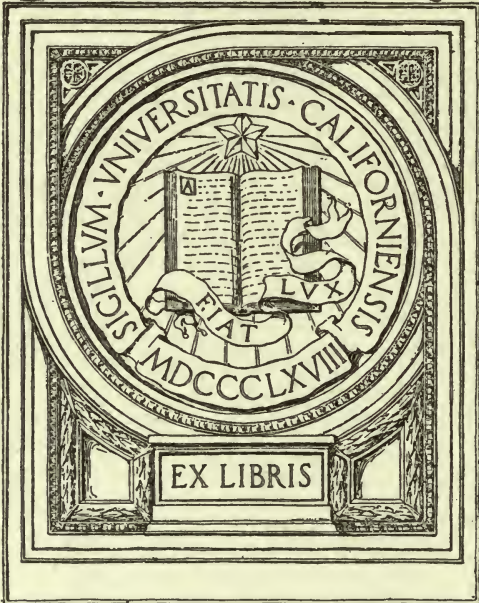


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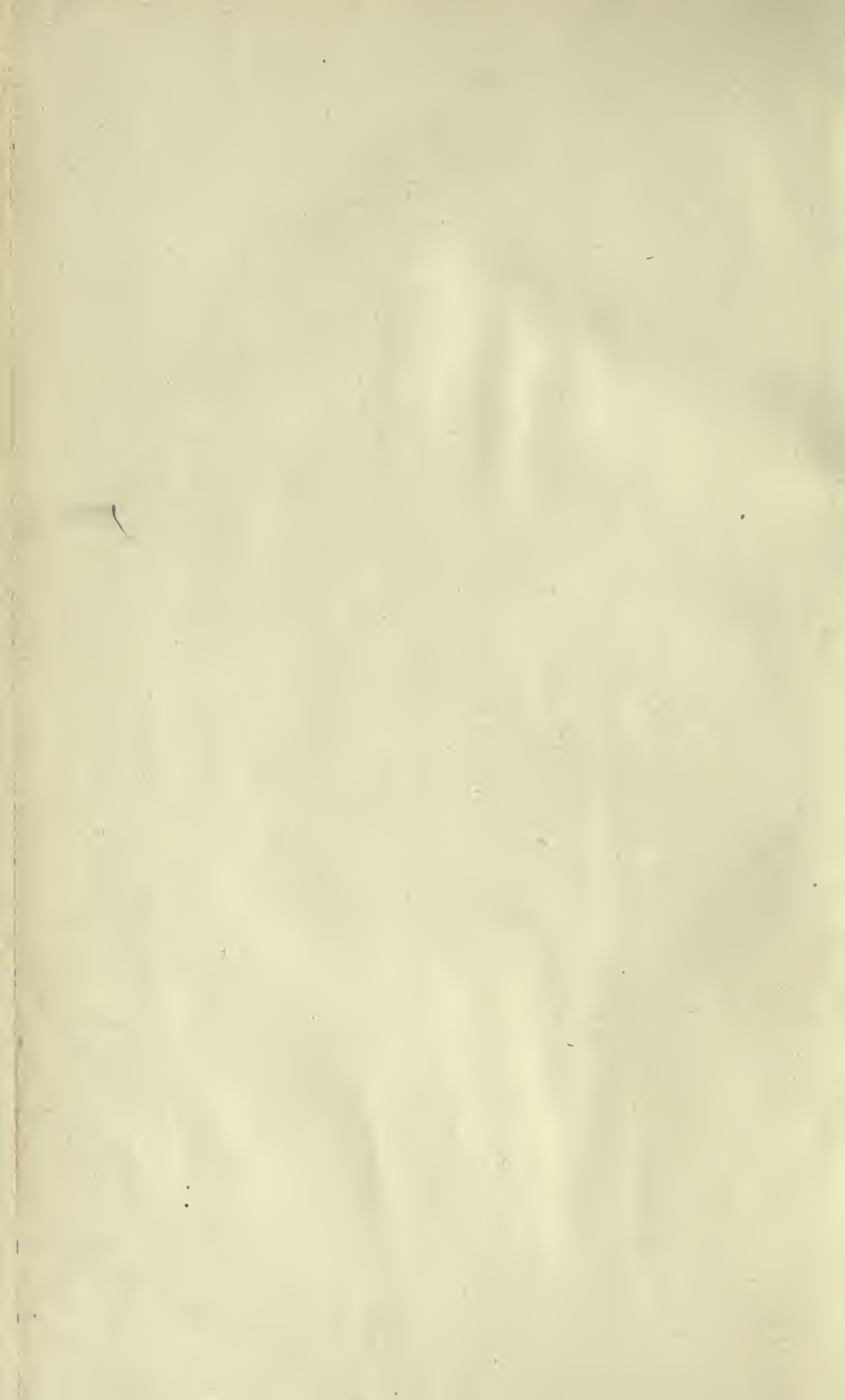
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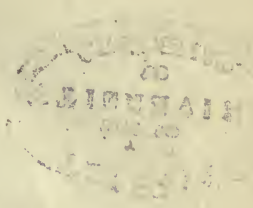




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**PROCEEDINGS**  
**OF THE**  
**SECOND ANNUAL NATIONAL MINE**  
**TAX CONFERENCE**

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**At the**  
**Twenty-Fourth Annual Convention**  
**of**  
**THE AMERICAN MINING CONGRESS**

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**Chicago, Illinois, October 17 to 22, 1921**

HJ 4169

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1921

**TAX COMMITTEE  
AMERICAN MINING CONGRESS**

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**McK. W. Kriegh, Chief, Tax Division, A. M. C., Secretary**



## NATIONAL MINE TAX CONFERENCE

TUESDAY AFTERNOON SESSION, OCTOBER 18, 1921

The opening session of the National Mine Tax Conference, held in connection with the American Mining Congress at Chicago, was called to order at 2:45 p. m., by Mr. Paul Armitage, presiding.

**CHAIRMAN ARMITAGE:** The particular subject of the meeting today is uniformity in taxation of mines among the various states. There are three distinct and mutual inconsistent points of view of taxing mines that have prevailed among the various states; one of these is a policy of subsidization, the next is a policy of equalization, and the third is a policy of penalizing the mines. There has been a progressive movement in recent years among the states toward the penalization of mines particularly in certain states. That movement has been growing in force until in certain states the mines are in a position where they can not operate against that penalization. That was partly due to the enormous profits that were made by certain of the industries during the war, partly due to a progressive tendency of operation of mines and mining industry, and partly due to a growing tendency among the states of extravagance in expenditure.

Now the first important thing for us to dwell upon here is this fact that mines are a national and in part an international enterprise. They are not a local enterprise. In that respect they are entirely distinct from real property. Real property, for example, in matters of taxation is almost entirely local, it does not compete with any property outside of the state. On the contrary, mines are not local, they do not sell their produce in the states, they sell them over the entire country in competition with mines of other states and mines of other countries. Therefore, the need of uniformity of taxation becomes paramount.

From a point of view of production a mine is local. It produces in the state. But from the point of view of distribution and sale, it is national. The sale of its product is really the point of contact in which the mine comes in competition with other mines. That is the point of stress. If, at this point, it can measure up to the other mines that it meets, if it can compete with them and sell its product, it succeeds; if it can't, it goes under. Cost of production is an important factor, therefore, in that competition and one of the elements of cost of production is the local taxes. If we look upon local taxes merely as an element of cost of production, an item in cost of production, we

will see how important it is that that particular element be made uniform as far as possible.

The federal taxes are uniform all over the country. The state taxes are far from uniform. One state levies taxes on certain industries at the rate of 1.7 cents per pound, another state levies them at the rate of one-half a cent per pound. How can industries in those two states compete on equal terms with those conditions?

The three great things that are worrying the mining industry today are: high cost of wages and labor, high cost of transportation, and high and discriminatory and un-uniform taxes. The railroads are recognizing that and are endeavoring to make their rates uniform. The illustration of that is the long and short haul. For example, the mines get a rate on copper, with which I am familiar, to the seaboard, to the East, of \$16.50 per ton. That rate is almost uniform in Montana, in Arizona, in Utah, and elsewhere. Wages are mobile. They take care of themselves more or less. If there is a tendency to equalize wages in different states, the taxes have no such tendency unless the mines themselves initiate some sort of a movement, some sort of a concentrated effort to make taxes uniform.

There are two ways the states accomplish the penalization of mines: They raise the tax rate directly against the mine. They put on an ad valorem tax and add to that a tonnage tax. Minnesota has distinctly penalized mines. It has an open policy of penalizing mines. In the first place it has an amendment to the constitution which taxes mines to 50 per cent of their value, other property is taxed to 30 and 40 per cent of its value. In addition, it has an occupation tax which is added to that. Another way to accomplish this result is to increase the value of the mines, to gradually add on valuation, increasing it by different methods, increasing it by changing the factors of valuation until the mines are paying a greater share of the tax in that particular state than in other states. Now these conditions have moved the Mining Congress to invite here their representatives to discuss this question and it is a most serious one now. It is far more serious, in my estimation, than the federal tax is. We are going to discuss this and see if it is possible in any way to arrive at some sort of uniformity in state taxation, to arrive at some principles of uniformity and to initiate some movement toward the accomplishment of that result to mold out the unfair discriminatory taxes of some of the states against mines. Mr. Kriegh of the Tax Division of the American Mining Congress has prepared here as a basis of this discussion a summary of the state taxation and revenue systems of the various states. I will ask him to explain that briefly. This summary is here for distribution among you gentlemen.

MR. MCKINLEY W. KRIEGH: Gentlemen, I have very little to say about this summary. When it was decided to make the subject of state taxation of mines the principal topic of this conference, it was thought necessary to have something here that would be a convenient reference, and work was immediately begun on this summary. It is practically complete based on the existing laws of 1919. Wherever current reports were available the laws were brought up to date. There may have been some inaccuracies which crept in, but I think in the main you will find it accurate. The time was insufficient to make an analysis of this summary which could be read at a glance and so you have it as it is here, and as the various state delegates take up the subject about the laws of their particular states, you will have convenient reference to a skeleton of the laws of that state. There are two or three tables at the end of the summary which you will find somewhat interesting with reference to the per cent of increase of taxes during the past few years. There is one table there showing total revenue receipts by states. Revenues for counties and municipalities were not available so that we have only the per cent of increase in the state revenue receipts from taxes.

CHAIRMAN ARMITAGE: Gentlemen, there is a very active body which has been working for a great many years on the subject of uniform state laws. This body is known as the National Conference of Commissioners on Uniform State Laws. It is an official body in the sense that it represents delegates appointed by law by the various states of the union for the very purpose of devising and procuring the enactment of uniform state laws. That body has been eminently successful. We have with us today the Chairman of the Executive Committee of that body, General MacChesney.

General MacChesney is a member of the Chicago Bar and for a great many years was President of the Illinois Bar Association. He has been most active in the work of that Association, interested in the needs and the interests of it. Part of the work of that Association has been an endeavor to obtain uniform taxation laws. We have invited Mr. MacChesney to explain the work of that Association, its nature, its ideals and purposes and objects and its successes. He has kindly consented and I take great pleasure in calling upon Mr. MacChesney and introducing him to you.

GENERAL NATHAN WILLIAM MacCHESNEY: Mr. Chairman and Gentlemen of the Tax Conference: When the subject of uniformity was selected for discussion here, it seemed desirable to the committee, I was informed, that you should be advised as to just what efforts had been made in the direction of uniformity of legislation in this country in order to appraise properly the difficulties which you would have to face and the

probabilities of success you will achieve in the field of uniform taxation.

The National Conference of Commissioners on Uniform State Laws is, as has been said, an official body. It held its thirty-first annual conference last year at Cincinnati for a week preceding that of the American Bar Association, and has to its credit the passage of something like four hundred legislative acts in the field of uniform state legislation. It was first called together upon the suggestion of Governor Hill of New York about 1890 to see whether or not, in view of the handicap put upon commercial enterprises by lack of uniformity, something couldn't be done. Following that it has met every year and it was created by statute in the various states, its representatives being appointed by the governors under legislative authority and meeting in annual conference. In most of the states these commissioners or delegates are organized into a state commission as they are in this state for the purpose of promoting uniformity within the state itself.

The National Conference of Commissioners on Uniform State Laws started out largely from a commercial point of view and one of the first topics it took up was that of negotiable instruments. That negotiable instrument act which was drafted by the conference has been adopted by 51 jurisdictions of the United States in various states, territories, and the District of Columbia. A number of other acts have been almost as widely adopted. Following the adoption of certain commercial acts the conference went into the field of the so-called social or family acts like marriage and divorce, child labor, and so on. It found that while great encouragement was given to its commercial acts that it was somewhat difficult to get as widespread interest in the field of social acts. About 1908 the conference approached certain of its acts from a new angle, notably the Workmen's Compensation Act and one upon occupational diseases as a result of a suggestion from the then Governor of Massachusetts who, in an official communication, asked that the conference take up the questions of workmen's compensation, pointing out that a state like Massachusetts, which had a workmen's compensation act which placed a burden on the various employers of the state, was under an economic handicap as compared with states that had no such law. Therefore, it was to the interest of the business of those states which desired to maintain high standards that the acts on that subject should be uniform. For the first time in the history of the conference these so-called social acts were approved from a purely business point of view. It seems to me that is a very proper point of view from which they can be approached.

Your Chairman has said that the matter of land taxation is purely a local matter. I would be a little inclined to challenge that, though that is substantially true. Land taxation is much

more of a local matter than the taxation of movables of any kind, but, nevertheless, it is true that the tax upon plant investments do have something to do with manufacturing companies in close competition and it becomes of interest to the manufacturers that their plant equipment should not be taxed on an excessive basis. As has been pointed out here in the question of mine taxation, it is still more important that you should have some uniformity of taxation throughout the country. Perhaps before I discuss in detail how I think the National Conference might be of service to you gentlemen in the field of uniformity, it might be well to tell you, briefly, of the methods of work of the Conference of Commissioners on uniform state laws.

This conference meets once a year but it has certain standing and special committees which are functioning during the year. It has a committee called the Committee on Scope and Program, which in a general way determines the plan upon which the conference shall act. That is an elected committee representing the geography of the United States pretty well. It also determines what subjects come within the proper scope of the conference itself in view of the crowded program that is always presented to it. That committee reports to the conference and if, in its judgment, a particular subject suggested is a proper one for the conference to take up, it is the custom to authorize a special committee on that subject. That committee, as has been the practice, obtains an expert draftsman to draft a law intended for consideration and in the drafting of that law there are hearings held in some convenient point; for instance, on the commercial acts and bills of lading act, the railroads, the shipper and the warehouse men, and everybody were interested. In the negotiable instruments act, they had the bankers and everybody interested in that subject.

An act is then drafted and discussed, is reported back to the conference as the first draft of an act. Under the rules of the conference it must be discussed section by section before it can be given final consideration and must go over one year when it is sent out to all the interested bodies throughout the United States for specific criticism. If it comes back in the form of a tentative draft it may then be adopted. If it is adopted it is recommended to the states for adoption when introduced by the legislators of different states.

You take Illinois for instance, in our legislature we have a committee on uniform state laws in the Senate and in the House. In the last session of the legislature if an act was a uniform act instead of going to a committee on taxation or a committee on what not, it was referred directly to that committee on uniform state laws. In other words, the whole effort such as is put into this movement by the National Conference of Commissioners on Uniform State Laws is largely dissipated if, when the act

reaches the legislatures, each legislature is to exercise the prerogative of amending the law to make it what they deem a better law. So instead of referring such act to the committee on the subject matter of the act, it is referred to a committee on uniform acts and will be considered from the point of view of desirability of uniformity and, if the committee decides to recommend it, it will be recommended as a uniform act which does away with the constant meddling with these acts.

It has been said that this whole movement for uniformity of legislation is not only a difficult one but a futile one because of the danger constantly of having uniformity interpreted out of them by decisions of courts and that is a very real danger. During the last year there were 810 decisions upon the subject matter covered by the uniform acts, in the courts of last resort in the United States. Of these, 316 of the reported decisions were based upon and decided in accordance with the rule of the uniform act showing that the courts are at least beginning to not merely interpret these acts which was the course they pursued in the first few years of the work in the light of their previous law on the subject, but are taking into consideration the fact that these acts were intended to make the law uniform and, therefore, they will render their decisions in the light of uniform acts in effect in the various states and not in the light of their prior decisions on the same subject before such acts were passed. In doing that, they take into consideration not so much their own prior decisions but decisions of courts in other states where the same provisions of the uniform act have been interpreted rather than the decision of their own court. It would be quite interesting to some of us perhaps if the time permitted to discuss in the light of that principle the acts of some of the courts, but on the whole the most important commercial states of the union are pursuing the policy of endeavoring to keep the interpretation of the acts as well as the text uniform.

I have discussed somewhat the scope and organization and methods of the conference and the extent to which its acts have been passed and interpreted. It might perhaps be interesting to run over a few of the principal acts and show how many states have adopted them. For instance, the negotiable instruments act has been adopted in 51 jurisdictions which was the most successful one; the sales act was adopted in 23 states; the warehouse receipts act in 45 states; bills of lading acts in 23 states; desertion and non-support act in 10 states, and there are a large number of other acts in various states ranging from 2 up to 16 or 17. On the whole, the states which have been most prompt in the adoption of the acts have been eastern states like Massachusetts, Pennsylvania and New York, although Illinois until this last session of the legislature ranked among the first

group of those having the largest number of uniform acts in effect. Very few, however, have paid the compliment to the National Commission of Uniform State Laws that was paid by the legislature of Alaska which took 8 of our acts and passed them without a single change, leaving even the final bracket in place which said "this law will become effective on blank day of blank." I plead for no such uniformity but only for that reasonable degree of uniformity which will keep the factors effectively working together.

This whole question of uniformity is spreading and becoming more and more interesting as the scope of it is widened and it is realized it has a positive economic aspect which those of us who have been interested in it as a philosophy and social progress hope it will bring to our forces a large number of people who will be interested in widening the scope of the work. One very interesting recent addition was the discussion on inter-state compacts by Dean Wigmore of Northwestern University.

The constitution of the United States provides that the states shall not enter into compacts between themselves without the consent of Congress. That consent has been given in certain instances; for example, bills passed permitting Michigan, Indiana, Illinois and Wisconsin to enter into compact with reference to criminal jurisdiction upon Lake Michigan, and there have been a number of other instances, including one on the development of New York harbor between New York and New Jersey. The question has arisen in commercial conferences interesting the oil interests of South America and Mexico with the particular subject dealt with as at home within the jurisdiction of the states. Where there is to be general uniformity of treatment, it must be done by national agreement. Mr. Wigmore has urged that this question of interstate compact be broadened so that by consent of Congress, the states will be permitted to be represented in such commercial conventions with foreign states in order that the whole subject may be worked out with some degree of uniformity.

Why hasn't the conference contributed something to the field of taxation which, of course, is one of the most vital fields? Well, as I have said, the conference found that its easiest field was in the field of commercial law, commercial papers, negotiable instruments, bills of lading, warehouse receipts, etc., and that it found a disinclination even in the field of family law to pass its uniform acts. That wasn't so much because of lack of interest in those subjects but because it was pretty hard to persuade people with reference to divorce in South Carolina whether it was the same in Illinois and tell them what the law was. It is just as Judge Pike told me in Nevada when I sat with him and heard some of the divorce cases. He said the law of Nevada was intended to wash the dirty linen of Nevada and not for

other states. He wished people would stay away and let them alone in Nevada.

When it came to the field of real estate law it was found almost impossible to get any progress at all in the line of uniform legislation with regard to wills, real estate, or anything involving titles to property, etc., because people regarded it as their own local concern.

That has been true also in the field of taxation. The conference retained for a number of years a committee on taxation and they were presented with certain preliminary reports and it never could get anywhere when it came to working out some uniform system. Each state regarded it as its own concern and went on the principle that the right to tax was the right to raise the money where it could until the squeal became so loud they had to desist. On the other hand, I think there is a growing feeling that a state can not afford to penalize its own industries in such a way as to drive them all away from the confines of the state. If approached from that point of view some progress might be made.

A very much better case can be made in connection with mining taxation, for instance, as has been stated here. If this conference is interested in having the co-operation of this body that has been successfully operating in other fields, the way to get it would be to appoint a committee here to prepare some sort of draft, if you please, with a brief as to why you think the mine taxation is a proper subject for uniformity. Then present that to a meeting of the Scope and Program Committee which will meet in the mid-winter at Tampa, Florida; it is either January or February, I believe. Then if you can persuade the committee on Scope and Program that some action should be had, real progress could be made at the next annual conference.

It seems to me that if the conference makes up its mind that state uniformity is desirable in this field as it would seem to be, that the National Conference of Commissioners could be of very real service in placing at your disposal, upon proper presentation of the subject to its organization, its methods of work would give it the sort of backing which it is in position to give because of its long history in this field. It would have to depend on you gentlemen to furnish the particular information with reference to the industry and with that at hand I believe that it could be of very great help in the formation of an act which would stand some chance of passing in the various states, particularly if it had your backing when introduced into the legislatures.

This whole question of uniformity of state taxation is much more difficult than the question of federal taxation. That is bad enough for those who have to come in contact with it but at least you can focus pressure upon Congress, when some grave injustice as in the taxation of capital develops, with some hope



of bringing relief. It is such slow work to do anything in the various state legislatures where each legislature is enforced by an act which has not been repealed in some other state. If you gentlemen can get a uniform act prepared by the National Conference, with its recommendation before the legislatures, you will at least avoid that which has defeated so much business legislation in the past, namely, the charge that the proposed tax change is in the interest of some special interest or industry at the expense of the people. The Conference at least has the history and reputation of only recommending to the legislatures of the country those acts which in its judgment are for the benefit of the entire country without regard to any particular or special interest. I can assure you that if there is anything I can do personally as an officer of that conference in assisting in ironing out the inequality of taxation in the field of mining or anywhere else, I shall be glad to assist. (Applause.)

**CHAIRMAN ARMITAGE:** Gentlemen, I think I express the sentiment of this meeting in thanking General MacChesney for his interesting talk and his offer of assistance. I can assure him that if the conference here adopts some plan or program that we shall certainly consult his organization and call upon them for assistance, if not actually to advocate the laws that we may decide upon.

Mr. Albert Fay, who is the Chief of the Sub-division of Natural Resources of the Income Tax Unit of the United States Bureau of Internal Revenue, was to be here and deliver an address on the relations of the Sub-division of Natural Resources to the mining industry. Unfortunately, Mr. Fay's subdivision was engaged in a reorganization and moving from one building in Washington to another. He was doubtful at the last moment if he could attend and I am sorry to say he has not appeared as yet. I am afraid he will not be able to attend the meeting.

We have with us a gentleman who has been a Solicitor of the Internal Revenue and who is familiar with the needs and requirements of the mining industries and who has given particular attention to the subject of tax, both from Governmental and State standpoints—that man is Major Robert Miller. I will call upon him to address the conference. (Applause.)

**MAJOR ROBERT N. MILLER:** Gentlemen, I enjoyed very much and profited very much from what I have just heard and I expect to learn a great deal more while I am here; in fact, to get more than I am able by any possibility to give. What I have to say is primarily on the subject of federal taxation and it does not fit in, I am sorry to say, exactly with what Mr. MacChesney has said.

Before I begin, I want to say there is a very firm conviction of mine that the movement toward uniform state taxation is a

very important one. All of us have seen how pitifully foreign states are handicapped by the difficulty people have in moving back and forth, the duties and the changes of language and everything like that. I have realized what a vast blessing it is for us in this country that we can move around and forget when we cross the state line. What a splendid thing that is for our country. We have been handicapped by something that was nearly as bad as some of the foreign difficulties, and that is this utter diversity of laws and notions about all kinds of things. This is a step in the direction of wiping out that handicap. Laws can be uniform and still they can be bad. They can be uniformly bad as well as uniformly good, yet I am very firmly persuaded that with uniformity goes education of the fundamentals that are involved in any kind of tax laws. With education goes a movement on a sound basis of theory of the law. If this movement is started now and it takes 15 years to fruit in a reasonable number of uniform state tax laws on mining, it still is worth while to start now. The good results of starting now will begin to be evident right off because primarily the trouble is that the state laws are so diversified and the reason why they are so often poor in theory is a lack of understanding of the fundamentals and good sense of the thing. The more the matter is talked about, the more people meet together, the more they will get at that fundamental good sense of the proposition.

In taxation we have got to face the fact that uniformity is harder because taxes are like other laws, they are necessary evils to a certain extent. It is a pity we have to have anything to govern us. Fundamentally, it has a beneficial influence but a tax law just to raise money in that sense is a matter of necessity. In most cases it has to be met with materials that are at hand. This is a hard problem but the fact that a problem is hard never yet stopped the right kind of people from going at it and working it out.

One other point about this state proposition which I think we shall see more and more, is the growth of the idea that somehow or other a man doesn't have a right by natural resources. They think if he has paid a million for natural resources he has bought something people have no right to trade in. That is wrong. It is something that has got to be gotten out of people's heads. There is one other thing that has to be fought. There is a natural restraint on the taxing power even when it is directed against a small class. If the people of the taxing sovereignty need the product, after they have gone a certain way in taxing a small group, they begin to wake up and find the supply of what they need is falling off. In the case of natural resources, there is lacking the control of that influence which usually evens things up.

### With Reference to the Administration of Federal Income Taxes

When the federal tax administration takes the position that more income or excess profits tax is due from a taxpayer than has been paid for any particular year, there are three possibilities—the Government may be right, the taxpayer may be right, or neither may be right. The Government has a valuable background gained in the study of other cases, but is sometimes handicapped by lack of detailed knowledge as to the particular case and other disabilities due to the size of its organization. The taxpayer, on the other hand, has unique knowledge of his own business, but often lacks full understanding of the legal effect of the facts when considered in the light of the conventional rules which experience has developed in the Bureau. He often fails to realize that some of the facts are material on the tax questions. No satisfactory solution can be reached until some combination of experience can be made by which each group will get the knowledge which it needs, and furnish the knowledge in which it is proficient. It is unfortunate that the law should be so complicated to administer, but it is nevertheless true. It is a fact that any heavy income tax law is complicated, for the accurate determination of net income is inherently hard. We have not only an income tax law, but also a law involving invested capital—another source of complication. There appears to be no chance of getting rid of the excess profits complications in the returns to be filed next Spring.

Since the decision of these questions in any tax case lies primarily with the Government, it is the taxpayer who must take the initiative, and bring the Government to his way of thinking if he can. That this burden falls on the taxpayer rather than the Government is unfortunate, but here, too, we must deal with this as a fact. It must be admitted, also, that in taxing systems, both present and past, it has practically always been the same.

It is perhaps profitable to consider a few of the principal difficulties which harass the Government in the tremendous task of auditing millions of returns. The taxpayer has always known it was hard for the taxpayer, now he is beginning to realize that the Commissioner of Internal Revenue is in no easier position. The best reason for studying the problems of the Department is that such study is helpful to the taxpayer in presenting his case. To understand the difficulties which must be removed before a judicial body can be convinced, is obviously the first step toward actually and legitimately convincing.

1. Probably the greatest difficulty which confronts the Commissioner is the fact that he is not free to pay the salaries appropriate to the responsible and difficult work his technical assistants and deputies must do. All of the Secretaries of the Treasury and Commissioners of Internal Revenue who have held office since heavy taxes made this a vital issue, including the present

officers, have fought for better salaries for the men who must supervise this difficult technical work. Some success has been met with, but the taxpayer is still suffering from this difficulty. Inexperienced men are of course slow, but this is not the most serious thing; inexperienced men, who have not a clear background, based on the examination of many cases, nearly always lack the courage to decide for the taxpayer when he ought to have the decision. The seasoned man has the courage of well grounded convictions. The men of this type who are still with the Bureau are fully able to guard it from imposition, but also able to yield when the taxpayer is right. They cannot be spared, and they are the very ones who are most in demand for outside work. Unless these key men are paid what they are worth, things are likely to grow worse in the Bureau instead of better.

2. The next difficulty in point of importance is the complication of the law. So long as the law is complicated, its administration will be and the impending legislation, except as to the taxable year 1922 and thereafter, offers no substantial simplification. Taxpayers do not need to be reminded that the law is complicated, of course, but the undue stress which is often laid by them on some special phase of the law seems to indicate that many do not clearly see how wide a field must be covered before one can really say that a tax is correct, and if not, where the trouble lies. Human nature acts much as it does in relation to medical treatment. Just as patients who hear that someone has been benefited by a certain treatment, want to have the same treatment without reference to whether the disease is the same, so some taxpayers, because a depletion adjustment or a change of depreciation basis has helped someone else, assume that this is the point as to which their own returns need attention. The fact is that no one can tell without fundamental study what, if anything, needs attention in a particular case, and that this complexity is the biggest practical difficulty in administration.

The great number of questions which have to be settled before the Government or a taxpayer can tell whether a tax is right or wrong might be classified roughly into four groups:

- (a) General questions relating to determination of net income for the taxable year.
- (b) General questions relating to determination of invested capital for the taxable year.
- (c) Valuation questions.
- (d) Application of relief provisions.

The first—as to income determination—embraces a great number of widely diverse problems such as what must be included in gross income, and in what year; what constitutes realization; deduction problems, including those relative to depreciation; depletion, losses, amortization and the like.

The second class-invested capital question—involves such topics as reconstruction of items which could have been charged to capital account, but have been expensed, the establishment of values paid in for stock, questions as to diminution of invested capital through sustained depreciation and depletion, the subject of inadmissibles, etc.

The third class, that relative to valuation, is closely related to the first two, since the valuations are for the purpose of affecting either deductions used in determining net income or for the purpose of sustaining claims for invested capital, when property was paid in for stock. Valuations are an important feature for taxpayers in general, but are especially involved in the tax matters of wasting industries, because in addition to the other questions depletion deductions appear as an important element. Everyone who has dealt with valuations—whether for state or federal purposes, or rate-making or what not—will readily agree that few things are harder or less certain. In the case of natural resources, it is surprising that although it is seven or more years since depletion began to be a factor in federal taxation, and although it is an important and annually recurring factor, the problem as to what bases are best for such valuations for that purpose is still not fully worked out. In some of the lines, such as coal, metals, oil and gas, a great deal of constructive work has been done and is still going forward, but in the field of miscellaneous non-metals, such as, for instance, asphalt, gypsum, mica, asbestos, feldspar, graphite, phosphate rock, potash, salt, etc., the greater part of the constructive work is still to be done. In this difficult field, as in the whole taxation field, the answer lies not primarily in what some one authority thinks as to the value, but in the detailed facts. Accounts, engineering facts and law all play a part in the valuation of material deposits, and the ideal engineer's report on a valuation is one that not only sets for the conclusion of a qualified person, but presents such facts so marshaled that if no conclusion had been expressed, a well qualified reader following the report through will be led in his own calculations to reach the conclusion which the engineer had reached. The ipse dixit counts some, but the reliable and well ordered facts, which in common sense affect the value are most useful of all.

As you gentlemen are well aware, the Bureau has from the first recognized the importance of the valuation problems, and has not only established valuation divisions for natural resources and for those industries entitled to amortization, but has subdivided these divisions so as to employ and develop experts in each field of valuation.

The relief group, referred to as the fourth of the general heads, includes the cases in which the Commissioner has power, after the correct technical calculation of the excess profits tax, to reduce it to a figure in line with the percentage of net income

which more normal competitors have paid out in excess profits tax. The particular abnormalities on which such relief rests will not be discussed here. As bearing on the complication of the law, it is to be noted that many of these abnormalities relate to facts which books of account are not expected to indicate—which must be obtained by observation of the business itself, and careful inquiry as to its conduct, and the causes of its success.

3. In addition to the complication of the law itself, a very grave difficulty lies in the problem determining the facts to which the law is to be applied in the case of each taxpayer. It goes without saying that the natural inclination of a busy administrative officer is to apply the general rule—especially when it reaches the conservative result of increasing the tax due the Government. It is natural that any facts which bring the case under one of the rule's exceptions will be closely scrutinized, and to be accepted, must be fully substantiated. The determination of facts is difficult enough when both sides have equal access to the facts and opportunity to study them; it is harder still where, as in the tax questions, presentation is largely *ex parte*. The Bureau not only deals with the average taxpayer, who uses language honestly, and means what he says, but with some who are not so frank, and who deal in half truth, or worse. For instance, the taxpayer must remember that while "approximately" is a respectable word, and has a real meaning to him, it is a word to keep away from, because less scrupulous persons have made the Bureau auditor regard it as a cloak for misleading statements. This is trivial, yet it illustrates a general truth—how careful the auditor is made by experience. Generalities he hears every day, so that they make no more impression on him than the familiar ticking of a clock. He does not begin to listen until clear and well authenticated facts, given in circumstantial detail, begin to appear, and you would feel the same way if you had his job. When you come to think about it, it is his duty to watch the Government's side of the case, as well as the taxpayer's. Sometimes, it is true, he grows suspicious of everybody, and acquires a state of mind in which nothing can convince him. Such conduct is not the rule, and is of course indefensible; the only treatment when it is met with is to go higher.

The ordinary taxpayer has somehow inherited the idea that things in Washington go by influence. This may be true in some quarters but it has not been true of the tax administration since it has become so vital a part of the nation's fundamental structure. It demands and receives a leadership of unusual quality. This was true under democratic rule, and is true now. No governmental agency is less political or more earnest. It claims the attention of sober and thoughtful men, and its responsibilities make them more sober and thoughtful still.

It is not easy to employ thousands of men in a work which

requires an unusual degree of judgment as well as high technical accuracy, but since the tax laws first became complex the men responsible for administration have tried their best to build an organization which will develop the right answer for each taxpayer.

And yet—as these gentlemen freely admit—no amount of faithful endeavor has served to make the taxpayer's lot even bearable. Entirely aside from the money he must pay in taxes, endless delays and readjustments occur which are soul-wearing to him and unfortunate for the Government. The point is that these conditions are not due to lack of effort to correct them or lack of effort to get the men who can correct them. The Commissioner must enforce the law Congress enacts; Congress must enact the kind of law which the tremendous demand for tax revenue makes imperative, and no hope of really simple administration is in sight until the amount to be raised in taxes can be reduced. But it is important for taxpayers to bear in mind, I think, that the solution of these difficult problems depends on a fuller understanding of the whole problem by both parties, and that the Department welcomes and always has welcomed the co-operation of taxpayers in getting at the truth. If you say that you have met a revenue agent who is a plain tax-grabber, or some other official who seemed to think that the taxpayer had no right to have any ideas on so distinctly federal a science, my answer is that you ought to know better than to accept the word of such a man as final. It is indeed a shocking thing that it takes so much time and patience and so many trips to Washington, but we have to admit that since the dawn of civilization man has never invented a single satisfactory method of settling any kind of technical controversies involving large issues without difficult, hard work and delay. Patience and hard work have always been required, and if there is a royal road, no one has ever found it.

4. Another difficulty is that all taxpayers must be treated alike in principle, and that the principle which helps one taxpayer often hurts another. If a point of principle hitherto adopted is yielded because its application would result in hardship in a particular group of cases, it means that this principle is wiped out permanently. It is either sound or not sound. From this it is clear that a taxpayer's contention has a better chance of succeeding if it can be reconciled with principles to which the Bureau has been committed, because while established principles must be overturned when necessary, such action may require a reaudit of many cases closed on the former basis, and introduces an element of uncertainty which is sometimes as bad in its total effect as adhering to the old rule would have been.

5. There is another factor which might be mentioned, but which as a practical matter is not as important as some people think. It is a fact in this organization, as in any other where

many employes have great responsibilities, that moral breakdowns occur, but I am glad to say that the importance of this is often exaggerated. While this is a thing which must be and is watched for and guarded against, the tax administration is one of the cleanest large organizations in the world. Instances of moral failure, when they occur, are startling and disquieting, but they are very exceptional. The Bureau may agree with the taxpayer, or—more commonly—disagree with him, but it is fundamentally an honest place and the disagreements and agreements are honest. The men naturally resent any action on the part of a taxpayer which indicates an impression that influence can produce a result which facts and arguments cannot.

Taxpayers who must help the Government perform its difficult and important function would do well to observe three cardinal rules—to which I think the Commissioner and all his cohorts would cheerfully subscribe:

1. To treat the representatives of the tax administration as men who are honestly seeking the right answer to a hard problem.

2. To avoid assuming that any government tax man who seems churlish or intolerant is typical of the organization, and to realize that there are always men who will listen with courtesy and sympathy to a real case clearly stated, no matter who presents it.

3. To present the detailed facts and the law of the case, fundamentally considered, in written form which will permanently justify the ruling expected, and, if possible, on a ground which does not require the upsetting of rules adopted in other cases.

CHAIRMAN ARMITAGE: Major Miller's discussion of the subject of federal taxation was of special interest, particularly with reference to the administration of federal taxation. The same problems of administration of taxation systems apply in the states. The same difficulty of getting proper men, of keeping proper men, preserving the personnel of the tax bureau and commission, and keeping a high standard exists in the states. It is through Major Miller's long experience with those particular problems in Washington that his discussion of these things bear on the subject of our state tax problems. That is one of the problems that we will have to face. It has been stated that nine-tenths of the tax law's success depends on its administration. There is a great deal of force in that statement.

Major Miller pointed out and gave us a new thought on the subject of state taxation, particularly as applied to mines, that is in the case of mine taxes that we did not have that natural restraint which existed where the people of the locality consumed the product. That is a very interesting thought. You can see plainly that where the product is consumed by the people and is overtaxed, people of the locality feel the effect of high taxes. Where the product is consumed nationwide they don't feel that



effect and we don't have a constraint. That is one of the things which differentiates and separates the taxation of mines from other industries of the state.

I think we can approach this subject of state taxation best by having a discussion of the different systems of the different states in the taxation of mines. They may be roughly divided into some form of income tax and some form of ad valorem tax. In some states we have the net production, the gross production, or a combination of the two taxes and in others the valuation tax based upon a valuation of the mines. One of the states has made a most determined, conscientious, and fair effort to solve this problem of tax. New Mexico appointed recently a commission to discuss the question of taxes and report to the government of that state.

The members of that commission, of which Mr. Hagerman was chairman and Professor Haig of Columbia was special advisor, had many hearings and issues. In November of last year, a report which is a very interesting one and a very carefully prepared and carefully thought out document was made. Part of that report deals with the question of taxation of mines. It is a most interesting chapter. The commission seemed to be in favor of the ad valorem method. One of their suggestions is a very interesting one. They suggested that there should be a suspension fund in the type of an insurance fund which should guarantee in a sense the assessor's valuation. This fund was to be paid in to the state and as the assessor's valuation should be collected that fund should be used to pay subsequent taxes if the valuation was excessive. Now one of the men who attended those sessions and who is familiar with the problems that they tackled and the attempt of the state to solve those problems, is present and that man is Judge Stimson. I would like to call upon Judge Stimson to give us his experiences with reference to tax matters and methods of taxation of mines in the state of Colorado with which he is familiar also.

JUDGE E. C. STIMSON: Mr. Chairman and gentlemen, this is almost embarrassing. There are gentlemen here from New Mexico who are much more familiar with the New Mexico situation than I could possibly be, for I was almost an interloper and intruder. I was present at the meeting of the mine operators at Silver City, when the matter was first presented for their consideration. I was present afterwards at the session of the commission to which the Chairman has referred, at Santa Fe when they gave the mining interests a part of one day for a hearing. Professor Haig was there; he asked very few questions and said very little. His conclusions appeared, I suppose, in the report of the commission to which reference has here been made.

We all understand, I think, that the whole system of taxation

was voiced in the remark of that pretty wise old man of many, many generations ago, that it was an endeavor to get the most feathers from the goose with the least squawking. That seems to be the earnest endeavor of those who are trying to work out some simple and easy plan by which the expenses of our government can be paid, getting the money from the sources where the least complaint will arise.

I was extremely interested in the suggestion that was made that we taxpayers should treat the governmental agents as honest men. I'd like to pass back the suggestion that it would be a mighty fine idea if the governmental agents treated the taxpayer as if he were an honest man. (Applause.) Most of us are perfectly willing to perform our civic duty even though it be at some sacrifice to ourselves. Most of us are anxious to bear the burden of citizenship and bear it properly and bravely and honestly and we don't want any sympathy from anybody in the performance of our duty, for we recognize it as an existing thing and we are more than glad to respond to any reasonable demand that may be made upon us, but we want to be treated fair and be handled at least with as much consideration as is received by others in the same situation.

I have no apology to make for the mining industry with which I have been pretty familiar for something like 40 years. I realize the burdens that have been laid on it. It isn't so much hostility to the mining industry as it is anxiety of other industries.

When we met at Silver City we found (and it later developed at the meeting in Santa Fe when the commission was in session), the real trouble was that there seemed to be large areas of territory of the state of New Mexico which bore no burden of taxation at all. The real complaint there was addressed against the coal mining industry. Some of those operators occupied enormous tracts, hundreds of thousands of acres of ground under agricultural working. In New Mexico, then under the existing law, they paid tax on that entire holding based on the production of the small area from which they were actually mining coal, with a valuation on the surface as grazing land or something of that sort. That had been, primarily, the great trouble in New Mexico. They sought what they called a valuation of the mining property. They talked a lot about an ad valorem tax but it very soon developed that they didn't know what ad valorem meant.

Some of us took the position that every dollar that is taken out of a mine, metalliferous or coal or non-metal, in the first instance is a depreciation of the capital. It is a taking away of the substance of the estate, it is not income, it is a return of the capital investment and it should not be treated as income. It is not available in that sense. Some of us felt that very strongly and some of us took the position which I am prepared to define reasonably, that a mine is worth nothing under God's heaven

except for what you take out of it. The value of your mine this year is what you take out of the mine this year, and the value of the mine next year is what you take out of it next year. That did not meet with the approval of this special commission. The thing was thrashed out very extensively, not exactly along that line, but with those considerations being urged as matters really affecting the ultimate situation.

The commission made its report to the governor and the legislature. A bill was drafted. A substitute bill was prepared and submitted by the committee of the legislature which had the matter in charge and that bill was enacted into a law in 1921. It doesn't appear on the summary which Mr. Kriegh prepared and which is here, because he did not have it available when he prepared that summary. They came back to the idea, finally, in New Mexico, that the value of a mine is what is taken out of it.

I have said on previous occasions something which I would like to repeat right here. The difference between a farm and a mine is, as a friend of mine says who had been engaged largely in mining enterprises in all phases, and who after a long time begun to run a sugar factory—much to his unhappiness afterwards—the difference between a mine and a sugar factory or an agricultural enterprise of any sort is that in the agricultural enterprise he found that he ran that sugar mill very much as he did a mine for the extraction of ore but the ore reserves on a farm are renewed every year and the ore reserves of a mine are not renewed at all, for once taken out they are gone forever.

So finally the New Mexico legislature enacted a law that the average net production of a mine for 5 years shall be taken as the value of the mine for taxing purposes. In addition to that—if I am not right on this, one of the New Mexico gentlemen will correct me—the equipment and the plant is valued as other property is valued and in addition to that there is a valuation placed on the use of the property not actually devoted to mining to the extent that that also has a value. So those are the three elements which now enter into it, substantially as the situation was before, except that they have taken five years' production and averaged it in order to reach the present year's valuation. That is going to hit some of us who are interested in New Mexico mining because we are doing nothing this year and if we have to take the production of 1916, 1917, 1918, etc., when we were producing rather heavily, it will make a high tax for us.

In addition to that, provision was made in the New Mexico law for the appointment of a special examining engineer; and under that provision a very high class man, Mr. Findlay, who had much to do with the administration of the Michigan tax law, is now engaged in a very earnest endeavor to reach a fair statement of the actual values in order to aid the state tax commission of New Mexico in adjusting things if it should turn out

that this other system of valuation shall not appear to be entirely fair.

It happens that I am more familiar with the Colorado situation than with the New Mexico situation. For a number of years after Colorado was admitted to the union, mines as such were not taxed. It was felt that the industry of the state should be encouraged and the industry then hadn't got old enough to be weaned, to use Champ Clark's expression. The mines of Colorado were divided into two classes. The coal mines, I may say, are taxed regardless of this metal mining tax. Their taxation is based on an estimated value which is made by the various assessors under the direction of the tax commission. There never has been any question raised, particularly by those people. The valuation value always has been, at least, satisfactory to the coal mines.

Metal mines are divided into two classes: the productive and non-productive. A group of mining claims operated as one mine is called a mine. The surface improvements, equipment and everything of that sort are valued by the assessor just as household furniture or any other articles in his jurisdiction are valued.

A mine which produces less than \$5,000 net in a year is a non-productive mine and is valued according to the judgment of the taxing authorities, but in no case at a higher valuation than the producing mine in the same locality. The producing mine is taxed on a valuation of its net output. The net output is the actual net value of the ore after deducting the actual mining expense but not general supervision, not the salaries of general officers, not big overhead, but just the actual cost of the production, unless that is less than one-fourth of the gross. That is a queer provision. They figure a man ought to make 25 per cent on his operations. The taxing officer takes the return that is made, finds out what the gross value is, finds the net, divides the gross value by 4 and uses either one of them, whichever is higher. That is about the way it works out.

There have been a great many people who assisted in the mining development of Colorado, and that development has been anything but equal to the agriculture interests of the state. The farmers have sometimes felt that the miners were getting a little the best of it. They have not approached the matter with an entire earnestness of purpose to secure absolute fairness perhaps, but they so far have not succeeded in materially changing this law which has been in force with us for years and which declares in substance that the value of a piece of mining property is what is taken out of the ground. That is what it is worth. After it is taken out of the ground it appears in other investments and is added to the wealth of the country; it is taxed as wealth of the country is taxed; it becomes a part of the real property of the country but at that particular time the only value

that a mine has, in our estimation, is what we can get out of it. We have a provision—of course all states have that—that all properties shall be valued for assessment and taxation at its full cash value. I have urged and shall continue to urge until my mind is changed, that a fair cash value is just what I can get out of it, not what I estimate it to be worth in the future, not what I imagine I can get out of it years to come, but its actual worth I can get for it, what I can spend.

There was an expression used in a decision of a lawsuit in the state of Washington not so many years ago which rather interested me. A man was held accountable as a trustee for certain investments and he had reported the ownership of certain stock in a mine as being \$10,000. He was therefore asked to account for \$10,000 in cash. The judge wiped that all out by saying, "We all understand that the valuation of a mine in the estimation of the owner is a capitalization of his hopes and dreams."

Now there is one thing I want to speak about. Some gentleman suggested to me when the matter of uniformity of state taxation was presented, that the first thing we have got to get is uniform state constitution before we can have uniform state laws. Here is a practical difficulty that suggests itself to me in that direction. I want you to think about this. In many states (you have heard about one of them), the valuation for taxation purposes is fixed at 30, 40 or 50 per cent. of the estimated value of the property. In other states, it is the full valuation of the property; it is so in my state. Now, you have got to begin further back than that in your endeavor for uniformity of taxation because I don't hesitate to say there's not as great discrimination in the rates of tax in two different states as there is in other costs of production of the minerals from the ground. The wages paid in Montana are different from those paid in Colorado; in Arizona they are different from both of them, and all of them are different from the wages paid in the mines of New York state where there is some mining going on although very few of us know about it.

The burden laid on the producer by his various costs of production is not limited to taxation and while taxation is an important feature there are certain other elements which are of equal importance. I wasn't asked to discuss that now but what I was trying to do in the first place was to give an idea of the notion that prevails in some of the western states at least about the valuation of metal mining property for taxation purposes. The net value of the product of a mine is written in the constitution of the state of Montana, a difficulty which will have to be met if there is to be any such uniformity as this. This is to give you gentlemen a notion of what some of us in the West think about and have thought about the value for assessment for a piece of mining property which is in operation and from which people are trying to make some money for themselves

naturally because that was what induced them to get into the game. (Applause.)

CHAIRMAN ARMITAGE: Is there a gentleman present familiar with the tax in the mines of New Mexico who would like to add or comment on the statement of Judge Stimson? We would be glad to hear from them on the subject of New Mexico mine tax laws.

MR. BURTON BUNCH (Silver City, N. M.): I want to thank Judge Stimson for making it possible for me to say I am usually one of the most lucky men in the country. I thought I might have to say something and the Judge covered the situation perfectly with regard to New Mexico. He went thoroughly into the New Mexico law.

I would like to suggest, if the crowd is interested, that I have prepared copies of the mine tax provisions of the new revenue code of New Mexico for distribution at tomorrow's session. If you are interested, I will have them on the table for you.

CHAIRMAN ARMITAGE: Judge Stimson referred to the law of Montana. There is present here Mr. Dan Kelly, a lawyer in Montana, who has been associated with the Anaconda Company and who has had occasion to tackle mine problems there. I would like Mr. Kelly to explain to you the method of taxation of mines in the state of Montana and the peculiar problems confronted there.

MR. D. M. KELLY: Representing the Anaconda Copper Mining Company we very naturally have a great deal to do with mine taxes in the state of Montana. As suggested by Judge Stimson, we have a constitutional provision which was written in the constitution at the time of its adoption which specifies a particular method for the assessment of mines in Montana. The first provision is that the property is assessed at the price paid the government, either \$2.50 an acre or \$5 an acre, depending on the manner in which it was secured. All machinery and equipment and improvements on mines are taxed as other property, in addition to that, if the surface of the mining claim has any value independent of its value for mining purposes, if it is used for any other purpose, it is taxed at that value. To illustrate that, the entire city of Butte is on patented mining land and the town property there is taxed on the basis of front footage just the same as it would be if it were on other types of patented land, and the owner of the mineral rights pays \$5 an acre on surface valuation in addition to the tax the resident owners pay for the surface rights they have. The machinery and equipment at the mine is taxed like other property of like character. The net proceeds of mines are taxed annually as other property is taxed.

Two years ago we had a report of a temporary tax commission appointed by the legislature of two years previous and they recommended and there was adopted a classification law in the

state of Montana providing in substance that all property is originally valued at its full cash value. Theoretically, that was always the law. Then the property is classified for the purpose of determining the value upon which the taxes will be figured; proceeds of mines 100 per cent., real estate  $33\frac{1}{3}$  per cent., machinery and other equipment 40 per cent., banks 40 per cent., money credits 7 per cent. and household furniture 20 per cent. I believe, so that the average of all property in Montana, as it has worked out, is a tax on a little bit over 30 per cent. of the actual value, whereas, the proceeds of the mines are taxed on 100 per cent. That gets us in about the same position that Utah is in. I believe they have a proceeds tax where they multiply by three. The same result is found in Montana.

That law, this year, was amended but not to change it fundamentally. The reports of the mining companies instead of going to the local assessors, go to the state board and the taxes are figured and levied by the State Board of Equalization. This system of taxation has been added to by the last legislature which provides a visual tax of  $1\frac{1}{2}$  per cent. on metalliferous mines. We have in addition to that, 10 cents on coal. That has worked out in Montana so that with the additional 1 per cent. corporation tax, which the mining companies as well as other corporations have to pay, in one year, for example, the Anaconda Copper Mining Company paid \$20.13 out of every \$100 that went into the treasury of the state of Montana—a state nearly 700 miles long and nearly 400 miles wide, which has three trans-continental railroads and other railroads and power companies operating, as well as our agricultural and merchandising institutions.

Now it was suggested by the Chairman at the opening of the meeting that uniform system of taxation would be helpful. I have no doubt that any system of taxation that can be uniform would be helpful. It doesn't follow that because you get a uniform law you would get uniform taxes. I don't think either that if you had a uniform charge per pound against copper, zinc or other metal that it would necessarily follow that taxation would be uniform. I can conceive, for example, that there might be a mine in Arizona, Utah, New Mexico or elsewhere that had one hundred million pounds of copper in it which could be produced and would cost 10 or 11 cents a pound and there might be eleven hundred million pounds left in that mine. Now the levy of a tax should be based on the value of the eleven hundred million pounds of copper that can be mined at 8 cents a pound. That copper is worth more money in the Butte hills even if mined at 15 cents a pound. If the tax on the copper in Montana was 1 cent a pound and you had a uniform tax law, the charge of taxation against the production of copper throughout the country would be necessarily unfair and would discriminate against the owner of the mine who had the

same amounts of copper in his mines but the cost of production would necessarily mean fifty or one hundred per cent. more. I don't believe myself in writing a statute uniformly, putting the same language in a statute and having it adopted by the legislatures throughout the country that will not necessarily result in uniformity of tax burden. You say it applies to mines rather than to real estate of other types. The mining industry of Montana is bearing a larger burden than the mining industry of Colorado. It is my judgment that the valuation of mines and the methods of taxation are such, both from constitutional provisions and from history and development of states and from different types of industry and its relation to other industry of the same state, that uniformity of statutory enactment doesn't mean uniformity of taxation at all. If I were to make an examination of taxes in different states, those states which had the highest production probably would have the highest charges because of the inequities of administration of tax laws generally.

Mr. FENNEL: What are net proceeds?

MR. KELLY: Net proceeds is the gross value of the ores that you take out less a certain portion of the cost of getting them out. It is just an arbitrary figure. It is arrived at this way. In Montana you get your gross return, if you own your smelter, you just take it from your sales of copper and if you sell during this year one hundred million or fifty million dollars worth of metal you are entitled to deduct from that your smelting cost, your transportation from the mine to the smelter, the actual cost of mining the ore and hoisting it to the surface and loading it. None of your overhead goes in, none of your tax, none of your employees' expenses or other overhead, and no depreciation.

Our mine tax law was amended this year, providing for an allowance of 6 per cent. investment in smelters where the mine operator owns his own smelter because of the fact that his smelter was naturally depreciating and he wasn't getting allowance on that. I may say the net proceeds system is used in Montana, Idaho, Utah, Colorado, Nevada and New Mexico, I think. The system is difficult in Arizona where the net proceeds is an arbitrary figure arrived at by subtracting from the transportation your smelting charge without any allowance for overhead or depreciation at all.

CHAIRMAN ARMITAGE: Mr. Kelly, have you any figures that would tell us about how much per pound of copper the tax amounted to?

MR. KELLY: I have some data in my grip. I'll look it up. I have some pamphlets of an address made by Mr. Kelly, president of our company, and Mr. Evans, chief counsel. I'll be glad to furnish you with them. They have a number of figures in them, whether they will give that information I cannot say.



MR. KRIEGH: Hasn't the Montana system been changed recently by a court decision affecting mineral rights?

MR. KELLY: No, not with reference to the taxation of mines. You have reference to the taxation of mineral reservations.

The Northern Pacific Railroad Company had a large land grant in Montana. In the sale of lands they reserved the mineral rights. After having disposed of the entire surface, they took the position that since mines were taxed upon their net proceeds and their surface improvements, this mineral right which they reserved was exempt from taxation. The court sustained the right of taxation because the Northern Pacific Railroad Company in the reservation of the minerals under the ground reserved the right to enter upon the ground and mine it.

CHAIRMAN ARMITAGE: Has there been any investigation of the subject of mine taxation in an official way in the state of Montana?

MR. KELLY: This tax commission, as I said, had the entire tax situation to investigate and report on. They made their report to the legislature two years ago. They recommended to the tax commission the tax classification law and some other minor changes and they left the mine tax system, after investigation, as it was. They made no further recommendations with reference to a change in the general system of mine taxation. A great deal, of course, may be said with reference to this mine taxation. I will not say that now.

CHAIRMAN ARMITAGE: I don't know whether I quite understood your statement about the multiplication of three.

MR. KELLY: You get the same result as if you taxed the property all at the same amount. We pay three times as much taxes on the same valuation as the fellow does who is assessed at  $33\frac{1}{3}$  per cent. If your net proceeds are a million dollars, you are assessed on one million dollars. If a merchant turns in one hundred thousand dollars worth of merchandise he is assessed on thirty-three thousand dollars worth, so that the mine proceeds are taxed three times as much as the merchandise or the farm or other proceeds.

CHAIRMAN ARMITAGE: Do they take the net proceeds of the year?

MR. KELLY: Of the year on an average. That has its advantage from the standpoint of the state. You have your good years and bad years. The result is that they spend all the money they get in good years and when the bad years come along they are in bad shape. Men who run government are not usually business men. It would be a good idea to spread the money around. Mine operators wouldn't like to pay at this time on the last five years' production when we don't have any now.

CHAIRMAN ARMITAGE: I would like to ask Judge Stimson a question about New Mexico. I think he said they use an average there as a basis.

JUDGE STIMSON: Five years.

CHAIRMAN ARMITAGE: What do they do when one of those years is a blank.

JUDGE STIMSON: Still divide it by five.

As Mr. Kelly suggested, that is going to work pretty hard this year because we have no production, or practically no production this year and the five years previous were good years.

CHAIRMAN ARMITAGE: Is there any gentleman present who wants to add to Mr. Kelly's statement?

Gentlemen, it is now half past four. We have set for this meeting tomorrow morning at 10 o'clock a series of discussions by various state representatives on the local methods of taxation in those states. We will continue that meeting as long as you want to, even into the afternoon if you so desire. That will be the real meeting at which you will have an opportunity to discuss the different methods of taxation which are in vogue in the various states and the effects of those various methods.

The meeting adjourned at 4:30 p. m.

## NATIONAL MINE TAX CONFERENCE

WEDNESDAY MORNING, OCTOBER 19, 1921

The second session of the National Tax Conference convened at 10:10 o'clock, Mr. Paul Armitage presiding.

CHAIRMAN ARMITAGE: Gentlemen, will the meeting please come to order?

Mr. Kriegh has a statement to make.

SECRETARY KRIEGH: Mr. Chairman and Gentlemen: I was very much pleased with the statement made by Judge Stimson yesterday that the mining industry isn't endeavoring to escape bearing its just proportion of the tax burden. I think that is the feeling of every member engaged in the industry. I thought, however, after discussing the matter last evening with several of the delegates, that it would be well to define the purposes of this Conference a little more definitely so that our ideas will be directed into a definite channel.

The keynote of this Convention was sounded yesterday by President Loring, in a luncheon of the Directors of the American Mining Congress, when he said that the purpose of this Convention is the conservation of our natural resources by the elimination of waste and inefficiency in mining wherever waste and inefficiency are found.

The greatest waste that is going on today in the mining industry is that resulting from the total loss of enormous tonnages of ore which could be mined at a profit simultaneously with the extraction of high-grade ores if it were not for high taxes. It may be impossible to secure uniform tax laws. We must not anticipate the early accomplishment of such a program but what we can do and do at once is ascertain and publish facts which will enable the state legislatures to act intelligently at least when revenue legislation affecting mines and mineral land is being considered. We can demonstrate at this meeting the fact that there is a maximum rate of taxation beyond which taxes cannot be raised without serious impairment and gross wastage of the nation's natural wealth. We can establish without doubt the fact that increased taxes in many of the states, instead of augmenting state revenues, actually reduce the volume of taxable property, make valueless rock of an enormous tonnage of ore and thus destroy forever present and potential sources of revenue.

That, gentlemen, is the purpose of this Conference, to bring before the public the facts concerning the taxation of the mining industry.

CHAIRMAN ARMITAGE: Mr. Kelly has given us copies of the address of Mr. L. O. Evans that he referred to in his address yesterday and they are here for any of you gentlemen

that are interested. I will ask Mr. Kriegh to distribute them.

Now before we continue the discussion in reference to state taxation, I wish to call upon a representative from Mexico. It seems that the Secretary of Industry of Mexico has appointed a special delegate to this Convention. He has been approved and commissioned by President Obregon to come here and explain to us the laws of Mexico in reference to the taxation of mines, and with your permission I will interrupt the discussion of state taxation to call on Mr. L. de Silva.

SENOR L. de SILVA: Mr. Chairman and Gentlemen: As a Mexican delegate I am going to give you a lecture about taxation on the mining industry in the Mexican Republic, as a mere matter of information.

I request your benevolence, and beg your pardon on account of my faulty pronunciation and for the mistakes that I make in your language that is strange to me.

The metallic wealth of Mexican subsoil has been considered, since remote times, the property of the nation, which confers to individuals the right of exploitation under certain conditions. In the colonial time the Spanish Crown had a direct dominion or control over said wealth. The mining regulations stipulated the form in which the private corporations could acquire mining concessions for their exploitation, and stated therein the amount of roya'lty that was to be paid to the Royal Treasury.

When New Spain seceded from the Mother Country, becoming the Mexican Republic, the old mining regulations continued in effect until the year 1884. In 1885 the new mining laws, strictly Mexican legislation, went into effect, maintaining the principle that the nation is the primitive owner of the mines and that the title is granted to the applicant by the Public Administration. The taxation assigned to the mines in Mexico is based on this principle, as well as in the equity of contributing all branches of national activity for the necessities and expenses of the Nation.

In order not to tire the benevolent attention of my hearers I shall only speak of the mining taxes in effect in recent times, this in my opinion, being of great and practical interest.

According to the Mining Tax Law, enacted June 27, 1919, there are three kinds of taxes: first, on the mining property; second, on the metals produced; and third, on smelting, assaying and coining. The first one, or tax on mining property or Mining Tax, is an annual rate paid on each mining claim unit; the mining claim unit is the *pertenencia*, say a prism of indefinite depth whose outer base is a square, 100 meters to each side (say 10,000 square meters).

A mining property may consist of one or more *pertenencias* (unit or area), without any limitation whatever; but the tax about which I am speaking, tends to limit the control of great extensions in horizontal area, by one single individual or corporation, because the annual rate per claim unit increases in

proportion to the number of *pertenencias* owned by a single individual or corporation, in the following manner:

From 1 to 5 <i>pertenencias</i> (hectareas) the annual rate per <i>pertenencia</i> is.....	\$ 6.00
From 6 to 50 the rate is.....	9.00
From 50 to 100 the rate is.....	12.00
And over 101 <i>pertenencias</i> , the rate per <i>pertenencia</i> is .....	18.00

This increase of rates is applied considering the number of *pertenencias* owned by a single individual, regardless of whether they are included in one or more mining properties, and provided they are located within the jurisdiction of one Mining Agency.

A mining property under Mexican law is a group of mining *pertenencias* covered by one mining title.

The national territory is distributed among 93 mining agencies. A map of Mexican mining agencies may be seen at the Mexican booth in the Coliseum. The tax on mining property is the same regardless of the kind of metal produced. For paying this tax the year is divided into three periods: the first third is paid in January; the second third in May; and the balance of taxes for the year, in September. Should payment not be made the first month of the period but in the second, third, or fourth, there is added a penalty of 10, 15 or 50 per cent., respectively. If payment is not made within the whole period, the mining title becomes liable to be declared void, and consequently the owner loses his rights to the mining property.

In addition to the annual mining tax, another tax of 10 pesos on each *pertenencia* is paid when the title is issued.

Second: Tax on the production of metals.

The second kind of taxes is the one assessed on the production of metals; the rates vary in accordance with the kind of metal produced. Metals used in the national industry, such as in the manufacture of jewelry, gold or silver work, are exempt.

Gold bullion pays 7 per cent. on its valuation, when it is exported or sent to the mint for coinage, and 8 per cent. when it is exported as ore, concentrates, precipitates, mattes, or assay by-products; when those products contain only two grams of gold or less per ton, they are exempt.

According to said law, silver formerly paid the same tax of 7 and 8 per cent. as gold, under the same circumstances, whether in bullion, ore or products more or less treated; but the decrees of June 15, 1920, issued on account of the drop in the price of silver, which began at that time, established a tariff that is now in effect, whereby the tax rate on silver bullion gradually decreases in proportion to the fall in the price of silver; when silver bullion is quoted in New York at \$1.40 or more per ounce, the rate is 12 per cent. and gradually decreases as low as 5 per cent. when the price is 60 cents or less. The rate varies from

13 per cent to  $5\frac{1}{2}$  per cent. as above, when silver is mixed with other substances as when only partially treated.

Later on, when the drop of the white metal was more marked, the tariff was amended by Decrees of December 24, 1920, to protect the mining industry during such a crisis. When the price was \$1 or less per ounce, the rate would decrease as low as nothing, when silver was worth 60 cents or less, but maintaining the previous rates when the price per ounce exceeded \$1. However, on July 20, 1921, a new decree re-established the tariff of June 15, in view of the fact that an economic readjustment of the mining industry was taking place.

When silver contained in ore or other products other than bullion does not exceed 250 grams per ton, said metal is exempt.

Regarding copper, the tax was definitely set when the law of June 27, 1919, was enacted and the rate increases in proportion with the price on this electrolytic metal, per pound, as quoted in New York. Another fact which influences the variation of tax rates is the contents of copper, whether less or more than 50 per cent., and the amount of precious metals which accompany the red metal, in the following manner:

In bullion mattes or concentrates containing more than 50 per cent. of copper and more than 300 grams of silver or 5 grams of gold per ton the rate is 60 on each 1,000 on the valuation of copper, if the price quoted in New York is 0.25 cents per pound; the rate gradually decreasing as low as 1 on 1,000 when the price is 0.10 cents or less.

Under the same circumstances, but if the contents of silver does not reach 300 grams, or 5 grams of gold per ton the highest and lowest rates, for the prices of .25 and .10 cents are the same as above, but for the intermediate prices, from .25 to .15 cents, the rates are remarkably lower.

On ore and concentrates containing 50 per cent. of copper or less, the tariff is made out under the same basis but the rates are much higher than the above, for the purpose of inducing a complete metallurgical treatment in Mexico, at least to obtain commercial copper. These rates gradually vary between 80 for each 1,000 when the price is 25 cents or more, and 15 for each 1,000 when the price is 13 cents. When the price is less than 13 cents the rate is the same as stated above.

The decrees of December 29, 1919, and December 23, 1920, issued on account of the drop in the price of copper, amended some of the rates, especially those on ore and concentrates, completely releasing the tax on copper when its price was less than 15 cents. In addition copper ore containing 3 per cent. or under of copper is also released.

At present lead is also released from production tax in virtue of a decree issued March 17, 1921, for the purpose of encouraging the production of silver-bearing lead.

Two per cent. on the valuation is paid on tungsten, molybdenum, manganese, graphite and quicksilver.

One per cent. on the valuation is paid on zinc, antimony and other metals not mentioned above.

The Mexican states may assess a tax on production of metals not to exceed 2 per cent. of their valuation.

The tax on smelting, assaying and coining constitutes the third mining tax. The coinage tax is assessed when the previous metals are sent to the mint for coinage purposes; gold paying  $\frac{1}{2}$  of 1 per cent., and silver 2 per cent. of their valuation; the smelting tax is paid when due to lack of homogeneity in the bullion it is necessary to resmelt it over again to assay with accuracy the rate is 15 cents per kilogram, when the gold does not exceed 100 thousandths; 25 cents if it exceeds this figure without reaching .945, and \$3 when it exceeds the last figure. The assaying tax is paid for the analysis which is necessary to practice in order to figure out the production tax; the rate varies from \$1.50 to \$3 for each bar or lot of determined weight; viz., 10 kilograms for gold bars; 35 kilograms for silver bars, 10 tons for lead, copper and other metals in bars. When the weight of the bar or lot exceeds those indicated above, the assaying tax rate is a little larger.

I have just explained in a brief manner how the mining industry is taxed in Mexico. My best wish is that this information may be of some usefulness to the honorable members of this Twenty-fourth Convention of the American Mining Congress. I regret that the short time at my disposal prevents me from dealing on this matter in a more ample way, for it is interesting, in my opinion to give a broader idea of this subject; but I have the honor to place myself at the orders of anyone interested in obtaining further details on the subject, and I will be more than glad to privately furnish him with whatever information he may desire. (Applause.)

CHAIRMAN ARMITAGE: I believe we should have some copies of Senor de Silva's paper mimeographed for distribution to any of the members that would leave their names with Mr. Kriegh, or request it? I would like very much to have a copy of it.

I was going to call the attention of you gentlemen to the fact that the state of Louisiana, in February, 1921, had made and published a report of the assessment and taxation commission to their constitutional convention. It seems to be a very carefully prepared and thorough discussion of the subject of state taxation, with some very interesting appendices to it. They have a very interesting appendix, for example, of the investigation that they made of the mine taxation system. It seems that one of the members of this Louisiana Tax Commission took a tour around various states and in that tour he interviewed the heads of various tax commissions and tax officials and he had

the interviews taken down stenographically and that is an appendix to this report. Mr. Kriegh has succeeded in getting 4. I have one of those 4 and I think he can get some more for any of you gentlemen who would be interested in that. If a sufficient number want them I think the state of Louisiana would publish some extra copies. If any of you gentlemen want a copy of that report or a copy of this report of the special revenue commission of New Mexico, I think it would be better to get them through the Mining Congress. I think if the American Mining Congress took it up with them they would take the trouble of publishing additional reports and sending them on.

We have with us today various representatives appointed by the governors of the different states to explain the laws in relation to mine taxation of those states. I think I would like to call upon the Minnesota representative. Mr. Armson is a member of the Minnesota Tax Commission and is familiar with the laws, and I take pleasure in introducing him. He has come especially at the request of the Congress to explain these tax laws and the method of taxing mines.

HON. J. G. ARMSON: Mr. Chairman and Gentlemen of the Conference: If you will permit a word of personal apology this morning I would like to make it. It had been my wish to be present yesterday at your conference but owing to illness I was not able to come down and I was a little doubtful last night whether I should attempt the trip or not but I did, and I am glad to say that I feel fairly fit this morning.

In order that I might not take up too much of your time and say briefly just what I want to say, I have committed some of my thoughts to paper, and with your indulgence I will read rather than speak to you extemporaneously this morning.

Mr. Armson presented his prepared manuscript on "Mine Taxation in Minnesota," as follows:

Less than a generation ago Minnesota was regarded as mainly an agricultural state. Today, while we still have our fertile agricultural lands, we not only lead all of our sister commonwealths in the production of iron ore, but for some years past our state has produced more than 60 per cent. of all iron ore mined in the United States.

While it was known more than 50 years ago that Minnesota had considerable deposits of iron ore, it was well in the nineties before these deposits began to assume commercial importance. Since the initial shipment was made, and up to the beginning of the present year, more than 615,000,000 tons of iron ore have been shipped out of the state, and we still have a remaining measured tonnage of merchantable iron ore of more than 1,300,000,000 tons in the ground. In addition, we have hundreds of millions of tons of low grade and magnetic ores that are not now merchantable but in time will be made commercially valuable by improved methods of benefaction.



The state began to give special attention to the taxation of iron ore about the time the first shipments were made from the Vermilion range. Our earliest law imposed a tax of 1 cent. per ton on all ore mined in the state. This tax was in lieu of all other taxes and assessments on mining property, the law apparently being designed to encourage the development of mining industry in the state.

The output or tonnage tax remained in force until 1897, when it was repealed by Chapter 40, Laws of 1897, following an opinion rendered the previous year by the attorney general that the law was unconstitutional. Since that time iron ore in this state, both mined and unmined, has been assessed and taxed on the ad valorem basis.

Prior to 1914 the laws of the state required all property to be assessed and taxed at its true and full value. This law, however, had never been observed or enforced by assessing officials. Instead, the practice of assessing property at a percentage of full value had become so universal throughout the state as to have almost the force of law, and, in a measure, to receive legislative sanction, for practically all of our revenue laws were based on the assessment of property at less than its full value.

By Chapter 483, Laws of 1913, effective January 1, 1914, property was divided into four classes for purposes of taxation, each class being subject to assessment and taxation at a different percentage of true and full value. Iron ore, whether mined or unmined, constitutes Class 1 and is subject to taxation at 50 per cent. of its true and full value. This is the highest percentage applied to any of the four classes, Class 2 being subject to taxation at 25 per cent., Class 3 at 33 $\frac{1}{3}$  per cent., and Class 4 at 40 per cent. of true and full value.

In the earlier years of the application of the ad valorem tax method to iron ores no serious attempt was made to adopt any scientific rule of valuation. No reports of tonnages and mining or other cost data were required from mining companies, and hence no reliable information was available upon which such properties could be even approximately valued for purposes of taxation. As a consequence, the assessment of iron ore in those early days was largely a matter of guess, or of compromise between assessing officials and mine owners and operators.

Among other subjects that first engaged the attention of the tax commission when it was organized in 1907 was that of some method of measuring the taxable value of real property other than mere guess, or arbitrary opinion, or the revenue needs of a community, methods that had so long prevailed throughout the state in the assessment of all kinds of property. After careful investigation and study of the subject, it was decided that the selling price of property not only fairly represented its taxable value, but at the same time was in harmony with the law which provides that the price for which property sells at private sale

shall be taken as the "true and full" value of such property for purposes of taxation, hence the adoption by the tax commission of the "sales method" of determining the taxable value of all real property.

But it was found that sales of fee title to ore properties were not sufficiently numerous to justify their use as a measure of the taxable value of such properties. The leasing, rather than the absolute sale of ore properties, was the method most generally followed in the ore belt. As a consequence, the tax commission was obliged to adopt a rule other than that of the sales method for the valuation of ore properties. It was finally decided that the selling price of ores at Lake Erie docks, less the cost of mining and shipping the same, fairly determined the present values of such ores in the ground. As it would be manifestly impossible to mine and ship all of the ore deposits in a single year or in a dozen years, it became necessary, in order to ascertain the present value of the future worth of such ores, to apply a percentage discount to present values extending over the expected life of the mines, the latter being based on measured tonnages and average expected annual shipments.

This, in brief, is the method followed by the tax commission in valuing iron ore in the ground for purposes of taxation. It may be aptly described as the net profit method of ascertaining the taxable value of iron ore deposits. The tax, of course, is applied to the value thus ascertained, and not directly to the profits. But in effect it is similar to a net profits tax, because under this method, in the final analysis, profits determine the values upon which the ad valorem tax is levied.

In valuing iron ore the following factors are taken into consideration:

(1) The measured tonnage of ore as of a given period; (2) the grade of the ore; (3) the character of mining; (4) market value of the ore; (5) cost of mining; (6) profit from operation; (7) expected life of the property; (8) present value of future profit based on the expected life of the property.

To give a concrete example of the application of these factors, let us assume that a given property, fully developed and in operation as an underground mine, contains a deposit of 3,000,000 tons of iron ore, grading 51.50 per cent in natural iron content, and of a non-Bessemer standard. It is found that the average market price of this grade of ore at Lake Erie ports for a 5-year period was \$4.50 per ton. The average cost of mining during the same 5-year period was \$3.00 per ton leaving a net profit of \$1.50 per ton on the ore mined and shipped. Assume average annual shipments of 100,000 tons. Based on this average of annual shipments the life of the mine would be 30 years. The present value of \$1.50 per ton extended over a period of 30 years, discounted, say at 8 per cent., would be approximately 56¼ cents. Applying this rate to the tonnage in the mine, we

find the present value of the 3,000,000 tons of ore would be \$1,687,500.

For purposes of taxation mines are classified according to grade of ore and character of mining as follows: Class 1, open pit, low mining cost, high grade ore; Class 2, open pit, moderate mining cost, medium grade ore; Class 3, open pit, high mining cost, mixed grade ore; Class 4, underground, low mining cost, high grade ore; Class 5, underground, moderate mining cost, medium grade ore; Class 6, underground, high mining cost, mixed grade ore; these classes are further divided into "active mine tonnages" and "reserve tonnages," the former including developed tonnages, whether active or inactive, and the latter undeveloped tonnages held for future operation.

Based on the valuation factors enumerated in a preceding paragraph, the value per ton of the ore in the different classes of mines in 1920 was as follows: Class 1, active 80.22 cents, reserves 51.04 cents; Class 2, active 72.88 cents, reserves 43.68 cents; Class 3, active 65.72 cents, reserves 36.54 cents; Class 4, active 55.86 cents, reserves 26.66 cents; Class 5, active 46.20 cents, reserves 24.36 cents; Class 6, active 34.02 cents, reserves 19.54 cents.

Perhaps it should be stated that while the rates above enumerated are generally applied to all mines falling within the respective classes, occasional modification of the rate is made where abnormal mining conditions or other unusual circumstances render the standard rate unfair.

The total measured tonnage of merchantable iron ore in the state on May 1, 1920, the latest available year, amounted to 1,341,674,538 tons. These tonnages were valued for purposes of taxation at \$591,556,698, or an average value per ton of approximately 44 cents. Under the laws of the state iron ore, whether mined or unmined, is taxable at 50 per cent of full value. The taxable value of iron ore in 1920 was therefore \$295,778,349, the average taxable value per ton being 22 cents.

In Minnesota public revenues are derived mainly from the general property tax, supplemented in part by a gross earnings tax on railroads and certain other public service corporations. All property not specifically taxed is subject to state and local levies. The state levy is at a uniform rate on all property, but local levies vary in different taxing districts according to local needs. Iron ore is therefore subject to the same tax levies—state and local—as all other property subject to the general property tax, except money and credits.

The total of taxes levied for all state and local purposes on mineral property in 1920 amounted to \$20,255,223. Of this amount the state levied \$1,603,119, and the counties and local districts \$18,652,104. If all taxes imposed on mineral property, whether active mines or reserve ores, should be charged against the ore mined, the levy last year, based on an output of 39,500,-

000 tons, would represent an average charge per ton of approximately  $51\frac{1}{4}$  cents. Of this amount, 4 cents represents state levies and  $47\frac{1}{4}$  cents county and local levies. Based on the total measured tonnage of merchantable ores, the tax last year was approximately  $1\frac{1}{2}$  cents per ton.

That twenty and a quarter million dollars levied in taxes on the mineral property in a single year is a considerable burden on the mining industry of the state will not be denied. Less than 8 per cent. of this amount, however, represents a state burden. Local levies are largely responsible for the heavy taxes paid by mining companies.

Let me cite just a few instances of heavy local levies. The average per capita levy for local and school purposes in 77 cities and villages in the state, not located in the mining districts, amounted to \$31.89 in 1920, while in 17 cities and villages located in the mining districts the average per capita levy for local and school purposes last year was \$164.29. The levy in one village of about 2,000 inhabitants represented a per capita tax of \$557.28 for every man, woman and child in the village. Another village levied \$320.16, one \$263.15, and another \$244.91, while the so-called "richest village in the world" had a per capita tax levy for local and school purposes of \$222.13 for each of its 15,000 inhabitants.

An effort was made at the last session of the state legislature to curb extravagant local tax levies by placing a per capita limitation on the amount that might be levied for local and school purposes. Under existing general laws the limitation is based on assessed value, but this limitation is practically worthless in districts having large taxable values due to iron ore deposits. A bill limiting the per capita levy for local and school purposes to an amount not exceeding \$90.00 per inhabitant was introduced in the legislature early this year, but before its final passage the amount had grown to \$160.00. While even this large per capita limitation will curb local tax levies in some mining districts, it will still permit a per capita tax levy in mining districts almost five times greater than the average tax levy for like purposes in non-mining districts.

There is one other law affecting mine taxation to which I desire to make brief reference.

For more than a dozen years the so-called "tonnage tax" question has engaged the attention of the state legislature at each of its sessions. In 1909 a bill passed both branches of the legislature imposing a tax varying from 2 cents to 5 cents, based on metallic content, on all ore mined during the year, but the bill was vetoed by the governor.

At the extra session of the legislature held in 1919 another bill passed both branches imposing a tax equal to 5 per cent. of the value of the ore produced and shipped during the year, less

certain mining and shipping costs. This bill was also vetoed by the governor.

A new tonnage tax bill in the guise of an occupation tax made its appearance in the legislative session of 1921 and was enacted into law. Under this law a tax is imposed on persons or corporations engaged in mining iron ore equal to 6 per cent. of the valuation of all ores mined during the year. The valuation upon which the tax is imposed is the value of the ore at the mouth of mine, less the cost of mining and shipping the same, such value and costs to be determined by the tax commission. Royalties paid are included in deductible costs.

Mining companies are required to make detailed reports to the tax commission showing amount and grade of ore produced, mining and shipping costs, the market or selling value of the ore and such other information as the commission may require.

The tax imposed under the law is due on May 1st of each year, and if not paid before June 1st, a penalty of 10 per cent. attaches. The tax is in addition to all *ad valorem* taxes—state and local—and is to be paid into the state treasury and credited to the general revenue fund of the state.

The new law is not a child of the tax commission. While the commission at the request of the committee having the bill in charge, aided in its preparation, it does not then, nor does it now, approve of the underlying principle of the law. The occupation tax theory of the law does not appeal to at least a majority of the commission, while the rate of tax imposed under the law is regarded as excessive. In its last biennial report the commission discussed the tonnage tax question at some length. But it did not recommend a tonnage tax. It did, however, recommend that if a so-called tonnage tax law was enacted, the taxes imposed under it should be in lieu of all other state taxes on mineral property, and that the tax base for county and local purposes should be reduced from 50 per cent. to  $33\frac{1}{3}$  per cent. of full value, in order that the *ad valorem* tax burden imposed on mineral property should not be greater than that imposed on farm property.

Neither of these recommendations was adopted by the legislature. The tax imposed under the law is an additional burden on mining companies, while the tax base for *ad valorem* taxation remains at 50 per cent of full value.

As the constitutionality of the new law will, in all probability, be contested in the courts, any comment or criticism of its provisions on the part of the commission charged with its administration would neither be appropriate nor advisable at this time.

MR. ARTHUR THACHER: Mr. Chairman, these taxes I understand are just state taxes. In addition to that, of course, the mining companies have the federal and income taxes and when you come to add all these different ones, state, local and

federal taxes, you can see at once you get a tremendous figure as a tax on the iron and ore.

MR. CHAS. R. HOWE (Arizona): In addition to your twenty million dollars tax that you say is placed on the mining by the ad valorem system, do you also impose a 6 per cent. tax?

MR. ARMSON: We do, Mr. Howe, under the new law. If the state sustains the law it is an additional burden.

MR. HOWE: Approximately how much more would that add to the twenty million?

MR. ARMSON: During a discussion of the legislature it figured at approximately four and a half million dollars. That, however, would vary. They are going into court and attack the constitutionality of the tax. This year if the mining companies pay the tax it won't be very large because the mining operations have been very much reduced, but on an assumed average annual production of forty million tons, it was estimated the tax would run between four and four and a half million dollars.

MR. HOWE: That would aggregate something like twenty-five million dollars annually for state, county and local purposes. Is that correct?

MR. ARMSON: That is correct in a measure. The figures that I have given you on local taxation were those of 1920, the levy made last June and payable this year. They haven't always been as high as that. They may not always be as high in the future although I think this year there won't be any substantial reduction. The total taxes 2 years ago or 3 years ago at any rate wouldn't be more than half the figures I gave you just now.

I want to say with due respect to my mining friends, a number of whom I see here, that notwithstanding those high taxes of a year ago, the federal government imposed a tax 2 years ago of still larger amount on income and excess profits and I didn't hear so much complaint about the federal tax. There is something peculiar about that, you know. When we pay a federal tax we do a little bit of grumbling but when it comes to state tax we stand up on our feet and holler.

The mining companies on their output of 1918 paid a federal tax of \$21,272,000. They paid more in federal taxes in 1919 on their operations of 1918, than the local taxes amounted to this year. That was the highest amount they have ever paid. The total federal taxes last year amounted to a little over six and a quarter million dollars. In 1918 they were nearly fifteen million dollars. Prior to that they were nominal only.

MR. E. E. HUNNER (Minnesota): I would like to have you explain to them the personal tax on the stock pile.

MR. ARMSON: The open pit mines as a rule were operated in the summer season and seasons suitable for outdoor work. Many of the underground mines are operated all the year

'round. In the late fall and during the winter the ore taken from the underground mine is put in a stock pile, as we call it, as we cannot move it down the lakes in the winter-time and it is stock piled.

Ore in the ground in the original deposit is construed as real property with us while if it is severed from the ground and elevated and placed in the stock pile it is regarded as personal property and is taxable as such. Ore in the stock pile takes a much higher valuation than ore in the ground. The ore in the ground, as I explained, has applied to it an exhaustion period, it is the life of the mine. We figure that perhaps it takes 30 years to exhaust the deposits of a given range and we ascertain the present value of the future worth of that ore extended over those 30 years, but your ore in the stock pile is going to be shipped out just as soon as navigation opens and that takes the rate of your present value, not discounted but immediate present value and that rate in some cases will run up very high. In a few cases it went practically as high as \$2 a ton assessed value, \$1.75, \$1.50 and \$1 and down lower, and is a very substantial burden on winter operations under ground mining with us. The mining with the ore in the ground is taxed we say on the basis of perhaps 28 cents a ton and I will say more when ore is piled up on top of the ground and it remains there and is there on May first of the year, it is liable to take a valuation of \$1.50, \$1.75 or \$2 a ton, thus making the tax perhaps 4, 6 or 8 times as high on the ore in the mine.

It has been represented to the commission that that proposition of law is rather discouraging winter operations of mines and perhaps it does. You have probably heard Mr. Hunner say that we have made some concession this year and reduced stock piles all over the field ranges probably 25 per cent. That is, we took the market value less cost of shipping and all the cost that we deducted and then from that we deducted still further 25 per cent. of the value so we made some little concession this year toward that. It might encourage the operation of some of those properties in winter and we need it this year perhaps as it has been a long time since we have had such unemployment, a good many years since the outlook was so gloomy as it is now for the next few months. I am not a pessimist, I don't believe that this country with its immense resources, with its energy and vim and vision of its citizenship is going to remain dormant very long. We are going to get back to normal conditions shortly but it is going to take a little time to do it and in getting back to normal conditions it seems to me that it is up to every citizen, every corporation, to do all they can to bring about those conditions but it is not alone up to the individual and the corporation, it is up to the governments both federal and state, to reduce those excessive tax burdens that property now is struggling under and we can

only do that by reducing expenditures. Our little contribution of 25 per cent. was done in the hope that it might encourage many of the mines to operate this coming winter and thus give employment to people that otherwise would be idle.

MR. J. C. DICK: Do I understand that the valuation is two hundred some millions of dollars and there were levied upon that sum twenty million, or a little over 10 per cent. of the valuation? Do I understand if a man owns a house worth \$1,000 he would have \$100 tax to pay?

MR. ARMSON: It wasn't quite 10 per cent. The valuation was about two hundred ninety-five billion dollars, and a tax of twenty million dollars, it would be a little less than 7 per cent. yet not on full value. Of course that means only 50 per cent. of the value of the mine so that your actual tax at that place would be only a little over 3 per cent. of actual value because the tax is levied on 50 per cent. of full value. The average tax rate in our state last year for all purposes, including mining properties, was about fifty-six and a quarter mills. That tax was levied on taxable value of approximately 35 per cent. of full value, a little lower than one-third of full value. Our taxes are very high in Minnesota. How are they in Arizona, Mr. Howe?

MR. HOWE: I thought, Mr. Armson, that they were very high but since I have heard from Minnesota, I have concluded that they are not so high.

MR. ARMSON: We don't claim low taxes in Minnesota but don't misunderstand me, Mr. Howe. The entire state doesn't levy taxes like those mining districts that I have enumerated.

MR. BARRETT (Michigan): I would like to ask one more question about that stock pile. We have the same problem up there only more so on account of the fact that all of our mines are under ground operations with the exception of two. Now in handling this stock pile in Michigan we determine the actual value of ore in the ground and ore in stock on January first at the same rate, we treat it as if it were in the ground. Then, in the case of the stock pile assessment, we subtract the value of the stock pile as personal property and the balance then remains upon the real estate, in other words, there is no discrimination between the ore in the stock pile as to rate. Is that true in Minnesota?

MR. ARMSON: No. That was the practice 10 years ago in Minnesota. The ore in the stock pile took the same rate as the ore in the mine from which the stock pile had been mined. It was technically wrong under the law. The ore in the stock pile was regarded personal property; in the ground it is real.

We do the same in the matter of deductions, Mr. Barrett, for instance a mine that had a hundred million tons, if it had shipped a hundred thousand tons this year, we deduct that from the million and tax it next year on the basis of \$900. We also



deduct the stock pile from the ore remaining in the ground so that we don't tax it twice that way, except if the stock pile remains there for the second year it is taxed twice but we deduct the amount shipped and stock pile from the ore in the ground and then tax the ore in the ground at the reduced tonnage and tax the stock pile as personal property at an increased value.

MR. D. M. KELLY: Might I ask a question. Has your commission any statistics showing whether a ton of ore which would be mined say 20 or 25 years hence and subjected to a continuous tax rate of 3 per cent. would have any value—any present value?

MR. ARMSON: That would depend on the grade of ore you were considering. I think I know of some ores in Minnesota that they wouldn't give you very much for on that basis. I know of some other ores I would like to buy on that basis and pay considerably more for them.

CHAIRMAN ARMITAGE: Your illustration was a mine of 30 years. The question raised itself in my mind as to whether that ore, if it were subject to a continuous tax rate of 3 per cent., would have any value after 30 years.

MR. ARMSON: Sixty per cent. anyway.

MR. D. M. KELLY: Your mines in Minnesota were assessed last year at two hundred ninety million, and paid a tax of twenty million. Now if they continue to do that for 30 years or more what are they worth now?

MR. ARMSON: Oh, five hundred ninety odd million dollars full value at the present measured tonnage of merchantable ores.

MR. D. M. KELLY: If you pay the tax of twenty million dollars a year for 20 years that would be four hundred million dollars taxes.

MR. ARMSON: Probably if you figure the tax on your home for 20 or 30 years and compound the interest on it, the tax amounts to more than your home is worth at the end of several years. We must figure every system. All property is supposed to contribute a fair share toward the government.

MR. THACHER: To what is it subjected?

MR. ARMSON: Let me call your attention to another phase of that. If our ore should be exhausted in 30 years, and I don't believe it will, the present merchantable tonnage at the present rate of mining would perhaps last 35 or 40 years. We have immense tonnage of low grade and magnetic ores and probably will develop new tonnage of merchantable ores but at the end of 35 years, we will say at the average rate of shipping in the last 5 years, the state of Minnesota won't have any ore. We have lost our wealth. It isn't in the state, 95 to 98 per cent. goes out of the state. Now are we going to lose that wealth? Are we going to have it carried out of our state, taken away forever without exacting a good, reasonable contribution from

that property? Many of those properties were acquired for \$1 an acre many years ago. The surface of many of our richest mines was originally covered by timber and was bought by lumber companies without any supposition that there was ore there at all and some of those lumber men are living in Chicago, in Detroit, and New York. Those men acquired those lands years ago for a mere song, they haven't paid anything for them, nothing to speak of. Of course, some of the recent ones were paid much more for, but the bulk of the mineral property of the state of Minnesota is owned by non-residents of the state and the ore is being shipped out of the state.

JUDGE STIMSON: Where are you going to get your money for taxes after you have exhausted those mines?

Mr. ARMSON: I don't know. I think those mining districts are proceeding with the theory of getting it while the getting is good.

SECRETARY KRIEGH: What percentage of the value of the ore produced goes into the labor employed in Minnesota, that is, to citizens of the state?

MR. ARMSON: A considerable percentage goes to the labor, a part of which, however, is not a part of the citizenship of the state. A great many foreigners are employed. Of course, we are trying to Americanize them up there and are succeeding to some extent but when you get into some of the mining districts you might feel that you are in some of the southern countries of Europe. We are building up cities and producing some wealth that way. Of course, it is largely a floating population. Compared with the total number employed, the number that own homes is very small.

MR. HOWE: Under your system of assessment, would not the amount of taxes become correspondingly less as your tonnage of ore grew less until the end of the 30 years that you speak of as your tonnage grew less?

MR. ARMSON: Yes. We have properly reached the very peak of valuation now unless market values become a factor in changing that, because we have probably reached the peak of our merchantable tonnage. While we hope that we are going to develop new tonnage from now on we expect a gradual decrease in taxable tonnage.

MR. HOWE: It wouldn't be twenty million a year for 30 years.

MR. ARMSON: No. That was an excessive levy and probably wouldn't be that again for years, but it would grow gradually less each year. We included in our last biennial report a chapter on tonnage taxes and net profit taxes, I think that was the title, in which we gave some figures showing with that present rate of shipping how long the ore will continue and what the taxes will amount to each year until the ore becomes

exhausted on the ad valorem basis. I will be glad to mail you copies if any one so desires. That will give the information you want.

CHAIRMAN ARMITAGE: Mr. Armson, I suggest that any gentleman here who wants copies of that report leave their names with Mr. Kriegh, and he will communicate with you.

MR. ARMSON: I'll be glad to furnish copies to all who request them. I probably have ten or a dozen in my room.

CHAIRMAN ARMITAGE: Mr. Dick, are you familiar with the local tax law of Utah in reference to mines? If so, I would ask you to explain that to us briefly. Mr. Dick for many years was head of our Natural Resources Department of the federal government and made a specialty of the study of federal tax laws as applied to mines. I am calling upon him in the absence of Mr. Mackenzie.

MR. J. C. DICK: In the question of valuing mines, the preceding speaker has given a very good idea to my mind as to how mines should be valued, if you want to get at the value of them. But the value of mines for state purposes or the value of mines for federal purposes or the value of mines for another purpose are three different things. In valuing mines for federal purposes the valuation is not the same. That may seem strange but it is a fact.

The law says you shall not include any ores but those that are definitely known, nothing beyond that which at present is developed in other words, while in their computation for depletion the law there says you shall not take into consideration only the ores in sight but the probable ores and the prospective ores.

Again, in the federal law the value of your mine might be what you paid for it, plus the cost of development and prospect. This development and prospect worth to the extent of a hundred thousand dollars may determine that the mine you originally paid one hundred thousand dollars for is not worth 30 cents. Its sales value may be 30 cents, and the computation made by the federal government is to the value of one hundred thousand dollars. There is absolutely no similarity at all.

I believe that the valuation of mines for state tax purposes is altogether a state issue. The method of valuing mines in Michigan or in Minnesota might not at all do in Arizona, Utah, Wyoming or the West. I believe that the valuation of the mine when one goes into valuation of mines for tax purposes is more of a tax job than it is a valuation job. The laws of the federal government should not be to my mind such that they make or tend to discriminate between taxpayers. The tax should be equitably distributed so far as possible. In Utah it would be absolutely impossible to get at the value of mines by the method used in Michigan and approach at all an equitable basis for taxation. If the mines of Utah were taxed or valued as the

United States Government values mines for invested capital purposes, including only those ores developed, there would be very few mines paying taxes.

We have a system in Utah that taxes the mines upon the basis of valuation of three times the annual proceeds. This three times the proceeds was brought about by the reason that physical property in general, personal property in general, had been taxed at about one-third its total value and mines had been taxed on their net proceeds. The legislature concluded to raise the value not one-third but assess on the total value of physical, personal property. Therefore, to make it equitable and not change the ratio they concluded the mines should be assessed on three times. A great many mines are not worth three times the proceeds. Just the other day before leaving Salt Lake City I was on a tax case. A man was assessed three times his 1919 tax. The law I believe came into effect in 1919. This was a dump assessed on three times its net proceeds for 1918. The dump was worked out, \$20,000 I believe was taken out of the dump in 1919, cleaning it up, yet the tax for 1919 was on three times the product or net proceeds of 1918.

To my mind the net proceeds of a mine is a fair way to tax or to value mines upon which to assess the tax. You do not know in Utah how many years these mines are going to run. Some of them have been going for 40 years and I believe some of the prospects now in the making of mines will be going for 40 years. When an engineer goes out to buy a mine for cash he has got to know pretty much what is there. He doesn't go very strong on indications. When it comes to paying full value for the mine he wants to know pretty much the full value is there.

It is a little hard on the state of Utah a year like this when there are no net proceeds. The mines are closed down pretty much. I believe that three times the net proceeds is right and the state of Utah is giving a great deal of consideration to this question and I am not sufficiently versed in the conditions to criticize the action that the legislature has taken. Maybe three times is pretty near the value of the mines in Utah and pretty near the share of the tax that the mine industry should pay. The mining industry of Utah wants to pay its full share, of course. I believe if you are to get at the full share that the mining industry should pay, you should consider the millions of money perhaps that have been spent in prospecting and finding these mines. In other words, give back to the industry tax free the amount of money they have spent in finding and producing these mines upon which you are assessing a full valuation.

I am assuming that three times is an equitable basis of valuation, and if I were making a suggestion as to a change, I would not assess it on three times the net proceeds of the year but on the average or three times the average of the three preceding years. That would give the state an income in its lean years

and, too, I wouldn't assess a mine three times its net proceeds or three times the average of the three preceding years if the taxpayer showed me that he had but another year to live. I think that change should be made in the law.

I haven't got much sympathy for this cry of heavy taxation for conservation, holding our ore for posterity. In fact, heavy taxation tends to the contrary. If your taxes are heavy, such as those taxes of Minnesota must be, there is a great deal of ore being left in the mines today that would be mined and brought to surface. That is not conservation, it is waste and that is what the heavy taxation laws of Michigan and Minnesota are tending to do.

I am sorry I can't go into the laws of Utah in full, but I am not sufficiently acquainted with how they have been operating the last couple of years. (Applause.)

MR. ARMSON: Mr. Chairman, I would like to express just one thought. In my opinion it would be impossible to devise a taxing system for mines that would suit the conditions of all of the states of the union. The nature of the ore deposits of Minnesota are entirely different from the nature of the mineral deposits of your western states. The great bulk of our ores can be accurately measured, the tonnage can be accurately determined by drilling. We are not guessing at it as you have to in Utah and some of the other states.

Just the other day we had occasion to place the Alpenna practically on the exempt list. A few years ago it had a tonnage of about 7,000,000 tons. It is exhausted. The measurement of the tonnage that we had charged against that mine checked out within about seventeen and a half thousand tons.

Now I don't want the gentlemen to go away with the idea that we have excessive taxation. Our taxes are high, but on the basis of 50 per cent. of value that the property is taxed on, mines are not taxed relatively any higher than farm lands on the percentage of 33 $\frac{1}{3}$ .

Now just so you won't run away with the idea that we have been collecting a tax of twenty million dollars all these years, I want to tell you the year before all the tax was seventeen million dollars. The year previous to that twelve million dollars. In 1916 they were seven million nine hundred thousand. In 1917, nine million nine hundred seventy-two thousand. We haven't been getting that twenty million two or three years.

I believe that Michigan and Minnesota and perhaps Alabama and a few of those states can use about the same method of valuation in their ore but our method wouldn't suit the conditions in Utah or Arizona and Montana, and your methods wouldn't suit us. We can measure tonnage and we can determine value in advance; you can do that in Minnesota.

CHAIRMAN ARMITAGE: May I ask, Mr. Armson, if you have any figures showing the per capita cost for the year 1920?

MR. ARMSON: No, I think not later than 1918.

CHAIRMAN ARMITAGE: What did the last one show?

MR. ARMSON: I haven't it in mind and I wouldn't care to guess just now. It was high enough I will say.

CHAIRMAN ARMITAGE: Gentlemen, I want to impress upon you the importance of Mr. Dick's statement that in his opinion the net proceeds method is the best method for taxing mines for state purposes.

Mr. Dick was the head of the Valuation Section of the Natural Resources Division of the United States Government. He was the first man who really, seriously, intelligently tackled the problem of valuing all the mines of the United States on the ad valorem basis for the purpose of determining depletion and also invested capital. He didn't merely value some mines in some localities and some states but he had to value all the mines. He struggled with that problem with the best aid that he could get for many years and he now comes and tells you, after that experience, that in his opinion that is not the proper way or the best method of taxing mines for state purposes. Now just think of what that means. Here is a man who is probably more qualified to tell you the value of the ad valorem system of taxing mines than any man in the United States, who has had more experience with it in the practical way of valuing mines, and he tells you after that experience that in his opinion it isn't the best method or the proper method or the fair method of valuing mines for state purposes. Now I want you to consider just what that means and the weight to be given to that.

MR. ARMSON: Mr. Dick, I believe you said that three times the net proceeds is the best method for state taxation:

MR. DICK: Yes.

MR. ARMSON: I have in mind one mine in Minnesota having twenty odd million tons of ore in its deposit that has not been operated since I have been on the commission and I have been serving now nearly thirteen years. For 14 years we will say this mine hasn't been in operation at all. How do you apply your rules to property of that kind?

MR. DICK: Why should you get any tax on non-operating mines? You tax it as surface land.

MR. ARMSON: The surface is removed.

MR. DICK: Then what are we discussing, a hole in the ground?

MR. ARMSON: That ore is ready to ship any time they are ready to put their shovels in, but for their own benefit they let it lie idle. Are we going to exempt that property until they begin to operate?

MR. DICK: Yes. What do you do with the farmer that has got a thousand acres of wild land, you don't tax it?

MR. ARMSON: Absolutely.

MR. DICK: Land is valued on what it produces. Five years ago we say that was wild land but today it produces grapes that are selling at \$200 a ton. It is now producing and it is assessed at that high valuation. Why not treat the mines the same way and give the mining industry this consideration that I think is their due.

MR. ARMSON: I think this point is worth discussing here because you made a statement to this conference that we don't think applies to Minnesota and we don't believe that you are justified, or Mr. Dick is justified, in advocating a system that suits Utah and Arizona and tell us in Minnesota it will suit us better than the system that we have had for 15 or 18 years and have investigated just as carefully as Mr. Dick has his system.

I want to say that we do tax the farm lands. We have idle farm lands on the tax rolls. We tax all property. Do you think that it is fair to permit a corporation, for its own future profit, to let its property lie idle there indefinitely and charge them no taxes? Are we going to permit them to carry wealth of a great many million dollars and derive no revenues until they are ready to operate it 10, 20 or 30 years hence, while at the same time we are taxing your property, your home, your wild land, your approved land and all other property you have in the state? I submit that it is no right. We have one corporation (I don't say this in an unfriendly spirit) that owns probably 60 per cent. of the ore deposits of the state. They have acquired large holdings and they are not operating some of the mines. The one I have in mind is not being operated and hasn't been for 14 or 15 years. Why are they holding it? For their own profit in future use.

CHAIRMAN ARMITAGE: Now it seems to me logical, upon your theory of taxing mines, that an idle mine should be exempt. As I understood your theory of taxing mines heavily, it is because they are depleting the resources of the state and taking out of the state today the value, and, therefore, the proportion of that value before they take it out should be held by the state. Now it logically follows from that that if a mine is not doing that, it should not be so heavily taxed or should be exempt.

MR. ARMSON: It is not so heavily taxed, Mr. Chairman, because if it is reserve ore we apply a lower rate to it; we don't tax it as heavily as the ore that is being taken out and the mine that will be exhausted in the next few years, but why it should escape taxes is beyond my comprehension.

MR. DICK: I understood you to say it is held there by corporations until it becomes more valuable or when it becomes more valuable the state will get a greater proportion of tax from it.

MR. ARMSON: You misunderstood me on that. I said until it became needed. It may be that ores won't be any more

valuable 20 years hence than they are today or they were a year ago. They reached a pretty high point a year ago, but that corporation is holding it for future needs, that is all.

MR. DICK: May I add just a word that I think I forgot? In speaking of the state tax of Utah, I forgot to mention, I believe, that the mines also pay a tax on full value of all their physical equipment and mills and stuff of that sort, also a valuation upon their surface land.

CHAIRMAN ARMITAGE: From Arizona has come Mr. Charles R. Howe, the Chairman of the Tax Commission, at our invitation extended to the governor. He has been appointed a delegate to explain the tax system for taxing mines in the state of Arizona. I don't know of any more qualified man than Mr. Howe to explain that system. As soon as Mr. Howe has explained that, we will close the session and throw it open for discussion this afternoon.

MR. CHARLES R. HOWE: Mr. Chairman and members of the Mining Congress: I have listened with a great deal of interest to Mr. Armson's discussion of the Minnesota system and the resultant discussion from the members that has come from it. I had thought that our problems in Arizona were almost insurmountable and that our tax rate and amount of taxes that it took to run our government was huge, but after hearing from some of the other states, I am not so discouraged in that respect.

Several days ago Governor Campbell called the members of the Tax Commission to his office and stated that he had been requested by the American Congress to send a delegate from Arizona up here. I asked him at that time what the purpose was for sending a delegate at this time and he said he was unaware with the exception that possibly it might be for the purpose of ascertaining our methods of taxation and constructive criticism thereof. Constructive criticism is always beneficial to any taxing body and the taxing officials of Arizona welcome constructive criticism.

The Arizona method of taxation is predicated on three things: First, the needs of government; second, the ability to pay; and, third, the wasting asset with reference to the future of the state.

Now in explaining the method, first blank forms are transmitted to all individuals, companies or corporations owning producing mines. These blank forms I may say call for minute detailed information relative to practically everything that enters into the accounting for the mining company or corporation that is operating the property.

The Commission has defined a producing mine to be one whose net earnings, after all deductions for extraction, milling, smelting, converting, transportation, as well as all taxes and overhead, including both local and eastern office, and administration taxes,



are in excess of \$5,000. In other words, after all of these deductions have been made, if they show a net earning in excess of \$5,000 the mine is termed to be a producing mine, that is for the year prior to the first of January in which the assessment and appraisal is made. These allowances are far greater I note than those of any other state so far as I have been able to ascertain.

The second operation in our method is classification. Classifications are then created, which to date include the following:

First, copper mines whose ore bodies are found in advance and do not show evidences of exhaustion.

Second, copper mines whose ore bodies consist of porphyry deposits and large acres of grounds largely unexplored and undeveloped and do not show evidences of exhaustion.

Third, copper mines whose ore bodies consist of developed, low grade porphyry deposits and do not show evidences of exhaustion.

Fourth, copper mines whose ore bodies show evidences of exhaustion.

Fifth, gold and silver mines whose ore deposits show evidences of exhaustion.

Sixth, lead, tungsten and molybdenum and asbestos mines.

Seventh, all producing mines of irregular output.

Eighth, copper mines heretofore known producing ore of irregular production but whose present development indicates they will become regular producers.

Then there are several subdivisions.

Subdivision (a) which shall include all such properties as have entered the profitable productive state during the period of years under consideration.

Subdivision (b) which shall include all properties that have suspended profitable production during the period under consideration for reasons other than market or physical conditions.

Subdivision (c) which shall include all such properties that have suspended profitable production when such properties could have been operated at a profit during the period under consideration.

Then the third operation in the method is deciding the factor of capitalization for these different classifications in order to ascertain the ad valorem value of the property, for Arizona is operating solely under the ad valorem system of taxation. Our laws provide for nothing else than the ad valorem system and it is up to the tax commission to ascertain what the value of the property is by some method.

The property earnings have been capitalized over a period of years at the following percentages: Class No. 1, the factor of capitalization is 15 per cent; Class No. 2, 15 per cent; Class

No. 3, 15 per cent; Class No. 4, 20 per cent; Class No. 5, 25 per cent; Class No. 6, 20 per cent; Class No. 7, 20 per cent; Class No. 8, 30 per cent; Class No. 9, 20 per cent.

The next operation in valuing the mines is the different mines are assigned to their proper class. This is done after a careful consideration of everything that enters into the assigning of these mines to that class and all information possible to obtain is obtained by the commission in order that an injustice may not be done in assigning a mine to a class, because if a mine was assigned to an improper class, it would be valued possibly at a greater amount or a lesser amount than it should be.

Fifth, after obtaining the net earnings for a period of 5 years in the manner outlined, the total for this period is divided by 5 in order to find the average annual net earning. This net earning is then capitalized by using the factor set opposite the particular class in which the mine falls. The figure thus obtained is used as the taxable value for the current year of all mining claims or groups of same whether producing or not, if contiguous to producer. Also all other property of whatsoever nature actually used in producing the net earnings as heretofore defined.

In other words, the capitalized value after having been found by this method includes all the property—mining claims and smelters, mills and appurtenances of whatever nature used in the producing of the net of the several companies.

In assigning mines to their respective class great care is taken and due consideration given to non-ore bodies, present ore reserves, whether increased or decreased since last appraisalment, geological formation with reference to probable future life as well as every bit of information possible to obtain as to the physical condition of the property from actual inspection. Also for sake of comparison a tabulation is kept of actual bids for the stock wherever quoted at least twice each month. While the commission has no knowledge of any stock actually being sold for the amount bid, it indicates at least the willing buyer if not the willing seller, both of which are necessary under the Arizona tax law in order to arrive at the full cash value that the law contemplates.

In passing judgment upon this method of taxation a number of things should first be taken into consideration. First, the law contemplates only the old general property tax or an ad valorem system of valuation. Now I have been attending our national tax meetings for many years and at each of these meetings (Mr. Armson will bear me out) we cuss and discuss the old general property tax but none of us have ever gotten very far away from it. A few states, three I believe—Massachusetts, Wisconsin and New York—have enacted so-called income tax laws to take the place of some of their general property tax laws, but it is not general and never have any of the states

been enabled to get entirely away from, or to any appreciable extent get away from, the old general property law.

Second, the full cash value of all property must be the assessed value in Arizona.

Third, the courts have held that the full cash value of a given property is what it will sell for as between a willing buyer and a willing seller, in the usual manner that such sales are made and not at a forced sale.

Now this applies, of course, to mines and to all property and I believe the mining men that are here will bear me out in the statement that I make at this time that the tax commission has always endeavored and is getting pretty close to the top values of all classes of property as well as mining property.

The fourth thing that should be taken into consideration in this respect is that seventy-three per cent of the area of the state of Arizona is exempt from taxation through being owned by the national government, either as forest reserve or as Indian reservation.

Fifth, the state constitution is wide open on the subject of taxation, the latest amendment reading as follows: "The manner, method and mode of assessing, equalizing and levying taxes in the state of Arizona shall be such as may be prescribed by law." In answer to this amendment the legislature created a state-tax commission and delegated to it extraordinary power among which was the appraisal and assessment of producing mines.

Sixth, that every producing mine in the state, with one or two possible exceptions, have long ago returned to their owners the total capital investment. The records to August 13th show that a grand total of the dividends paid by the Arizona mines to that time were \$360,781,069 and the total earned surplus as carried by the mines as of January 1st last was \$271,984,365. The most notable case in this respect as having returned the capital investment is one of our large porphyry properties, with a total capital investment for property development and equipment of slightly more than fifteen million dollars which in the year 1916 alone earned, after all deductions as shown by their annual report to stockholders, slightly more than twenty-one million, even in the one year which was six million more than their total capital investment for every purpose of whatsoever nature. Thus it will be noted that the return of invested capital is not so pertinent to more than one or two properties in the state at this time.

Now with further respect to this method that we have in operation in Arizona, it has now been in effect for some 7 years, but has never been tested directly in our local courts. However, comparatively recently a case occurred in the state of Louisiana in which the state attempted to assess a large cor-

poration down there for a considerable sum of money and the taxing authorities of the state of Louisiana had used the Arizona method. The courts sustained that assessment.

The present method of taxing mines in Arizona was put into effect by the State Tax Commission at the beginning of the assessing season of 1915 and has, therefore, been in use for 7 years. Little complaint was heard of its application during the first 6 years of its operation, though the peak of total valuation was reached in 1919, since which time the total valuation has been reduced some seventy-two million dollars. This was partially caused by the fact that the mines were making enormous earnings during the years in question and partially for the reason that the mine owners had labored untiringly with the legislature of 1915 to have enacted a law to value all mines at  $4\frac{1}{2}$  times the net, plus  $12\frac{1}{2}$  per cent of the gross output of each year. That was the law advocated in Arizona by the mine owners during the entire legislative session of 1915 and a special session called later on. However, it was not enacted into law. It later developed that this law, had it been enacted, would have valued all of the mines for at least the peak years during the war at considerably more than the method used by the tax commission for those years, though when taken over a 5 year period the later method exceeds the method advocated by the mine owners to some extent. Hence, little or no complaint was made until the present year. This leads one to believe that it is not so much the method used that is involved in the complaint at this time as it is the tremendous increase in all governmental expenditures as shown by the budgets of the state and all of its subdivisions which have increased from \$6,823,000 in 1915 to slightly more than seventeen million in 1921. Of this total the producing mines being situated in counties having low tax rates and having practically no city tax to pay contribute a little less than eight million dollars and all other property something over nine million dollars of the total seventeen million dollars in taxes raised in Arizona.

The principal advantages claimed by the Arizona method is first, elasticity. This law that the mine owners proposed would have made it a hard and fast rule to have all mines, regardless of whether they were gold, silver, copper, or what not, valued at  $4\frac{1}{2}$  times the net, plus  $12\frac{1}{2}$  per cent of the gross, which in several instances that I can recall would have caused them to suspend operations entirely had it been put in force.

Second, avoidance of peaks and hollows or fat years and lean years. This is especially necessary in a growing state like Arizona whose principal industry is mining. The Arizona method levels off the peaks and uses them to fill in the hollows.

Third, its equalization of burdens within the class.

Now in conclusion, I believe that Arizona mining men present at this conference will agree that an honest effort is

always made by the tax commission to arrive at facts and if an error in administration is shown to exist, it is cheerfully corrected.

No perfect tax law or method of appraisement and valuation has ever yet found its place on the pages of the statutes of any state. If the millennium ever comes and a tax law satisfactory to all is devised by any man, or set of men, I feel sure that the American Mining Congress would be the first to transmit a fitting resolution to the powers above demanding in no uncertain terms that the reward shall be a crown in heaven.

I thank you. (Applause).

CHAIRMAN ARMITAGE: Gentlemen, if it is your pleasure we will adjourn now until 2:30. (Adjourned at 12:30).

## NATIONAL MINE TAX CONFERENCE

WEDNESDAY AFTERNOON, OCTOBER 19, 1921

The Third Session of the National Tax Conference convened at 2:45 o'clock, Mr. Robert N. Miller presiding.

**CHAIRMAN MILLER:** Gentlemen, our Chairman, Mr. Armitage, will be along in about a half or three-quarters of an hour and he desires us to go ahead and proceed along the same lines we started this morning and yesterday. With that in mind, we want to call on Mr. L. P. Barrett, who is appointed as the official representative of the state of Michigan to speak on the tax problems of that state in relation, of course, to the general problem that we are working on of uniform state taxation.

**MR. L. P. BARRETT:** I don't know that it is necessary to enter into any description of the Michigan system, it is purely an ad valorem system. There is one thing I would like to say though in discussing any method of taxation, and that is you have to consider something of the tax laws of the state. The Michigan constitution provides that all property in the state should be assessed at its full value. All properties are supposed to be assessed at 100 per cent value and the courts have held principally as they have in Minnesota that the criterion in this case is the sale value between a willing purchaser and a willing seller. Unlike Minnesota, however, there is no classification of property for purposes of taxation. All property is classified alike and the method in use in Minnesota appraisal doesn't aim to treat the mines any differently than it does farm property or anything else. Under the provisions of the Michigan law the local assessor is the officer who assesses all classes of property with the exception of railroads, public service corporations. The tax commission having general supervision of all assessing may, if they so desire, take over the assessment of any class of property. In 1911 they elected to do so in the case of mining property and Mr. J. R. Finlay was employed for this purpose. He made a complete valuation or at least an examination of all classes of property devoted to exploration of natural resources. As a result of his report it was found it would be inexpedient for the tax commission to actually appraise other than the iron mining property.

Coal mining in Michigan is of very small importance. Up until the last two or three years it has never paid. It has been purely a bill of expense.

The copper mines have been assessed for a number of years by the local assessors, the local assessors in all cases practically being the mining officials themselves who are the supervisors of the various political units. They have established what they

call stock market method of appraisal, not a method which is put out by the tax commission at all, it is purely a method that is operated themselves, in conference devised, and briefly it is this: they take the average stock market quotation of the shares of each of the companies over the preceding year. Then they classify the copper mines into three classes: dividend paying producing mines, producing non-dividend paying mines and mines which do not produce. Then with the average market value of the shares they determine each year what percentage will be applied to each particular class of property. In the case of the dividend paying mines in 1920, 93 per cent of the stock market was taken; in the case of the non-dividend producing, 70 per cent, and in the case of the other properties, other mines which do not produce and which are purely prospects, they took, I believe, 40 per cent (either 40 per cent or 50 per cent, I am not certain) of the stock market quotations. Now the stock market quotation is made by taking the outstanding shares and multiplying it by the average market value. That then determines the assessed valuation for all property owned by that particular mining company. In the case of the Calumet and Hecla, for instance, where they own interests in subsidiary concerns, that proportion of value is then deducted from the total calculated market value and the remainder would be spread upon the properties owned by the mining company. That also applies to land held which may be other than mining properties and that is deducted and the balance remaining would be on the distributed mining property.

Mr. Finlay's appraisal in 1911 included the copper mines. In 1919 I was asked to make an appraisal by the tax commission of the copper mines and got practically the same results. Strange as it may seem, in 1911 the chief criticism of Mr. Finlay's method was that he was too low. Apparently the stock market played more importance in their eyes than the actual valuation of the mines. This year there was a peculiar condition which I don't think it is necessary to discuss here. I made a revaluation to check the market value as determined by the mining men themselves with the same result again.

The iron mines have been reappraised every year and the system in use is practically the same as that used in Minnesota in the general outline. We differ in some respects, however, one of the principal points of difference being in the figuring of the stock piles. In the underground mines the ore is all sent to lower lake ports and it cannot be so sent during the winter and it has to be stocked. This is a condition which arises purely because of the climate. If we were in a warm climate, we could ship ore all the year. Under the Michigan law personal property is assessed at its market value as the second Monday in April, whatever that may be.

To assess stock piles at their market value would result in a

discrimination against the iron mining business. Our method of handling it is this: we determine the value of the ore in the ground and the ore in the stock on the same basis, that is, the total tonnage estimated ore in the ground and in the stock are added together on January 1st and the ore in the stock is not treated any differently than the ore in the ground. On the second Monday of April there is always considerably more ore than has been hoisted. We then have this ore in stock at its actual market value as determined from the previous year's prices, unless there should be a special reason for believing that the ore is worth less as was the case this year. In order to avoid double taxation and to discriminate between ore that is above ground we subtract the total value of the stock pile on the basis of the Lake Erie prices and the balance remaining is then arbitrarily placed upon the real estate. In other words, if a mine had a million tons of ore and the assessed valuation calculated was \$500,000, all in the ground and no ore in the stock the entire value of the \$500,000 would be placed upon the real estate. If there were a hundred thousand tons of ore in stock and say that this was valued at \$1 a ton, the total value of the mine would remain the same. It would be classified as real estate \$400,000, personal property \$100,000.

There have been no special additional taxes placed upon mining in Michigan and I think there will not be. While there has been agitation for tonnage tax or occupational tax, something similar to that placed in Minnesota, so far it has not materialized in the form of legislation.

The method of appraisal is simply one to determine the value of the mine and determine as nearly as possible what we conceived to be the sales value.

MR. HOWE: Mr. Barrett, in determining the stock quotations, do you take the average amount bid or asked as the figure?

MR. BARRETT: I believe it is the average bid. That is done by the local supervisors and I don't have anything to do with it myself.

MR. ARMSON: Mr. Barrett, in your illustration you gave a mine valued at \$500,000, and then if you have a stock pile valued at \$100,000 you deduct the stock pile from the \$500,000 and then assess the balance of the ore in the ground at \$400,000. You then have 900,000 tons left in the ground. Originally you assessed it at 50 cents a ton, then after that 100,000 was taken out and the \$100,000 deducted, you have \$400,000 valuation on nine hundred thousand tons, or about forty-five or six cents a ton. Either your ore in the stock pile is over-valued or the ore in the ground under-valued.

MR. BARRETT: Well, that is probably true.

MR. ARMSON: I just wanted to know how it fits in the law or does the tax commission make a law itself?



MR. BARRETT: It is a ruling of the tax commission itself. Our whole idea back of this was to treat all of that ore as if it were in the ground, and this is purely an arbitrary method of handling the stock pile. It isn't a method sanctioned by law so far as I know, but the tax commission has quite considerable powers to handle a situation of that sort.

MR. ARMSON: What is the valuation of your tax ores in Michigan.

MR. BARRETT: One hundred and seventeen million dollars.

We have a little different situation in regard to ore than you have. Most of our mines in Michigan are underground mines. They are not fully developed and our experience has been that they have maintained about a constant tonnage over a period of the last 10 years. For instance, this year the total tonnage estimate was 205,000,000. In 1911 it was 199,000,000, so there is a slight increase in spite of an average production of about 12,000,000 tons a year. In other words, we have not reached the point where our reserves are being exhausted faster than they are being discovered.

MR. WEBB: Isn't one reason that the reserve stays constant because the mining companies are afraid to drill promising ground because of the taxes?

MR. BARRETT: That is probably true to a certain extent.

MR. WEBB: High tax may cause that situation.

MR. BARRETT: Under the Michigan law there is absolutely no other way that we could handle that.

MR. DICK: How do you value the mine in prospect that has no ore?

MR. BARRETT: Surface equipment. There is no value given to the mine itself. In the case of our Michigan copper mines, for instance, I might cite one like Victoria. It has been operating for 15 years. It has water power, a mill, and quite a lot of other equipment. It produces, I guess, about ten million tons a year, but it has been producing at a loss. That would be appraised under our system purely on the basis of its surface equipment and the value of that water power. The land itself is put in exactly the same as any other type of property.

MR. THACHER: You said you put no valuation upon it except on its equipment. Now if there is ore there that can be sold, wouldn't there be a valuation on that?

MR. BARRETT: It is operating at a loss.

MR. THACHER: Even if it is operating at a loss, doesn't it have a value?

MR. BARRETT: I don't see where ore has any value that is operated at a loss.

MR. THACHER: Not that particular ore, but now I think if we come back to the question of values that the property must have a salable value.

MR. BARRETT: The point is nobody is able to determine what the sale value is in unprofitable property.

MR. THACHER: As I understood it, in 1911 when Mr. Finlay made his appraisement that was supposed to be the value of the mine. Isn't it true that now you make an annual appraisement?

MR. BARRETT: Yes, in the case of the iron mines.

MR. DICK: How is the life of the mine determined?

MR. BARRETT: The life of each property is determined precisely, I think, as they do in Minnesota, by the tonnage of ore divided by the rate of production as determined from experience of the mine in the past 5 years, modified, if necessary, by the appraiser's judgment as to any element which might tend to increase or decrease that rate of production. As far as the application of that system goes, it is purely up to the appraisers.

MR. THACHER: I would like to say in this connection that this idea of annual appraisement or estimate appeals to me very strongly. If we stop a minute to consider any property in its relation to its value, it has a value at one time, and the time is the element there; in 6 months or a year it may have a very different value. Now that is one of the reasons I have opposed this idea of taking the Utah copper or some other and saying that this valuation is for 25 years ahead. What do we know about 25 years ahead? We don't know anything about what it will be worth.

If you are going to come to values, I think you have got to make the value as of that year. We have that in the inheritance tax it is the value on the day you die and not some other month or year. I don't see how it is possible for us to talk about values 10 years ahead or 20 years ahead. We are just fooling ourselves on that. I heard some time ago that Michigan had come back to the annual appraisement and that seems to be a step in the right direction.

We are all confused in what value means. We don't use the same terms. We have ad valorem used one time one way and another time some other term used for it and after all we have a dozen different kinds of values that we are talking about, and it is really a question of definition. The government has a value for depletion and it has a value for invested capital and a value for inheritance tax and a whole string of them. Now we are injecting into that a valuation which comes from all these varied state laws and one puts it one way and another another.

I think to understand what we are talking about we have got to get some new word which means what we mean by value. Michigan has got one kind of taxation value and Minnesota another and Arizona another and the government half a dozen more for its different uses.

MR. ARMSON: I rather disagree with the gentleman. I think we all understand what value is. The trouble is the measure of value. I think value means the same in all those cases—state and federal—but the measure in determining the value is different.

MR. THACHER: Perhaps your point is well taken, but it is rather confusing to have half a dozen different ones get up and call it a different measure of value.

MR. BARRETT: Now I want to say this: this question of taxation is a practical matter. In Michigan the mining companies are very fair; I believe they are as fair-minded men as we could possibly meet.

The question of taxation in Michigan doesn't involve mining property only, it involves all sorts of property. If I want to apply the earnings' method to mines and capitalize that, if you wish, so that the mine only pays a certain proportion of the taxes based upon its earnings the previous year, your manufacturer, your farmer can come up and demand the same thing. Now farm property in Michigan this year hasn't made any money. I am not a farmer, but I have got a brother who is a farmer and I know he hasn't made any money. There are a lot of farmers in Michigan and they would be perfectly justified in taking the stand with the legislature "If you say that mining property can only be forced to pay taxes on the basis of the years when it actually produces, why then should I pay when my farm is a loss?" Now the farmer has to pay under this system. I am not holding any brief for the farmer, but I do believe that taxation is a matter that should be equitably distributed among all classes of people.

MR. THACHER: This question is complicated. The state laws vary so and you may have to change the constitution in order to get them more uniform in some of the states, but I think in our discussions here what we should try to get at is the main principles first. Let us decide those principles and then see how they can be applied or how they will work out in practice.

Now we have not only this confusion about the word "value" but the government and the different states tell us certain ways to derive that value. Now the one that has been forced on our attention particularly is this one in connection with income taxes. In our mines we have three factors to determine that really—the ore body, the cost of operation and the selling price. Now in regard to the ore body you may be able to determine the tonnage very accurately maybe for all practical purposes, but out of our 30,000 mines in this country there are very few that approach that. Many of them have no ore in sight and there is nothing to base that on.

Then you have the cost of operation as the second factor. That depends on labor, general conditions in the country, and

who is going to guess what our cost of operating any one of our mines is going to be 5 years from now? I wouldn't be willing to guess and I don't think any one else would.

Then you have your third factor, the selling price. What will be the selling price of copper 20 years from now? Can any one make a guess whether it will be 10 cents or 40 cents? I think we are building these on entirely artificial things and when you come and tell us that a certain mine is worth so much, based on that method of valuation, why we know as a matter of fact it is ridiculous, it doesn't come sometimes within gunshot of what that mine may be worth.

I don't see how you can get away from the fact that value, after all, is what the civilized world under favorable conditions will pay for it. We can go way back to the Supreme Court decision, and you remember their decision. It was a cardinal principle which we should never forget, that what property is worth for the purpose of sale it is worth for the purpose of taxation, and that is exactly what they try to apply in the inheritance tax. Now they have introduced, and it has been supported by the Supreme Court, that for the purposes of taxation they can have other kinds of values, but we don't want to forget that that is the right value. It is the only value that appeals to me and when we say the stock quotations are totally unreliable, possibly they are, but if you buy you will pay the stock quotations, that is the value that is placed on it at that time, and perhaps an entirely erroneous value.

To my mind that is very clear that that is what we understand in common terms as value and these others must have some kind of a name attached to them when we are talking about them.

CHAIRMAN MILLER: We had hoped to have here today Lieut. Governor Thruston Ballard of Kentucky. Kentucky is another state that uses a straight valuation method as distinguished from a proceeds method and it would have been interesting to have heard from him. Is there anybody here from Kentucky who has had experience with the way that operates from the standpoint of the miner or the government? (No response).

As to New York, it was hoped that the Honorable W. C. Witherbee could get here but I haven't seen him here. Is there any one else here from New York to take his place? (No response).

SECRETARY KRIEGH: We received wires that all of these men might be here today. They were not sure that they could get here.

Is Mr. Mackenzie of Utah here? Mr. Mackenzie, we just called your name hoping that you would be here. We are mighty glad you came in. We wanted you, if you will, to state

to the gentlemen what the taxes of your state are, how they are based, and how they seem to you to work.

MR. A. G. MACKENZIE (Utah): I am sorry, gentlemen, that I didn't get in touch with this meeting earlier, but due to some confusion on the program I missed it entirely this morning. I understand Mr. Dick said something about the Utah situation but I haven't any advantage of knowing just what he said and what I say may perhaps duplicate to some extent what Mr. Dick said, but in any event it won't take up much of your time.

Possibly I might give you briefly the evolution of our present mine tax laws in Utah. With the adoption of the constitution at the time of statehood, Utah and several western metal and mining states adopted the Nevada mine tax code, which in general provided for a nominal tax on the surface ground so long as it was used for mineral purposes, taxation of the physical property, the improvements at their value as other property and taxation of the net mined proceeds, arrived at by deducting certain expense items from the gross.

In the case of Utah, at that time and for many years subsequent, general property was assessed at say one-third of its value. As a matter of fact, 20 per cent would have been nearer the truth. In the year 1916, through an act of the legislature lowering the levy, a full valuation of the property was made necessary. Following that and in consequence of that the constitution and laws of the state were amended so that at present all property—physical property—is presumed to be assessed at its full value. All metal mines or mining claims, both placer and rock in place, shall be assessed at \$5 per acre, and in addition thereto at a value based on a multiple or sub-multiple of the net annual proceeds thereof. All other mines or mining claims and other valuable mineral deposits including lands containing coal or hydrocarbons shall be assessed at their full value. All machinery used in mining and all property and surface improvements upon or appurtenant to mines or mining claims, and the value of any surface use made of mining claims or mining property for other than mining purposes shall be assessed at full value.

What I read there, gentlemen, is a constitution provision. The statute follows the language and under a provision providing for a value based on multiple or sub-multiple proceeds the multiple of the fee has been fixed and is now used.

The State Board of Equalization which assesses mining property in our state, except the surface ground, has made diligent and fairly successful efforts to bring other property up to full value. I think in the case of the public utilities, in the case of city realty and stocks of merchandise they have got pretty well up to a 100 per cent. They have not done so well with the

farms and never will, but it is a fact that they have farm values up to approximately 70 per cent for value.

Comparatively we are now in substantially the same situation that we were before the change in the law of 1919. You may be interested in knowing the deductions. They are given here briefly. We have a better definition of net annual proceeds now than we ever had before. There was always friction and disputes over deductions. For illustration, the old law never allowed a deduction of a general office expense. We will say a company (and this is more or less characteristic in our state) would have its property, of course, out in one of the mining camps and its general offices in Salt Lake City, and that, by the way, is the rule rather than an exception in our state. Under the old practice they would not permit the deduction of any of that Salt Lake City office expense which was a considerable and a necessary item of expense. Under the new law we are permitted those deductions, and as you will note when I read the deductions there are practical expenses except federal taxes and corporate officers, meaning presidents and vice-presidents and so on, but not including such officers as general managers, engineers, general counsel and so on, so long as they are residents within the state.

The deductions are these:

The amount of money actually expended during the year for labor, tools, appliances, supplies, etc., the actual and necessary office and expenses and salaries of employes, other than corporate officers within the state; the actual cost of the installation construction, maintenance and repair of machinery and improvements made during the year; the actual cost of reduction transportation and fee including sampling, as in smelting; the amount paid for state and local taxes during the year; the amount for compensation insurance.

Briefly those are the deductions allowed. I may say that we are reaching a better understanding in Utah with the tax authorities than previously existed. We find the position on their part to recognize some of the problems of our business which in former years we had great difficulty in bringing effectively to the attention of the taxing officials, and on the other hand the members of the Board of Equalization tell me that they are finding a spirit of reciprocity, if you wish to call it that, on the part of the mining men, and I think I can say truthfully that the relations there are better today than they have been at least for many years past in the state. The law, of course, is not ideal. No taxpayer will ever find a tax law that he regards an ideal I think, but they are fairly satisfactory.

CHAIRMAN MILLER: We are very much obliged to you. We have had some very interesting statements by gentlemen whose angle on it has been quite different. There are several gentlemen here who look at it from the standpoint of the tax-

payer's side. That is of vital importance because that is where the money has got to come from in the first place and we want to call on several of those gentlemen for brief statements of what their observation has shown as to the fairest and best method for assessing these mining taxes, not only from the standpoint of their own views, but what they believe to be the mutual standpoint. Mr. Frank Webb of the Republic Iron and Steel Company is one of these gentlemen.

MR. FRANK WEBB: Mr. Chairman, I am absolutely unprepared to speak at any length at all on this question. I just dropped in, but we are operating mines in Michigan, Wisconsin and Minnesota, and the system in Minnesota and the system in Michigan we think is fair and equitable and we think it works out in most instances very fairly. Our great trouble in Minnesota isn't with the system, it is with the rate of taxes that we have to pay. Now I suppose perhaps in no locality are mining companies burdened with taxes to the extent that we are in our Mesaba Range mine. That is more or less true in all groups of mining districts and that is largely due to the expenditures in those range towns and not the trouble with the system applied. In Michigan this isn't true to the extent of expenditures. We believe the system that is used there is worked out properly. We think the Michigan system of appraising stock piles is much fairer than the Minnesota system. In fact, we think that we are being hurt in Minnesota by this personal property tax. Now in Minnesota the law requires that personal property be taxed for 50 per cent of its true valuation. This year, for instance, we might have a stock on a certain property on May 1st of 100,000 tons of ore that was put up last winter, due to local conditions entirely, and according to the state law the market value of this ore must be considered, certain deductions made, and then our tax based on this rate. It might be \$1.50 a ton or it might be \$2.00 a ton. We appealed to the tax commission only recently for some relief along this line that there should be a value placed on this ore other than the supposed market value because ore wasn't being sold at market value, it was sold for almost anything it could be sold for.

Now in Michigan we believe the system of taxing stock piles is much more fair to the operator. Personally, I would hate to see our system in either state change. The mining companies I believe are absolutely honest and square with the commissions in giving them every bit of information that they have on the properties. We are, of course, in Minnesota up against a so-called occupational tax—in other words, tonnage tax. It is made to hit the mining industry only and it is a super-tax. Naturally, we believe this is a gross injustice to the mining industry and is going to make a great difference in the mining operations of the state.

CHAIRMAN MILLER: Thank you very much.

We would like to hear from Mr. McGrath if he is here.

MR. T. O. McGRATH: Mr. Chairman, I don't think I have anything further to add. It has been very thoroughly discussed here.

Speaking of the taxpayer, I think there are other taxpayers here from Arizona who are paying a larger share of the burden than the company I represent. I think the system there of capitalizing net is probably as good as can be devised, considering the consensus of opinion as expressed here today. The only question there is arriving at the value in comparison with the values arrived at on cattle, stocks of merchandise, residence property and personal property. In other words, the only thing is to distribute the burden. I think the Utah plan is about the same as the Arizona, except that in Arizona they classify the mines which I think is an improvement over the Utah system. For instance, we capitalize the net at three times on some mines. It works an injustice upon some mines that are of short life and I think in that respect that the Arizona system is better than the Utah, but, of course, the Arizona system starts at 15 per cent and raises to 20, 25 and 33. I think that they have done their best in the matter and I think that probably a little improvement could be made in further classification and I think probably the rates are a little high for capitalization. I think probably 15 per cent might be all right for certain groups of mines, but I think that larger groups ought to go into 20 and others in 25 and 33 and I think some might go up even higher than that.

To illustrate the point: when they assess the value of merchandise at the end of the year they take the merchandise on hand at cost. Usually the merchant lets his stock run down at the end of the year and he tries to carry a very small inventory at the end of the year. That is a custom of the business regardless of tax methods and, of course, it is to their interest to have a small stock on hand at the end of the year and they probably make a further effort to reduce that stock towards the end of the year, so you might say at the end of the year the merchant has a smaller stock on hand than at any time during the year, unless business conditions were such that he was unable to reduce it, so you might say in some cases of some businesses that the amount of stock they had on hand at the end of the year in the ratio to the net to the year would be equal to about 60 per cent. Now they are capitalizing the mines at 15, 20, 25 and 33. I am convinced, just as a rough estimate, that the merchants are paying their taxes upon a basis of about 60 per cent capitalization. Of course, they don't pay it on a capitalization, you understand, they pay it on the stock on hand, but taking the figures and comparing them together it would be equal to about that, so you might say the merchant is getting the best of it. That applies also in the cattle industry, cattle on hand



at the end of the year, and a great number of other things, and it also applies to real estate. In some counties the real estate is assessed at coal value. In other counties where there is mining it is not. They have reasons for that. They say that real estate will not appreciate, it will depreciate, which is true, but still the people in those counties are dependent upon the mining interests for their living and the mines are contributing to their living and they should bear their proper ratio of expense.

Another point that Mr. Howe brought up there this morning about depreciation should not be included as deduction. I think that Mr. Dick was right in that. While some of the mines in Arizona have depleted all their original investment, a great number of others have not and if you determine the net of a mine without deducting the investment or the depletion of the investment—not the depletion of March 1, 1913, but the depletion of the investment—some mines will be overvalued or will get a net that is unfair when compared to other mines. If provision was made whereby the deduction should be taken, why those mines that have already depleted their investment would have no deduction to take, while those mines that had not depleted their investments would get that deduction, so between the mines themselves it would equalize a certain unfairness, but those are all blind points you might say and the trouble down there as the trouble in every other state is that this burden must be carried by the different groups of industry, by the cattle men, by the merchants, by the property owners and by the miners. Now the question is, can those groups get together and distribute that burden equitably. It is something that must be solved in your own state. You cannot solve it by uniform laws because those laws are made by representatives and each group gets its representatives up there just as strong as it can.

CHAIRMAN MILLER: We would like to hear from Mr. Zapffe.

MR. C. ZAPFFE: I would like to repeat about all that has been said by Mr. Armson of Minnesota and Mr. Barrett of Michigan and Mr. Webb and Mr. Hunner this morning but I don't think I will try to cover that. There is just one thing that comes to my mind that I think would be interesting to the gentlemen who have listened to the talks today and that hasn't been elaborated upon sufficiently. Now it may be from what you have heard that you have conceded a large discrepancy that exists between Michigan and Minnesota. In one way that may be true, but it is due to natural conditions that I think will eliminate the situation in the course of time, and that is that while in Michigan the mines are paying a tax of perhaps 20 cents a ton and in Minnesota at the present time they are paying a tax of 50 cents a ton is due to the fact that the tonnage is so very, very great, and that comes about through the fact

that in just one of the iron and ore producing districts in Minnesota the tonnage is so very large, and I refer particularly to the Mesaba Range. Years ago when explorations were started on the Mesaba Range, it was soon learned that it was possible to develop a very large tonnage with a small amount of exploration. The men were keen to develop a large amount of ore, they were keen to obtain a large number of properties. Mining was started in a small way by taking out ore in underground fashion and when it was realized that the tonnage was so very extensive and that the ore could be taken out by cheaper methods, the open pit method was developed and the ore was removed by the use of steam shovels. Now one of the necessary things in connection with steam shovels is that you have got to have lots of room and that meant the removing of a large amount of dirt. With such a large quantity of earth removed, it was found that a large amount of ore was on the property. When the time came to tax these properties, the greatest refinement was used in estimating these tonnages and it soon developed that the taxable value of the iron and ore jumped by leaps and bounds, and when the tax commission finally got to the point where they were using such extreme refinement that they said in their own mind that the iron and ore was valued at 100 per cent valuation, the figures of course became enormous.

In Michigan the mines were prevailing underground mines and they were developed with considerable difficulty. The explorations were very expensive as compared with the explorations in the Mesaba district, so after a certain small amount of ore was discovered, enough to justify gambling to the extent that you would sink a shaft and operate, the explorations ceased.

Now that all condensed in a few words means that on the Mesaba Range the total amount of reserves so far as exceeds the requirements for successful operation as compared with Michigan are very small, just enough to keep you going one might say, so we have, in fact, a situation in Minnesota that we have more ore than we really need, more than we know what to do with. However, when the tax commission reached the point where properties were valued to their fullest extent, the mining companies in analyzing the situation got to realizing that they had made a mistake in trying to develop so very much ore and the last 4 or 5 years has brought about a situation that explorations have been practically brought down to nothing excepting the few instances where reserves have to be developed.

A few years ago the total amount of ore reserves in Minnesota was roughly 1,500,000,000 tons. Today it is about 1,300,000,000 tons and that figure in my opinion will continue to decline for a certain number of years. Now many have taken the position that the ore is playing out in Minnesota and very recent statements have been made that probably ought never

to have been made that the merchantable ore in Minnesota will be gone in about 15 years. In my opinion that is not true. Just as soon as more reserves are necessary explorations will be resumed and more ore will be found. There isn't any doubt in my mind at all that there is a great deal more ore in Minnesota than it is possible to estimate at the present time. Of course that property cannot be put on the tax roll until the ore is known to exist. Now certain political organizations in the state of Minnesota have played up this fact to considerable advantage, have ridiculed the tax commission many a time and have made it appear that the tax commission is playing in the hands of the mining companies because we will say in 1914 the tax commission reported 1,400,000,000 tons and we will say 10 years ago it reported perhaps half that quantity. They say, "Why that ore has been here all this time and the tax commission hasn't put it on the tax roll." Nobody knew that wealth existed because it hadn't been developed, but just as soon as this total reserve of 1,300,000,000 is cut down to where we get the proper balance between what is necessary for mining, the reserves will begin to keep pace with the amount of ore that is extracted every year and instead of the iron and ore being depleted in the mines in the next 15 years, the probabilities are they are going to keep on taking ore out of mines for 100 years. At the same time new material is going to be made commercial which today is absolutely non-merchantable. The methods of improving ore are increasing so rapidly that material containing 35 per cent or 40 per cent of iron in some form or other in these ores will eventually be benefited in such a way that the ore will have a content not only equal to what our commercial ores contain today but even a better content.

Another point I want to speak about briefly is a matter that was brought up by Mr. Armson this morning with reference to the deposits of ore containing 20,000,000 tons which was stripped and made ready for mining and was never mined, but it is being taxed today at a high rate, as some of you men thought here today, although it was put in the reserves class—by that I mean not in the active class. One reason I want to speak about that is Mr. Armson made reference in his remarks to the fact that this certain large corporation was interested in the property and didn't want to have it appear that the tax commission was at all trying to lambast the large corporations. That is very true. I am employed by a corporation which has a very large organization. We mine in the state of Washington; we are the biggest coal miners in the state of Washington; we are the second biggest in the state of Montana; we mine ore in Minnesota and we have some properties on the Mesaba Range, and I am satisfied that the tax commission of Minnesota is not selecting the cor-

porations or the mining companies with any idea of being unfair to them.

Now in this instance the corporation referred to is the United States Steel Corporation and its subsidiary company which operates iron mines in Minnesota is the Oliver Iron Mining Company. Years ago this company acquired many, many properties and the general tendency was very much then as it is today not to buying property but to lease it. Settlers, homesteaders, timber workers and men of that kind were the men that were acquiring the properties and then later on leasing them to the larger mining companies. In the early days then the steel corporation had acquired some by purchase but the largest part of this property was acquired by lease. Two years ago the Oliver Iron Mining Company realized that the tonnage that it had on its leased properties was so great, that the period allowed for extracting these ores under the terms of the lease was gradually getting so short that it would be impossible for that corporation to take out all the ore to which it was entitled under those leases and the result was that it adopted the policy of not operating the properties which it owned and instead concentrated on its efforts in extracting the ore on these properties which it leased.

Up to that time the corporation had proceeded to strip this property with the large tonnage and then expose this ore deposit so it is absolutely exposed to view and there isn't any question about the tonnage there. Right then and there, in spite of the fact that they invested a large amount of money in stripping the properties, it discontinued its operation, but there is that large deposit which is there being taxed in the reserve list.

I merely mention that so you will not gain the impression that the corporations are being discriminated against by the tax commission.

I think as a whole we feel we are getting pretty good treatment under the ad valorem system. I think it is a good method to use in evaluating our iron and ore properties for taxation purposes. A few little things come up, of course, that aggravate the situation. One thing we dislike is the necessity of having our stock piles taxed with personal property. That is just simply a matter of fate, a condition of climate. The ore is piled in the winter-time not only to keep your organization intact, but to keep employment for the married men, keep their families going and keep the communities that are necessary around mines in good condition. Of course, with an open pit operation the sediment disappears and when the cold weather sets in everything ceases, no work is done at all until the ice thaws out in the lakes, and then the work is resumed, but in the meantime we stock pile this ore and we can't possibly get it out of the way by the first of May. If the period for assessment was the first of June, we could probably beat the game

and there is no doubt at all but what the mining companies would make an effort to beat that game just the same as the merchant will let his stock run down in order that his stock would not be the average of his stock during the year.

Our fight in Minnesota has largely been with the legislature. There has always been an attempt there to saddle extra tax burdens on iron ore. The mining companies have never attempted to provide any bill or legislation but have always combated whatever legislation has been presented. The result was that a few years ago property was classified and a bill was passed that put the iron ore in class one and thereby it is valued at fifty per cent of its full and true value. The last thing that happened was during the last session of the legislature the occupational bill was passed. There probably wouldn't have been such a severe fight against that bill if it was not for the mere fact that the only occupation against which the bill was directed was the occupation of mining.

Mr. George E. Holmes took the Chair.

CHAIRMAN HOLMES: I am sure we appreciate Mr. Zapffe's remarks. One or two points occurred to me in the course of his remarks and in the course of the remarks of Mr. Armson this morning which I didn't have occasion to voice, with respect to the ore which has been stripped but not mined and which is taxed a heavy rate. I should think it would be for the benefit of the state of Minnesota not to tax it at the present time to prevent this era of extravagance in the villages, and tax it at a higher rate when it is extracted at some future time. And with respect to the stock piles, I don't see those economical means of value, time and place value ought not to considerably reduce the value of stock piles below the market price that might be received the following spring if the ore can be sold at that time. Those, however, are merely observations of one who has very little knowledge of the practical operation of mine laws.

The meeting is now open for discussion by the members who may wish to comment upon the disorderly situation of our tax laws. We will no doubt some time reach a situation where those laws are more scientific and more equitable and more flexible than they are today. One great objection to all our tax statutes is that they are usually inflexible or the constitutions are inflexible. They can't cover special cases. A good deal of the complaint against tax laws arises from the taxpayer who has a special case.

I think it may be conceded that it is desirable that the taxpayers regard the tax officials as honest men, as Major Miller said yesterday, and that the tax officials regard the taxpayers as honest men as Judge Stimson remarked later on. No doubt, and without question that is the attitude between tax-payers and tax officials and the friction, if any, that does arise is due to some inflexible provision of the statute or some set practice or perhaps some fault in the underlying principles along which our taxing statutes are based.

We have gotten a great deal of valuable information in the meetings at this session of the Congress but only a small portion of the information that a body such as this Congress should have in order to advise or discuss or reason together for the purpose of improving our taxing system.

I think this is an opportune moment for any one who wishes to express his views on any particular statute or on the mining tax statutes in general to step to the front and address the audience. There are several gentlemen here that we haven't heard from and I am sure they have some valuable contribution to make.

MR. KELLY: With reference to the hardship that follows a reason of inflexible statutes and constitutional provisions, I don't know just what the Chairman has in mind but to my mind the protection of the taxpayer is guaranteed by an inflexible statute that gives him the same right and the same yardstick and the same measure that the other fellow has, and it is my judgment that there is too much tendency at this time in some of the states at least to make what they seek to term flexible statutes that may mean a different thing or may be applied in a different manner or different method according to the attitude of the taxing of property, and it is my judgment that the taxpayers' rights are better protected by constitutional provisions that are inflexible and furnish the same yard stick for everybody.

CHAIRMAN HOLMES: I think Mr. Kelly's remarks are very much to the point. What I had in mind was rather some degree of flexibility in the administration of a tax law that might be inflexible as to its limits but there has been a great deal of discussion on this subject of stock bills in Minnesota which I think even the Minnesota Tax Commission regards as being a rather unjust imposition or at least indicates that, since it has arbitrarily reduced the value of stock bills twenty-five per cent below what might be called their present cash value.

I see our friend Mr. Fernald has just stepped in. I wish to advise him that now is the time to speak or forever hold his peace. The meeting is open to a general discussion of our tax problems.

MR. H. B. FERNALD: I must apologize for not having been around earlier but I had a few little real problems that came up for consideration so as a matter of theory and principle I gave place a little while to them. It haven't had the opportunity to hear what has been said this afternoon but I have been very much impressed with what was said in the discussion yesterday and today in regard to the situation.

When I came on here I was expecting to hear what was the attitude of the various commissions and the various representatives in this matter of state taxation and we seem to be in a pretty general agreement that the mines must stand a very large amount of taxation in those states where they represent a large part of the state

wealth, and they must expect to bear their fair burden of taxation. On the other hand, there seems to be a general disposition on the part of the state commissions that have been represented here to arrive fairly and consistently at a basis of what the mines should bear and what they can bear without detriment to the industry and that the idea is not to penalize, not to injure, not to oppress any part of the state industry, whether it be mines or otherwise. I think we are all looking for the way in which it can be worked out along that line. It seems to me that we must look for that solution state by state for the time being at least, until we can arrive at some more general standard scheme of state revenue finance than we have at present or than we seem to have any hope of getting for a great many years to come. I think if we can just have the same spirit of cooperation to solve the mutual problems that we seem to have here today, and if we can all work on this matter of state expenditures, recognizing the bottom of the whole tax question is this matter of how much money is to be spent by the government, we will get our real solution.

I think we were all amazed at some of these figures that were given as to what some of these government budgets have run to. Five hundred dollars per capita is simply an impossible load. We can't run to that. Whether it comes from one system of taxation or another, it is too much. We are met with these demands in the states for all kinds of new expenditures, extension of activities, that cannot be met out of present funds and I think we must agree that they cannot be met at all without passing the danger point in the taxation, that danger point being the point at which taxes will become such a burden on industry that prosperity in the state is going to be injured.

Those are the principal thoughts that I have in my mind on this general question and I think it can be followed through and be given much more study to advantage and the tax committee of the Congress can do very excellent work on this matter. Perhaps this period of 15 or 20 years brings us to a point where we have worked out this ideal system of taxation for mines as well as all the other industries of the country.

CHAIRMAN HOLMES: By that time all the old reserves of Minnesota will be gone.

Is there any further discussion on this point of state taxation?

MR. A. G. MACKENZIE: I might say, to complete the information that we have pending now, to be voted upon next fall, a constitutional amendment providing for full classification of property and a graduated income tax but expressly exempting mines from classification. There seems to be a disposition in our state not to classify mining property. This exemption was not certified by the legislature. The amendment was killed twice in the House and once in the Senate and finally they put in this exemption I referred to and took it up and put it in the

Senate and put it through. It may sound as funny when I say it was killed three times and then passed, but what I mean is that it was practically killed in different forms. It will be voted upon next fall. Of course I can't predict whether it will be adopted or not. It may or it may not be. The people, of course, vote upon constitutional amendments.

CHAIRMAN HOLMES: Do you consider it a desirable change?

MR. MACKENZIE: I am not answering too rapidly on that. I am hesitating for the reason that I am not sure that state income taxes are a good thing as long as the federal government uses that means. My personal opinion is that the state should keep out of that field for some time at least. I don't believe in the classified property tax. Perhaps I am not a hundred per cent. disciple, but generally speaking I am not in favor of that. I think there is justification for certain forms of classification but you understand that this does not affect our property. The legislature seemed to be very much resolved itself on that question. This exemption was put in after the measure had failed three times and it then passed.

MR. ARMSON: I might say as a matter of information that in Minnesota at the next election we will vote on a constitutional amendment, in effect writing our new law into the constitution. There is grave doubt in the minds of some attorneys as to whether the so-called "Occupational Tax Law," imposing a tax of 6 per cent. on the value of the product of those engaged in mining, is constitutional. It was said this morning that we fully expect a fight up to the United States Supreme Court.

Now the majority of the legislature, anticipating the possibility of the law being held unconstitutional, put through a bill providing for a constitutional amendment writing into the constitution a provision permitting the levy of an occupational tax on mining in the state. Whether it will be adopted at the next election or not I don't know. Under our constitution, it requires a majority of all votes cast at the election to adopt an amendment, not merely the majority of those voting on the question but all votes cast at the election. I might say that as far as the occupation tax is concerned, it is not approved or endorsed by a majority of tax commissioners. The commission perhaps believes that iron and ore, because of its peculiar nature, because it is diminishing, that it does not reproduce itself, that when it is taken out it is gone forever and eventually we will have nothing left but holes in the ground, should bear relatively heavier taxes than other forms of property but we believe the state should impose that supertax in one system. We don't believe the state is justified in imposing two different kinds of taxes on the same property. For that reason, the commission, or the majority of the commission, was opposed to the occupa-



tion tax, but Mr. Mackenzie, referring to the constitution in Utah, brought to my mind the fact that we are going to vote in my judgment for a constitutional amendment. I quite agree with Mr. Kelly that I believe tax laws should be clear and definite in their terms and not left to individual caprice or whim. The matter of valuation is a question of judgment, of course, but the law should be definite and specific and the taxpayer, as Mr. Kelly said, is much better protected by a definite law than a law that is left to the judgment of the taxing officials. But at the same time I don't believe in writing statutory laws in the constitution of the state. I believe that you can trust as a general rule to the wisdom and judgment of the legislature to enact laws to meet conditions as they arise from time to time. In our case where we require a majority vote to amend our constitution, if we write what properly is a statutory law in the constitution and conditions change in two or three or five years, we can amend that without going back to the people to get an amendment to our constitution, so I don't believe in writing statutory laws into the constitution.

CHAIRMAN HOLMES: Are there any further remarks on this subject? The secretary of this meeting has requested me to state to the members briefly the recent developments in Federal Income and Excess Profits Taxation so far as that affects the mining industry. I have in my hand a copy of the Revenue Act of 1921, which may become a law in 30, 60 or 90 days, depending upon how bitter the opposition to the Administration Bill develops to be. At the present time the Senate has agreed to a number of so-called compromises and amendments, some 77 of them, and the leaders of the House have announced their intention to fight these amendments and insist upon some of the original provisions of the House Bill, particularly in provisions reducing surtaxes to a maximum of 32 per cent.

It is very unlikely, therefore, that this bill will become a law before the end of November, possibly the end of December, and possibly we will have a law again passed in January to apply retroactively to the preceding calendar year. This bill does not make any material change in so far as the law affects the wasting industries.

The provision for depletion is retained with a slight and very reasonable modification in the case of depletion based on discovery values, that modification being to the effect that the allowance for depletion based on discovery value shall not exceed the income from the particular property discovered, unless the income from the particular property discovered is not sufficient to cover depletion based on cost or on the value as of March 1, 1913. I think Mr. Thacher was perfectly right in saying a little earlier this afternoon that we do have several kinds of valuation and it is more than merely a measure of valuation, it is valuation of very different times and

under very different conditions. For state tax purposes, of course, we speak of current values, valuation on the assessment today. For the capital stock tax, invested capital under the federal law, we speak of value, meaning the actual cost to the taxpayer, which might be \$15,000 for a property now worth a million. For depletion it may be that very same \$15,000 or it may be a valuation of his property on March 1, 1913, a peculiar temporary provision due to our federal constitution, or it may be his value 30 days after discovery and special inducement granted to the prospector or wild-catter to go ahead with the new natural resources during our period of high taxation so that we have more than a mere difference in the measurer of value. It is a real difference in value. It is a difference as to point of time and the value on which state taxes may be assessed, not the value in point of time on which invested capital is based or upon which depletion may be based.

As I said, the depletion clause is not materially changed, it has this one limitation and no one can quarrel with that. The excess profits tax is proposed to be re-enacted for the year of 1921 practically without change. Gold mining companies are exempt from this, as they were under the revenue act of 1918, and in the case of the sale of mines, the same limitation on the tax, namely, 20 per cent. of the selling price, is contained in this law. The limitation in the case of the sale of mines by individuals is also retained in that portion of the income tax law relating to surtaxes, the limit being 20 per cent. for the year 1921 and 16 per cent. of the selling price for the year 1922 and thereafter.

This change is due to two things. First, there is a reduction proposed by the Senate Finance Committee to 32 per cent. as the maximum surtax rate, which, plus an 8 per cent. normal tax rate, would equal 40 per cent. and be the highest rate payable by an individual. Then there is another new provision in the statutes referring particularly to the taxation of profits on the sale of capital assets. It has been recognized for many years that it was decidedly unfair to the taxpayer to impose a tax upon the profits he made on the sale of his capital assets at the rate of surtax which was intended primarily to measure the amount of tax which capital could earn in a twelve month period when he may have held this very property for a period of several years. Our surtax rates went up to 70 per cent., practically. The result was that men would not sell their properties as a whole, new alignments of capital were prevented because no man felt that he wanted to be taxed at a maximum rate of approximately 70 per cent. on the profit which he may have gotten in the year of sale but which really was the profit gained over the period of many years, 5 or 10 years perhaps, so the Senate has tried to remedy that situation by providing that where a man has gains from the sale of capital assets, the net gain, which shall be the selling price minus the cost, or the value on March 1, 1913, and such expenses as are clearly applicable to the sale of the property,

that capital net gain, or profit, shall not be taxed in full but only 40 per cent. of such profit shall be included for the purpose of the income tax on individuals, or corporation tax on corporations. That provision, however, does not go into effect until 1922, so that if the maximum surtax rates remain at 32 per cent. of the normal and the normal tax at 8 per cent., the highest rate could not be more than 40 per cent. and if that is applied to only 40 per cent. of the capital gains, the highest rate of tax that a man would be called upon to pay upon the sale of his capital assets would be 16 per cent.

In the case of corporations paying a 15 per cent. income tax, which is the rate proposed for 1922, on 40 per cent. of the profits arising from the sale of capital assets, it would leave a net tax of 6 per cent of their profits to the federal government. This is an attempt to remedy a situation that everyone has deprecated for several years and is a considerable step in advance of the development of our federal income tax system.

I do not recall any other provisions specifically affecting the mining industry. There are other provisions of a remedial character, such as those relating to exchange of property. Under that law an exchange of property for property will not be subject to income tax or excess profits tax unless the property received in exchange has a readily realizable market value. Just what is meant by "readily realizable" is perhaps a question for discussion and construction and interpretation. I think the intention of Congress was to approach this general rule, which perhaps the courts may lay down with respect to our present and past income tax laws, that unless a man receives in exchange for the property he surrenders, property of a kind and in an amount which he could without question go out and sell at a definite price within a reasonable time after the exchange took place, then he should not be deemed to have received something which is the equivalent of cash.

That would apply to a man who received liberty bonds in exchange for property but it would not apply to a man who received several hundred thousands of dollars worth of shares of stock upon the incorporation of his business because it might be plainly evitable, even though there was a market for some of that stock, that he could not go out and sell all of it and that stock is not worth to him the equivalent to a market price on a small amount of stock which might be sold. The Senate and the House, to go a step farther in treating the question of exchange, provide that not only must the property received in exchange have a readily realizable market value but even though it has a readily realizable market value, under certain conditions it shall not be taxable in any event, and those conditions are that when any property held for productive use in trade or business not including stock in trade or other property held primarily for sale, is exchanged for property of a like kind or use, no gain or less shall be deemed to arise. One manufacturer may have a certain kind of machinery and another a differ-

ent kind and they may find it desirable to exchange. Perhaps A has gotten the better of B on the exchange but nevertheless the law specifically states that no gain or loss shall be deemed to arise in such a transaction.

Secondly, no gain or loss shall be deemed to arise in the case of a reorganization of one or more corporations where a person receives in place of stock or securities owned by him stock or securities in a corporation and party to or resulting from such reorganization. In any reorganization which includes the reincorporation of a company or the merger or consolidation of two or more companies, the statute now specifically provides that no gain or loss shall be deemed to arise.

The 1918 Act and the preceding acts have given rise to a great deal of controversy on the question of how much richer a man has become because he incorporated his business. This will exclude all that controversy from the income tax law in the future.

The third instance where this exemption is made is where a person, or two or more persons, transferred property which he or they may own, to a corporation. In other words, where they incorporate a business. In that case no tax shall be imposed even though the stock received in exchange may be said to have a readily realizable value. Congress has tried to weed out of taxable profit any alleged or apparent profit or to take out profit which might arise on an organization or reorganization or any exchange of property used for productive purposes in a business, their position being that those are not transactions primarily intended for realization of gain but they are realignments of capital in the case of organization or reorganization or substitutions for the more expeditious construction of business in the case of other exchange.

Then there is another provision that where property is compulsorily or involuntarily converted into cash or its equivalent where a man has to, by reason of condemnation proceedings or loss or anything else, involuntarily get his money for his property, he will not be taxed if he takes that money and spends it on similar property performing the same function as the property which was taken away from him, or destroyed.

In all of those cases the property received in exchange for the property surrendered shall be deemed to be a substitution of the assets of a taxpayer. He can ascribe no more cost or value to the new property than to the old. He merely postpones his final accounting for income tax until he actually does sell the new property for cash or the equivalent of cash.

A further provision in that connection is to the effect that where a man exchanges property, exchanges stock, let us say, of one corporation for stock in a merger, he may receive a little cash also, and in such cases the cash is not deemed to be profit but goes to reduce the cost to him of the investment, unless the cash received exceeds the cost to him of the investment, in which case the excess

of cash shall be deemed taxable profit and the new stock will cost him nothing.

There are a number of changes of an administrative character in the law, too many of them to go into it at any great length, and perhaps of no particular interest to this audience. These, I think, are the principal changes which will be made in the statute when it is passed, provided no amendments are made and no compromises and amendments that have been introduced have not materially affected the law in these respects.

In addition to the Revenue Bill introduced by the Ways and Means Committee originally, a number of bills have been introduced that have some interest to the mining industry and some of them, if there was any serious danger of their passing, would constitute a serious blow to owners of natural resources. The best known of these bills probably is the Ralston-Nolan Bill, House of Representatives 12397, which is a measure introduced into the House of Representatives proposing to impose a tax of 1 per cent. on the privilege of holding land and natural resources—coal, oil, minerals, timber, water power, etc. Only land in excess of \$10,000 in value, irrespective of improvements is intended to be taxed thus, relieving the ordinary farmer and small holder of city property. This, of course, is a single tax and class legislation and will no doubt retard the economic development of the natural resources.

There is some considerable propaganda issued in favor of this bill and some considerable support of the bill but at the present time the chances seem to be that the measure will not become a law. Of course, if such a bill became a law, we would have all of the administrative difficulties of valuation that we have been discussing for the last two or three days.

The Keller Bill is another proposal along the same line as the Ralston-Nolan Bill and Mr. Keller has also introduced a second bill proposing a differentiation between earned and unearned income, classifying as unearned income, income derived from rents of land or other properties, which includes rental from mines. This bill proposes that the surtax rates on earned income shall be one-half the rates prescribed by the revenue account of 1918 and the surtax rates on unearned income shall be twice that amount.

Senator Pittman has introduced a bill in the Senate, Senate 233, to extend the exemption from excess profits tax now granted to gold mining corporations so as to embrace corporations engaged in mining, milling or reduction of silver.

Senator King of Utah has introduced a bill, Senate 2007, with the exemption of gold mining corporations from the excess profits tax under the Revenue Act of 1918 shall be extended to any tax imposed by Article II of the Revenue Act of 1917, and assessed but remaining unpaid. Apparently it would not apply to those who have paid their taxes but those who had been assessed and had not paid them. It is rather serious premium on delinquency.

Senator King also announced his intention a week or ten days ago to abolish depletion altogether in the calculation of net income of mines and other corporations having natural resources but I understand he has recently stated that he will not introduce that measure and if he should, of course it is entirely improbable that any action would be taken on so revolutionary a measure as to abolish depletion altogether after what the Supreme Court has said on that.

If there is no further discussion of the Federal Revenue Act, I shall ask the permanent Chairman to take charge of the meeting.

MR. ARMITAGE: I would like to suggest a resolution before the meeting adjourns. We have had a very interesting and thorough discussion of the question of state taxation. A great deal of this discussion, I am afraid, will be lost if we do not put it in some concrete and definite form. Now my idea is this, that we should recommend here—we can't pass a resolution as we are only a subdivision of the Mining Congress, but we can recommend to the Committee on Resolutions of the Congress that they pass a resolution and here is my suggestion—that we recommend to the Committee on Resolutions that the Congress pass a resolution reading as follows:

“RESOLVED, That the President of the American Mining Congress appoint a committee of not less than 10, with authority to increase its number, to study the question of state taxation of mines within the United States; that this committee be empowered to collaborate and act with a similar committee appointed by the American Institute of Mining and Metallurgical Engineers and make a joint report of their study and research, said report to be delivered to the Secretary of the Congress, and to the Secretary of the Institute as soon as possible.”

Now those committees would get together, make a careful report, collaborate and systematize what we have collected here and distribute that report among the members and we could have the substance of this and such further investigations as they would make with the aid of some of these officials from the various states who have been so kind as to come here and give us their full information and knowledge and their reports. We could give a very comprehensive report and study of this subject of state taxation. Before this meeting, Mr. Kriegh and I went through all the libraries to find if there was any such book written and the only one we could find was written several years ago by Professor Young and that is of no value because the laws have changed so and altered in all the states. It does not give any idea of the subject and therefore I thought a committee of that sort working hard and conscientiously, in the next three or four months, or less than that, could get out such a report. It may say that I have talked with various members of the Institute and the president of the Institute and he is fully in accordance and in favor with the appointment of such a committee and will recommend it to his body. He is in accord and I am quite sure they will follow his recommendation. Therefore I propose such a resolution.

CHAIRMAN HOLMES: Before putting the motion to the meeting I would like to say a word or two about this. I don't see how the American Mining Congress could render a greater service to the mining industry on this phase of its many activities than to gather together the available data, data which exists in many places, if in no other place, in the minds of the members of tax commissions and of taxpayers, get the available data together so that we will have a definite premise on which to reason together again next time the Congress meets, and which can be distributed for discussion and consideration among those who give time and thought to tax matters. Will somebody second the motion?

The motion was seconded by Mr. Kelly and was carried.

CHAIRMAN HOLMES: I have been acting as temporary chairman of the meeting in the absence of your much more able permanent Chairman and will now step aside and let the permanent Chairman take the chair.

Mr. Armitage then took the Chair.

MR. FERNALD: I think before we adjourn we should register a vote of thanks to the delegate from Mexico and to those members of the state commissions who have been good enough to take their time and give their effort in presenting the subject to us so carefully and from which I know we all feel we have so greatly benefited, and that the Committee on Resolutions of the Congress be requested to spread this in the resolutions of the Congress on behalf of this division.

CHAIRMAN ARMITAGE: Gentlemen, you have heard the motion. Is there any discussion? If not, all those in favor please say "Aye"; contrary "No." The motion is carried.

Is there any other business before the meeting? If not, a motion to adjourn is in order.

MR. HOLMES. I move we adjourn.

The motion was seconded and carried and the meeting adjourned at 5:10 p. m.

Mr. A. P. Ramstedt of Wallace, Idaho, being unable to attend the Tax Conference, submitted the following communication to be placed in the record of the proceedings:

"I regret that important business coming up unexpectedly at the last minute prevents my attendance at the Chicago Convention of the American Mining Congress convening on Monday next.

"The Mine Operators of this district are much interested in the subject of State and local taxation of mines to be considered at the Mine Tax Conference, and as I will not have time to prepare a statement of our views on the subject, I submit the following report of my discussion of the subject following the submission of the Report of the Special Committee on Mines Taxation of the National Tax Association at Salt Lake City, September 10, 1920, which report advised the ad valorem system of state and local mines taxation:

I question the advisability of this Association giving its endorsement to any idea or scheme, for general application, in the matter of state and local taxation of mines. From a purely administrative standpoint the assessment of mines in states like Michigan and Minnesota, where the deposits may be quite readily measured and valued, may be quite simple, as compared with the assessment of the deep fissure mines in states like Idaho and Montana. The members of the main tax committee of this Association, and most of us here probably are aware of the wide diversity of opinion on this question. This diversity of opinion arises as a result of the differences in the conditions surrounding this industry in the several districts throughout the country as a whole. There is such a wide divergence in the product mined, in the value of the product, and in the surrounding conditions, that I am inclined to believe that the subject may more profitably be treated from the standpoint of each state, rather than from the standpoint of the nation.

I have given the subject of mine taxation in Idaho a great deal of thought, as a public tax official and as a private citizen, and I believe that as far as our state is concerned, a tax on net profits is the most equitable tax that may be applied to ore itself. If we must have a nation-wide scheme, I believe that the net profits tax is the most equitable tax that may be applied to this industry, as well as to all other industries of wasting assets.

The benefits to be had from our material resources are not measured by the public revenue that may be derived therefrom or thereon. The welfare and prosperity of our people here in the west depend largely upon the development of our material resources. To tax this class of property on its full value, I believe generally results in excessive taxation, and, if so, would be an obstacle to investment and development. To impose a tax on the full value of this property, annually upon the ore, is to load this ore down with its annual charge, during its entire life, to be met with eventually out of the sale of the property itself. This property does not produce income, in the sense that farm lands produce income. When the ore is eventually taken out and sold it is gone; it cannot be replaced. There is no new crop coming in. I believe that a tax on this class of property should bear some relation to income, not necessarily to value.

No one with his eyes open is going to invest money in mining, in states like Idaho, where the initial investment is so great, where the returns are so far in the future, and where the hazards are so great, and take a chance on the entire profits, or a great portion thereof at least being taken from him. I believe, that the tax officials in my state, who have given this matter consideration, agree that under our net profits tax law the mining industry is bearing its full share of the load.

In our state the lands and mining claims are assessed on the ad valorem basis, the land itself being assessed at the price paid the government therefore; all machinery and equipment improvements are assessed at full cash value, and then the annual net proceeds are taken as an additional assessment value, for purposes of taxation.

"In this connection I beg to also submit the following report of the discussion of the subject at the Salt Lake City Conference by Mr. Samuel Lord, State Tax Commissioner of Minnesota:

I have probably given as much thought to the taxation of mining properties as any other man in this country, and it is my deliberate conclusion that the only real way of taxing mining property, that approaches anywhere near a scientific method, is by means of an output tax. Unfortunately so many of the cities and villages that have sprung up on the iron ranges in Minnesota have come to be so dependent upon



the mining properties for their support, that to deprive them of the general property tax and compel them to obtain their revenue in any other way, would knock the props from under them completely, would lead to chaos and would be most unfortunate; and so no member of our commission has ever advocated the adoption of an output tax for the mines in Minnesota that the local communities would be compelled to depend upon for their revenues.

We believe that any change in the taxing system must leave to the villages, cities and towns the ad valorem system of taxation for the support of their schools and for the support of their local governments, but I do not know of any good reason why the state is not fully justified, if it sees fit, in obtaining its revenues from the mines by means of an output tax. I am confident that it can be proved conclusively that in a long series of years—say 40 or 50—the mining companies, by paying an output tax to the state, which would be no more burdensome than the state taxes they now pay, would turn into the state treasury a very much larger amount of revenue than they will be compelled to pay under a general property tax. And I say this with entire feeling of friendliness towards the mining companies. If ability to pay is a proper criterion for taxation, and I believe that it is, one of the cardinal principles, this conclusion certainly is sound.

The ability of a mining company to pay taxes depends upon its profits, and its profits depend, of course, entirely upon output. If an output tax were imposed upon the mines of Minnesota which would produce no more revenue than they pay the state today, in the end they would turn into the state treasury a much larger amount of money than they would under a general property tax. The correctness of this statement is so evident that it needs no elaboration. The known merchantable tonnage of iron ore in Minnesota is approximately 1,300,000,000 tons. We are mining on the average about 37,000,000 tons a year, and if no more merchantable ore is disclosed (a thing which is, of course, unthinkable) the mines will be exhausted in about 37 years. The mining companies paid in state taxes last year approximately \$2,300,000. With an output tax, having a rate that would yield the same amount per annum, at the end of the 37 year period they would have paid in taxes in the neighborhood of \$84,000,000. And they would be just as able to pay \$2,300,000 in taxes the year they take out the last 37,000,000 tons as they are to pay that amount today. Under the general property tax, if the state rate remains the same—and of course we hope for it to decrease rather than increase—the taxes from the mines will decrease about 3 per cent a year until they reach the vanishing point. Of course there are many factors I have not taken into consideration that will necessarily change, to some extent, the figures I have given, but such figures are sufficient, I feel sure, to demonstrate the points I am endeavoring to make; that an output tax from the standpoint of the state is a much more desirable form of taxation than the general property tax, and, if the rates are fair, that it will impose no unjust or unusual burden upon the mining companies. For these and for other reasons that I shall not trespass upon your time to give. I have always been in favor of an output tax for state purposes, in lieu of the general property tax.

“There can be no doubt that the discussions and treatises at our annual conventions of all questions pertaining to taxation of state have been of greatest value and this applies to the discussion of state and local taxation of mines. However, as there is so wide diversity of opinion on this question, arising as result of the difference in conditions surrounding mining in the several states, I again urge the inadvisability of The American Mining Congress giving its

endorsement to any scheme for general application in the matter of state and local taxation of mines."

The following resolutions were adopted by the American Mining Congress in convention assembled as a result of the national mine tax conference held at the Congress Hotel, Chicago, October 17-22.

#### RESOLUTION NO. 4

RESOLVED, That the President of The American Mining Congress appoint a committee of not less than ten, with authority to increase its number, to study the question of state taxation of mines within the several mining states of the Union and report to the Secretary of the Congress as soon as practicable.

#### RESOLUTION NO. 5

RESOLVED, That this Conference register a vote of thanks to those members of State Tax Commissions who have been good enough to take their time and give their efforts in presenting to this conference so carefully the subject of the taxation and revenue systems of their respective states, from which we have so greatly benefited; and,

BE IT FURTHER RESOLVED, That the Committee on Resolutions of The American Mining Congress be requested to spread this vote of thanks in the proceedings of The American Mining Congress in behalf of this division.

#### RESOLUTION NO. 6

WHEREAS, The discussion at this Convention particularly those of the National Tax Conference, have shown that there is a tendency in certain states to discriminate unfairly against mining properties and mining enterprises in matters of taxation and thereby curtail the mining industry and discourage the development of mines in many localities, and discouraging those who otherwise would take reasonable risks in developing the mining resources of the country.

BE IT RESOLVED, That the American Mining Congress protest against all such forms of taxation which directly or indirectly discriminate against mining property or mining enterprises and all forms of taxation which have for their purpose the object of obtaining any greater amount of revenue from mining property or mining operations than is obtained from other property, and

BE IT FURTHER RESOLVED, That the Tax Division of The American Mining Congress be authorized, upon request of any State Chapter, to provide a representative to appear before any board, commission or other legislative committee and to present information looking to the prevention of any such discriminatory or inequitable forms of taxation and that the Tax Division be authorized to use all available facilities of this organization for this purpose and for the purpose of carrying on a campaign of education in matters of mine taxation.

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