

SENATOR LANDIS: I'm sorry, would you rephrase the question again.

SENATOR SCHMIT: Senator DeCamp made a reference to the fact that in his letter to the Attorney General he did not properly...he may not have properly phrased the question as to whether or not we are allowed to tax those securities, government securities. Would you address that question.

SENATOR LANDIS: All right, what I understand the Attorney General to be saying is that it is true, we can't tax the securities. What we tax in this case is the expense of purchasing and operating the securities themselves, rather than the income. The Attorney General said 717 is constitutional, and I think that means that the use of an add-back based on the expenses is not the same thing as taxing income. For that reason it is constitutional.

SENATOR SCHMIT: I would like to ask Senator DeCamp, you've heard Senator Landis's explanation. Do you agree, disagree, or do you want to add some other language?

SENATOR DECAMP: I'll be honest with you, I didn't completely hear his explanation. But let me just read you some language from the opinion, actually it is the same language that is used in court cases. It says, in sum, ever since Gaynor, that's the name of a case, each time the court has addressed the scope of the tax exempt from government obligations it has concluded that the exemption need not be a total exclusion, but instead," and here is operative language, "may be limited by charging tax exempt obligations and interest their fair share of related expenses or burdens." The language is used consistently, "their fair share of related expenses or burdens." Under LB 717, with the add-back of "basically all expenses" it is not "their fair share." It includes, for example, all convention expenses, personnel expenses, other expenses that may be used simply as ways to divert income or keep it from being taxable. In other words, you are adding completely inappropriate type of expenses in complete opposition to quote the language of the court, "their fair share of expenses." So I feel that that issue was never addressed in the opinion. I also feel that there is no question that 717 would be challenged in the court, and if an injunction isn't granted against it, it certainly would be ultimately declared unconstitutional. I further would like to make it