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TAX IMPEDIMENTS TO INTERSTATE MOTOR VEHICLE TRANSPORTATION

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Despite the tradition of free trade among the states ostensibly provided by the authors of the Constitution in the light of chaotic conditions prior to its adoption, the last few years have witnessed the rise of trade barriers along state lines, including numerous damaging reprisals by one state against another. These in some cases have materially hindered the interstate operations of motor vehicles. Business, labor, and agriculture have suffered as a consequence.

Motor vehicle tax barriers are only one example of interstate commercial barriers;[1] but, according to the United States

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[1] For a list of the "leading forms" of discriminatory legislation *see* F. Eugene Melder, *Trade Barriers and State Rights* (April, 1939) 25 A. B. A. J. 307. It has been estimated that over 3,000 trade barrier laws are on the statute books of the states. Paul Truitt, *Interstate Trade Barriers among the States* (Spring, 1944) 8 LAW & CONTEMP. PROB. 213. The subject has been given rather detailed study in recent years, especially by federal agencies. Among the more comprehensive investigations are those by GEORGE R. TAYLOR, E. L. BURTIS and FREDERICK WAUGH, BARRIERS TO INTERNAL TRADE IN FARM PRODUCTS (1939) U. S. Department of Agriculture; MARKETING LAWS SURVEY, COMPARATIVE CHARTS OF STATE STATUTES ILLUSTRATING BARRIERS BETWEEN STATES (1939) U. S. Department of Commerce; HEARINGS OF THE TEMPORARY NATIONAL ECONOMIC COMMITTEE, INTERSTATE TRADE BARRIERS (1941); F. Eugene Melder, *State and Local Barriers to Interstate Commerce in the United States* (1937) UNIVERSITY OF MAINE STUDIES, 2nd Series, No. 43; W. Brooke Graves (Ed.), *Intergovernmental Relations in the United States* (1940) ANNALS AMER. ACAD. OF POL. & SOC. SCI.; *Governmental Marketing Barriers* (1941) 8 LAW & CONTEMP. PROB.; TAX BARRIERS TO TRADE, Tax Institute Symposium (1941).

Department of Commerce, the motor vehicle laws present perhaps the greatest single impediment to trade between states.[2] Motor vehicle tax barriers are not peculiar to Kentucky; there are several states that require practically all out-of-state trucks to register and pay a fee, or to pay higher special carrier taxes than do resident trucks.[3] A second set of interstate conflicts arises from the Kentucky highway use regulations and is indirectly associated with the tax problem. Lack of reciprocal registration provisions for commercial vehicles placed Kentucky in the direct spotlight of national interest when the country was striving to build up the national defenses.

The various motor vehicle taxes, although ordinarily not discriminatory in form, impose a cumulative burden on vehicles moving interstate traffic.[4] These burdens may be justifiable as compensation for the use of the highways;[5] but when rates are superimposed on other states' taxes against a single motorist, they often constitute an obstruction to the free flow of commerce.

It is a clearly established rule that states may constitutionally regulate and tax motor vehicle operations on their highways. Roads are state properties and, as such, are protected by law. Taxation and regulation of motor vehicle transportation

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[2] MARKETING LAWS SURVEY, *op. cit. supra* note 1.

[3] Examples are Arizona, Kansas, Oklahoma, and Wyoming.

[4] MARKETING LAWS SURVEY, *loc. cit. supra* note 1. A kindred trade barrier is found in inconsistent state regulations respecting width, length, height, weight, and vehicle combinations and equipment. Kentucky, aside from special, temporary wartime relaxations, has more exacting regulations for trucks than has any other state. As a consequence vehicles which are well within legal limitations in neighboring states are forbidden to operate in the Blue Grass State (KRS 189.180), so that many interstate truckers before the 1942 legislation (KRS 189.225) regularly unloaded and reloaded on smaller vehicles at the Kentucky border. This necessity rendered traffic movements much more expensive than would otherwise have been the case. As to the police regulations consult NATIONAL HIGHWAY USERS CONFERENCE, STATE RESTRICTIONS ON MOTOR VEHICLE SIZES AND WEIGHTS (1942) and EQUIPMENT REQUIREMENTS FOR MOTOR VEHICLES. As to road conditions which allegedly justify the statutory provisions, *see* KENTUCKY HIGHWAY PLANNING SURVEY, KENTUCKY HIGHWAYS (1943) 16.

[5] L. L. Waters, *Interstate Trade Barriers* (Aug., 1941) 19 TAXES—THE TAX MAGAZINE 494.

rest upon the power to tax,[6] the police power,[7] and the power to conserve public property.[8] The federal courts have repeatedly sustained the right of a state to tax the use of motor vehicles engaged in interstate commerce on its highways in the absence of definite proof of discrimination if the nature of the imposition indicates that the tax is levied as compensation for the use of the highways, if the statute provides that resulting revenues be earmarked for traffic or other road regulation or for highway construction or maintenance, or if the law otherwise indicates that the tax is reasonably compensatory for highway use.[9] The United States Supreme Court has condemned as unconstitutional motor carrier taxes shown to be clearly discriminatory or deliberately designed to tax interstate commerce.[10] Specific measures of tax liability which federal courts have upheld include carrying capacity,[11] the mileage traveled in the state,[12] a combination of both,[13] the net weight of the vehicle,[14] a flat

[6] Continental Baking Co. et al. v. Woodring, Governor, et al., 286 U. S. 352 (1931); Interstate Transit, Incorporated, v. Lindsey, County Court Clerk, 283 U. S. 183 (1931); Hendrick v. State of Maryland, 235 U. S. 610 (1915); Prouty et al. v. Coyne, Secretary of State of South Dakota, et al., 55 F. (2d) 289 (1932); Smith v. Commonwealth, for use, et al., 175 Ky. 286, 194 S. W. 367 (1917).

[7] Continental Baking Co. et al. v. Woodring, Governor, et al., 286 U. S. 352 (1931); Reo Bus Lines Company v. Southern Bus Line Company, 209 Ky. 40, 272 S. W. 18 (1925).

[8] Stephenson et al. v. Binford et al., 287 U. S. 251 (1932).

[9] Morf v. Bingaman, Commissioner of Revenue for New Mexico, 298 U. S. 407 (1936); Interstate Transit, Incorporated, v. Lindsey, County Court Clerk, 283 U. S. 183 (1931); Interstate Busses Corporation v. Blodgett, et al., 276 U. S. 245 (1928); Clark et al. v. Poor et al., 274 U. S. 554 (1927); Kane v. State of New Jersey, 242 U. S. 160 (1916); Hendrick v. State of Maryland, 235 U. S. 610 (1915).

[10] Interstate Transit, Incorporated, v. Lindsey, County Court Clerk, 283 U. S. 183 (1931); Sprout v. City of South Bend, 277 U. S. 163 (1928).

[11] Hicklin et al. v. Coney et al., 290 U. S. 169 (1933); Clark et al. v. Poor et al., 274 U. S. 554 (1927).

[12] Interstate Busses Corporation v. Blodgett, et al., 276 U. S. 245 (1928); Roadway Express, Inc. v. Murray et al., 60 F. (2d) 293 (W. D. Okla., 1932).

[13] Continental Baking Co. et al. v. Woodring, Governor, et al., 286 U. S. 352 (1931); Johnson Transfer & Freight Lines et al. v. Perry et al., 47 F. (2d) 900 (N. D. Ga., 1931).

[14] Liberty Highway Co. et al. v. Michigan Public Utilities Commission et al., 294 F. 703 (E. D. Mich., 1923).

annual fee per vehicle,[15] and a combination of weight and capacity.[16]

Due to the legal limitations on the power of the state to tax interstate motor vehicle transportation, the states do not usually distinguish in prescribing rates between out-of-state and resident carriers. The out-of-state carrier and the resident carrier are both required to pay the annual registration fees and the special carrier excises for the use of the highways. However, the interstate carrier is required to pay, in addition to the fees in the home state, the annual registration and carrier taxes in each state in which he operates the vehicle; while the local carrier, who may operate over an equal or greater road mileage, is required to pay tax to only one state. As a striking example of the tax load on an interstate carrier in the absence of special provision, a 5-ton truck traveling from Kentucky to South Carolina (ignoring the extra fees for trailer and special imposts on the use of for-hire trucks) would be required to pay in Kentucky, Tennessee, Alabama, Georgia, and South Carolina a total of $1407. Testimony presented to the Temporary National Economic Committee showed that a trucker with a 5- to 6-ton truck (no trailer) traveling from Alabama to South Carolina would be required to pay $400 in Alabama, $400 in Georgia, and $300 in South Carolina, or a total of $1100. Trucks which operate exclusively within one state would be required to pay only one of these taxes.[17]

METHODS OF DEALING WITH NONRESIDENT VEHICLE OWNERS

Why Kentucky motor tax laws are a matter of widespread concern during the present national emergency is disclosed by examination of the changing methods of dealing with nonresident vehicle owners.

Nonresidents who evidenced compliance with their own state laws were exempt from the original registration act in Kentucky.[18] Complete exemption was also the most prevalent practice in the original motor registration acts in other states.

[15] Aero Mayflower Transit Co. v. Georgia Public Service Commission et al., 295 U. S. 285 (1935).

[16] Consolidated Freight Lines, Inc., et al. v. Pfost, Commissioner of Law Enforcement of Idaho, et al., 7 F. Supp. 629 (D. Idaho, 1934).

[17] TEMPORARY NATIONAL ECONOMIC COMMITTEE, *op. cit. supra* note 1, at 15790.

[18] Acts 1910, chap. 81, sec. 7, 246.

However, this method was abandoned by most states in later modifications due to (a) the difficulty of enforcing police regulations without adequate check on nonresidents; (b) the desire to tax non-voters; and (c) the need for revenue. Yet Kentucky, unlike a majority of the states,[19] during the rapid development of motor legislation which followed World War I continued to grant complete exemption to nonresidents who complied with registration requirements in their own states and evidenced such conformity by the display of license plates.

As nonresident truckers began using the Kentucky highways more intensively, some officials advanced the argument that the nonresident vehicle owners were not contributing anything toward the state's roads. This argument, which was plausible, led the Kentucky legislature in 1920 to provide reciprocity limited as to time to the exemption granted to nonresidents "temporarily" in the state in which the owner was originally registered.[20] The legislature in 1926 altered the reciprocity provision to extend exemption from "registration" to nonresident vehicles for a period not exceeding 30 days.[21] However, this amended act required a nonresident to register his vehicle in Kentucky before he was authorized to operate it in the state in any commercial activity. But in 1928 by an act relating exclusively to nonresident reciprocity the existing reciprocal provision was repealed and that provided in 1920 was again re-enacted.[22] This provision has remained in the statutes which deal with general registration of motor vehicles.

Although the statutes regulating and specially taxing common and contract carriers did not mention reciprocity, they were adopted after the reciprocity act applying to general registration was re-adopted in 1928. So the Kentucky Court of Appeals, in the absence of any other provision for reciprocal immunity, held the term "registration" used in the 1928 reciprocity statute broad enough to embrace commercial vehicles.[23] Thus the Kentucky reciprocity clause as defined by the Court

[19] Only Ark., Conn., Mont., N. D., Ohio, W. Va., Wis., and Wyo. continued complete exemption.

[20] Acts 1920, chap. 90, sec. 1(g), 419.

[21] Acts 1926, chap. 109, sec. 2(g), 349.

[22] Acts 1928, chap. 108, 390.

[23] Reeves, Com'r of Revenue, v. Deisenroth et al., 288 Ky. 724, 157 S. W. (2d) 331 (1941).

reciprocally exempts from Kentucky's special motor transportation taxes nonresidents temporarily operating in Kentucky in road transportation either privately or for hire. But a for-hire vehicle "used regularly or more than occasionally in Kentucky," according to the Court, is subject to the same regulations and taxes to which resident truckers are subjected.

Following the decision of the Court in *Reeves* v. *Deisenroth*, the Kentucky General Assembly in 1942 levied a tax on casual or occasional trips made by interstate motor carriers into this state.[24] Specific examples of highway transportation which, due to the Kentucky tax plan, was delayed in crossing the state have included cargoes of machine guns from Rock Island, Illinois to Camp Pendleton, Virginia; empty projectiles from Indiana to Wolf Creek Ordnance Plant, Milan, Tennessee; and shot from a diesel engine plant in Illinois to Milan, Tennessee. Tennessee highway patrols, as a reprisal after the Kentucky Court of Appeals' invalidation of reciprocity agreements which Kentucky administrators had with other states, stopped numerous defense shipments coming from Kentucky for inspection for petty irregularities in weight, lights, and Tennessee permit cards. Frequently, the drivers were cited, forced to appear in court, and fined before the trucks were allowed to proceed.[25] In order to move government materials in foreign licensed equipment from Patterson Field, Fairfield, Ohio, to Milan, electric welders from Detroit to the powder plant at Millington, Tennessee, or steel from St. Louis consigned to Fort Knox for the United States Army building project, nonresident truckers were required to pay the Kentucky motor vehicle taxes.

REMEDIES FOR KENTUCKY MOTOR VEHICLE TAX BARRIERS

If the General Assembly should seek to abolish the interstate trade barriers caused by Kentucky motor taxes, it should remember that, due to the mountainous topography and abnormally large number of grades, curves, and restricted driving areas,[26] some severe regulations are necessary. Broad considera-

[24] Acts 1942, chap. 185, sec. 1, 831.

[25] Letters from trucking concerns addressed to the Federal-State Conference on War Restrictions held in Washington, May 5-7, 1942, and published in UNITED STATES DEPARTMENT OF COMMERCE, FEDERAL-STATE CONFERENCE ON WAR RESTRICTIONS (1942) 125-148.

[26] KENTUCKY HIGHWAY PLANNING SURVEY, KENTUCKY HIGHWAYS (1943) 16.

tions of comity between the states, the desirability and necessity for interstate cooperation, the wisdom of a common policy in order to serve the convenience of the traveling public, and the practical administration of the law are cogent considerations favoring the removal of the cumulative tax loads imposed on interstate truckers.

The states, pursuant to suggestions by the Council of State Governments and with the help of the American Association of State Highway Officials, have achieved some success with interstate cooperation. Commissions on interstate cooperation have effected the elimination of some highway use regulations and have successfully resisted the establishment of others.[27] Under Council of State Government auspices a National Conference on Interstate Trade Barriers was held in Chicago in 1939 and has been supplemented by regional conferences and frequent informal discussions among the officials of small groups of states seeking to deal with specific legislation. These meetings have seemingly engendered a more cooperative spirit among officials. State officers of Kentucky have participated in several such conferences.

Although many states have entered into reciprocal agreements with neighboring states, the agreements are frequently more restrictive than they appear to be; but in the Rocky Mountain and Pacific Coast region several adjoining states have reached fairly liberal bilateral understandings. If reciprocal agreements covered the entire United States, the trade barrier arising from the cumulative burden imposed on out-of-state truckers would be solved. But the progress has been slow in some regions; and apparently it will be next to impossible to achieve complete reciprocity in Kentucky.

The Court of Appeals of Kentucky has expressly declared reciprocal agreements made by public officials of Kentucky invalid.[28] Any administrative action beyond an agreement as

[27] THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES (1943-1944) 40-41; Hubert R. Gallagher, *Work of the Commissions on Interstate Co-operation* (Jan., 1940) 207 ANNALS AMER. ACAD. OF POL. & SOC. SCI. 103-110.

[28] Reeves, Com'r of Revenue, v. Deisenroth et al., 288 Ky. 724, 157 S. W. (2d) 331 (1941). It will be noted that in a *dictum* Judge Stanley said in his opinion that such agreements, even though the legislature sought to authorize them, would violate Section 3 of the state Constitution.

to statutory interpretation would be ineffectual because no officer of the state has power to waive a statute or forgive any tax liability.

Three strong arguments have emerged from attempts to broaden the scope of Kentucky reciprocity, so that it will apply to commercial as well as to private motor vehicles. Some legislators contend that the low rates on common and contract carriers which certain neighboring states levy would induce bus and truck operators to qualify in those states and that as a consequence this state would lose all or nearly all revenue from interstate motor vehicle transportation. This consideration, from an economic viewpoint, militates strongly against *unrestricted* reciprocity. It would be technically possible to deal with this difficulty by means of a proviso[29] that the reciprocity would apply only to states which charged, say, as high an annual rate as Kentucky charged. Alternatively, a plan could be worked out by which the amount of tax paid elsewhere would be credited against Kentucky liability. Such a plan, however, would fail to solve the trade barrier problem in relation to states taxing at low rates. Both plans would introduce administrative difficulties growing out of various methods of taxation in the several neighboring states.

A second argument rests on the view that, as interstate motor transportation concerns are large users of the most expensive highways, showing any favor to this class of carriers would throw an undue tax load on the intrastate motor vehicle operators. That common carriers, and to some extent contract carriers as well, use the best highways almost exclusively; that they drive their vehicles more miles a year than do private automobile owners as a class; and that they use by and large heavier vehicles than do private road users—all this gives some support to the contention. On the other hand, as has been suggested already, the actual road use by interstate carriers is spread over more than one state.

The third contention is that Section 3 of the Constitution

[29] Assuming for the moment that the argument regarding constitutionality is not to be taken too seriously. *Cf.* Reeves, Com'r of Revenue, v. Deisenroth et al., 288 Ky. 724, 157 S. W. (2d) 331 (1941) and the Constitution, Sec. 3. The difficulties referred to in the text could be avoided if the various states could agree on a uniform method and rate of taxation of commercial vehicle use, but this is scarely to be expected.

would preclude a reciprocal statute in Kentucky. This view so appealed to Judge Stanley, Commissioner of the Court of Appeals, that in the *Deisenroth* case he said, speaking of the reciprocity statute:

> "It certainly was not intended to permit them to do business regularly in this state without complying with the regulations and paying the taxes which our own citizens must observe and pay. Any other construction would make the reciprocity provision unconstitutional because it would be a discrimination against our own citizens and would violate the equality provision of Section 3 of our Constitution."

The Judge, however, does not explain why, although granting reciprocity to other states with respect to hundreds of thousands of private automobiles owned by nonresidents and used to the extent of about 50 per cent for business purposes is consistent with Section 3 of the Constitution,[30] the General Assembly could not in the light of Section 3 grant similar reciprocity to a few thousand trucks. He does say that "There is a reasonable basis for classification by drawing a distinction between those who used the roads regularly and those who used them temporarily"; but he gives no inkling as to why *any* classification is even relevant to Section 3, which says that "no grant of exclusive or separate emoluments or privileges shall be made to any man except in consideration of public services," regardless of the reasonableness of such a classification. Moreover, the Court in this opinion ignores the obvious fact that reciprocity for private automobiles is no more for "temporary use" than would be reciprocity for common carrier trucks, half of whose routes are in Kentucky. In any event, perhaps this *obiter dictum* could scarcely be regarded as binding on the Court; in view of the considerations alluded to, perhaps the offhand remark incident to deciding a case in which it was necessary merely to interpret rather confused statutes may not be regarded as even persuasive.[31] The question of constitutionality, therefore, appears to be still open.

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[30] *See* also City of Newport v. Merkel Brothers Company, 156 Ky. 580, 161 S. W. 549 (1913).

[31] It will be noted that some of the argument in the text ignores technical legal distinctions. For example, under Kentucky decisions a traveling man living in Cincinnati and traveling in his own auto and selling continuously in this state (entitled to the advantages of reciprocity) is not engaging in business, whereas (if Judge Stanley's *obiter dictum* is the law) a truck owner operating a route between Fort Thomas and Albany, New York, and so driving a few

Although Congress has watched this undeclared war for several years, it has as yet failed to take any specific action.[32] Federal interference is probably within the powers of Congress.[33] In cases in which state legislation interferes unduly with interstate traffic, Congress can assert exclusive jurisdiction under the commerce clause of the Constitution. However, as a practical matter Congress can hardly be expected to enact hurriedly the comprehensive regulations which would be needed to deal fully with motor vehicle trade barriers in the light of the accompanying disturbances to state finances which such legislation would effect. National legislation might take the form of (a) laying down reasonable limits of state regulation, (b) defining more fully the extent to which interstate motor transportation is subject to federal regulation, (c) providing that certain phases of local legislation be open to Congressional review, and (d) bringing pressure on the states through the use of grants-in-aid. However, central action would enhance the national government's power in a degree objectionable to many devotees of federalism.

The most reasonable of these four methods in the light of American traditions is the last. Even though the states have the power to tax the operators of vehicles owned by nonresidents for the use of the highways, Congress could levy a federal tax and distribute revenue to the states on the condition that the latter refrain from imposing their taxes on nonresident-owned vehicles. The Motor Carrier Act of 1935 provides a suitable framework.[34] This solution has many objections and, in addition to being cumbersome and difficult to administer, it would relieve the interstate vehicles of only part of their cumulative burden.

Judicial action on the ground that the cumulative tax loads are unconstitutional is improbable. The courts for obvious

miles into Kentucky one day a week is regularly engaged in business in this state. The practical man has difficulty in seeing that the first use of the roads is more "temporary" than the second.

[32] Congress has authorized an investigation of kindred air transport taxation. In the last Congress a joint resolution (H. J. Res. 287) providing a national study of trade barrier problems was unanimously supported by the Chamber of Commerce of the State of New York. Arthur M. Reis (for the Chamber's Committee on Internal Trade and Improvements), *Trade Barriers to Interstate Commerce* (1944) 36 MONTHLY BULLETIN 212.

[33] Reynold E. Carlson, *Federal Pressure for Uniform Laws* (1941) TAX BARRIERS TO TRADE 286-304.

[34] Carlson, *loc. cit. supra* note 32.

reasons view the problem as one for legislatures.[35] Chief Justice Hughes expressed this view regarding a kindred issue: "However important such a policy may be, it is not a matter for this Court."[36]

Perhaps the most practical long range solution which has been suggested thus far is the permanent joint federal-state committee on intergovernmental problems proposed by Frank Bane in behalf of the Council of State Governments before the Temporary National Economic Committee.[37] The Temporary National Economic Committee, in its Final Report,[38] recommended such a committee; moreover, Henry A. Wallace,[39] W. Y. Elliot of the Harvard School of Government, Paul Truitt of the Department of Commerce and the Interdepartmental Committee on Trade Barriers, and a number of other witnesses appearing before the Temporary National Economic Committee expressed the view that a joint approach through a federal-state committee was the most reasonable and likely to succeed. The executive committee of the Council of State Governments recommended that the proposed federal-state committee be composed of 12 members with representation divided equally between the Congress, the executive branch, and the states represented through the Council of State Governments. Such a committee, with a small, permanent staff, would function by (a) placing research facilities and recommendations at the disposal of federal and state governments and other organizations, (b) acting as a focal center for hearing and sifting complaints against the operation of barriers, and (c) referring these complaints, if

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[35] Robert C. Brown, *Judicial Trends with Respect to Trade Barriers* (1941) TAX BARRIERS TO TRADE 272.

[36] McGoldrick, Comptroller of the City of New York, v. Berwind-White Coal Mining Co., 309 U. S. 33 (1939). For a similar expression *see* the dissenting opinion in McCarroll, Commissioner of Revenue of Arkansas, v. Dixie Greyhound Lines, Inc., 309 U. S. 176 (1939).

[37] *Testimony of Frank Bane, Executive Director, Council of State Governments, Chicago,* HEARINGS BEFORE TEMPORARY NATIONAL ECONOMIC COMMITTEE, PART 12, 76th Cong., 2nd Sess. (1940) 15751. A kindred view is expressed independently in HAROLD M. GROVES AND OTHERS, FEDERAL, STATE, AND LOCAL GOVERNMENT FISCAL RELATIONS, SEN. DOC. No. 69, 78th Cong., 1st Sess. (1943) 5 ff.

[38] FINAL REPORT AND RECOMMENDATIONS OF THE TEMPORARY NATIONAL ECONOMIC COMMITTEE, SEN. DOC. No. 35, 77th Cong., 1st Sess. (1941) 34.

[39] *See Letter from Former Secretary of Agriculture to Senator O'Mahoney,* HEARINGS BEFORE THE TEMPORARY NATIONAL ECONOMIC COMMITTEE, PART 12, 76th Cong., 2nd Sess. (1940) 16114.

justified, to the states or to the federal agencies for action.[40] Through a federal-state committee, authorities suggest, cooperation among the states and with the federal government would be encouraged and such an agency would prove a strengthening influence in our democratic form of government.

CONCLUSION

The alternative remedies discussed above, for the most part, are applicable to all forms of trade barriers and are not limited in applicability to Kentucky. The only important approach, other than outright exemption, of alleviating tax barriers to interstate motor vehicle transport which is available to Kentucky, so far as has yet been discovered, is reciprocity with other states—limited or not, as the General Assembly might specify. Such reciprocity in Kentucky would have to be provided directly by legislation, but it might prove helpful to supplement the law by administrative action.[41]

Doubtless even reciprocal state statutes enacted to apply to the use of all, or of certain classes of, commercial motor vehicles should grow out of findings by a federal-state agency such as has been suggested. Experience in other states shows, however, that state legislation providing reciprocity directly is practicable if deemed desirable.

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[40] I. M. Labovitz, *Discussion of Report — Intergovernmental Fiscal Relations* (1943) PROCEEDINGS, NATIONAL TAX CONFERENCE 232-236; *Cf.* FEDERAL, STATE, AND LOCAL GOVERNMENT FISCAL RELATIONS, SEN. Doc. No. 69, 78th Cong., 1st Sess. 267.

[41] Laws of Utah (1943) c. 64 followed this plan, and the State Tax Commission of Utah, SEVENTH BIENNIAL REPORT 28, shows the immediate results of the policy. If this plan is unconstitutional in Kentucky, probably little can be done to relieve existing impediments to trade and to comity with nearby states.