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SYMPOSIUM

THE WASHINGTON STATE TAX STRUCTURE

THE WASHINGTON TAX SYSTEM—HOW IT GREW

ALFRED HARSCH*

Since the establishment of Washington as a territory in 1854, the state's taxing system has expanded from a simple two-tax program, adequately serving the needs of its rough pioneer communities, into an involved complex of multiple taxes, limited and confined either within a rigid and strictly construed constitutional framework or by the outer limits of economic and political feasibility. Whatever may be one's belief with respect to the desirable extent of the governmental activities and services of the state and its many subdivisions, there can be no denying the proposition that the state's existing revenue system creaks, groans, and mightily strains at the task of providing the funds necessary to maintain the level of governmental activity which citizens and organized groups require their representatives to maintain in the complex of urban, suburban, and rural communities of the state.

THE TERRITORIAL TAX STRUCTURE

In 1854, when Washington was organized as a territory, the provisions of the Territorial Organic Act¹ with respect to the taxing power were very brief. Power to tax the property of the United States was expressly negated and the lands or property of a non-resident could not "be taxed higher than the lands or other property of residents." Equality and uniformity was required in the case of "all taxes," and different kinds of property was to be assessed without distinction and according to its value. The requirement of *equality* seemingly forbade classification of, or the making of distinctions among, objects to which any taxing statute was to be applied. The specific provision demanding no distinction in assessment made it doubly clear that the territorial legislature was not authorized to establish different classes of property for the purpose of imposing a tax thereon. Literal interpretation of the equality provision of the Organic Act would seem to have likewise de-

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¹ 10 U.S. Stat. ch. 90, § 6 (1853).

prived the territorial legislature of power to classify the subject to which taxes other than property taxes were to be applied. However, if this was the intended effect of the language, it was certainly not observed in connection with the non-property taxes which were levied, or authorized, by the territorial legislature. For example, the county poll tax of 1854 taxed some citizens, or residents, while others were not taxed.

At its first meeting in 1854 the territorial legislature provided for the support of the territory, the counties, and the school districts by levying a poll tax of one dollar upon all white males over the age of twenty-one,² and by taxing all property, real and personal. The legislature directed the county commissioners to levy for territorial purposes one mill, for school district purposes two mills, and for county purposes not to exceed four mills.³ The territorial and the county tax levies were to apply to "every dollar's worth of real and personal property."⁴

To the legislator of this early day there was no need for elaborate definitions of property. One section related to personal property which expressly included several common items of tangible personality, all debts due, or to become due and specified stocks.⁵ Property exempt from taxation was listed in a single six-line section.⁶

In addition to the poll tax and the property tax, the county commissioners were authorized to license itinerant vendors, grocers, liquor vendors, and operators of billiard tables, bowling alleys,⁷ and ferries.⁸

As the end of the territorial period approached, the statutory provisions relating to taxation had become more extensive and numerous changes in tax administration procedures had been made, but reliance still was almost wholly upon the poll tax and the property tax for the support of the territorial government and its subdivisions. The description of taxable property had become a little more detailed;⁹ the

² Wash. (Terr.) Laws 1854, at 331. It specified that the proceeds of this tax "shall go to the county."

³ *Ibid.* With respect to county tax for schools see also Wash. (Terr.) Laws 1854, at 319. Legal voters in school meetings could levy a tax on all property without a millage limitation by a majority vote. Wash. (Terr.) Laws 1854, at 326-27.

⁴ Wash. (Terr.) Laws 1854, at 331.

⁵ Wash. (Terr.) Laws 1854, at 332.

⁶ Only the following were listed: Property of religious, benevolent, charitable, literary and scientific institutions, property of the Territory and its counties, school property, public libraries, places of burial, and the property of Indians. *Ibid.*

⁷ Wash. (Terr.) Laws 1854, at 330-38.

⁸ Wash. (Terr.) Laws 1854, at 354.

⁹ Wash. (Terr.) Laws 1881, ch. 220, at 593.

breaking of the wilderness barriers was evidenced by references in the taxing statute to the property of railroad, telegraph, and telephone companies,¹⁰ as well as to the shares of banking associations;¹¹ the county poll tax had been increased¹² and expanded;¹³ and the property tax levy for territorial purposes had been raised.¹⁴

Cities and Towns. During the territorial period the charter for each city and town was enacted by special legislative act, and for this reason the general statutes of the territory were devoid of any reference to the taxes that were to be levied for city or town purposes. The powers vested in the cities and towns by these special charters varied in detail from charter to charter. In studying the provisions of seven city charters enacted by the legislature at its 1881 session,¹⁵ it appears that all of the cities were granted the power to levy and collect taxes on property within the city for municipal purposes. The maximum rates permitted, however, varied from city to city, ranging from four mills to ten mills. In some instances, levies in excess of the stipulated maximum were permitted with the approval of voters,¹⁶ while in other instances additional levies might be made without voter approval, subject to varying provisions.¹⁷

In each of the city charters mentioned, city officials (not always the same ones) were empowered to list property and polls for the purpose of municipal taxation, to prepare assessment rolls, to collect, and in case of delinquency, and to enforce payment of the municipally levied taxes. In each instance, however, the city assessor (or other official performing this function) was directed to utilize the valuations of property as determined by the county assessor for the purposes of territorial, county, school district, and road taxes.

¹⁰ Wash. (Terr.) Laws 1881, at 492-94.

¹¹ Wash. (Terr.) Laws 1881, at 492.

¹² The increase was from \$1 to \$2 annually. Wash. (Terr.) Laws 1881, at 495-96.

¹³ A poll tax of \$4 was imposed on males liable to perform labor on the public roads. Wash. (Terr.) Laws 1881, at 518-19.

¹⁴ Rate for Territorial purposes was raised from 1 to 2½ mills. The maximum levy rates were specified as follows: for county purposes, 8 mills; school district purposes, 6 mills; and road purposes, 5 mills. Wash. (Terr.) Laws 1881, at 498.

¹⁵ Wash. (Terr.) Laws 1881, Local and Private Laws, under varying titles: City of Olympia 51; New Tacoma 66; City of Dayton 87; City of Port Townsend 115; City of Waitsburg 138; City of Colfax 157; City of Spokane Falls 148.

¹⁶ See, e.g., Wash. (Terr.) Laws 1881, Local and Special Laws, § 3, at 52 (Olympia) and 143 (Waitsburg). Each city was granted power to levy and collect license taxes for revenue purposes, but the powers so granted were not identical for each city. Compare, e.g., Wash. (Terr.) Laws 1881, Local and Private Laws, § 3, at 52-54 (Olympia), with Wash. (Terr.) Laws 1881, art. VI, § 1(7), at 144 (Waitsburg).

¹⁷ See, e.g., Wash. (Terr.) Laws 1881, Local and Special Laws, § 34(20), at 78 (New Tacoma) and § 15, at 91 (Dayton).

THE CONSTITUTION OF 1889

At the inception of statehood in 1889, the drafters of the state's constitution departed from the pattern of brevity in reference to the subject of taxation that had been observed in the Territorial Organic Act. The constitution of 1889 contained one article, of nine sections, and two sections in another article which related wholly to taxation.¹⁸ References to the subject of taxation were also to be found in ten other sections.¹⁹

The first two sections of article VII and the two sections in article IX provided the basic framework of the constitutionally formulated pattern for the revenue structure of the state. It appears that the two sections in article XI relating to taxation of and for support of the municipalities and other subdivisions of the state, were taken from similar provisions of the 1879 constitution of the state of California.²⁰ The language of sections 1 and 2 of article VII, however, has no counterpart in other state constitutions. Language similar in part to the provisions of these two sections is found in the then-existing constitutions of six states.²¹ The journal of the constitutional convention is devoid of information relative to either the derivation, or the reasons for selection, of the policy positions or the language of these constitutional provisions.²² It has been suggested that the committee on revenue and taxation of the constitutional convention must have put these two sections together by borrowing sentences and parts of sentences from the constitutions of the above mentioned six states.²³

Article VII, section 1: Article VII, which is entitled "Revenue and Taxation," contains the basic framework of the state structure as it was envisaged by the drafters of the constitution in 1889. The first section provided that all property not otherwise exempt, "shall be taxed in proportion to its value, to be ascertained as provided by law."

¹⁸ WASH. CONST. art. VII and art. XI, §§ 9, 12 (1889).

¹⁹ WASH. CONST. art. II, § 28, cl. 5; art. IV, §§ 5, 6; art. VIII, § 6; art. IX § 2; art. XI, §§ 4, 13, 15; art. XII, § 17; and art. XXVI.

²⁰ Beardsley, *The Sources of the Washington Constitution as Found in the Constitutions of the Several States: Historical Notes in CONSTITUTION OF THE STATE OF WASHINGTON, 1889-1939*, xxix (Golden Jubilee ed. 1939). These notes are also to be found in each subsequent biennial edition of this pamphlet published by the Secretary of State.

²¹ California, Colorado, Illinois, Kansas, Oregon, and Texas. The draft constitution for the proposed state of Washington submitted to Congress in 1878 also contains language similar in part. *Id.* at xxv.

²² THE JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION 1889 at 649-58 (Rosenow ed. 1962).

²³ Beardsley, *supra* note 20, at xxiv.

This section also directed the legislature to make provisions for an annual tax levy, "sufficient, with other sources of revenue, to defray the estimated ordinary expenses of the state for each fiscal year," as well as for the payment of interest on state indebtedness and for its amortization over a period of twenty years. It is obvious that the members of the constitutional convention were thinking only in terms of conditions as they then existed and contemplated that the property tax would continue to constitute the mainstay of, and provide the element of flexibility in, the total revenue structure. While the possibility of other sources of revenue for state purposes was recognized, the property tax levy was to supply the balance of income required to maintain current operations at the state level and to retire those debt obligations which might be incurred.²⁴

Article VII, section 2—Requirement of Uniformity and Equality of Treatment. The second section of article VII stated that "The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money. . . ." This requirement, that "all property" be both assessed and taxed at a "uniform and equal rate" forbade classification of property either for the purpose of variation in the ratio of assessed to full value for different types of property or for the purpose of variation in the levy rate application to different classes of property. All types of taxable property must receive identical tax treatment, regardless of other relevant considerations.²⁵ While there was no definition of the word "property" in the constitution, it was evident that the drafters meant that the taxable property, to which the requirement of equal treatment applied, included not only real property but also all kinds of personal property, intangible as well as tangible. This was patent both from the lack of anything to qualify or limit the modifying word "all"

²⁴ WASH. CONST. art. VII, § 8 appears to do no more than elaborate upon this idea. It states that: "Whenever the expenses of any fiscal year shall exceed the income, the legislature may provide for levying a tax for the ensuing fiscal year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of the ensuing fiscal year." This section, which is still operative, has not had much effect in shaping the state's tax structure. It applies only to taxes levied for state purposes. *Mason v. Purdy*, 11 Wash. 591, 40 Pac. 139 (1895).

²⁵ The all-inclusive sweep of the equality requirement of the constitution became evident in a very few years. In 1897 the legislature amended the revenue law to provide for an exemption of \$500 worth of personal property for each individual and an exemption of \$500 worth of improvements on the land of each taxable person. The court held such exemptions were in conflict with the equality provision. *State ex rel. Chamberlain v. Daniel*, 17 Wash. 111, 49 Pac. 243 (1897). Article VII, § 2, was amended in 1900 to permit exemption of the personal property of the head of a household (limited to \$300 in value). WASH. CONST. amend. 3 (1900).

and from the proviso, appearing in the latter part of the section, "that a deduction of debts from credits may be authorized."

The legislature was directed by section 2 to "prescribe such regulation by general law as shall secure a just valuation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property." While this focuses upon valuation and procedures for assessment, it further evidences the drafters' concern for equality of treatment for tax purposes, not only with respect to different types of property owners. The third and fourth sections of article VII also illustrate how greatly concerned the members of the constitutional convention were with uniformity and equality. These sections provide that corporations should not receive any better treatment than individual property owners.²⁶

The remainder of section 2 related to exemptions and provided that, "property of the United States and of the state, counties, school districts and other municipal corporations, and such other property as the legislature may by general laws provide, shall be exempt from taxation." The properties of the specified governments and subdivisions of the state were thus constitutionally immunized from taxation. While the legislature was given no discretion with respect to governmental property, it appeared to have the authority to exempt such other kinds of property as it might select and designate by general law. However, this proved to be an erroneous belief. The Washington Supreme Court, applying the rule of *ejusdem generis*, held in *State ex rel. Chamberlain v. Daniel*²⁷ that the legislative power to exempt was limited to property that was of the same character as the property constitutionally exempted, *i.e.*, public and quasi-public property. This interpretation led to the 1900 amendment which authorized the legislature to exempt a limited amount of personal property belonging to the head of a household.²⁸ Sections 5, 6, and 7 of article VII have had little, if any, effect upon the content of the taxing system.²⁹

²⁶ WASH. CONST. art. VII, § 3 provided that "the legislature shall provide by general law for the assessing and levying of taxes on all corporation property as near as may be by the same methods as are provided for the assessing and levying of taxes on individual property" and § 4 stated that "the power to tax corporations and corporate property shall not be surrendered or suspended by any contract or grant to which the state shall be a party." Both of these sections were deleted by WASH. CONST. amend. 14 (1930). See text accompanying notes 62-76 *infra*. The same thought concerning corporate taxation is also evidenced in art. XII, § 17, which relates to the rolling stock and other movable property of railroad corporations and states that such property "shall be liable to taxation...in the same manner as the personal property of individuals..."

²⁷ 17 Wash. 111, 49 Pac. 243 (1897).

²⁸ WASH. CONST. amend. 3, § 1 (1900).

²⁹ Section 5 requires that taxes be levied only by law and that the tax law state

Municipal Taxation. Section 9 of article VII and section 12 of article XI relate to the powers of taxation enjoyed by the municipal subdivisions of the state. A portion of section 9 and the final clause of section 12 are, at least in part, overlapping.³⁰ The provisions of both sections are permissive in character and clearly show that municipal corporations are without any inherent power of taxation, being dependent upon legislative grant for their enjoyment of such power. The legislature may give such authority or it may withhold it.³¹

The latter portion of section 9 states that taxes for municipal purposes "shall be uniform with respect to persons and property with the jurisdiction of the body levying the same." Unlike the provision in section 2 of article VII, section 9 requires only that municipally levied taxes be uniform, not uniform and equal, with respect to the subject matter to which such tax applies. This permits classification of the objects upon which municipal taxes may be imposed. It is also to be noted that this section is phrased in terms broad enough to embrace all types of taxes, not just property taxes.³²

The initial portion of article XI, section 12, frequently called the "home-rule provision," restricts legislative action by stating that "the legislature shall have no power to impose taxes upon counties, cities, towns or other municipal corporations, or upon the inhabitants of property thereof, for county, city, town or other municipal purposes. . . ." The apparent objective of this restrictive provision (which is followed by the permissive authority-to-grant-taxing-power-to-municipalities clause previously discussed) is to bar the legislators, whose members come from all parts of the state, from dictating to any municipality that it shall, for its own purposes, levy any particular type of tax or levy a tax at any particular rate prescribed by the legislature. How-

the object to which it is to be applied. Sections 6 and 7 require payment of state taxes into the treasury in money only and require publication of an annual statement of receipts and disbursements of public money.

³⁰ WASH. CONST. art. VII, § 9 states: "The legislature may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of property benefited. For all corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes. . . ." Art. XI, § 12 states: "The legislature. . . may, by general laws, vest in the corporate authorities thereof, the power to assess and collect taxes for such [i.e., municipal] purposes."

³¹ For more detailed discussion of the taxation powers of municipalities under the constitution, see Trautman, *Legislative Control of Municipal Corporations in Washington*, 38 WASH. L. REV. 743, 749-55 (1963).

³² See also *Id.* at 755-57 and Harsch & Shipman, *The Constitutional Aspects of Washington's Fiscal Crisis*, 33 WASH. L. REV. 225, 263-64 (1958).

ever, this constitutional language has been interpreted to impose other restrictions which are discussed below.³³

Early Tax Legislation under the new Constitution. At the inception of statehood in 1889, the legislature first reenacted the revenue laws for support of the state, counties, school districts, and for construction and maintenance of roads and bridges, in substantially the same form as these laws had been immediately prior to statehood.³⁴ In addition, the legislature provided for a poll tax to be paid into the general funds of the counties.³⁵

The new state constitution prohibited the charter of cities and towns by special act of the legislature, requiring instead the enactment of general laws for their organization.³⁶ Consequently, the state legislature at its first session enacted general laws for the organization of four classes of cities which were based upon variations in population.³⁷ In conformity with the constitutional provisions of article VII, section 9, and article XI, section 12, this act also granted specified powers of taxation to each class of city. As had been true under each of the separate city charters of the territorial period, cities of each class were granted authority to levy and collect taxes for municipal purposes upon taxable property in the municipality.³⁸ The property subject to tax was the same as that taxable for state purposes³⁹ and, as under territorial procedures, specified officials of the cities were to assess, equalize valuations, and collect the municipal property taxes. In 1893, however, these functions were shifted to the county assessor, county board of equalization, and the county treasurer.⁴⁰ This action eliminated the unnecessary duplication in performance that had existed.

³³ See text accompanying notes 61, 62, and 132-39 *infra*. For further discussion of the impact of WASH. CONST. art. XI, § 9, see Trautman, *supra* note 31, at 749-50 and Harsch & Shipman, *supra* note 32, at 264-74.

³⁴ Wash. Laws 1889-90, ch. XVIII, "AN ACT to provide for the assessment and collection of taxes in the State of Washington." This act became law without the governor's approval.

³⁵ Wash. Laws 1889-90, at 555, 623 (property highway tax, not to exceed 7 mills).

³⁶ WASH. CONST. art. XI, § 10.

³⁷ Wash. Laws 1889-90, ch. VII, § 1, at 131; §§ 23, 24, at 143; § 104, at 178; § 142, at 198; § 1, at 215.

³⁸ Wash. Laws 1889-90, ch. VII, Cities, § 5, at 219, (first-class cities); § 53, at 159 (second-class cities); § 117(9), at 184 (third-class cities); § 154(9), at 202 (fourth-class cities).

³⁹ See, *e.g.*, the provision relating to second-class cities. Wash. Laws 1889-90, § 53, at 159.

⁴⁰ Wash. Laws 1893, chs. LXXI and LXXII, at 167, 171, *passim*. These acts were also applicable to cities which had been chartered by special act during the territorial period; see, *e.g.*, Wash. Laws 1893, § 9, at 170.

Under the general statutes relating to cities the legislature also vested in the municipalities authority to license certain businesses and to collect license taxes thereon. These provisions followed the pattern of territorial city charters, as did the provision for the authority to levy the poll taxes, dog taxes, and the liquor vendors tax, specifically granted to cities of the third and fourth classes.⁴¹

1890-1930: WASHINGTON AS A PROPERTY TAX STATE

During the first forty years of statehood the general pattern of the taxing system remained fairly constant. At the county, city, town, school, and other local district level the major reliance continued to be upon the property tax, with cities and towns deriving a small portion of their revenue from licensing of certain activities carried on within the municipal limits. The poll tax, which provided some revenue for county and road district purposes during the early part of this period, fell into disfavor and was eliminated.⁴² The era of liquor prohibition, by local option in many areas before the state bone-dry law and the following federal prohibition amendment,⁴³ dried up a source of license revenue which had been traditionally available to the cities and towns. These factors and others, increasing population, emerging industrialization, the beginning of an urban living trend, the First World War, the automobile, technological developments, greater national prosperity, combined to call for larger governmental expenditures and the placing of greater burdens upon the property tax payer. The alterations of the taxing structure which were taking place during this period were made at the state level. New excise or license taxes were levied and the proceeds paid into the state treasury for the support of the expanding activities.

The earliest example of a tax for state purposes, other than an ad valorem property tax,⁴⁴ was levied by the first state legislature in 1890. This tax, levied at the rate of two percent, was imposed upon

⁴¹ Wash. Laws 1889-90, ch. VII, §§ 117(7), (8) and (10), at 184; §§ 154(7), (8) and (10), at 202-03.

⁴² The poll tax for county purposes was repealed in 1893 by virtue of its deletion from the re-enacted Revenue Law. Wash. Laws 1893, ch. CXXIV, at 323. The road poll tax was specifically repealed by Wash. Laws 1907, ch. 246, § 3, at 680.

⁴³ Init. No. 3 (1914), Wash. Laws 1915, ch. 2, at 2; U.S. CONST. amend. XVIII (1919).

⁴⁴ Fees collected by state officers for special services performed by them are not regarded as taxes. During the territorial period, as well as by laws enacted at the first session of the state legislature, various state officers were authorized and directed to collect specified fees for special services performed by them. See, e.g., CODE of 1881, ch. CLIII, § 2086; ch. CCVII, § 2647, and HILL'S CODES 1891, § 75 (secretary of state), § 131 (state land commissioner), and § 138 (state geologist) (1891).

the gross premiums received by insurance companies doing business in the state.⁴⁵ In 1891 this statute was amended to make this tax in lieu of "all taxes upon the personal property" of the insurance company "and the shares of stock therein."⁴⁶ This 1891 amendment constituted another "first" in state taxation as it was the forerunner of several excise taxes levied by the state in lieu of taxes on specified kinds of personal property.

Another new state-levied tax was added in 1897, the annual license fee of ten dollars for both domestic and foreign corporations. At the same time, the fee for filing original and amendatory articles of incorporation was fixed at a minimum of ten dollars.⁴⁷ In 1923 the method of computing this tax was altered to provide for a minimum filing fee of twenty-five dollars.

The year 1901 saw another tax innovation, a tax upon the transfer of property from a decedent to his heirs or legatees.⁴⁸ This is commonly known as the classified inheritance tax because different rates of tax apply depending, first, upon the relationship of the heir or legatee to the decedent and, second, upon the amount of property received by the heir or legatee. Immediately, the Washington Supreme Court held that this was not a tax on property for purposes of the state constitutional provisions relating to taxation, but that it was, instead, an impost or excise to which the equality requirement of article VII, section 2, did not apply.⁴⁹ Thus it was determined that the constitutional requirement of equality applies only to the property tax and the legislature has a much greater latitude in selecting the objects upon which it may impose a tax when the tax is denominated an excise or impost tax rather than a property tax.

Other excise tax innovations during this period were the motor vehicle license tax,⁵⁰ the motor vehicle operator's license fee,⁵¹ and the tax

⁴⁵ Wash. Laws 1889-90, ch. XVIII, § 47, at 547. An ambiguous provision for distribution of a portion of this tax to the counties was deleted in 1891: Wash. Laws 1891, ch. CXL, § 42, at 295.

⁴⁶ Wash. Laws 1891, at 296. It expressly provided that the real property of such a company should be assessed and taxed the same as other real property.

⁴⁷ Wash. Laws 1897, ch. LXX, at 134. Prior to this time there had been only small service-type fees for the filing of articles, etc., by the Secretary of State.

⁴⁸ Wash. Laws 1901, ch. LV, at 67.

⁴⁹ *State v. Clark*, 30 Wash. 439, 71 Pac. 20 (1902).

⁵⁰ Wash. Laws 1905, ch. 154, at 293, under which the annual fee was \$2. Under Wash. Laws 1921, ch. 96, § 15, at 261, the basic fee for both automobiles and trucks was \$10 with additional charges based on weight of auto and truck and an additional charge for trucks based on rated cargo capacity of the vehicle.

⁵¹ Wash. Laws 1921, ch. 108, §§ 6, 7, at 325-26.

on gasoline for use in motor vehicles.⁵² These taxes, engendered by the booming manufacture of motor vehicles and popular demand for roads, became, and continue to be, important sources of revenue. But another legislative experiment in state-wide taxation did not prove popular. The legislature in 1921 resorted to the well-known poll tax, by imposing an annual tax of five dollars on all persons within the state with specified exemptions.⁵³ There was an immediate public response and the tax was repealed in 1922 by an initiative measure.⁵⁴

Creation of the State Tax Commission. The first state agency charged solely with functions relating to taxation, the State Board of Tax Commissioners, was established in 1905.⁵⁵ The governor was directed to appoint three persons as full-time members. Prior to this time the revenue acts had provided for a state board of equalization with a membership consisting of elected state officials.⁵⁶ This state board of equalization was responsible for two functions. First, it examined and compared the assessments of property by the assessors of the several counties and equalized them so that each county paid a property tax in proportion to the ratio its property bore to the total value of all state property. Second, it determined the rate of levy on taxable property for state purposes⁵⁷ and advised the county auditors of the adjustment required in assessing county property in order to conform with the state board's equalization for state tax purposes.⁵⁸ Under the 1905 act, the members of the State Board of Tax Commissioners also assumed duties as *ex officio* members of the state board of equalization.

The new Board was directed to exercise general supervision of the system of taxation throughout the state. Specifically, it was to supervise the assessors and county boards of equalization and determine the assessment of taxable property in each county, city, and town in order to equalize the tax throughout the different municipalities and counties.

⁵² Wash. Laws 1921, ch. 173, § 2, at 670 (one cent per gallon); Wash. Laws 1923, ch. 81, § 1, at 242 (two cents per gallon); Wash. Laws 1929, ch. 88, at 159, esp. §§ 1, 5, 7 (three cents per gallon with the additional taxes earmarked for distribution to counties for highway construction and maintenance).

⁵³ Wash. Laws 1921, ch. 174, at 674.

⁵⁴ Init. No. 40 (1922), Wash. Laws 1923, ch. 1, at 1 (the vote was by a 3-1 margin).

⁵⁵ Wash. Laws 1905, ch. 115, at 224.

⁵⁶ From beginning of statehood until establishment of the State Board of Tax Commissioners, the secretary of state, the state land commissioner, and the state auditor were *ex officio* members of the state board of equalization. Wash. Laws 1889-90, § 75, at 557; see also Wash. Laws 1897, ch. LXXI, § 60, at 164.

⁵⁷ Wash. Laws 1891, ch. CXL, § 73, at 308; compare Wash. Laws 1897, ch. LXXI, § 62, at 166.

⁵⁸ Wash. Laws 1891, ch. CXL, § 72; compare Wash. Laws 1897, ch. LXXI, §§ 60, 61, at 165-66.

The Board was also directed to confer with, advise, and direct assessors as to their duties including an examination of their work. If the assessor failed to correct an omission or inaccuracy, the Board was to bring the matter before the county board of equalization.⁵⁹ After several changes in its organizational structure, this agency became a three-man body known as the Tax Commission.⁶⁰

However, when the legislature authorized the Tax Commission (upon appropriate occasion and after notice and hearing) to redetermine the value of property and direct the county assessor to extend such redetermined valuation upon the county tax rolls, the Washington court held that the state constitution forbade the exercise of such power with respect to taxes imposed for county, city and other local purposes.⁶¹ As a consequence of this decision, and others in the same vein which followed, it became, and continues to be, impossible for the state or its officials to require the county assessors to strictly adhere to the statutory, and now the constitutional, mandate that taxable property be assessed at fifty percent of its value.⁶² Some of the problems which still persist as the result of this lack of power in state tax officials will be discussed below.⁶³

Tax Exemptions for Personal Property—Constitutional Problem.

Notwithstanding the constitutional mandate that *all property* be taxed uniformly and equally⁶⁴ the taxing authorities found it virtually impossible to enforce the provision which required that the taxation of intangible personal property be on the same basis as real and tangible personal property.⁶⁵ So, in 1907, the legislature amended the tax law to provide that money plus a number of specified types of intangible personal property should no longer be subject to the property tax.⁶⁶

⁵⁹ Wash. Laws 1905, ch. 115, § 2, at 225, and § 3, at 227.

⁶⁰ Wash. Laws 1925, ch. 18, § 1, at 33.

⁶¹ State *ex rel.* State Tax Comm'n v. Redd, 166 Wash. 132, 6 P.2d 619 (1932). The action of the Tax Commission was taken pursuant to the provisions of a reassessment and re-taxation act passed in 1931 (Wash. Laws 1931, ch. 106, at 306) which permitted the Commission to act only with respect to excessive assessments or assessments which were void in whole or in part, § 2, at 307-08. The court concluded that WASH. CONST. art. XII, § 12, forbade the exercise of this power by the state or its agency.

⁶² For a more extensive discussion of the constitutional problems concerning assessment see Harsch & Shipman, *supra* note 32, at 269-74.

⁶³ See text accompanying notes 132-39 *infra*.

⁶⁴ WASH. CONST. art. VII, § 2 (1889).

⁶⁵ In 1893 the legislature had amended the property tax law to specifically provide for assessment, at "true and actual value," of all credits except mortgages and "credits for purchase of real estate." Wash. Laws 1893, ch. 74, § 3, at 324.

⁶⁶ Wash. Laws 1907, ch. 48, § 1, at 49. "Mortgages, notes, accounts, moneys, certificates of deposit, tax certificates, judgments, state, county, municipal and school district bonds and warrants should not be considered as property for the purpose of

The constitutional validity of this legislative exemption was immediately challenged. While the supreme court stated that the constitutional mandate for taxation of "all property" was met "without the taxation of credits" and thus upheld the legislative exemption of the specified types of intangibles, it held the exemption of money, a tangible property, invalid.⁶⁷ Thereafter, it appears that for all practical purposes, no effort was made to tax any type of intangible property, and many kinds of tangible personal property were overlooked when the lists of taxable property were prepared.

CONSTITUTIONAL AMENDMENT

The complaints of owners of real property and those owners of personal property which did not escape listing on the tax rolls grew more and more audible during the "twenties". These complaints were against both the obvious unevenness in the distribution of the property tax load among property owners and the high rates of tax levy in many parts of the state. The first of a long series of initiative measures providing, *inter alia*, for a maximum tax levy of forty mills on any property, on the basis of assessment at fifty percent of its value, was submitted to the voters of the state in 1924,⁶⁸ but this failed to pass.

Amendment Fourteen Fundamentally Alters the Tax Structure. At its 1929 session the legislature proposed an amendment to article VII of the state constitution. This was approved by the voters in 1930⁶⁹ and effected a repeal of the first four sections of article VII, by substituting a completely new section. One of the major changes was to permit the classification of personal property for the purpose of taxation. Instead of requiring that assessment and levy of all property be uniform and equal, the amendment requires that "all taxes be uniform upon the same class of property." Standing alone this would have permitted classification of all types of property, but there is an important qualification. This is the requirement that "all real estate shall constitute one class . . ." with the exception that mines, mineral resources, and lands devoted to reforestation may be treated separately and made subject to a yield tax or an ad valorem tax. Thus, the overall effect of this amendment permits the legislature to exercise its discretion in classifying personal property but bars the creation of different classes

this chapter, and no deduction shall hereafter be allowed on account of indebtedness owed." *Ibid.*

⁶⁷ State *ex rel.* Wolfe v. Parmenter, 50 Wash. 164, 96 Pac. 1047 (1907).

⁶⁸ Init. No. 50.

⁶⁹ WASH. CONST. amend. 14 (1930).

of real estate except in the case of mining property and reforestation land.

Another significant change of amendment fourteen is with respect to the exemption of property from taxation. Unlike the original language of article VII which had been construed to vest quite limited discretion regarding exemptions in the legislature,⁷⁰ the amendment gives the legislature complete discretion to determine what kinds of property, real as well as personal, shall be exempted.⁷¹ This is in addition to the several types of public properties which the constitutional provision itself prescribes shall be exempt.⁷²

The new constitutional provision also decreed an exemption for "credits secured by property actually taxed in this state, not exceeding in value the value of such property." Notwithstanding its power to classify personal property for purposes of taxation, this constitutional mandate for an exemption of certain credits seems to effectively bar the legislature from taxing any intangible property under any plan which would be administratively feasible and legally valid.⁷³ However, there has never been any necessity for a determination of this issue since the legislature immediately enacted the presently operative provision that all money and credits shall be exempt from taxation.⁷⁴

A completely new provision in amendment fourteen was a sentence which provides that: "the word 'property' as used herein shall mean and include everything, whether tangible or intangible,⁷⁵ subject to ownership." While on its face this appears to convey no more than the term "all property" which appeared in the pre-1930 constitutional provisions, this sentence has had an enormous impact upon the shaping of the tax structure of this state.⁷⁶

⁷⁰ See text accompanying note 67 *supra*. See also *Pacific Cold Storage Co. v. Pierce County*, 85 Wash. 626, 149 Pac. 34 (1915).

⁷¹ *State ex rel. Atwood v. Wooster*, 163 Wash. 659, 2 P.2d 653 (1931). See also *Kennewick Irrigation Dist. v. Benton County*, 179 Wash. 1, 35 P.2d 1109 (1934). How the legislature has exercised its power to exempt under this constitutional provision is shown in RCW, ch. 84.36.

⁷² "Property of the United States and of the state, counties, school districts, and other municipal corporations . . . shall be exempt from taxation." WASH. CONST. amend. 14. With respect to the United States this is modified by WASH. CONST. art. VII, § 3, amend. 19, to permit taxation to the full extent permitted by the laws of the United States.

⁷³ For an elaboration of the reasons supporting this statement, see Harsch & Shipman, *supra* note 62, at 249-51.

⁷⁴ RCW 84.36.070. The constitutional validity of this exemption statute was upheld in *State ex rel. Atwood v. Wooster*, 163 Wash. 659, 2 P.2d 653 (1931).

⁷⁵ By requiring, in a following sentence, mandatory exemption of "credits secured by property actually taxed," the mention of intangibles here as little, if any, effect. See text accompanying note 73 *supra*.

⁷⁶ See text accompanying notes 115-18 *infra*.

THE SHIFT FROM PROPERTY TAX TO EXCISE TAX

Adoption of amendment fourteen, however, did not insure that property owners would obtain the relief they desired from high property taxes. There existed an increasing belief that other sources of revenue should be utilized to meet the rising costs of both state and local government units, costs which were unquestionably due to the popular demand for more and better highways, more and better schools, increased health and sanitation facilities, and more parks, playgrounds, and recreational facilities. In addition, the nationwide economic depression which followed the break in the business boom of the middle and late 1920's added businessmen and farmers as well as homeowners to the property owners who demanded relief from the unreasonable and inequitable burden which they felt the existing tax structure placed upon them.

In the spring of 1932, five initiative petitions relating to taxation were filed. Of the five, two proposed exemption of residential property from taxation⁷⁷ and one sought repeal of the butter substitutes excise tax.⁷⁸ However, while none of these reached the ballot, the other two proposals were more successful.

The Forty Mill Limitation. Initiative Measure No. 64⁷⁹ proposed that, with stated exceptions, the aggregate tax levy upon any taxable property in the state could not exceed forty mills, based upon an assessed valuation of fifty percent of the true and fair value of such property. In addition to providing this over-all limitation, the measure established specific millage limitations for the state and its three major subdivisions.⁸⁰ This measure also provided that if certain stated procedures were complied with, a county, school district, city, or town could levy a tax in excess of the rate specified when it was approved by sixty per cent of the persons voting at a special election.

During the months which followed approval of the so-called "forty mill measure," there were many proposals for its revision. Some people suggested that its provisions be made more stringent while others urged

⁷⁷ Init. No. 59 and Init. No. 63.

⁷⁸ Init. No. 67. This tax had produced no revenue.

⁷⁹ Wash. Laws 1933, ch. 4, at 47; adopted November 1932. The text of this measure was identical to that of Init. No. 50, which had failed in the 1924 election. See text accompanying note 68 *supra*.

⁸⁰ The specific rate limitations were as follows: state, 5 mills; county, 10 mills; school district, 10 mills; city or town, 15 mills. Taxing districts (other than school districts) comprising an area less than a county were excluded from the overall limitation in this measure.

that it should be made less stringent in various respects or repealed entirely. Because of this controversy, the sponsors of the limitation measure decided not to leave its revision to the 1934 legislature.⁸¹ So in 1934, another initiative measure was filed which re-enacted the aggregate and specific levy limitations and made some changes which the sponsors had reason to believe would make the limitation measure more effective. This measure was approved by the voters at the general election of 1934.⁸² The same procedure was followed in 1936⁸³ and 1938.⁸⁴ In 1939 and 1941 a different procedure was followed. The "forty-mill measure" was enacted by the legislature and then referred to a vote of the people at the general elections of 1940 and 1942. Each time the voters approved.⁸⁵

Following these six successive, and successful, biennial submissions of the "forty-mill" limitation measure to the voters, the 1943 legislature proposed, and the electorate accepted, a constitutional amendment which incorporated the overall levy limitation of forty mills.⁸⁶ This is applicable to levies by the state and all taxing districts⁸⁷ except for port or public utility districts. Under this constitutional provision the legislature is permitted the determination of how the total forty mills is to be divided among the state and the several taxing districts.

The amendment also sets up exclusive methods and procedures through which any taxing district may authorize a levy in excess of its statutory millage limitation. Thus an excess levy requires approval by sixty per cent of the votes cast, and forty per cent of the voters who cast ballots in the preceding general election must vote upon the proposal. Further, authorization of an excess levy to finance current operations can not be operative for more than one year. This latter provision requires a separate submission and vote for each year that an additional tax levy for current operations is needed.⁸⁸ Finally,

⁸¹ WASH. CONST. art. II, § 1(c), amend. 7 (1912), provided that an initiative measure approved by the voters could not be amended or repealed by the legislature within a period of two years after its enactment. (This rule was operative until adoption of Amendment 26 in 1952). After the two-year period, the legislature had the power to amend or repeal such an act.

⁸² Wash. Laws 1935, ch. 2, Init. No. 94. The vote was 219,635 to 192,168.

⁸³ Wash. Laws 1937, ch. 1, Init. No. 114. The vote was 417,641 to 120,478.

⁸⁴ Wash. Laws 1939, ch. 2, at 5, Init. No. 129. The vote was 340,296 to 149,534.

⁸⁵ Wash. Laws 1939, ch. 83, at 217; Referendum No. 5 (1940). The vote was 390,639 to 149,843. Wash. Laws 1941, ch. 176, at 474; Referendum No. 6 (1942). This time the vote was 252,431 to 75,540.

⁸⁶ WASH. CONST. art. 7, § 2, amend. 17 (1944).

⁸⁷ Defined to "mean any political subdivision, municipal corporation, district, or other governmental agency authorized by law to levy or have levied for it, ad valorem taxes on property..." *Ibid.*

⁸⁸ There also are detailed conditions relating to tax levies in excess of the stated

a proposal cannot be submitted to the voters more than twice in any one calendar year.

Net Income Tax. On the ballot at the general election in the fall of 1932, along with the first of the "forty-mill" measures, was an initiative which proposed a tax at graduated rates upon the net income of natural persons and corporations. This net income tax proposal was sponsored by, or had the blessing of, a number of organizations and associations who were advocating a broader state tax base. These organizations recognized the need for additional state tax revenue in order to cover the anticipated reduction in property tax revenues resulting from approval of the forty-mill limitation measure. While not a "package deal," the two measures were generally regarded as companion measures and both were approved by the voters, with the income tax receiving a margin of approval substantially greater than the tax limitation measure.⁸⁹

Business and Occupation Tax. By the fall of 1932 the economic depression had spread throughout the nation. Tax collections had spiraled downward and property owners were demanding either complete forgiveness or virtually indefinite postponement, without penalty, of taxes already due or to become due. In addition, governmental treasuries were being drained by the expenditures necessary to maintain the breadlines and other minimal forms of assistance to the constantly-increasing groups of unemployed and needy citizens. The economic debacle reached its climax with the bank holiday in March 1933 while the Washington Legislature was in session.

With demands rising, collections from existing property and other taxes falling, and doubts rising as to the amount of revenue which would be derived from the net income tax during the depression

maximum levies for payment of interest and principal on bonded indebtedness. A levy in excess of the specific maximum for the taxing district which is to be made in two or more consecutive years can be authorized by the voters of the taxing district *only* if the proceeds of such levies are to be used to pay interest and principal of a bonded indebtedness incurred solely for the purpose of making capital improvements other than replacement of equipment. In such case the proposal to incur general obligation indebtedness, issue bonds, and to pay the interest and principal thereon from the proceeds of the tax levy must be submitted to a vote of the electors in the district. Not less than forty per cent of the persons who voted at the last general election must cast votes on the proposition; and at least sixty per cent of the persons voting on the proposition must vote in favor of the proposal. *Ibid.*

⁸⁹ Wash. Laws 1933, ch. 5, at 49; Init. No. 69 (net income tax). The vote was: For 322,919; Against 136,983. Its plurality was over 73,000 greater than that of Init. No. 64, the forty-mill tax limitation measure approved at the same election. Wash. Laws 1933, ch. 4, at 47.

period,⁹⁰ the legislature levied another new tax.⁹¹ This tax was imposed on individuals, partnerships, and corporations engaging in production, manufacturing, selling, public utility, transportation, banking, amusement, and other specified types of businesses conducted within the state. Since the amount of tax was determined by applying varying rates to the gross receipts derived by the several classes of taxpayers, the new tax was a classified tax, the measure of which was gross receipts or gross income, with different rates applicable to different classes of taxpayers.

Constitutional Problem. The validity of both the 1932 net income tax and the 1933 business and occupation tax was challenged on the ground that each conflicted with the state constitutional provisions of article VII, section 1 as amended in 1930. The Washington Supreme court, in *Culliton v. Chase*,⁹² held that net income constitutes property as that word is defined in section 1.⁹³ As a tax on property, the tax on net income is subject to the uniformity and restricted classification provisions of article VII, section 1. Therefore, the net income tax was invalid because it improperly created two classes of real estate, namely income-producing land and unproductive land.⁹⁴

On the same day that *Culliton* was decided, the Washington court sustained the validity of the business and occupation tax. This tax, which operates on different classes of persons and applies varying rates to gross receipts, was declared an excise tax to which the provisions of amendment fourteen did not apply.⁹⁵ Thus, the legislature was held to have the power of creating classes of taxpayers upon the basis of business activities performed and, as to the classes created, could impose a tax at different rates upon differing types of gross receipts.

⁹⁰ The allowance of credits for property taxes paid against the computed amount of net income tax payable also created doubt with respect to the amount of revenue which this new income tax law would produce.

⁹¹ Wash. Laws 1933, ch. 191, at 869.

⁹² 174 Wash. 363, 25 P.2d 81 (1933).

⁹³ "The word 'property' as used herein shall mean and include everything, whether tangible or intangible, subject to ownership." WASH. CONST. art 7, § 1, amend. 14 (1930).

⁹⁴ The court also held that the income tax law violated the uniformity clause because it applied graduated rates upon income, all of which constitutes a single class. The decision was 5 to 4. See Harsch & Shipman, *The Constitutional Aspect of Washington's Fiscal Crisis*, 33 WASH. L. REV. 225, 252-56, 279-82 (1958), and Comment, *A Study of State Income Taxation in Washington*, 33 WASH. L. REV. 398 (1958).

⁹⁵ State *ex rel.* Stiner v. Yelle, 174 Wash. 402, 25 P.2d 91 (1933). The decision was also 5 to 4. The dissenting justices (all of whom had voted against the validity of the net income tax) felt that the business and occupation tax was also a property tax, and thus, invalid.

Following these two decisions the state found itself in the position of having to rely solely upon the business and occupation tax as the source of the "new revenue" so desperately needed at that time. This tax was amended, effective in mid-1934, to make it applicable to services and other businesses not included under the 1933 act,⁹⁶ and at its next regular session the legislature launched a two-pronged attack on the problem of providing additional sources of revenue for state purposes.

The Revenue Act of 1935—Excise Taxes. Relying upon the court's holding that a tax based upon an activity performed by the taxpayer, measured by gross receipts, is not subject to the classification restrictions of the constitution, the legislature in the "omnibus" Revenue Act of 1935⁹⁷ levied a variety of taxes. Each of these was framed to apply upon the performance of some business or other activity, and in all but one the amount of the tax was determined by reference to some gross measure. The 1933 business and occupation tax was re-enacted with some revisions.⁹⁸

The first completely new tax in the Revenue Act, and by far the most important from the standpoint of revenue produced over the intervening years, was the retail sales tax. This was imposed at the rate of two per cent of the selling price upon sales of tangible personal property at retail.⁹⁹ Also enacted was a compensating, or use, tax.¹⁰⁰ The latter is complimentary to the retail sales tax and is imposed only upon a person who uses, in this state, tangible personal property upon which he did not pay the Washington retail sales tax when he acquired the article. The amount of the use tax was two per cent of the article's value, which generally meant two per cent of the purchase price paid for the article by the user.

Next in order came the public utility tax which was a re-enactment, with some revisions, of the 1933 business and occupation tax law.¹⁰¹ Following this was a tax, at rates varying from approximately five per

⁹⁶ Wash. Laws 1933 Ex. Sess. ch. 57, at 157. This tax on services and other businesses had been vetoed by the governor in 1933.

⁹⁷ Wash. Laws 1935, ch. 180, at 706. This comprehensive tax act contained twenty titles, levied sixteen different taxes (of which thirteen had never before been levied in this state). Of the sixteen, nine are still levied for state purposes and one has been made available for use by the counties and municipalities.

⁹⁸ Wash. Laws 1935, ch. 180, tit. II, at 709.

⁹⁹ Wash. Laws 1935, ch. 180, tit. III, at 71. Sales at retail of certain food items for consumption off the premises were exempted under this act; § 19(g), at 723. This exemption was later repealed.

¹⁰⁰ Wash. Laws 1935, ch. 180, tit. IV, at 726.

¹⁰¹ Wash. Laws 1935, ch. 180, tit. V, at 728.

cent to fifty per cent, upon amounts charged for admission to theaters and places of amusement and entertainment.¹⁰²

Other new state-levied taxes imposed under the provisions of the 1935 omnibus tax measure were: a tax on sales by the state's liquor control board of intoxicating liquor,¹⁰³ a stamp tax upon conveyance of interests in land,¹⁰⁴ a tax upon fuel and diesel oil,¹⁰⁵ and the first of a series of increasing tax levies on cigarettes.¹⁰⁶

The Revenue Act established a new method of computing the amount of inheritance tax¹⁰⁷ and contained five new kinds of sales or other excise taxes which did not become operative because they were either vetoed by the governor¹⁰⁸ or held invalid under the federal interstate commerce clause.¹⁰⁹

Revenue Act of 1935—Income Taxes. The second avenue of approach to the solution of the state's revenue problem was an attempt to establish the net income tax as a valid component of the state's taxing structure. The first step had been taken in 1934 when the legislature submitted a proposal to the voters which would amend the taxation article of the constitution to specifically provide, *inter alia*, that a graduated net income tax was not prohibited.¹¹⁰ Although the voters rejected this proposed amendment, the legislature¹¹¹ still included in the

¹⁰² Wash. Laws 1935, ch. 180, tit. VI, at 733. Changes with respect to this tax are discussed at note 141 *infra*.

¹⁰³ Wash. Laws 1935, ch. 180, tit. VII, at 737 (10% of sale price).

¹⁰⁴ Wash. Laws 1935, ch. 180, tit. VIII, at 738 ($\frac{3}{10}$ of 1%).

¹⁰⁵ Wash. Laws 1935, ch. 180, tit. XI, at 749 ($\frac{1}{4}$ of 1 cent per gallon).

¹⁰⁶ Wash. Laws 1935, ch. 180, tit. XII, at 751. The tax imposed was one cent per pack unless the selling price exceeded 20 cents per pack (very few at that time) then the tax was 10% of the intended retail selling price.

¹⁰⁷ Wash. Laws 1935, ch. 180, tit. XV, at 768. The provision revising the method of computing the tax (§ 106) and fifteen other sections (§§ 104, 107, 108, 111-15, 121-27) designed to improve and strengthen administration of this tax were approved by the governor, but the governor vetoed eight sections amending other parts of the inheritance tax statute (§§ 105, 109, 110, 116-20).

¹⁰⁸ The governor vetoed a stamp tax ($\frac{1}{10}$ of 1%) on stock issues and transfers; a stamp tax (10% of intended selling price) on proprietary medicines and toilet preparations; a chain store tax (progressive rates, varying from \$25 to \$250 per store per year); and a tax on lifetime gifts of property (at rates equal to 90% of the rates under the state inheritance tax).

¹⁰⁹ A tax on the business of radio broadcasting ($\frac{1}{2}$ of 1% of gross income); Wash. Laws 1935, ch. 180, tit. X, at 748. The tax was held to constitute an unconstitutional burden on interstate commerce. *KVL, Inc. v. Tax Comm'n*, 12 F. Supp. 497 (W.D. Wash. 1935).

¹¹⁰ Wash. Laws 1933, Ex. Sess., H.J.R. No. 12, at 230.

¹¹¹ Most legislators believed that, as the voters had so overwhelmingly approved the net income tax initiative measure in 1932, their rejection of the 1934 proposal to amend the constitution was due to lack of information as to its purpose and need. There was nothing, either pro or con, in the *SECRETARY OF STATE, VOTERS' PAMPHLET* (1934) relating to this amendment and none of the state-wide organizations which had been active in supporting the 1932 initiative income tax measure came out strongly for the 1934 amendment.

Revenue Act of 1935 a tax on corporations for the privilege of exercising their corporate franchises. This tax was levied on the net income of every corporation doing business in the state¹¹² as well as upon the net income of national banks¹¹³ and was imposed at the flat rate of four per cent.

The legislature also levied a tax on each resident of the state "for the privilege of receiving income therein while enjoying the protection of its laws."¹¹⁴ This included a normal tax, at the rate of three per cent, and a surtax, at the rate of four per cent,¹¹⁵ on an individual's net income.

Believing that the voters would approve the necessary constitutional changes if adequately informed, the 1935 legislature submitted a proposal for constitutional revision which would have opened the way for working out in the legislative arena a number of the serious fiscal problems then, and still, confronting this state. The proposal was a comprehensive one, involving provisions relating to the property tax and its administration as well as the matter of net income taxation. The resolution submitted to the voters not only proposed amendment of the court created restrictions in article VII, section 1 but also amendment of the ninth section of article VII, relating to the taxation powers of local subdivisions of the state.¹¹⁶

However, the legislature's net income tax productions were again rejected. First, by a five to four margin the Washington Supreme Court held that the 1935 "privilege tax" on individuals, which was

¹¹² Wash. Laws 1935, ch. 180, tit. XVIII, at 811.

¹¹³ An earlier effort (Wash. Laws 1929, ch. 151, at 380) to impose a tax on the net income of national banks and competing financial institutions had been held invalid by the Washington court. *Aberdeen Sav. & Loan Ass'n v. Chase*, 157 Wash. 351, 89 Pac. 536 (1930) (violation of the equal protection clause of the Federal Constitution).

¹¹⁴ Wash. Laws 1935, ch. 178, § 2, at 661-62. The theory of imposing the tax on individual taxpayers as a privilege tax was chosen and carefully phrased in hope that, for the purposes of WASH. CONST. art. VII, § 1, amend. 14 (1930), the court would classify this tax as an excise (as it had the business and occupation tax) rather than a tax on "property" (as it had the 1932 net income tax). See text accompanying notes 94 and 95 *supra*.

¹¹⁵ If the court held the surtax invalid, it was thought that the general severability clause would permit the flat rate of three per cent to be applied.

¹¹⁶ Wash. Laws 1935, S.J.R. No. 7, at 925. This joint resolution proposed to amend § 1 in the same manner as had been proposed in 1934. See text accompanying note 111 *supra*. It also proposed to revise § 9, art. VII, by incorporating in it all of the non-duplicative language from art. XI, § 12 (which would be repealed) and add to this section language which would permit the legislature to impose restrictions relating to assessment and collection when it granted to the municipal subdivisions of the state power to levy taxes for local purposes. Again the SECRETARY OF STATE, VOTERS' PAMPHLET 75 (1936) contained nothing but the bare text of the proposed amendment. The Constitutional Government Committee of Seattle (members unidentified) circulated a pamphlet opposing adoption of the proposed amendment.

measured by net income, was a tax on property under the state constitution, and as such it was an invalid classification of property, *i.e.*, net income, whether levied at graduated rates or at a single, flat rate.¹¹⁷ Next, in a six to three decision, the court held the flat rate corporate franchise tax, which was also measured by net income, an invalid property tax under the provisions of the state constitution.¹¹⁸ Finally, the voters rejected, by a decisive margin, the legislature's 1935 proposal for a comprehensive revision of the three sections of the state constitution relating to taxation.¹¹⁹

Daunted, but still trying to find a partial way out of the maze of restrictive constitutional provisions and judicial interpretations in which it was enmeshed, the 1937 legislature put forth one more effort. This time its proposal for constitutional amendment was very simple. It offered no revision of existing language, just the addition of a single sentence stating that the constitution does not prohibit the levy of a graduated net income tax.¹²⁰ But once more the voters rejected a proposal for constitutional revision which would have permitted greater flexibility in framing the state's tax system while, at the same time, approving the initiative measure re-enacting the restrictive forty-mill property tax limitation law.

As the end of the 1930's approached, it seemed evident that while the voters would not approve any suggestion for removal of constitutional restrictions on the legislature's powers with respect to taxation, they would readily approve the establishment, and continuation, of measures which further restricted legislative discretion with respect to the revenue laws and their administration. Notwithstanding this apparent attitude on the part of the voters, the 1941 legislature hopefully tried once more to obtain voter approval of a constitutional provision which would validate a graduated net income tax.¹²¹ But again the

¹¹⁷ *Jensen v. Henneford*, 185 Wash. 209, 53 P.2d 607 (1936). The court held there was an invalid classification under the alternate flat rate tax because the exemption for a married taxpayer was greater than that for a single taxpayer. See authorities cited note 94 *supra*.

¹¹⁸ *Petroleum Nav. Co. v. Henneford*, 185 Wash. 495, 55 P.2d 1056 (1936). This holding stands alone in the United States in classifying a corporate franchise tax as a tax on property.

¹¹⁹ See note 116 *supra*. The vote was 93,598 to 328,675.

¹²⁰ Wash. Laws 1937, S.J.R. No. 5, at 1231. Again no one was sufficiently interested to provide an explanation of the objectives of the proposed amendment. See SECRETARY OF STATE, VOTERS' PAMPHLET 14 (1938). The Washington State Farm Bureau, Washington Association of Real Estate Boards, and the Washington State Taxpayers Association endorsed an argument in this pamphlet favoring INT. No. 129 which proposed re-enactment of the "40-mill" tax limitation law; *Id.* at 8.

¹²¹ Like the proposal rejected in 1938, the 1941 proposal would have added only a single sentence to WASH. CONST. art. VII, § 1, amend. 14. The wording of the 1941

the verdict; no proposal for an income tax amendment has been submitted to the voters in the last twenty-three years.

Other Constitutional Amendments. Since 1942 there have been, however, six proposals to amend the constitution on other features relating to taxation.¹²² In 1944 the voters approved two constitutional amendments relating to taxation proposed by the 1943 legislature. The first of these, incorporating the forty-mill property tax levy limitation in the constitution, has been previously discussed¹²³ while the second requires that motor vehicle license fees, motor vehicle fuel taxes, and "all other state revenue intended to be used for highway purposes" be placed in a special state treasury fund and used solely for highway purposes.¹²⁴ This constitutes a constitutional earmarking of the entire proceeds of the designated taxes¹²⁵ for highway purposes, as defined in the constitutional provision, and thus further limits legislative discretion in the utilization of available revenue sources.

The third amendment submitted and approved by the voters¹²⁶ departs from the usual restrictive pattern and permits taxation of the "United States and its agencies and instrumentalities, and their property" to the full extent allowed under the laws of the United States.¹²⁷

The other three proposals for constitutional amendment would have relaxed the restrictions under the "forty-mill" tax limitation section.¹²⁸ These amendments would have permitted the voters at a *single* election to approve¹²⁹ successive annual levies over a period of not more than four years¹³⁰ when such levies are in excess of the stated maximum rate

proposal differed however. It started with the statement: "for the purposes of taxation income shall not be construed as property..." and made specific reference not only to the feature of graduation in rates, but also to exemptions, offsets, and deductions.

¹²² These six do not include two closely related proposals to amend the debt limit provisions applicable to school districts, to permit additional debt for capital outlays only. Wash. Laws 1949, H.J.R. No. 10, at 1004; Wash. Laws 1951, H.J.R. No. 8, at 961.

¹²³ See text accompanying notes 87-88 *supra*.

¹²⁴ WASH. CONST. art. II, § 40, amend. 18.

¹²⁵ Vehicle operator's license fees, excise taxes imposed on motor vehicles or the use thereof in lieu of property tax, and fees for certificates of ownership of motor vehicles are expressly excluded, as are general or special taxes not levied primarily for highway purposes. *Ibid.*

¹²⁶ Wash. Const. art VII, § 3, amend. 19 (1946).

¹²⁷ The effect is to repeal that part of art. VII, § 1, amend. 14, which constitutionally exempted property of the United States from taxation.

¹²⁸ WASH. CONST. art. VII, § 2, amend. 17 (1944). See note 86 *supra*.

¹²⁹ No change was proposed in the requirement that 60% of the voters (who must number at least 40% of those who voted at the last general election) vote favorably on the proposal in order to approve it.

¹³⁰ The first of the three proposals, which applied only to school districts, would have permitted levies in two successive years only for current operations and levies

applicable to the taxing district, and the purpose of such levies was for the expense of operations or capital improvements without incurring bonded indebtedness.¹³¹ Running true to form, the voters rejected all three proposals for the relaxation of existing restrictions, even though the powers could be exercised only by the voters themselves.

DIFFICULTIES AT THE LOCAL LEVEL

When considering the fiscal situation of the counties, school districts, cities, towns and other local subdivisions (except port and public utility district), it is found that as of 1940, the picture was dismal. The chief source of revenue of all local subdivisions, and the sole source of many of them, was the property tax. The forty-mill levy limitation act with its specific rate limitations applicable to each of the major types of taxing units had cut deeply into their revenue. This, of course, was the intent, and the expected result, of the tax limitation measure.

To provide more revenue for the local units of government there were at least two rather obvious routes to follow. One would be to soften the impact of the forty-mill limitation act, and thus increase the amount of local revenue to be derived from the property tax. The other would be to provide additional non-property tax sources of revenue. Let us consider the alternatives in this order.

The desire for Equality of Assessment. The fact that the electors had voted each two years since 1932 to re-enact the forty-mill tax limitation act and, in 1944, incorporated this limitation in the constitution, eliminated any hope that the overall limitation could be raised. However, it had long been recognized that the impact of the tax limitations upon local government finances was greatly magnified by the practice of the locally-elected county assessors to consistently assess taxable property at less than the fifty percent of its true and fair value as required by statute prior to 1944 and by the constitutional provision thereafter.

In *State ex rel. State Tax Comm'n v. Redd*,¹³² decided in 1932, the voters rejected such a proposal. At this point the legislature accepted court had held invalid a statute which would have permitted the Tax Commission, for the purpose of determining taxes for local purposes,

in six successive years for capital outlays. Wash. Laws 1957, Sub. H.J.R. No. 4, at 1302.

¹³¹ 2 Wash. Laws 1961, S.J.R. No. 1, at 2749; applied to school districts and provided for both types of expenditures. 2 Wash. Laws 1961, H.J.R. No. 1, at 2755; applied to cities and towns and made provision for capital outlays only.

¹³² 166 Wash. 132, 6 P.2d 619 (1932). See text accompanying note 61 *supra*.

to revise the county assessor's assessed value of property even though such valuations were shown to vary substantially from the statutory standard. In an effort to develop more effective controls over the level of assessments for local taxation, the legislature proposed an amendment of the constitutional provisions upon which the decision in the *Redd* case had depended. The voters, however, rejected these proposals.¹³³

In the following years, efforts to persuade the county assessors to bring the level of their assessments up to the constitutional standard were ineffective. Then, after study of the problem, an act was passed in 1955 which directed that school district tax levies be applied to assessed values of the county assessors as equalized by the *state* board of equalization.¹³⁴ This legislation would have increased the tax base of the school districts because the methods employed by the state board of equalization would have brought the equalized valuations considerably closer to the fifty percent standard. However, the Washington Supreme Court in *Clark v. Seiber*,¹³⁵ divided three ways, held the 1955 statute invalid.

At its 1955 session the legislature also put forth another effort to entice county assessors to conform with the constitutional mandate. This action¹³⁶ called for a continuing program of revaluation of property by the county assessors and they were directed to value property at fifty percent of true value and in accordance with the rules, regulations, and manuals published by the tax commission. The commission was authorized to render special assistance to county assessors whenever such was requested. In this 1955 act the legislature recognized that the Tax Commission could do no more than advise and assist the assessor who is willing to accept such aid.

Present Policies to Achieve Equality of Assessment. The state is now attempting to bring some pressure to bear upon each of the counties, and their respective assessors, to meet the constitutional standard of assessment. This is being done by requiring the State Board of Equalization to gradually lower its "fixed ratios" of assessment and, thus, over a period of years to make the "fixed ratio" for each county

¹³³ See text accompanying note 116 *supra*.

¹³⁴ Wash. Laws 1955, ch. 253, at 1035. Earlier, the court had ruled that a school district could not *voluntarily* use the higher equalized value for this purpose. *State ex rel. Tacoma School Dist. v. Kelly*, 176 Wash. 689, 30 P.2d 638 (1934).

¹³⁵ 48 Wn.2d 783, 296 P.2d 680 (1956).

¹³⁶ Wash. Laws 1955, ch. 251, at 1027.

conform with the "actual ratio," now designated "indicated ratio," of property assessment for each county.¹³⁷ As the State Board uses the "fixed ratio" to determine the dollar amount of assessed value of inter-county operating properties of utilities (assessed by the state tax commission), to be allocated to each county, the lowering of this ratio operates to reduce the total property tax base available to the county and to the taxing districts in the county.¹³⁸ If the actual ratio of assessment by the county assessor goes up, the downward movement of the State Board's "fixed ratio" will be halted. Whether this method of "persuasion" will be effective still remains to be determined. It should be noted that after ten years of gradual reduction in the "fixed ratio" the range of the Tax Commission's "indicated ratios" of assessment for the year 1963 was from 14.6 percent in San Juan County to 25 percent in Grant County. This does not show much alteration in the actual ratio of assessment from what it was in 1954.¹³⁹

Other Sources of Local Revenue. As previously mentioned, another approach to the problem of local finance would be to authorize the various subdivisions to levy and collect taxes of various kinds other than property tax. The consensus of legislators and experienced tax administrators has been that the local administration of most types of excise taxes is costly and inconvenient. Consequently, the state has pre-empted for state levy such taxes as the retail sales tax, use tax, tax on conveyances, and the cigarette tax.¹⁴⁰

In two instances the legislature has authorized local levy and collection of taxes which had not been previously available at the local level. In 1943 the state-levied tax on admissions was repealed, and the coun-

¹³⁷ Over a long period of years it has been the practice of the State Board of Equalization to establish its "fixed ratio" for each county at a figure which is substantially higher than the "actual ratio" of assessment in the county as determined by the State Tax Commission. STATE OF WASHINGTON, 17TH BIENNIAL REP'T and 1958 ANN. REP'T OF THE TAX COMMISSION 24-25 (1958).

¹³⁸ For an excellent description of the property tax process in Washington see WASHINGTON STATE RESEARCH COUNCIL, HANDBOOK—STATE AND LOCAL GOVERNMENT IN WASHINGTON 568-79 (1964-65 ed.). Tables showing the "fixed ratios" and "indicated ratios" of property tax assessments in the thirty-nine counties of the state over the ten-year period 1954-63 are found at 584-85. For a description of the manner in which the "fixed ratio" is used for purposes of the state tax levy see 574, and for its use in allocating to the several counties the value of utility properties assessed by the Tax Commission see 572.

¹³⁹ Over the ten-year period 1954-63 the number of counties having an "indicated ratio" of 20% or more increased sixteen to twenty-one. However, in eleven counties the 1963 "indicated ratio" was lower than the 1954 ratio for the same county and in one county there was no change in ratio for the two years. These comparisons indicate that persuasion, even when coupled with some economic pressure, is not very effective.

¹⁴⁰ RCW 82.02.020.

ties and cities were authorized to levy such a tax.¹⁴¹ Later the legislature authorized counties to levy a tax on real estate sales for the benefit of school districts in the county.¹⁴² In order to avoid duplication in this latter tax, the state has not levied its own tax on real estate sales.

A number of cities in the state, following the lead of Seattle in 1943, impose a tax for city purposes on persons and corporations engaging in certain businesses and occupations which is measured by gross receipts or gross income. These city taxes are patterned after the state-levied business and occupation tax but are imposed at a much lower rate. The state has not pre-empted this method of taxation. Thus, the cities have been able to impose this duplicative tax under their general grant of power to license for revenue purposes.

In addition to authorizing or permitting these additional taxes, the state has followed the patterns of assisting the counties, cities, and school districts by sharing the proceeds of various state-levied taxes, profits from the state liquor monopoly, and certain rental income with these political subdivisions. This means that the property tax is the sole source of *tax* revenue for the other subdivisions. However, non-tax sources of income, including federal subsidies, are available to many such districts.

SOURCES OF REVENUE: 1937-1964

The executive and legislative branches of state government have been continuously confronted since the latter thirties with the task of formulating, within a rigid constitutional framework, and implementing, with niggardly support from the voters, a revenue-producing program which would not only meet the increasing costs of state government but also provide additional tax revenue and more state assistance to the local subdivisions of the state. The tax story of this period of approximately three decades has been that of a continuing search for new sources of state tax revenue and devising means of increasing the amount derived from the taxes already imposed.

It is, therefore, not surprising to find that eight new taxes, in addition to those of the "omnibus" Revenue Act of 1935, have been levied for state purpose. Three of these new taxes were annual excises on the use of "vehicles" of different kinds, levied in lieu of personal property taxes

¹⁴¹ Wash. Laws 1943, ch. 80, at 165 (cities) and ch. 269, at 835 (counties). Overlapping application by city and county is prohibited. If a city levies an admissions tax, the county admissions tax cannot be applied in the city area.

¹⁴² Wash. Laws 1951, 1st Ex. Sess., ch. 11, at 108 (1% of sale price).

on such vehicles. The first of these was the motor vehicle excise, imposed on the use of motor vehicles on the highways of the state.¹⁴³ Another new tax, first levied in 1941, which is in lieu of property taxes of all kinds upon the districts taxed, is the public utility district excise.¹⁴⁴

Several more taxes were first levied in 1941. The first of these was a tax on the transfer of property by gift during the lifetime of the transferor.¹⁴⁵ There have been no significant changes in this law since its enactment in 1941 and it has never been challenged in the highest court of the state. Another new tax levied in 1941 was on the business of operating certain mechanical devices (pinball machines, slot machines, and the like).¹⁴⁶ Still another 1941 tax was the use fuel tax which applies to motor vehicle fuels such as diesel and other special fuels not subject to the gasoline tax,¹⁴⁷ and is complementary to the tax on gasoline.¹⁴⁸

The last in this series of new taxes was imposed in 1959 upon tobacco products other than cigarettes.¹⁴⁹ And all except one¹⁵⁰ of these state-levied taxes which became operative¹⁵¹ since 1933 are still in effect. The rates applicable to two taxes have been reduced.¹⁵² Without going into full detail, it suffices to state that the tax rates applicable to every

¹⁴³ Wash. Laws 1937, ch. 228, at 1167 (1½% of fair market value of the vehicle). This was raised to 2% in 1959. RCW 82.44.020. From 1943 until 1955, house trailers were subject to this tax (Wash. Laws 1943, ch. 144, § 1, at 439) then they were subject to a separate excise tax, Wash. Laws 1955, ch. 139, at 601 (1½%). In 1957 this was reduced to 1%. RCW 82.52.030. In 1949, an excise tax in lieu of property tax was levied on aircraft. RCW ch. 82.48 (1%).

¹⁴⁴ Wash. Laws 1941, ch. 245, at 809. Presently the rates are 2% of gross revenue from certain sources and 5% in other instances. RCW ch. 54.28.

¹⁴⁵ Wash. Laws 1941, ch. 119, at 308. The governor had vetoed a similar tax included in 1935. The gift tax is designed to complement the inheritance tax, and the method of computing the amount of gift tax follows the same pattern as that for the inheritance tax. The rates under the gift tax are, however, 90% of the rates applicable under the inheritance tax.

¹⁴⁶ Wash. Laws 1941, ch. 118, at 305 (10% or 20% of gross operating income depending upon type of machine). The rates were increased to 20% and 40% in 1947. RCW ch. 82.28.

¹⁴⁷ Wash. Laws 1941, ch. 127, at 363. (Five cents per gallon). Presently 7½ cents per gallon. RCW 82.40.020.

¹⁴⁸ See RCW ch. 82.36.

¹⁴⁹ RCW ch. 82.26 (25% of wholesale selling price).

¹⁵⁰ The only tax once imposed which has been completely eliminated from the tax structure is the fuel oil tax of 1935. It was repealed in 1947. Wash. Laws 1947, ch. 208, at 889. The state-levied admissions tax was repealed, but converted to a county-city tax; see text accompanying note 141 *supra*.

¹⁵¹ The net income taxes and the tax on radio broadcasting, which were held unconstitutional, never became operative. See note 109 *supra*. Three taxes included in the Revenue Act of 1935 which were vetoed by the governor have never been reimposed. See note 108 *supra*.

¹⁵² The house trailer excise tax. See note 143 *supra*. The insurance premium tax rates have been altered three times since 1935, and with respect to certain classes there has been a reduction in rates. See RCW 48.14 and notes therein.

major tax levied for state purposes has been substantially increased during this period. To give a few illustrations, rates applicable to the retail sales tax and the use tax have gone from two percent to three percent to three and one-third percent and finally to four percent,¹⁵³ and the business and occupation tax rates have been increased three times.¹⁵⁴ The cigarette tax rate has been successively increased, in five steps, from a basic tax at the rate of one cent per pack to a total of seven cents per pack.¹⁵⁵ Since 1935 the gasoline tax has been increased from five cents to seven and one-half cents per gallon,¹⁵⁶ and the driver's license fee has gone from one dollar to four dollars.¹⁵⁷ There have been a number of changes in the tax imposed upon the sale of intoxicating liquors by the state liquor control board. At the present these taxes are at their highest level since 1933.¹⁵⁸

CONCLUSION AND RECOMMENDATIONS

This survey indicates that from a constitutional standpoint the past thirty-five years of Washington's statehood have been marked by a series of amendments each of which has operated to reduce the scope of legislative discretion in the formulation of tax policy. These amendments have also hampered the development of effective administrative procedures for equality in the enforcement of the property tax, which still constitutes a major source of combined state and local tax revenues. The effect of these restrictive amendatory provisions has been amplified by narrow judicial constructions which have negated legislative efforts, whether by the voters or by the legislators to broaden the tax base and force compliance by county officials with the constitutional mandate that property throughout the state be assessed on the same basis wherever it is located.

Property tax rate limitations have been strongly condemned by many, including quite recently the non-partisan federal Advisory Commission on Intergovernmental Relations.¹⁵⁹ This Commission rec-

¹⁵³ Wash. Laws 1935, ch. 180, § 16, at 721; Wash. Laws 1941, ch. 76, § 2, at 195, and § 6, at 198; Wash. Laws 1955, Ex. Sess., ch. 10, §§ 2, 3, at 1750; Wash. Laws 1959, Ex. Sess., ch. 3, § 5, at 1646, and § 10, at 1651; RCW 82.08.020, 82.12.020.

¹⁵⁴ Wash. Laws 1951, 2nd Ex. Sess., ch. 28, § 1; Wash. Laws 1953, ch. 91, § 1; Wash. Laws 1959, Ex. Sess., ch. 5, § 6. RCW 82.04.296.

¹⁵⁵ Compare Wash. Laws 1935, ch. 180, § 82 (1 cent per pack) with RCW 82.24.010 (7 cents).

¹⁵⁶ Compare Wash. Laws 1933, ch. 58, § 5, with RCW 82.36.020.

¹⁵⁷ Compare Wash. Laws 1921, ch. 108, § 6, at 324 with RCW 46.20.090.

¹⁵⁸ RCW 82.08.150 and notes thereto.

¹⁵⁹ This commission was created by Congress in 1959; Pub. Law 86-380, 73 Stat. 703, 5 U.S.C.A. Ch. 35 (1960). It is a permanent, bipartisan body of 26 members and consists of representatives of federal, state, and local governments. *Inter alia*, the

ommends the lifting of both constitutional and statutory limitations on local power to impose property taxes, stating that such rate limitations are "inimical to local self-government."¹⁶⁰ It condemns, in particular, inclusion, as in this state, of property tax rate limitations in the constitution.

Constitutions should be limited to governing principles, to the exclusion of administrative detail. The solution of problems generated by the accelerating pace of American society cannot await the time consuming process of constitutional amendment. We concur with the National Municipal League that: 'Ideally, a constitution should be silent on the subject of taxation and finance, thus permitting the legislature and the governor freedom to develop fiscal policies for the State to meet the requirements of their time.'¹⁶¹

The Advisory Commission also condemns another feature of Washington's constitutional property tax rate limitation, stating that, if a tax rate limitation is to be imposed, it should be "in terms of the value of taxable property equalized to full market value rather than fractional assessed value." Washington's constitutional provision for assessment of property at fifty per cent of its value is clearly contrary to this statement of principle. In support of its view, the Advisory Committee points out that "under the usual procedure of applying tax rate limitations to locally assessed values, the assessor is actually a policy maker, since he determines a locality's property tax revenue by determining the assessment ratio."¹⁶²

Constitutional earmarking of revenues from specified taxes for particular uses, the constitutional prescription of the percentages of voters and votes required for a particular electorate to impose upon itself an additional tax burden, are other illustrations of undesirable minutiae of

Commission is directed to study and "recommend methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers."

¹⁶⁰ ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS ON LOCAL TAXING POWERS 6 (1962).

¹⁶¹ *Id.* at 7. See also 1 ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX 9 (1963).

¹⁶² ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE CONSTITUTIONAL AND STATUTORY RESTRICTIONS ON LOCAL TAXING POWERS 7 (1962). For a frank evaluation of the extra-legal practices of assessors who completely disregard constitutional and statutory standards of assessment, see 1 ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX 3, (1963). The following statement is certainly appropriate under the present state of affairs with respect to Washington's county assessors: "He—not the State constitution and the State legislature—defines local taxing and borrowing power and determines the value of a veterans' or homestead tax exemption by the level at which he decides to assess property." *Id.* at 4.

policy that have crept into this state's basic legal document. Another illustration is the constitutional definition of "property" and the limitations on its classification. As a result of marginal and questionably supported judicial interpretations of the term "property," any utilization of a tax upon or measured by net income has been barred. This has deprived the people and their elected representatives of the discretion to determine whether such tax is needed to leaven the regressive characteristics of other taxes in the structure. Finally, the existence of supposed constitutional limitations barring state-wide equalization of the property tax base, for all subdivisions of government, have operated to the detriment of the state as a whole and of its subdivisions, severally.

Turning now to consideration of the presently-existing congeries of taxes that constitute Washington's tax system, the Tax Commission of this state, in its most recent biennial report, has summed up the situation as follows:

Washington has a tax structure that relies heavily on sales and gross receipts taxes, uses property taxes to a lesser extent than most states and does not use net income taxes at all.

Washington is often referred to as a 'sales tax state.' Clearly this is an appropriate term, as sales and gross receipts type taxes, which include, in addition to the retail sales and business and occupation taxes, such selective sales tax sources as those imposed upon motor fuels, liquor, tobacco products and pari-mutuel betting, account for nearly 83% of Washington's state tax revenue and 60.7% of the total state-local tax revenues.

Measured against other states in this respect, Washington's heavy reliance [upon sales and gross receipts taxes] at the state level is exceeded by only two states, Indiana and Illinois. When state tax revenues of all states are combined, the reliance upon such sales and gross receipts taxes is computed at 58%. When state and local tax revenues are combined for all states, sales and gross receipts taxes account for only 32.8% of the total as compared to 60.7% in Washington.¹⁶³

Notwithstanding the several constitutional restrictions and the limiting judicial interpretations previously discussed, the total tax revenues derived by the State of Washington and its local subdivisions do not appear to have been greatly diminished below what they might have been without these restrictive provisions. At least by comparison with other states, Washington's state and local tax collections for a typical year seem to be well in line with the total taxes collected in other states.

¹⁶³ 19 WASHINGTON STATE TAX COMM'N BIENNIAL REPORT AND 1962 ANNUAL REPORT OF THE TAX COMMISSION 29 (1962).

In 1961, for example, Washington's total collections, state and local, ranked nineteenth among the fifty states, on the basis of tax collections per thousand dollars of personal income.¹⁶⁴ The stringent limitations of the constitutional provisions did *not* effect the amount of taxes actually collected but rather the types of taxes levied and upon what agency levied and collected the bulk of the taxes. In 1960 the state collected and distributed to the local subdivisions of government more than forty percent of the total local government revenue.¹⁶⁵ Forty-two states contributed a smaller percentage to their local subdivisions. Whether such dependence upon the state government, and the vagaries of its largesse, is desirable or undesirable, is a matter upon which reasonable people may differ. However, all would agree that policy decisions on such matters should be made after careful consideration of the relative merits of the several alternatives, rather than forced as a by-product of restrictive constitutional provisions originally sold to the voters on a completely different basis.

Washington, formerly rural in character and economically dependent upon agriculture and its native resources of fish and lumber, is now industrially based, with growing reliance on modern technology. Its population, rapidly increasing, is concentrating within sprawling urban complexes, which are costly to maintain. Its citizens have become accustomed to ever-increasing levels of production and income and have more hours available for recreational and other leisure-time activities. There is every reason to believe that their demands upon both state and local governments for services and benefits will continue to expand. Existing constitutional restrictions, which have produced revenue problems and imbalances previously discussed, will certainly magnify the stresses which will arise out of demands for even more governmental services. Major surgery upon the basic framework is needed if there is to be any expectation of remedying present ills and making it possible for the citizens of this state, and their elected representatives, to provide the type of government services which the people themselves desire.

¹⁶⁴ *Id.* at 28.

¹⁶⁵ ADVISORY COMMITTEE ON INTERGOVERNMENTAL RELATIONS, LOCAL NONPROPERTY TAXES AND THE COORDINATING ROLE OF THE STATES 16 (1961) Table 6.