

**LIQUOR TAX LAWS. HEARINGS BEFORE
THE SUBCOMMITTEE ON INTERNAL
REVENUE OF THE COMMITTEE ON
WAYS AND MEANS, 59TH CONGRESS,
1ST SESSION, FEBRUARY 3 AND 5, 1906**

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COMMITTEE ON WAYS AND MEANS.
SUBCOMMITTEE No. 3, ON INTERNAL REVENUE.

JOHN DALZELL, *Chairman.*

JAMES T. McCLEARY.

HENRY S. BOUTELL.

SAMUEL W. McCALL.

CHAMP CLARK.

EBENEZER J. HILL.

OSCAR W. UNDERWOOD.

WILLIAM K. PAYNE, *Clerk.*

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LIQUOR TAX LAWS.

COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE NO. 3, ON INTERNAL REVENUE,
Saturday, February 3, 1906.

The subcommittee met this day at 2 p. m., with the chairman, Hon. John Dalzell, in the chair.

Present: The chairman and Messrs. McCleary, Hill, Boutell, Clark of Missouri, and Underwood.

The CHAIRMAN. The committee will come to order, and we will first hear Mr. Humphreys, of Mississippi.

[For copies of bills under consideration, see p. 76-80.]

STATEMENT OF HON. B. G. HUMPHREYS, A REPRESENTATIVE FROM MISSISSIPPI.

[For additional statement of Mr. Humphreys, see p. 71.]

Mr. HUMPHREYS. Mr. Chairman and gentlemen of the committee, the bill that I want to direct your attention to is a bill^a that provides for an amendment of section 3240 of the Revised Statutes. That section 3240 now provides that the internal-revenue collector shall keep an alphabetical list of the parties to whom he issues this special tax and have it posted in his office. The amendment that I propose is to require him in addition to that to give a certified copy of the tax receipt which he issues to retail liquor dealers upon request.

Mr. Chairman, I want to say in the outset that this is not a prohibition measure. My objection is to an order issued by the Secretary of the Treasury, and it is an objection that the whisky men, the men engaged in the business of retailing liquors, would, or at any rate should, urge just as strenuously as a man who is opposed to the sale of liquor at all. A man who has a license to sell whisky in the State of Mississippi, and in most of the States, I suppose, has to pay a very large sum—from \$600 to \$1,500—and he is just as much interested in having the blind tiger, without any license whatever, prevented from encroaching on his rights as the man who is opposed to the sale of liquor at all is in favor of his conviction.

Mr. Chairman, the rule which the Secretary of the Treasury has promulgated, through the Commissioner of Internal Revenue, changes the rule of evidence that has always existed in all common-law countries

^a H. R. 4533 (see p. 76.)

down to the date when that rule was promulgated. It extends the protection of privilege to a witness and to a class of testimony that has never been exempted under the law. The reason for giving the protection of privilege to certain classes of testimony is apparent, and it is unnecessary for me to mention them here; but the law has always held that the protection of privilege which is extended to the lawyer, and which enables him, and commands him, in fact, to keep secret the communications which come to him from his client, is subject to this exception: That if the communication to him is of a crime intended to be committed—of an offense which is contemplated, one in futuro, not one actually accomplished—then the protection of privilege is taken from him and he can not decline to testify in the courts; and that rule, I believe, is universal.

In some of our States privilege is extended to the communications that are made to priests at the confessional, and in those States, where the communication evinces an intention to commit a crime or makes known the fact that the confessor is contemplating a crime, under the decisions of the States where those communications are privileged the priest even is required to testify.

Now, in this case the man goes to the internal-revenue collector and says: "I intend to go into the State of Maine and engage in an unlawful enterprise." If he had communicated that fact to his attorney, or if he had conveyed it to the priest, they would be required to testify to it in the courts. The collector of internal revenue was formerly required to testify, too. It was so held in the 74th Federal Reporter.* The case went up from Connecticut—the Hirsch case—and it required this rule of the Department to protect him.

THE CHAIRMAN. What is the rule of the Department to which you refer?

MR. HUMPHREYS. The rule of the Department is quite a long rule, but it is just this: The collectors shall not give copies of their records and they shall not go into the courts and testify as to the issuance of the receipt, and they shall not testify at all where a man is being prosecuted for unlawful retailing.

MR. BOUTELL. Will you kindly give the number of the regulation and the page so that we may have it in the hearing?

MR. HUMPHREYS. It is set out in the case of Lamberton in the One hundred and twenty-fourth Federal Reporter, which went up from the State of Arkansas. The language of it to start with is this:

Collectors are hereby prohibited from giving out any special tax records or any copies thereof to private persons or to local officers or to produce such records or copies thereof in a State court, whether in answer to subpoenas duces tecum or otherwise. Whenever such subpoenas shall have been served upon them they will appear in court and answer thereto and respectfully decline to produce the records called for, on the ground of being prohibited therefrom by the regulations of this Department.

The reason which the Commissioner gives for this rule and the reason the courts have given for sustaining it is that the evidence is gotten from the taxpayer under compulsion, and that it is unfair to divulge it for that reason.

I submit there is no compulsion about it at all. The only compulsion he is subjected to is to comply with the rules of the Department after he has made up his mind to engage in this unlawful enterprise.

* In re Hirsch, 74 Federal Reporter, p. 928.

He is not required to engage in it at all. That matter is his own election. He can go into the whisky business in direct violation of the law if he wants to, or he can let it alone. If he decides to do it, however, he is required to conform to the rules of the Department in making out his application. In 1794, I think it was the first revenue bill, they called this tax a license. They called it a license under the act of 1813. They called it a license in the act of 1864. Now, in the License Cases reported in the 5th Wallace^a it was contended that, having paid a license to the United States Government, they were entitled to immunity from any interference on the part of the State.

The court held, however, in those cases that it was not a license at all; that they had no right to go into a State and violate the law because of the payment of this license; that it was simply a tax. The Congress then, in 1866, to make that clear, amended the law and put in the two words "special tax" in place of the word "license," so that the man could not be deceived when he paid it on the theory that he was securing a license. Congress went further than that and specifically and particularly enacted that this tax receipt should not be construed as any authority whatever, so when a man takes it, I submit that the Department is under no obligation to him whatever, because he takes it understanding that he is receiving no authority to violate any State law. They have told him when they issued the license that he has no authority whatever in virtue of it to go into any State and engage in the business of a retail liquor dealer, and that if he does go he goes at his own peril.

The CHAIRMAN. Let us get in the record at this point that section of the Revised Statutes:

The payment of any tax imposed by the internal-revenue laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State, or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business for State or other purposes.^b

Mr. HUMPHREYS. That being true, how can the Government say we owe this man a duty because we have gotten this information from him by compulsion? We owe him no duty whatever. When he goes into a State and does violate the law he goes there knowing that he has no protection from the Government, and yet he claims protection from the Government to the extent that the Government will not give any information against him if he does violate the laws of the State.

The President of the United States thought this matter of sufficient importance to call the attention of Congress to it in his annual message. He laments the fact—I believe I will read that part of it—the laxity of the administration of our criminal laws. He says, among other things:

Centuries ago it was especially needful to throw every safeguard round the accused. The danger then was lest he should be wronged by the state. The danger is now exactly the reverse. Our laws and customs tell immensely in favor of the criminal and against the interests of the public he has wronged. Some antiquated and outworn rules which once safeguarded the threatened rights of private citizens now merely work harm to the general body politic. The criminal law of the United

^a License Tax Cases, 5 Wallace, 462.

^b U. S. Rev. Stat., sec. 3243.

States stands in urgent need of revision. The criminal process of any court of the United States should run throughout the entire territorial extent of our country. The delays of the criminal law, no less than of the civil, now amounts to a very great evil.

The President in another place, referring to what he calls "bootlegging" among the Indians, says:

It is gratifying to note that the States and municipalities of the West which have most at stake in the welfare of the Indians are taking up this subject and are trying to supply, in a measure at least, the abdication of its trusteeship forced upon the Federal Government. Nevertheless, I would urgently impress upon the attention of the Congress the question whether some amendment of the internal-revenue laws might not be of aid in prosecuting these malefactors, known in the Indian country as "bootleggers," who are engaged at once—

Now listen to this:

in defrauding the United States Treasury of taxes and, *what is far more important*, in debauching the Indians by carrying liquors illicitly into territory still completely under Federal jurisdiction.

The Commissioner of Internal Revenue reports that there are one hundred and sixty-odd men in the Indian Territory who have paid him taxes on the business of retail liquor dealing and as retail malt liquor dealers, and he declines to give evidence against them, although the President of the United States is calling for the enforcement of the law.

The CHAIRMAN. What you seem to desire is an amendment to the regulations?

Mr. HUMPHREYS. That is all. It is to make the United States Government get out of the way so that the States can enforce their own laws.

Mr. BOWIE. Let me emphasize the point. We have statutes in the various States to the effect that the possession of one of these special stamps from the Government is *prima facie* evidence that a man is engaged in the business.

Mr. HUMPHREYS. Exactly.

The CHAIRMAN. I assume that under the law the tax collector has a list posted in his office where anybody can go in and see it.

Mr. HUMPHREYS. Let me say there are two reasons that have been given, and only two, in all the decisions I have ever read on the subject, why public records should be protected or have the protection of privilege extended to them. One is that it may be of such inconvenience to require the officer to leave his office and carry with him his records as to interfere with his public duties; and the other is this, that it makes public certain matters that ought not to be made public, and in that case the officer would report to the court that it is not a matter that ought to be made public.

So far as having his special tax payment kept a secret, the law requires the collector to post in his office a list of the names of all who have paid the special tax and the place where he intends to do business, so there is, therefore, no secret. What he does do is to say: "I will not go into court and carry this list with me, although the law requires me to make the list of names public, and I will not give a certified copy of the tax receipts." In other words, "I will not give you any information on the subject whatever."

Mr. CLARK, of Missouri. All you want is to have a certified copy of the list of those fellows who have paid the Government the retail liquor dealers' tax and then the State is to use that as evidence against the fellow?