# CONGRESSIONAL RECORD:

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gaged in the manufacture of galvanized sheet iron and sheet steel. I am receiving telegrams from those people to the effect that this rise in the cost of spelter, which has already occurred, increases very greatly the cost of galvanizing steel and iron sheets.

The average quantity of zinc used in galvanizing a ton of sheet steel or sheet iron is 325 pounds. This spelter has increased of late about $10 a ton, which means an increase per ton of their material, as they estimate, of nearly $2 a ton. There is a differential in paragraph 126 of this bill between ungalvanized and galvanized of two-tenths of a cent a pound. It was no doubt intended that a large share of that two-tenths of a cent would provide for additional labor; but if this duty is imposed the price of zinc will so increase that the actual difference in the material will be more than two-tenths of a cent a pound. So I must ask, if any duty is imposed, that the schedule with reference to galvanized iron shall be changed to meet the changed conditions.

Mr. President, the principle of protection does not demand that this duty be imposed. It is not a languishing industry; it is not an industry that requires a penny of duty to make it profitable and increasingly profitable in the years to come.

While its imposition will tend to destroy secondary industries which depend upon this for their raw material, the increase in price will also threaten not only a decrease in the quantity made, in the zinc that is smelted, and thus in the zinc ore which is taken from the mines, but the very decadence and almost destruction of the industry itself. I can hardly understand how those who are interested in zinc ore, who have certainly as profitable mining interests as any in the United States, the one that has shown the greatest increase in profits, should be coming here to Congress and asking for this absolutely unnecessary duty—a duty not only unnecessary to themselves, but hurtful to all the related industries. So I trust, Mr. President, that this paragraph will be stricken out of the bill, and that the law will be left as it is.

Mr. HEYBURN. Mr. President——

The PRESIDING OFFICER. The Chair lays before the Senate a message from the President of the United States, which will be read:

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

The PRESIDING OFFICER. The Secretary will call the roll.

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

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|---|---|---|---|
| Aldrich | Clark, Wyo. | Gamble | Overman |
| Bacon | Clay | Gore | Page |
| Bailey | Crane | Guggenheim | Paynter |
| Bankhead | Crawford | Heyburn | Perkins |
| Borah | Culberson | Hughes | Piles |
| Bourne | Cullom | Johnson, N. Dak. | Rayner |
| Brandegee | Cummins | Johnston, Ala. | Root |
| Briggs | Curtis | Jones | Scott |
| Bristow | Daniel | Kean | Simmons |
| Brown | Davis | La Follette | Smith, Md. |
| Bulkeley | Dick | Lodge | Smith, S. C. |
| Burkett | Dillingham | McCumber | Smoot |
| Burnham | Dixon | McLaurin | Sutherland |
| Burrows | Dolliver | Martin | Taliaferro |
| Burton | du Pont | Money | Tillman |
| Carter | Elkins | Nelson | Warner |
| Chamberlain | Flint | Newlands | Wetmore |
| Clapp | Gallinger | Nixon | |

The PRESIDING OFFICER. Seventy-one Senators have answered to their names. A quorum of the Senate is present. The Secretary will read the message from the President of the United States.

The Secretary read as follows:

*To the Senate and House of Representatives:*

It is the constitutional duty of the President from time to time to recommend to the consideration of Congress such measures as he shall judge necessary and expedient. In my inaugural address, immediately preceding this present extraordinary session of Congress, I invited attention to the necessity for a revision of the tariff at this session, and stated the principles upon which I thought the revision should be effected. I referred to the then rapidly increasing deficit and pointed out the obligation on the part of the framers of the tariff bill to arrange the duty so as to secure an adequate income, and suggested that if it was not possible to do so by import duties, new kinds of taxation must be adopted, and among them I recommended a graduated inheritance tax as correct in principle and as certain and easy of collection. The House of Representatives has adopted the suggestion, and has provided in the bill it passed for the collection of such a tax. In the Senate the action of its Finance Committee and the course of the debate indicate that it may not agree to this provision, and it is now proposed to make up the deficit by the imposition of a general income tax, in form and substance of almost exactly the same character as that which in the case of Pollock *v.* Farmers' Loan and Trust Company (157 U. S., 429) was held by the Supreme Court to be a direct tax, and therefore not within the power of the Federal Government to impose unless apportioned among the several States according to population. This new proposal, which I did not discuss in my inaugural address or in my message at the opening of the present session, makes it appropriate for me to submit to the Congress certain additional recommendations.

The decision of the Supreme Court in the income-tax cases deprived the National Government of a power which, by reason of previous decisions of the court, it was generally supposed that Government had. It is undoubtedly a power the National Government ought to have. It might be indispensable to the Nation's life in great crises. Although I have not considered a constitutional amendment as necessary to the exercise of certain phases of this power, a mature consideration has satisfied me that an amendment is the only proper course for its establishment to its full extent. I therefore recommend to the Congress that both Houses, by a two-thirds vote, shall propose an amendment to the Constitution conferring the power to levy an income tax upon the National Government without apportionment among the States in proportion to population.

This course is much to be preferred to the one proposed of reenacting a law once judicially declared to be unconstitutional. For the Congress to assume that the court will reverse itself, and to enact legislation on such an assumption, will not strengthen popular confidence in the stability of judicial construction of the Constitution. It is much wiser policy to accept the decision and remedy the defect by amendment in due and regular course.

Again, it is clear that by the enactment of the proposed law the Congress will not be bringing money into the Treasury to meet the present deficiency, but by putting on the statute book a law already there and never repealed will simply be suggesting to the executive officers of the Government their possible duty to invoke litigation. If the court should maintain its former view, no tax would be collected at all. If it should ultimately reverse itself, still no taxes would have been collected until after protracted delay.

It is said the difficulty and delay in securing the approval of three-fourths of the States will destroy all chance of adopting the amendment. Of course, no one can speak with certainty upon this point, but I have become convinced that a great majority of the people of this country are in favor of vesting the National Government with power to levy an income tax, and that they will secure the adoption of the amendment in the States, if proposed to them.

Second, the decision in the Pollock case left power in the National Government to levy an excise tax, which accomplishes the same purpose as a corporation income tax and is free from certain objections urged to the proposed income-tax measure.

I therefore recommend an amendment to the tariff bill imposing upon all corporations and joint stock companies for profit, except national banks (otherwise taxed), savings banks, and building and loan associations, an excise tax measured by 2 per cent on the net income of such corporations. This is an excise tax upon the privilege of doing business as an artificial entity and of freedom from a general partnership liability enjoyed by those who own the stock.

I am informed that a 2 per cent tax of this character would bring into the Treasury of the United States not less than $25,000,000.

The decision of the Supreme Court in the case of Spreckels Sugar Refining Company against McClain (192 U. S., 397) seems clearly to establish the principle that such a tax as this is an excise tax upon privilege and not a direct tax on property, and is within the federal power without apportionment according to population. The tax on net income is preferable to one proportionate to a percentage of the gross receipts, because it is a tax upon success and not failure. It imposes a burden at the source of the income at a time when the corporation is well able to pay and when collection is easy.

Another merit of this tax is the federal supervision which must be exercised in order to make the law effective over the annual accounts and business transactions of all corporations. While the faculty of assuming a corporate form has been of the utmost utility in the business world, it is also true that substantially all of the abuses and all of the evils which have aroused the public to the necessity of reform were made possible by the use of this very faculty. If now, by a perfectly legitimate and effective system of taxation, we are incidentally able to possess the Government and the stockholders and the public of the knowledge of the real business transactions and the gains and profits of every corporation in the country, we have made a long step toward that supervisory control of corporations which may prevent a further abuse of power.

I recommend, then, first, the adoption of a joint resolution by two-thirds of both Houses, proposing to the States an amendment to the Constitution granting to the Federal Government the right to levy and collect an income tax without apportionment among the States according to population; and, second, the enactment, as part of the pending revenue measure, either as a substitute for, or in addition to, the inheritance tax, of an excise tax upon all corporations, measured by 2 per cent of their net income.

WM. H. TAFT.

THE WHITE HOUSE, *June 16, 1909.*

The PRESIDING OFFICER. Without objection, the message will be printed (S. Doc. No. 98) and referred to the Committee on Finance.

Mr. HEYBURN and Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho [Mr. HEYBURN] has the floor. He rose first, and has been recognized.

Mr. HEYBURN. I think I was recognized before the message was received.

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Oklahoma?

Mr. HEYBURN. For what purpose?

Mr. GORE. I wish to object to the reference. I should like to make a suggestion.

Mr. HEYBURN. I yield for the Senator to make his objection.

Mr. GORE. I desire to make a motion, Mr. President. I inquire if the Senator from Idaho has yielded?

The PRESIDING OFFICER. The Senator has yielded.

Mr. GORE. Mr. President, as I understand, the Chair proposed——

Mr. HEYBURN. I did not yield for remarks accompanying the motion. I thought the Senator merely desired an opportunity to object. I have the floor for the purpose of discussing another matter.

Mr. GORE. Mr. President, I did not want the announcement made that the message was referred, because I desired——

Mr. ALDRICH. It has already been referred.

The PRESIDING OFFICER. The reference has already been made, and the Senator from Idaho has been recognized upon another subject.

Mr. GORE. I was trying to get the attention of the Chair.

Mr. BACON. Mr. President, if you will pardon me a suggestion, the question of reference of a measure of any kind is always in the control of the Senate. It is the custom to yield that to the Chair, subject, of course, to the right of the Senate to decide that matter. I submit to the Chair that the Senator from Oklahoma was in time, because the Chair did not put any question with reference to it and there was no opportunity to make any objection.

Mr. HEYBURN. Mr. President, I had asked for and obtained recognition, if I am not entirely mistaken, before the message from the President was received.

Mr. BACON. Very well.

Mr. HEYBURN. And I merely yielded the floor for the purpose of having the message received and read.

The PRESIDING OFFICER. The Chair is of the opinion that the question of reference may be considered open. The Senator from Idaho [Mr. HEYBURN] had the floor. He yielded for the reading of the message, and if the yielding of the Senator from Idaho gave room for the reference of the message by consent, it gave room also for a motion regarding the reference or for an objection. So the Chair does not think that the question ought to be considered closed by the rather peremptory treatment of the subject, which is customary, and which ordinarily is treated as being subject to being open for any objection or motion. The Chair will recognize the Senator from Oklahoma for the purpose of making an objection to the reference of the message or a motion in regard to it.

Mr. GORE. Then, I move that the President's message just read be referred to the Committee on Finance, with instructions to that committee to report, on or before Friday next, a joint resolution proposing an amendment to the Constitution of the United States authorizing the levy and collection of an income tax in accordance with this message.

Mr. HEYBURN. I retain the floor, Mr. President.

Mr. McLAURIN. Is that debatable?

Mr. HEYBURN. If it is debatable, I have the floor.

Mr. McLAURIN. I understand.

Mr. ALDRICH. I move to lay the amendment upon the table.

Mr. GORE. I wish to modify the motion by striking out "in accordance with this message."

Mr. ALDRICH. I move to lay the motion on the table.

The PRESIDING OFFICER. The Senator will modify his motion in accordance with his own wishes. The question then will be upon agreeing to the motion of the Senator from Rhode Island.

Mr. ALDRICH. To lay the motion for instructions upon the table.

Mr. LODGE. To lay the motion for instructions upon the table.

Mr. GORE. Mr. President——

Mr. LODGE. That is not debatable.

Mr. GORE. Under the motion to table I have no right to discuss it, but by unanimous consent——

Mr. LODGE. The motion is to refer to the Committee on Finance. The Senator from Oklahoma proposes to amend it by adding instructions. The motion of the Senator from Rhode Island is to lay the amendment on the table.

Mr. TILLMAN. I think the Senator from Massachusetts is in error there. There is no motion in regard to this message at all, but it is the action of the Chair in having under the ordinary course referred it to the committee without a motion.

Mr. ALDRICH. The Senator, I think, is mistaken in that. The suggestion was made that it be referred to the Committee on Finance.

Mr. TILLMAN. By whom?

Mr. ALDRICH. By the Chair.

Mr. TILLMAN. But the Chair can not make a motion.

Mr. ALDRICH. That is the motion.

Mr. MONEY. I rise to a parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. ALDRICH. It goes there under the rule.

Mr. TILLMAN. But there is no motion.

Mr. MONEY. I understood that the Senator from Oklahoma had the floor to make a motion. He had a right to move, and he had a right to say what he pleased upon that subject; and who could take him off the floor by a motion to table? He had the floor. The motion to refer is not privileged. You can not take a Senator off the floor who has it by the recognition of the Chair——

Mr. HEYBURN. He had it by unanimous consent.

Mr. MONEY. Not by unanimous consent, but by the recognition of the Chair. You were on the floor for something else, as you stated yourself, and the Chair ruled you were not in order or did not have the floor because the matter of reference had not been concluded. The Chair then recognized the Senator from Oklahoma, who proceeded in his own right to make a motion to refer with instructions; and he has the right to say what he chooses on that subject, and can not be taken off the floor by some other Senator who wants to make a motion to table.

Mr. ALDRICH. The Senator from Oklahoma had taken his seat, and I was recognized in due course by the presiding officer and made the motion.

Mr. HEYBURN. I——

Mr. MONEY. I did not know that was the fact. I thought the Senator from Oklahoma was standing all the time——

Mr. ALDRICH. Oh, no.

Mr. MONEY (continuing). And waiting an opportunity to continue what he had to say. Of course if he had taken his seat and abandoned the floor, that is another question.

Mr. HEYBURN. I yielded the floor for a purpose that was expressed and limited. I had the floor before the message came into the Senate.

Mr. MONEY. I know you had.

Mr. HEYBURN. I yielded for the purpose of receiving it. I did not yield for the purpose of considering the question whether it should go to this committee or that committee, and all that has intervened since the reading of the message was concluded has been under a waiver on my part, as a matter of courtesy. I was proceeding to speak upon the question under consideration, which is not the message——

Mr. MONEY. The Chair has already ruled, as I understand, against the position of the Senator from Idaho; but whether he has or not, he certainly will rule that way when his attention is called to it, because, having the message here, the Senator can not resume the floor upon another question, and thus interrupt the proper reference of that message. He has no right to the floor until that is disposed of.

Mr. HEYBURN. The disposition of a message is not privileged. The receiving of a message is. I yielded to privileged business. I had not yielded to the question of the disposition of this message. That might involve a week's discussion; and having had the floor, I am entitled to retain it. I may yield