NOTES

TAX LEGISLATION BY CONSTITUTIONAL AMENDMENT

It would be unreasonable to object to the late report of the California tax commission [1] on the ground that it attempts little in the way of discussion of problems of incidence, or that it leaves practically untouched the laws and the problems of distinctly local taxation. The problem undertaken was not the construction of a complete tax system, or even, so far as constructive effort should proceed, the establishment of an ideal system, but only to work out for practical purposes a system of revenue to provide for the purely state share of the general revenue. Two specific ends, therefore, and only two—(1) to establish the principle of the segregation of sources, and (2) to outline a workable basis and method for collecting the state share of the general revenue—combine to control, shape, and limit the sphere of the discussion. Judged by these tests nothing more thorough, more exhaustive, more practical, more compact in arrangement, or more intelligible in statement could be desired. In the field of comparative tax legislation the report is especially admirable in its command of concrete fact and masterly in its statistical analysis and statistical groupings.

The central thesis of the report is the necessity of the adoption of the gross-earnings tax upon railroads. This thesis must be regarded as well and conclusively established, in view of the truth that most of the California railway corporations are owned by other corporations, and that therefore most of the railroad securities have no market ratings, and of the fact also that the mileage-apportioned value basis would be grossly unjust to California as a method of taxing great interstate systems extending widely into desert states. It is, however, almost inevitable that some of the intermediate positions in the commission's argument and some of the legislative applications from its general conclusions should command less ready acquiescence.

[1] *Report of the Commission on Revenue and Taxation of the State of California*, 1906. George C. Pardee, governor; J. B. Curtin and M. L. Ward, state senators; H. S. G. McCartney and E. F. Treadwell, assemblymen; Carl C. Plehn, expert on taxation and finance, secretary.

It is unfortunate that the commission has been forced, by the political necessity of submitting its plans in the form of constitutional amendment, into the mistake of treating its measure as complete and definitive and approximately perfect. It is always and everywhere bad enough that even approximately definitive legislative detail should be allowed to harden into the fixity of constitutional requirement and constitutional limitation; it is worse when all the future is tied and trammeled in unforeseen and unknowable ways —all to the simple purpose of establishing the segregation of sources and the taxation of corporations upon the basis of gross earnings— and all, therefore, with no attempt to enter thoroughly into the fundamentals of tax theory or into the intricate problems of local sources and local methods.

The resulting specific evils in the present case are numerous. In the proposed constitutional amendment it is provided that "all property in the state except, etc., ..." "and not exempt, etc.," "shall be taxed in proportion to its value, to be ascertained . . . . as hereinafter provided." This, obviously, compels the interpretation of the gross-earnings tax as a mere device for arriving at the market value of the properties. It thus prohibits any later efforts anywhere toward progression, or any changes directed toward the appropriation, through taxation, of any part of the corporate "unearned increment," or toward any other end than that of the strict proportion of tax burdens to market values. This closes the door not only to the single-tax agitator, but also to further light upon the possible desirability of burdening position values at one rate, fertility values at another, and improvement values at some possible third. It makes most dubious also the question whether a local habitation tax could in any wise be imposed; and since the law elsewhere provides that "income taxes may be assessed," it leaves the matter questionable whether this could be done otherwise than upon the property-value basis. Beyond this no one can at all surmise what may have been prohibited to be done or imposed to do.

And surely any revenue scheme that makes nowhere any provision for the taxation of personal earning power ought not to present itself in any character of ultimateness or permanency, or stand as better than the best thing practicable at the present time and under present conditions. The per-capita wealth of the California population is probably not far from $1,200, representing an annual per capita income of perhaps $75; the per capita income from

personal activity is perhaps $400; from which it may be inferred that a tax system based upon the values of accrued wealth taps about one-fifth part of the income-receiving and tax-bearing capacity of the Californian commonwealth.

In cases of this kind, the danger of covering too much ground in one piece of legislation, and especially the danger from permitting this legislation to harden into the rigidity of constitutional enactment, is further well illustrated in the treatment of credits. The proposed amendment reads:

> The word "property" [which, be it remembered, "shall be taxed in proportion to its value"] is hereby declared to include moneys, credits, stocks, bonds, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. The legislature may provide, except in cases secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this state.

Mortgages and trust deeds are elsewhere provided for, though the present writer confesses his inability to make out to precisely what purport. But no matter; debts unsecured by mortgage or trust deed *may* set off against credits due to residents of the state. But all other credits *must* be taxed according to their values; and the legislature may or may not provide for any sort of set-off; and all this as the outcome of several pages of discussion in the report to the effect that "it seems futile to try to tax this property, and the underlying reason for the failure to reach it and for the objection which people in general have to paying it *is probably to be found in the fundamental fact that it ought not to be* taxed at all."

Again, the rates of corporate taxation recommended are as follows:

> For railroad, trams, sleeping, dining, drawing-room, palace, refrigerator, oil, stock, fruit, and other car and car-loaning companies, gas companies, and electric-light companies, not less than 4 per cent. nor more than 5 per cent. (respectively) of gross earnings.
>
> Express companies, 3 per cent.
>
> Telephone and telegraph companies, 3½ per cent.
>
> Banking, savings and loan, and trust societies, 1 per cent. on book value of stock in excess of reality locally taxed.

Now, while for present conditions of technique and of volume of business this may be well—and all the evidence adduced points to this conclusion—it approximates the temerarious to embalm these rates into constitutional sanctity against an unknown future. The

mere fact of a fall in the general rate of interest used as the basis of capitalization involves the necessity of changing the rate of charge upon gross earnings; and especially is this true, if the ultimate basis of the tax burden is admitted to be, or is constitutionally declared to be, the *ad valorem,* general-property basis.

The case is even worse with the 2-per-cent. tax upon insurance premiums. True, it is not easy to see what else to do under present conditions. But an insurance company is merely one out of several sorts of savings institutions. It must follow, therefore, that to tax the assets of a savings bank at the regular rates, and then in addition to fall upon the act of making the deposit with another tax is nothing short of the barbarous. We may some day not merely know better, but also know how, in a practicable manner, to do better, if only by that time the blunder has not intrenched itself behind constitutional barriers. For cases of this sort celerity should, in the words of wise old Sir Thomas Brown, "be tempered with cunctation."

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A PERMISSIVE HABITATION TAX

As the economics of the California tax report is seemingly to be ascribed and credited to Professor Plehn, so in some part, if not in much the larger part, is Professor Seligman's directive influence to be recognized in the report of the New York commission.[1] But it is to be noted that the New York commission was of a considerably larger membership than the California commission, and that upon many points the New York commission has not found it possible to arrive at unanimous conclusions.

That portion of the report which will especially attract interest and attention outside of New York is that part discussing and recommending a permissive habitation tax for purposes of local revenue. This recommendation comes with only such authority as can attach to a minority report from three members out of a com-

[1] Report of the special tax commission of the state of New York, transmitted to the legislature, January 15, 1907. (Members of the commission: Warner Miller, Samuel Ordway, Lawson Purdy, Edwin R. A. Seligman, Charles S. Wheeler; senators Thomas F. Grady, Merton E. Lewis, George R. Malby, Martin Saxe, Spencer K. Warnick; assemblymen C. Fred Boshart, Sherman Moreland, Charles W. Mead, George M. Palmer, Arthur C. Wade.)