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case.³³ Although the court's holding will not be binding under the new law, it may indicate whether the policies underlying "stacking" are now outweighed by increased burden on the insurer.

William G. Conly

THE PIGGYBACK STATUTE

Following the national trend of state reliance upon the federal government for determination and collection of state income taxes,¹ Act 341 of the 1974 regular session² conforms the Louisiana state income tax to the provisions of the United States Internal Revenue Code. The United States Congress sanctioned this movement by the Federal-State Tax Collection Act of 1972³ which allowed federal collection of state income tax, provided the state elected to participate in the process⁴ and complied with other conditions outlined in the Internal Revenue Code.⁵ Under such an unmodified plan, "piggybacking" significantly lessens the taxpayer's burden as he merely completes his federal return and the Internal Revenue Service is allowed to deduct an appropriate portion of the tax paid for his state income tax.⁶ The scheme arguably facilitates more efficient administration of state income tax laws⁷ and results in quicker payment of withholding taxes to the states than do the methods currently employed.⁸

33. The Louisiana supreme court granted writs to hear *Barbin* on December 20, 1974. 305 So. 2d 125.

1. S. REP. NO. 1050, 92d Cong., 2d Sess. 3891 (1972): "[A] significant number of states have, of their own accord, already adopted income taxes that conform substantially with Federal income tax laws." Even before the "piggyback" legislation, Louisiana law required a taxpayer who filed both a state and federal return to include his federal net income in the state return. LA. R.S. 47:103(B) (1950).

2. The Act amends Chapter 1 of Title 47 of the Louisiana Revised Statutes by adding Part III, consisting of sections 290-98.

3. INT. REV. CODE OF 1954, §§ 6361-65.

4. *Id.* § 6361(a).

5. *Id.* § 6362 outlines the conditions a state's tax laws must meet to be eligible for the program.

6. The Internal Revenue Service returns this tax to the state under the provisions of INT. REV. CODE OF 1954 §§ 6361(c)(1), (2).

7. O. OLDMAN & F. SCHOETTLE, STATE AND LOCAL TAXES AND FINANCE 674 (1974) [hereinafter cited as OLDMAN & SCHOETTLE]. See S. REP. NO. 1050, 92d Cong., 2d Sess. 3891-92 (1972). *But see* note 12 *infra*.

8. S. REP. NO. 1050, 92d Cong., 2d Sess. 3892 (1972).

The most obvious disadvantage to the state of "piggybacking" is that, symbolically at least, adoption of an unmodified system indicates the state's acceptance of not only federal taxation policy,⁹ but also federal administration and judicial enforcement.¹⁰ Since the federal act requires absolute conformity of state income tax laws to the Internal Revenue Code, any subsequent change in the federal tax base¹¹ is automatically reflected in the state's tax base. A state may thereby lose not only a flexibility in determining taxable income but it may also actually lose part of its tax revenue.¹² In addition, some studies have indicated that piggybacking will result in a lessening of efficiency in collections by the Internal Revenue Service, slowing the rate of collection of state taxes.¹³

Louisiana's modified piggyback legislation¹⁴ retains the signifi-

9. State acceptance of Congressional taxation policy means the state will have no voice in determining the applicable tax base or taxable income and will be forced to accept the federal law on deductions, credits, depreciation and other categories which have historically varied between national and state standards. A state adopting the federal tax base is locked into the national guidelines, regardless of the local taxation circumstances. See *OLDMAN & SCHOETTLE* at 676-77.

10. State participation in the federal Act entails establishing administration of the state tax with the Secretary of the Treasury. The Secretary represents the state's interest just as he traditionally represented the national interest. *INT. REV. CODE OF 1954*, § 6361. The Secretary's administrative decisions regarding a taxpayer's state income tax liability are not subject to review by the state. *Id.* § 6361(d)(3). The federal judicial machinery is used to enforce the state tax. Federal civil and criminal sanctions apply to the collection of state income tax. The only limitation is the state's retention of its right to decide state constitutional issues. *Id.* § 6361. Only the United States may proceed against the taxpayer for any claimed liability and the state is prohibited from imposing separate legal sanctions for violations of state income tax law. *Id.* § 6362(f)(6). See also Conlon, *Federal Participation in State Tax Administration*, 24 *NAT'L TAX J.* 369, 375 (1971).

11. The federal tax base includes the federal definition of adjusted gross income and often the federal definition of itemized deductions as starting points in determining income subject to state tax. S. REP. NO. 1050, 92d Cong., 2d Sess. 3891 (1972).

12. Oregon discontinued automatic adoption of federal income tax changes after losing revenue under the scheme. Nebraska discovered that the adoption of the Tax Reform Act of 1969 would cost the state \$19,000,000. See *OLDMAN & SCHOETTLE* 675-76.

13. During 1963-1973 the volume of returns constituting significant audit workloads rose from 8.6 million to 33.8 million, an increase of 295%, while the audit technical power of the service declined by 15% during the same period. *OLDMAN & SCHOETTLE* 680-81. Critics of the piggybacking system argue that the chore of collecting and administering the state tax will add to the already heavy load that the IRS bears. See *OLDMAN & SCHOETTLE* 677-84. *But see note 7 supra.*

14. Louisiana first enacted a state income tax bill during the 1934 legislative session. This early act, La. Acts 1934, No. 21, was in total conformance with the federal tax laws. After 1934, there were numerous amendments to the Code, without subsequent adoption by the state. In 1958, the legislature revised the state income tax laws

cant advantage of taxpayer convenience offered by the federal law, while avoiding the restrictions on state control of state income tax laws sometimes attending adoption of piggybacking plans.¹⁵ Most taxpayers will pay less state income tax than in previous years because the adoption of the Internal Revenue Code will allow the taxpayer to take advantage of deductions and credits previously unavailable.¹⁶ Moreover, the taxpayer's accounting load will be lessened¹⁷ since he will be able to determine his state tax liability by merely locating the figure which corresponds to his federal tax liability on a chart provided in the state return.¹⁸

in an attempt to bring the state law into accord with the Internal Revenue Code of 1954. *Legislative Symposium: The 1958 Regular Session — Revenue and Taxation*, 19 LA. L. REV. 99, 104 (1958). Nevertheless, since 1958 the lack of subsequent ratification of amendments to the Internal Revenue Code by the state has resulted in over 300 basic differences between the Louisiana and federal income tax laws. See 1 CCH STATE TAX REP., LA. ¶ 10-004 (1974).

15. See note 9 *supra*.

16. La. Acts 1974, No. 341, adding LA. R.S. 47:290-98 (Supp. 1974), defines adjusted gross income as that figure which is reported as adjusted gross income on the taxpayer's federal income tax return. *Id.* § 293(1). Under the constitution of 1974, federal income taxes are deductible in determining this figure. LA. CONST. art. VII, § 4(A). By express provision, the state taxpayer retains his exemption of pensions and disability benefits. LA. R.S. 47:293(5)(a) (Supp. 1974). The Act provides for a \$2500 exemption for the taxpayer, with an additional \$2500 exemption for couples filing joint returns. *Id.* § 294(1). A \$5000 exemption is granted to the head of a household and an additional \$400 credit is given for each exemption in excess of the number required to qualify for the head of household exemption. *Id.* § 294(1),(2). The Act provides for a \$20 reduction for a taxpayer, his spouse or a dependent who is deaf, blind, mentally retarded, or has lost the use of one or more limbs and a reduction of two-tenths of one per cent of the amount upon which state law allows the percentage depletion for oil and gas wells. *Id.* § 297(A), (B). State-allowed exemptions, credits, and reductions are specifically retained in the Louisiana tax base and are combined with the deductions, credits, and exemptions outlined in the Internal Revenue Code to reach the taxable income figure. For a comparison of Louisiana income tax law with federal income tax law as to credits, exemptions, and deductions, see 1 CCH STATE TAX REP., LA. 1071-75 (1974).

17. Under the new law, the taxpayer first completes his federal return and then computes his state tax liability by reference to tables in the Louisiana return which are categorized according to the number of claimed exemptions and according to federal tax liability. After filling in the return, the taxpayer attaches a copy of his federal return to the state return and mails both to the Revenue Department. LA. R.S. 47:296 (Supp. 1974). The requirement that the taxpayer attach a copy of his federal return to the state return is not in violation of federal policy. Rev. Rul. 454, 1970-2 CUM. BULL. 193. The time for filing remains unchanged and is found in LA. R.S. 47:103(A) (1950).

18. The amounts in the table were determined in the following manner: Revenue Department officials assumed a dollar amount of federal tax. Using this figure as a base, they calculated the amount of federal taxable income required to produce that amount of tax, thereby allowing all federal adjustments to income. The tables were

The Act will also have an impact upon the state Revenue Department's collection and administration of the state income tax. Since the state income tax is now keyed to a federal tax liability base, the state will benefit from any Internal Revenue Service audit, and the Revenue Department anticipates that increased cooperation with the IRS will result in greater efficiency of collection.¹⁹ These benefits from improved administrative practices should accrue to the taxpayer with little loss of revenue to the state.²⁰ At the same time, judicial, administrative, and enforcement powers are retained by the state and Collector of Revenue, and the Collector is granted the additional power to adjust any tax established by the Act, provided the Board of Tax Appeals approves the Collector's actions.²¹

Some taxpayers will be forced to pay increased taxes under the law, and they may seek relief by attacking it on a number of constitutional grounds. The state constitution requires that the levying of a new tax receive the approval of two-thirds of both chambers of the legislature.²² To the taxpayer whose taxes are increased by this Act, the legislation has the practical effect of a new tax. Because the reputation and general purpose of the bill was administrative in nature, it can be argued that the legislature gave the required two-thirds

then constructed, calculating the income before the federal deductions and exemptions by restoring personal exemptions or credits for dependents. From this figure, the officials determined the minimum amount the taxpayer could have deducted to reach that figure, thus determining federal adjusted gross income. Assuming that Louisiana adjusted gross income is the same as the corresponding federal figure, the Department calculated the Louisiana tax, taking the Louisiana tax requirements into consideration. The resulting figure is the taxpayer's state tax liability. Interview with Bill Tuttle, Deputy Collector of Revenue, in Baton Rouge, La., Sept. 19, 1974. This calculation honors the constitutional requirement that tax rates shall not exceed the limits imposed by state law. LA. CONST. art. VII, § 4(A). See LA. R.S. 47:32 (1950).

19. The Internal Revenue Service has entered into mutual assistance programs with forty-eight states, including Louisiana. The IRS will prepare a list of all persons filing federal returns from an address within the state and will also provide various income data according to IRS procedure outlined in Treas. Reg. §§ 301.6103(a)-1(d), (b)-1; Rev. Proc. 62-18, 1962-2 CUM. BULL. 408. See also Conlon, *supra* note 10, at 369.

20. An unpublished report by Legislative Auditor J.M. Burris indicates that the new law will result in the collection of approximately 8% less revenue than under the old laws. Revenue Department officials believe that this report was based on an inadequate sampling and that the actual loss will be closer to 2.6%. Interview with Bill Tuttle, Deputy Collector of Revenue, in Baton Rouge, La., Sept. 19, 1974. This figure seems insignificant since the Louisiana general income tax law yielded \$188,198,000 in 1973. 1 CCH STATE TAX GUIDE ¶ 475 (1974).

21. La. Acts 1974, No. 341 § 295, adding LA. R.S. 47:295 (Supp. 1974). Such a grant of power to the Collector of Revenue is in addition to that already established in LA. R.S. 47:1511 (1950).

22. LA. CONST. art VII, § 2; La. Const. art. 10, § 1(a) (1921).

approval to an act it considered administrative rather than one to increase taxes. However, since the title of Act 341, which constitutionally must indicate the purpose of the legislation,²³ expresses that the bill's intent is to "conform the income tax on individuals with the United States Internal Revenue Code" and to "provide for the establishment of tax tables"²⁴ the legislature should have been put on notice that the matter before it affected tax rates. Therefore, the overwhelming vote²⁵ given to the Act should be construed as one which adopted a new tax and which conformed to constitutional requirements.

The Louisiana constitution also requires that all bills be limited to one object.²⁶ However, Louisiana courts have upheld laws with more than one object, provided the various parts have a logical connection to one another and to the general purpose of the bill.²⁷ Although Act 341 reflects several objects—conformity of tax laws, administrative policies, and an explanation of the tax—the parts appear to have the requisite connexity and the Act should survive constitutional scrutiny.

Because Act 341 adopts the Internal Revenue Code, it may appear to violate the state constitutional provision that the legislature not adopt a system of laws by reference.²⁸ However, prior jurisprudence has condoned similar laws. For instance, in *Bennett v. Banks*,²⁹ the First Circuit Court of Appeal upheld a state unemployment compensation tax statute which provided that a service was within a covered employment if the service was taxed under federal law. In addition, a series of earlier cases upheld an adoption by reference to federal alcohol laws.³⁰ However, *Rathborne v. Collector of Revenue*³¹ indicated that the Louisiana supreme court might have considered a state income tax provision unconstitutional if it had adopted the

23. LA. CONST. art. III, § 15(A); La. Const. art. III, § 16 (1921).

24. La. Acts 1974, No. 341, Title.

25. Act 341 passed the Senate unanimously and won all but two votes in the House of Representatives. HOUSE JOURNAL, *supra* note 16 at 2533.

26. LA. CONST. Art. III, § 15(A); La. Const. Art. III, § 16 (1921).

27. See *Wall v. Close*, 203 La. 345, 14 So. 2d 19 (1943); *Ferguson v. Hayes' Heirs*, 202 La. 810, 13 So. 2d 223 (1943); *State ex rel. Supervisor of Pub. Accounts v. Terrell*, 181 La. 974, 160 So. 781 (1935).

28. LA. CONST. art. III, § 15(B); La. Const. art. III, § 18 (1921).

29. 158 So. 2d 290 (La. App. 1st Cir. 1963), *writ denied*, 245 La. 802, 161 So. 2d 277 (1964).

30. See *State v. Bass*, 153 La. 269, 95 So. 714 (1923); *State v. Hughes*, 152 La. 929, 94 So. 702 (1922); *State v. Whittaker*, 152 La. 639, 94 So. 144 (1922); *State v. Anding*, 152 La. 259, 92 So. 889 (1922); *State v. Coco*, 152 La. 241, 92 So. 883 (1922).

31. 196 La. 795, 200 So. 149 (1941).

federal definition of "capital assets" by reference.³² Although legislation which adopts the provisions of the Internal Revenue Code would seem to be a violation of the constitutional language, the failure of the *Bennett* court to discuss the inferences of the *Rathborne* decision leaves the judicial standards uncertain in attempting to predict the outcome of a constitutional attack based on the prohibition against an adoption by reference.³³

Finally, a related constitutional attack may be that the legislature has surrendered its taxing power³⁴ by allowing the United States Congress to determine taxable income without providing for subsequent ratification of amendments to the Internal Revenue Code by the state legislature. To stifle such a constitutional challenge, the statute allows the Collector of Revenue, with the approval of the Board of Tax Appeals, to adjust the amount of taxes owed by a taxpayer.³⁵ The purpose of this section is to entice those persons whose taxes have been raised by the Act to seek a remedy short of a constitutional attack. However, if the Board adjusts taxes according to the former laws, it would defeat the purpose of the Act by recognizing income tax laws other than the Internal Revenue Code.³⁶

32. *Id.* at 811-12, 200 So. at 154-55.

33. A prohibition against adopting by reference was included in the Louisiana constitution to prevent the possible incorporation of the common law into the state. The section also has the purpose of preventing fraudulent or deceptive legislation by insisting that the entire text of the intended statute be available to the public. *Cf.* *State v. Cruz*, 76 N.J. Super. 325, 184 A.2d 528 (1962). While Act 341 of 1974 appears to be an adoption by reference, the courts would probably recognize the practical difficulties involved in adopting legislation as lengthy as the Internal Revenue Code and sustain the constitutionality of the Act.

34. LA. CONST. art. VII, § 1; La. Const. art. X, § 1 (1921). The constitutionality of a state legislature's approving prospective federal legislation by an adoption by reference to federal law has been extensively litigated in states prohibiting an undelegated surrender of authority. The majority of the cases follow the rule expressed in *Wallace v. Commissioner of Taxation*, 289 Minn. 220, 228, 184 N.W.2d 588, 593 (1971): "The legislature . . . could not grant to Congress the right to make future modifications or changes in Minnesota law." See *State v. Vino Medical Co.*, 121 Me. 438, 117 A. 588 (1922); *Smithberger v. Banning*, 129 Neb. 651, 262 N.W. 492 (1935); *Darweger v. Staats*, 267 N.Y. 290, 196 N.E. 61 (1935); *Holgate Bros. Co. v. Bashore*, 331 Pa. 255, 200 A. 672 (1938); *Dane, Problems Involved in Conforming a State Income Tax System With the Federal Law*, 47 TAXES 94 (1969). Decisions which upheld an adoption by reference indicated that the result would have been different had there been a prospective adoption of federal amendments. *Alaska S.S. Co. v. Mullaney*, 180 F.2d 805 (9th Cir. 1950); *Featherstone v. Norman*, 153 S.E. 58 (Ga. 1930); *Santee Mills v. Query*, 115 S.E. 202 (S.C. 1922). *But see, In re Lasswell*, 1 Cal. App. 2d 183, 36 P.2d 678 (1934); *People ex rel. Pratt v. Goldfogle*, 242 N.Y. 227, 151 N.E. 452 (1926); *Commonwealth v. Alderman*, 275 Pa. 483, 119 A. 551 (1923).

35. La. Acts 1974, No. 341, § 295, adding LA. R.S. 47:295 (Supp. 1974).

36. The state could also attempt to answer a constitutional attack against the Act

The piggyback statute should prove to be a convenient aid to state taxpayers. However, to insure that the Act will withstand constitutional attack, the legislature should either provide for successive amending of the legislation to reflect changes in the Internal Revenue Code³⁷ or initiate a constitutional amendment allowing federal changes in the income tax laws to be automatically enacted into state law.³⁸

Herman Edgar Garner, Jr.

LOUISIANA'S "NEW" ADMINISTRATIVE PROCEDURE ACT

Regulation of Administrative Procedure Prior to 1967

Prior to the adoption of the Louisiana Administrative Procedure Act (APA) of 1967,¹ broad statutory grants of power authorized each state agency to promulgate rules governing its adjudicative and rule-making functions. A party aggrieved by an agency decision or rule was afforded a state constitutional right to appeal the decision in district court, even in the absence of a specific statute providing therefor.² Methods of obtaining judicial review differed among the agencies³ and the scope of review depended upon whether the statute creating the agency specifically required the agency to make a determination on a record after notice and hearing or simply authorized the agency to proceed, setting no guidelines as to the minimum protection to be afforded parties appearing before it.

If the statute provided for notice and hearing and determination

based on the surrender of the taxing power by claiming that the state has merely turned to the federal guidelines for defining taxable income but has not allowed the federal government to "fix" or administer the tax. See *City Nat'l Bank v. Iowa State Tax Comm'n*, 102 N.W.2d 381 (Iowa 1960). However, such a distinction seems unwarranted since the federal definition of taxable income in fact determines the taxpayer's state tax liability.

37. The annual regular sessions of the legislature could facilitate the routine of ratifying amendments to the Internal Revenue Code. See LA. CONST. art. III, § 2(A).

38. This procedure has been followed in COLO. CONST. art. X, § 19; NEB. CONST. art. VIII, § 1-5; MO. CONST. art. X, § 4(D).

1. LA. R.S. 49:951-67 (Supp. 1967), as amended.

2. La. Const. art. I, § 6 (1921): "All courts shall be open and every person for injury done him in his rights, lands, goods, person or reputation shall have adequate remedy by due process of law and justice administered without denial, partiality or unreasonable delay."

3. Two traditionally used methods for obtaining judicial review of an agency rule or decision were the writ of mandamus (LA. CODE CIV. P. arts. 3861-66) and the injunction (LA. CODE CIV. P. arts. 3601-13).