assemblyman Herbert Tate from Essex County, on my right.

I will ask the Committee members at this time, do they have any questions of the witness?

ASSEMBLYMAN WILSON: No questions.

ASSEMBLYMAN TATE: No questions.

CHAIRMAN MUSTO: I have one question, Mrs. Smith. Assuming that this is constitutional, and assuming that we can use this \$40 million, or whatever the figure might be in that neighborhood, for the benefit of the commuter problem, would the League object to that?

MRS. SMITH: The League considers this another

patchwork in an already existing patchwork. We feel that it should be a tax for all New Jersey citizens.

CHAIRMAN MUSTO: I know you are in favor of a broad-base income tax.

MRS. SMITH: Right.

CHAIRMAN MUSTO: We don't have an income tax.

MRS. SMITH: That is right.

CHAIRMAN MUSTO: But we do have before us Assembly Bill 65 which proposes to get the \$40 million which New York now receives from New Jersey residents and use it for the commuters' problem. Assuming, as I said before, that that is constitutional, and only the courts can decide that, would the League have an adverse position against that?

MRS. SMITH: We oppose it. We oppose it, one, because it is again on a segment of the population and not a broad-base tax for the State as a whole; and also, we do not assume it is constitutional because it appears to be a dedicated tax for transportation, as we understand the way it is written; and, of course, we oppose dedicated taxes because it is not in keeping with sound taxing principles for the State.

CHAIRMAN MUSTO: Are there any further questions of the witness? If not, Mrs. Smith, on behalf of the Committee, thank you very much.

The next witness will be Mr. Robert R. Daly, representing the Somerset Hills Transportation Association.

You may proceed, Mr. Daly.

ROBERT R. DALY: Mr. Chairman and members of the Committee: I would like to note a correction at the outset. This morning I appear on behalf of myself and myself only. I am the attorney for the Somerset Hills Transportation Association. But what I have to say I say as a lawyer and a commuter and not representing a group.

CHAIRMAN MUSTO: That is the fault of the Chairman, Mr. Daly. I had that information here.

MR. DALY: I am not well known enough as a lawyer; I might be known as an attorney for a commuter association.

From what I have recently read in the newspapers, it is reported that a number of eminent tax specialists and constitutional lawyers have charged that Assembly Bill 65, the proposed Emergency Transportation Tax Act, quote, "is so obviously discriminatory as to guarantee its unconstitutionality," and that it is "patently discriminatory" and therefore "definitely unconstitutional."

While I do not intend to argue constitutional law with such eminent authorities, because I do not know the basis for their opinions, my own experience in arguing against "discriminatory taxes" in the federal courts, compelled me to examine Assembly Bill No. 65.

After a careful study of appropriate authority, I have concluded that the proposed law is not discriminatory and it is most certainly constitutional.

More than 70 years ago, the Supreme Court of the United States concluded that the Fourteenth Amendment to our federal

Constitution was not intended to compel a state to adopt an iron rule of equal taxation, and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a state legislature in formulating sound tax policies.

"The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized."

"Traditionally, classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden."

In taxation, more than in any other field, a legislature possesses the greatest freedom in terms of classification.

Those who oppose Assembly Bill No. 65 claim that because it does not apply equitably to each and every taxpayer in New Jersey, it is therefore discriminatory and unconstitutional. They overlook the fact that, properly classified, a tax law can discriminate constitutionally. We are all familiar with what appears to be discrimination in our gasoline tax which is imposed not on every citizen, but only on those who buy gasoline; in our fishing license tax which is imposed only on those who fish; in our real estate tax, imposed only on those who own real estate; in our dog license tax, imposed only on dog fanciers; in our cigarette tax, imposed only on those who smoke; and finally in our inheritance and estate tax, on only those who die.

It is, therefore, not surprising to conclude that we should impose a commuters' tax on those who commute.

Seriously, let us apply to Assembly Bill 65 the yardstick furnished by the United States Supreme Court to determine

unconstitutional discrimination. That Court has held consistently that, and I quote:

"Since members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes." Continuing the quotation, "The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."

Assembly Bill No. 65 measures up more than adequately on this yardstick. To preclude the possible charge of "hostile and oppressive discrimination," the Bill provides in paragraphs 5 (a), (b) and (c) that:

Before the tax can be imposed, the State Highway Commissioner must certify, first, to the State Treasurer that he finds as a fact that

1. a critical transportation problem exists in connection with interstate commutation, and that
2. the area involved includes not only a part of New Jersey, but also a part of a neighboring state, and that
3. there are in the aggregate more than 100,000 persons resident in such areas that are affected by this critical transportation problem.

Furthermore, the Bill No. 65 limits this tax to the year in which those facts exist and no more. To continue the tax each year beyond the first, requires a new finding of such facts and a similar certificate by the Commissioner in each subsequent year.

Measured against the Supreme Court yardstick, Assembly Bill No. 65, therefore, meets all of the constitutional requirements of the 14th Amendment as a means of providing a tax program to meet a local need and achieve an equitable distribution of the tax burden.

Just as the smoker pays the cigarette tax for the privilege of smoking, this bill is asking the interstate commuter to pay a commuters' tax for the privilege of continuing to commute.

Assembly Bill No. 65 presents a reasonable classification. It is not discriminatory. It is, without a doubt, clearly constitutional.

And for those in our Legislature who take issue with this conclusion, let them then repeal as oppressively discriminatory the gasoline tax, the fishing license tax, the real estate tax, the dog license tax, the cigarette tax, and finally, the inheritance and estate tax. Thank you, gentlemen.

CHAIRMAN MUSTO: Are there any questions by any member of the Committee? Mr. Wilson - Mr. Tate. (No response.)

Mr. Daly, on behalf of the Committee, thank you very much.

Are there any other people appearing here who wish to be heard? (No response.)

There have been many telegrams and other forms of communication received by the Chairman. They will be duly filed with the Committee, reviewed, and then released for publication.

At this time the Chairman wants, on behalf of the Committee, to thank all of those who have appeared here before us this morning. I realize that to many of you, it was an imposition. Without any further ado, if there are no other people to speak at this hearing, I will consider the hearing adjourned.

(Hearing adjourned.)

May 2, 1960

MEMORANDUM -- PROPOSED COMMUTER BENEFIT TAX

The proposed "commuter benefit tax" would be designed to produce revenue specifically for use in solving transportation problems in critical transportation areas. It is well recognized that the New Jersey-New York metropolitan region is now particularly critical. Presumably, a commuter tax would be operative only there at the present time. Under these facts, the revenues from the tax would be devoted to the solution of transportation problems in that area.

The counterpart of this limitation on use would be the limited class of persons subject to the tax. It would apply only to the class most directly related in an economic and activity sense to the critical area and to the transportation problem. Specifically, the tax would be imposed upon (1) the income of New Jersey residents from sources in New York, and (2) the income of New York residents from sources in New Jersey.

In a practical sense, the tax thus would be imposed on the very income produced as a result of the movement and other activity which gives rise to the transportation problems. The classification underlying the tax is responsive to the habits and patterns of living of people who are active in a critical transportation area intersected by a state boundary. It recognizes the roots of the transportation problem, i.e., the peak hour demands on transportation facilities which are directly or indirectly generated by the movement and activity incident to persons living in one state and working or carrying on a business or other income-producing activity in another. While it is not practicable to trace the specific lines of relationship in all cases, the aggregate relationship of the people to the problem is completely clear. A tax of this type therefore would provide an equitable distribution of the financial burden in relation to the objects for which the revenues would be applied, and for which compensation in the form of tax may reasonably be exacted.

The income of our residents which would be taxed by such an act, their income from New York sources, is the same income which is now taxed by New York State. Thus, our residents would be entitled to a credit against the New York tax for any taxes paid to New Jersey.

Comparably, the bill would provide a credit against the commuter benefit tax for taxes paid by a non-resident to his home state. Dependent upon the specific computation of this tax, the result well could be that New Jersey would receive all taxes paid by its residents, and New York would receive all taxes paid by its residents.

Such a tax would enable New Jersey to meet the foreseeable needs of the transportation problem in the New Jersey-New York area. Presumably, it would be in the nature of a temporary emergency tax, its continuation or adjustment to be governed by the development and solution of transportation problems in the coming years.

The proposed commuter benefit tax bill would need only certain major provisions (beyond procedural detail and the like), as follows:

(a) a section which would tax income and gains (1) of New Jersey residents derived from sources in a critical area state other than New Jersey, and (2) of residents of such other states derived from sources in New Jersey;

(b) a section establishing tables of rates for income and gain;

(c) a provision for the standard 10% flat deduction;

(d) a provision for itemized deductions;

(e) a provision for personal exemptions;

(f) a provision for tax credits (\$10 and \$25);

(g) a reciprocity clause giving tax credits for taxes levied by the home state;

(h) a withholding provision to cover wages paid in New Jersey to residents of other states (to be credited and refunded after final return under the reciprocity clause);

(i) provision for filing returns;

(j) an option to pay the New Jersey tax by means of an assignment to New Jersey of the claim for refund. This is needed because New Jersey residents will presumably still have taxes withheld in New York. There would be no point to having them also pay New Jersey for the same year, and this can be solved by allowing the payment to New Jersey to consist of the refund from New York;

(k) provision to define and restrict the use of the funds to proper purposes justified by the classification, and providing suitable revenues if this is not done;

(l) provisions to include estates, trusts and partnerships in order to give the tax an equitable distribution without regard to the form of business operation;

(m) identification of the state tax uniform procedure law (sub-title 9 of Title 54 of the Revised Statutes), to make repetition of its many applicable provisions unnecessary.

Specific aspects of the tax plan are treated in the following comments.

Item 1. The Reciprocity Clause

Section 363 of the New York Tax Law (Art. 16, ch. 60), covering the State income tax, now provides that whenever a non-resident of New York has become liable to income tax to his home state, on his net income and net capital gain derived from sources within New York and subject to tax by New York, he shall receive a credit against the New York tax in that proportion which the income taxed by New York bears to the income taxed by his home state. The credit is given on condition that the home state extends a substantially similar credit to New York residents.

This provision has been part of the New York law since 1919, and its theory is recorded in detail in the writings of experts who had a hand in the drafting of the New York law.

It was felt that if the non-resident were not taxed, he could carry on business in New York in competition with New Yorkers who were subject to tax, and that this would be an unfair advantage.

It was also felt that if the non-resident were not taxed, the New Yorker could escape tax by moving to New Jersey.

It was also expected at that time that all states would eventually enact an income tax. In fact, in the brief of the Attorney General of New York in the Yale & Towne case, it was said that:

"The framers of the Act, \* \* \* looked forward to the speedy adoption of an income tax by the adjoining States; \* \* \*"  
(252 U.S. 60, at 81 (1920)).

Of itself, the taxing of non-residents who were expected to be subject to tax by their home state, would result in double taxation. Such a result would not serve any of the purposes for taxing non-residents, and was characterized by one of the consultants as "unjust". To eliminate this, he proposed the reciprocity clause allowing credit for taxes imposed by the home state, as embodied in section 363. See, Seligman, "Studies in Public Finance", (1925) at pp. 195-196.

### Conclusion 1.

From the foregoing, the first conclusion is that the New York law has always contemplated that if the home state of the non-resident taxes the same income which New York taxes, the taxpayer will receive a credit against the New York tax. Where the income taxed by the home state and by New York is the same income, and where the rates are the same, the credit will be a 100% credit.

### Item 2. Classifying the Income

The foregoing conclusion obviously suggests that a tax law which taxes New Jersey residents on the same New York income on which New York imposes a tax, and on the same kinds of income derived by New York residents from New Jersey sources, would entitle the New Jersey resident to full credit against the New York tax, so long as reciprocity is extended.

The next question, then, is whether the classification of such a tax would be valid. Since its object is to obtain revenues to be applied to easing the transportation problem between the two States, it is clear that it can be sustained as valid.

The question would be whether the classification is sound under the 14th Amendment. The authorities are quite clear that the 14th Amendment does not impose an iron-clad, inflexible rule. Classification has traditionally been recognized as a necessary method for fitting tax programs to local needs and usages in order to secure equitable distribution of the tax burden in the light of the nature of the need. Accordingly, legislatures possess the greatest freedom in deciding on forms of classification. Their members are much more familiar with local conditions than any federal court can be, and the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is improper. The burden is on the challenger to "negative every conceivable basis which might support it". See, Madden v. Kentucky, 309 U.S. 83, at 88 (1940).

## Conclusion 2.

If such a tax bill be so designed that its yield will be devoted to transportation problems which include interstate transportation between the states of which the taxpayers are residents, a perfectly sound basis for the classification would exist.

This condition can be satisfied by including provisions to put the revenues in a separate fund which is to be used only for such purposes. This is adequate. It can be further buttressed by providing that the taxpayer be entitled to a refund of his pro rata share of any such tax money as may be used for another purpose, and suspending the tax from the time such other use begins until the refund is honored.

Since the whole concept of the tax would be based on justifying the classification by limiting the use of the funds by providing facilities and services for which compensation may reasonably be exacted, the common question of binding future legislatures does not arise. Future legislatures, if they effectively authorize uses which could not justify the classification, would simultaneously destroy the tax itself.

## Item 3. Continuance of Reciprocity

The question naturally arises whether New York could repeal or modify its reciprocity clause to exclude New Jersey residents from the present right to receive a credit.

Of course, the history of the New York law completely negatives the thought of outright repealer, as it would be wholly inconsistent with unbroken policy since the law was enacted, 41 years ago.

In addition, the fact that some 31 states have tax laws already, under which they can gain credits for their residents by extending the same reciprocity, means that a repealer would affect all of them, and make double taxation the rule rather than the exception. This possibility is unrealistic.

Alternatively, it may be supposed that New York would consider amending the reciprocity clause so as to exclude New Jersey, but not other states. This alternative is frivolous because such a step would be discriminatory and would violate the privileges and immunities clause in Article IV of the United States Constitution.

Finally, of course, there is the actual fact that the reciprocity clause was included in the New York law from the beginning, with the expectation that New Jersey would eventually tax its own residents on the same income which New York taxes. The tax law under discussion would do no more than bring that expectation into reality.

### Conclusion 3.

Under present New York law, the imposition of the tax under discussion is expected. Repeal or change of the reciprocity clause would be either practically impossible or illegal.

### Item 4. Revenues from a commuter tax.

It is difficult to get accurate estimates of the revenue to be derived from a commuter tax drawn as an emergency transportation tax measured by income now taxed by New York.

The last figures available were for 1957, and the amount which such a tax would have raised for that year would be \$27 million. Assuming about \$2 million for administrative expense leaves \$25 million net.

However, the use of \$600 and \$1,200 exemptions, the known increase in general income levels, and the extension of the table to a maximum 10% rate will bring the total somewhat higher. The highest estimate made (and it is a guess) is \$40 million, which would leave \$38 million net after expenses.

If the tax revenue were applied to current yearly needs of a transportation fund, the balance could then be accumulated in an endowment fund during the temporary period that the tax is in effect, say, perhaps 10 years. Such

a fund could be invested and the income used to finance annual needs after the tax expires. It could also be used as a revolving fund to finance projects that are able to eventually reimburse the fund, thus providing the greatest possible use from the revenues raised.

Pending receipt of the tax in 1961, withholdings from non-residents (perhaps \$10 million), to be later refunded, would be available to meet immediate cash needs.

Stephen B. Wiley  
Counsel to the Governor

# NEW JERSEY STATE CHAMBER OF COMMERCE

54 PARK PLACE, NEWARK 2, NEW JERSEY

JAMES P. STEWART  
President  
IRVING T. GUMB  
Executive Vice President  
ALBERT H. ACKEN  
Secretary



MARKET 3-7070

May 20, 1960

TO: Hon. William V. Musto, Chairman  
and other Members of the  
Appropriations Committee of the  
General Assembly

Because the relevant committees of the New Jersey State Chamber of Commerce are not meeting until next week, we regret that it is impossible for the State Chamber to submit a statement today to the Appropriations Committee with respect to Assembly Bill No. 65, the "Emergency Transportation Tax Act".

We should greatly appreciate the opportunity of appearing before this Committee at a subsequent hearing to present the views of the State Chamber with respect to this bill or, in the absence of a subsequent hearing, the opportunity of filing a statement with this Committee.

ALBERT H. ACKEN  
Executive Vice President

AHA/md

(WESTERN UNION TELEGRAM)

East Orange, N. J.  
May 20, 1960  
9:10 a.m., mbl

H. A. Thomas, Jr.:

Due to an emergency zoning and planning problem that must be resolved before Monday morning so that construction on a new building may commence, it will be impossible for me to attend today's public hearing on Commuter Tax.

However, in view of the mounting commuter crisis throughout the State and for its probable benefit to the citizens of East Orange and other commuting communities, I endorse the Musto Bill in principle.

Inasmuch as the Musto Bill proposes what could be a long range financial solution, I also urge immediate favorable action on the administration bill for rail contract service in order to preserve our rail commuting facilities on the Lackawanna Railroad pending solution of the long range objectives.

I would appreciate this message being made part of your record of this hearing on the Musto Bill.

James W. Kelly, Jr.  
Mayor, East Orange

VINCENT P. BIUNNO • 321 FOREST AVENUE • GLEN RIDGE, N. J.

May 20, 1960

Honorable William Musto  
Assembly Chamber  
State House  
Trenton, New Jersey

Re: Assembly Bill No. 65

Dear Assemblyman Musto:

This will acknowledge your kind invitation that I be present at the public hearings on May 20, 1960, when the above bill will be discussed. As I understand it, your thought was that I be available to answer questions which might come up either on the part of committee members or on the part of one or more persons coming to the hearing.

I would very much like to attend to give whatever help I can to a full and clear understanding of the question. Most unfortunately, however, the date set is one on which I am committed to present the results of a recent survey of data processing experiments to a committee of the New Jersey State Bar Association, and this makes it impossible to be present.

If it will be of any assistance to you, I will try to outline in the accompanying memorandum the questions which seem to me to be most likely to come up or in which there may be interest, along with the answers to those questions.

I leave it entirely to your judgment how this material can best be applied for the sole purpose of increasing the public's full understanding of the bill and its implications. What the disposition on the bill might eventually be is of no personal concern. My only object is to help in the difficult process of achieving its understanding.

Aside from the questions in the memorandum, there are some points that probably should be noted at the outset, and these I will mention here.

Except for a rather full account quoting extensively from the written materials distributed when the proposal was announced, I have read no really accurate presentation of it in the newspapers.

I do not intend here any criticism of the press, being well aware of the problems and difficulties which it faces. It is nonetheless a fact that the great majority of the accounts which I was able to read were directed mainly to the reporting of reactions, comments and opinions of people who did not have the bill itself or any underlying material, and who had no opportunity to make any study of the legal questions involved, at the time their statements were made. I say this because a number of capable newsmen asked what I thought of the comment made by X or Y, were in turn asked by me what material X or Y had available and they replied that only newspaper accounts were available.

With all due respect to the persons commenting, I suggest that the comments were of little value. Yet, this is about all that the general public has had available to it, and it is still true (even though they are taught otherwise) that public opinion is shaped mainly by press accounts and most of all by headlines.

The point is well illustrated by the observation that many of the editorial expressions published were clearly based on incomplete or inaccurate facts, regardless of whether the position taken was favorable or unfavorable.

The miracle of the democratic process was emphatically brought home to me over the last two years, and it is clearer than ever to me that it works best when the public gets the facts straight. How the public may feel is wholly unimportant. It is only important that it know the facts, because the public is fully capable of making sound decisions.

In the hope that the accompanying material may be of some small aid in that direction. I furnish it for what it may be worth. If, in the course of the hearing, you should have a question presented which the memorandum does not cover, I will be happy to give you the answer to it so that you may, in turn, pass it on to the questioner.

Sincerely,

/s/ Vincent P. Biunno

Vincent P. Biunno

Encl:

MEMORANDUM RE: ASSEMBLY BILL NO. 65 (1960)

Q. What is the general nature of this bill?

A. It is a tax bill imposing a tax measured by income, with a scale of rates beginning at 2% and increasing to a maximum of 10%.

Q. Who would be taxed by the bill?

A. The bill taxes all residents of New Jersey, but only on the income they receive from activities carried on in another state, provided there was a critical transportation problem between that state and New Jersey. The bill would also tax the New Jersey income of people who live in the other state. To keep the explanation simple, we will assume that the law would apply to New York.

Q. Who would decide what states would be involved?

A. The State Highway Commissioner would have to make a finding that there was in fact a critical transportation problem between New Jersey and the other state.

Q. Why is this requirement included?

A. Because the tax is intended to be used only for transportation problems with an interstate aspect. For example, transportation between New Jersey and New York involves crossing the Hudson River; and the facilities and services for that crossing are very much more expensive than ordinary transportation. For this reason, the law requires that it be a fact that there is a critical problem. The strength of the law rests upon the strength of the fact.

Q. Some people have expressed the opinion that the law would be unconstitutional. Is this true?

A. As the bill is drawn no one can legitimately say that it is unconstitutional. It would only be after the bill has passed, after the State Highway Commissioner has made a finding, and after the facts upon which his finding was based were thoroughly studied would anyone be in a position to argue that the bill was invalid.

Until that time, court decisions require that it be assumed that the Highway Commissioner would make only proper findings based on actual facts.

Q. What about the claim that it is not lawful to tax only some people and not others? Wouldn't that make the law bad?

A. Not at all. The United States Supreme Court has ruled many times that state legislatures have great latitude in deciding how to assess a tax in what they consider to be a fair way. This is the theory of classification. The Supreme Court has ruled that a classified tax law starts out with a presumption that it is valid, and that anyone who says it is not must convince the court that there is not any possible basis for justifying the classification. This is an extremely heavy burden.

Q. Are there any examples of such taxes?

A. Yes. Very many. One example we have in New Jersey is the Atlantic City sales tax. When the law was first passed, it permitted the tax in order to meet the emergency caused by a destructive storm along the Jersey shore -- but it was so drawn as to apply only to Atlantic City. Our courts held the bill was bad because other shore towns had also suffered severe damage. The law was passed a second time, making the tax permissible in any shore community and it was held to be good. The tax is a classified one because it can only be charged along the shore, and the justification is that the storm damage was along the shore.

Another familiar example is the Unemployment Tax. If you are self-employed, or if your employer has less than four employees, no unemployment tax is imposed. Some people are taxed, others are not, even though anybody might be unemployed. But the benefits can only be used for the people who pay the tax, and this makes it valid.

Very similar to this is the social security tax. Another example is the business corporation tax which is not imposed on individual and partnership business.

Q. If the tax money is used for interstate transportation problems between New Jersey and New York, won't the benefits also help other people who don't pay the tax?

A. This bill does not allow that. Keep in mind that this bill levies the tax and defines the kind of thing it can be spent for. It is not an appropriation bill. If the tax were imposed and a later appropriation bill tried to spend some of the money to help people who did not pay the tax, that bill would be open to challenge, but not the tax bill.

Q. Won't it be impossible to make sure that the money goes only to help people who pay the tax?

A. Not at all. This is merely a matter of being careful when the funds are to be applied. For instance, it could be provided that anybody who paid the tax would be entitled to buy H & M commuter tickets at 10 cents a ride, with the tax money used to buy contract service for the difference between the 10 cents and the regular fare charged to others.

Auto riders can be benefited the same way with tunnel and bridge tickets, or with parking charges.

On the other hand, if something is to be built, like a tunnel, for example, a fair appraisal of how much of the cost was due to serving the needs of ~~tax~~ people who pay the tax and how much for others, would control how much of the total cost could properly be paid out of this tax money.

Q. Are there any examples of this?

A. Yes. Suppose a city builds an improvement, like a highway. The law allows the city to levy a tax on the owners of the property along the highway on the theory that the highway is a benefit which makes the land more valuable. At the same time, other people owning land off the highway but near it may also find their land worth more, but are not taxed. This system is perfectly valid because no tax law, even a benefits tax law, is expected to be absolutely perfect. All that is required is that it be well designed.

Q. Suppose this law applied to people who work in New York? Would they have to pay a double tax?

A. No. New York law allows them a direct offset for the taxes paid to New Jersey. They would pay not a penny more than they would have to pay without this tax. The major difference is that they would be certain to get high value for their tax money, whereas they get almost no value now.

Q. Haven't New York officials said that they would not recognize this tax as one entitled to an offset, and wouldn't this mean a double tax?

A. There has not been any official and binding statement in New York. Whatever statements there have been do not appear to be anything more than casual, off-hand comments by individuals.

The fact is that the offset provision has been in the New York law for 41 years. It was put in there expressly to prevent a double tax if New Jersey taxed the same income New York does.

The fact also is that this very year, 1960, New York re-enacted a whole new tax law, in which it again included the offset clause. The fact further is that the 1960 New York clause is even more clearly worded than before, to apply to "any" income tax by the home state on the same income.

This reenactment expresses official policy of the 1960 New York Legislature, which passed it, and of Governor Rockefeller, who signed it.

Q. Some people have said that New York could amend that clause in special session or next year, to prevent the offset for the commuter tax. Is this true?

A. No one can say what New York might try. But the fact is that if they try to change their clause to deprive New Jersey residents of the right to offset while they continue to give it to the residents of other states, such as California, Delaware, District of Columbia, and so on, they will be on very dangerous ground. The reason for this is that Article IV of the United States Constitution guarantees that if a state law gives a privilege to citizens of one state, it must give the same privilege to citizens of other states.

It is well known that large numbers of New Jersey citizens earn their income entirely in New York or nearly so. For them -- and they are among the people taxed under this bill -- the tax has exactly the same effect as California's or Delaware's; and so on. Therefore if New York continues to give the offset to California, it cannot refuse the same offset to New Jersey.

Q. In that case, can't New York take away the offset from all the states, and give it to nobody?

A. It is possible that New York has this power. If they exercise it, however, they will be taking on a battle with all the states which used to have the offset, not just New Jersey, and they will make double taxation the rule rather than the exception. They will also expose their own citizens who live in New York to double taxation in other states. These practical facts prevent any realistic chance that New York would dare to go that far.

Q. But suppose they do go that far? What then?

A. If they do, New Jersey will know it long before the first returns are due in April, 1961. Our Legislature will have plenty of time to act to prevent double taxation.

In addition, if New York would go so far as to make it state policy to impose double taxation on New Jersey, then we ought to know it. New Jersey should know exactly where New York stands on this question,

because New Jersey's own policies with respect to New York -- and there is no thought of purely retaliatory acts here -- would then have to be completely reexamined and New York would be the loser in the long run. In fact, if New York wants double taxation and actually tries to do it, the best solution to the commuter problem would be to move as many offices from New York to New Jersey, where there would be no income tax. Modern systems of communication substantially reduce the necessity of crossing the river at all. Business can be conducted on the west side of the Hudson just as effectively as in New York.

Q. Some people are afraid that if this bill is passed it might be the first step toward an income tax on all income of New Jersey residents. Isn't this dangerous?

A. This bill has no such effect. It has no connection with what has been called the "broad based" income tax. No one knows whether such a tax will be passed in New Jersey. Those who think it should be admit that the opposition to it is very heavy. This bill, if enacted, would make it no easier to pass such a tax. If it has any effect, it would make it harder.

The reason is that one of the arguments for the broad based tax is that part of it would come from the New York tax. But if this bill is passed, New Jersey will already be getting the taxes now paid to New York, without a broad based tax. This eliminates one of the powerful arguments for such a tax.

Q. Is there any way of finding out, before the bill is passed, that it would definitely be a good law, and that New York would give the offset?

A. Every law that is passed is good until such time as a court says it is not. Our legal system has no laboratory where laws can be tested in advance. There is, however, no danger in passing the law, for if a court should decide that it is not good, there will not be any tax to pay. If it holds the law is good, then the major objective of financing emergencies for transportation will be achieved.

So far as New York is concerned, it has no problem which it must face unless the bill is passed. Then, and only then, will New York be obliged to act officially, either to recognize the tax or to oppose it. Until then, New York officials can freely say whatever they think might frighten New Jersey enough to prevent passage of the law. If New Jersey allows itself to be frightened it will be very foolish because it always retains full control of its own tax laws. Only passage of the bill -- nothing else -- will give New Jersey the answers which it must have. If New Jersey does anything less, it will be allowing New York to dictate to New Jersey what kind of laws it can pass.

Q. But wouldn't this bill freeze the inequity which now exists in New York's treatment of non-residents? Won't it make New York unwilling to give equality?

A. This tax has no connection with the equality problem. New York's conduct on that question has been nothing short of disgraceful. Its officials have admitted the inequity, they have conceded that it is wrong, they have recognized that New Jersey has a perfect right to use whatever tax system it wants to, and then, in the face of all these pious declarations it has suggested changes which would actually result in a higher tax on many New Jerseyans, or else, when that was shown up, promised a very modest adjustment which never left Assembly committee.

There is no reliable indication that New York will ever do all it should to provide tax equity. Each passing year, each "wait 'till next year", makes it more and more unlikely. The reason is that the money they take from New Jersey residents has grown larger every year, and New York has acquired a habit-forming addiction which it lacks the will-power to break.

Under these conditions it is wiser to forget about "equal treatment" for the moment. When New York has become cured of the habit and is no longer accustomed to the heavy take from non-residents, it may prove to be much easier to get tax equality, because it will then cost New York nothing.



