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Why Should We Have a New Federal Tax Law?*

BY ROBERT H. MONTGOMERY.

Up to a short time ago, I favored a new federal income-tax law because the present law needs revision. I have changed my mind. The reasons for a new law are strong, even stronger, than ever, but the reasons against it outweigh the reasons in favor. It has often been said that a poor tax law fairly administered is better than a good law unfairly administered. I would add that a poor law interpreted by the supreme court is a more trustworthy foundation for business than an alleged good law in which every doubtful point is decided against taxpayers until the doubtful points reach the supreme court. A new law in 1923 would not be interpreted until 1926 or later. If we want a tax holiday we had better leave the 1918 and 1921 laws alone.

Therefore I do not propose to discuss the details of desirable changes in the present tax law. My thought is that when the time is propitious an entirely new law should be drafted, much shorter and much less complicated than the present law. What I mean by propitious is that there will be a reasonable chance that serious consideration will be given to suggestions. It is a difficult task to work out income-tax legislation and if suggestions are to be ignored or flouted it is not worth the effort. At this time it would be love's labor lost. Constructive suggestions pass from one man to another, each in turn less understanding than the former, finally reaching the neck of the bottle, the chairman of a committee, whose sole tenure of office arises from length of service. Quality of service has less to do with congressional power than in railroad unions. In the latter seniority sometimes is questioned; in the former there is no instance of promoting the capable man as such.

There are many sections of the 1916 and 1918 law which have not been authoritatively interpreted. The treasury has not been consistent in its regulations. Recently there has been a tendency to re-open settlements which were made under early rulings and procedure. Existing conditions in the bureau of internal revenue are far from satisfactory to taxpayers and to the responsible and capable officers of the bureau. Why, then,

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have a new law or any changes in the present law until the existing congestion and confusion are at least partly cleared up? In my opinion conditions are worse today than they were one year ago, and they will be relatively worse one year from now unless something drastic is done.

I am not unmindful that a new tax law would greatly benefit the accounting profession. If we are against a new law, we are against our selfish financial interest. It requires some courage to urge simplification in tax measures, after reaping the benefits of a long series of complex laws; but the public accountant would not be a successful practitioner if he lacked courage, so we will talk and work against the new tax law just as we have worked and talked to improve those provisions of all previous laws which did not seem to us to be in the best interest of the business or taxpaying public. We were largely unsuccessful in our efforts but it was not our fault.

We may as well make up our minds that we shall not have a sane and practicable new tax law when those who have it in charge, who write it and who enact it into law lack clear vision and courage. Heretofore those who have finally passed upon the provisions of our tax laws have had their vision obscured by their personal political fortunes rather than illumined by the economic effect of the laws. We never know what takes place behind the closed doors of congressional committees, particularly conference committees. It has been said recently that public men are brazenly and cowardly whispering the truth in private instead of telling it openly. That is what takes place in Washington. Privately our congressional leaders admit the foolishness and impracticability of much that is before them to be enacted into law. Publicly, that is, through the medium of the *Congressional Record* and for publication in newspapers throughout the country, they say exactly the opposite for their constituents and for votes. Publicly they say that the public interests must be first, not private interests. In practice many private interests are well taken care of. This has been true in tax laws as in other laws. Taxpayers who have the ears of those who are most powerful in conference committees have been able to have special provisions inserted which take care of private concerns or special industries. Taxpayers who are not well organized and who do not have the ear of those powerful in legislation are left out in the cold.

The average senator, the average representative—being 99 per cent. of the whole body—has an obsession for re-election, which in reality is a disease of the most malignant nature. Soon after election he discovers the dreadful mistake the voters made in placing him in a position for which his qualifications are a minus quantity and the dreadful mistake he made in accepting. He has neither the courage to quit nor the courage to fight. The atmosphere in Washington inclines him with a pusillanimous attitude toward everything which requires common sense. He sees little evidence of common sense around him except in cases where men are not afraid of losing their jobs. He is fearful of doing anything different from the others; he submerges any inclination to be independent which he may have possessed when he reached Washington. And now his obsession becomes fixed; intelligence and courage vanish; he implicitly believes that he will be damned in this world and the next if he is not re-elected. His pride is aroused; he becomes frantic. Even though the next election is six years ahead, the obsession allows no interval of sanity. The realization and conviction (which he tries to hide from the world) that he is an utter failure as a legislator urges him on in efforts to avoid detection of his short-comings.

We had a good illustration of this cowardice in August. President Harding asked congress to enact laws which would help solve business troubles. Did the legislators discuss the questions on their merits? They did not. The newspapers interviewed them and the replies were almost unanimous. The *New York Times* summed up the situation in these words:

“Leaders believe too many dangerous issues are already before the public.”

In other words any issue which affects capital or labor is dangerous. Therefore, it must not even be debated. Senators and representatives concede that “something” should be done, but no emergency is so acute or alarming as the November election; nothing can be done which possibly would decrease the campaign contributions expected from capital or affect the labor vote. If capital can be scared and labor can be placated, the settlement of fundamental problems can go hang.

The men to whom powers are given almost invariably seek to extend these powers. It becomes part of the obsession. To keep themselves in power they will pass only those laws which

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assist or appear to assist this object. A confiscatory tax law appears to tax the few rich for the benefit of the many poor. Until the composition of the congress changes we shall have confiscatory tax laws.

Commencing with the federal revenue act of 1913 all our income-tax laws have been deliberately aimed at successful industry. Congress has proceeded on the theory that all large profits are illegitimate. The most popular vote-seeking word on the floor of congress, used by Republicans and Democrats alike, is "profiteer". A "profiteer" is a man who makes a profit, ergo he is a crook and the profit must be extracted from him by a new tax law.

Congressmen are a poor sort of office or errand boy. They are a poor sort because they do as much running around as the average errand boy but they do not get proportionate results. The promises which they make to their constituents cannot be kept. They promise 100 jobs when they can deliver ten. They pass on to the various government agencies the 100 promises, and the agencies, in turn, not to offend the congress, promise 100 jobs. So a vicious circle is started. Congressmen do more running around in it than the departmental chiefs. This I know from personal experience. They are so stupid that they do not read in the history of the world that the rulers and representatives who are loved and blindly supported against the field are those who make many mistakes, who acknowledge weaknesses, who do not bluff nor cringe nor promise the impossible, but who above all have one trait which dominates them, namely, courage.

In a recently published letter of the tsaritzza to the tsar appears this sentence, "Everybody who really loves you wants you to be firmer and more resolute". It is the dominant cry of the ages. Why is the trait almost lacking at this time in public affairs? Both business-men and congressmen are constantly excusing themselves for lack of courage, for lack of action, when courage and action are important, by the plea: "We can't make an issue of this one point; we must wait until we can afford to go to the mat". It is enough to make one sick. They never go to the mat although ninety-nine and nine-tenths per cent. of their constituents love a fight. Congressmen do not remember that people love both winners and losers; all that people insist upon is that one must fight.

It is a mistake for the business-man not to fight for those things which he knows are beneficial both to himself and to the business public as a whole. Having paid the cost of electing representatives, the business-man should demand some attention to the carrying out of promises, and, failing to receive reasonable consideration, should talk to congressmen the way congressmen talk to business-men. But the business-men also lack courage. I have seen many of them treated like dogs in Washington and they have not even talked back. The reason they do not talk back is this: Business-men know that they have paid in advance, in full, for something (they are never quite sure what they pay for in politics), and their thrifty natures lead them to avoid too many complaints in the fear that their man or men, that is the congressmen, will become annoyed and refuse to do anything at all.

I would not want it understood that the contributor to a campaign fund is entitled to any more consideration, or any more of a hearing, or any more influence than one who refuses or cannot afford to contribute; the contributor is not entitled to preferred consideration, but he should not be double-crossed.

On this point the *New York Herald* recently said:

“The disheartening thing in governments is the chameleon nature of politicians—statesmen. In the campaign for election, with alluring promises they beg you to take them on in your service; installed in your service they give you the lash of the master. In the campaign for election they beseech you for a job; installed in that job they tell you where you get off.”

A few months ago when Lloyd George said in the house of commons, “It is a mistake because of danger to run away from a fair and just claim,” he was cheered. In this country there is too much running away. Congressmen habitually run away when there is any danger of losing two votes, when they believe that the support of a fair and just claim means only one vote. Business-men have been running away because demagogic congressmen scare them into thinking that if they do not keep quiet something awful and mysterious will happen to them.

This reminds me of the story about the Chinaman who was doing business in the United States. He wanted to collect an account and he did not know just what kind of a threatening

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letter to write. Finally he wrote this: "If you do not pay this bill immediately something will happen which will cause you the utmost astonishment". It sounds like a letter from a congressman or from the treasurer of a campaign fund. It is this fear of something mysterious which keeps the business-man from demanding what is his due or withdrawing his financial support from his party.

The American business-man in political matters is a dumb-bell. He pays the expenses—and they are enormous—of his political party. When his party becomes dominant and he asks for intelligent legislation, he allows himself to be deceived by statements that all that can be done will be done in due season. Measures will be enacted at some subsequent, never the current, session of congress. I refer only to subjects which have been specially approved in party platforms or similarly have been agreed upon as desirable and unobjectionable. I think it safe to say that in the last fifteen years, congress has not averaged one good law per annum affecting business-men. If the legislation demanded by business-men were inimical to the best interests of the country at large, there would be full justification for the refusal and neglect. But the curious and amusing fact is that good or beneficial legislation is the hardest to put through. Congressmen see nothing in it for themselves. Many laws are passed which are not of general interest or importance. Contributors with courage sometimes collect more than they are entitled to. By occasionally delivering something on account, the congressman keeps his reputation for activity. His activity is another pose. From year to year the pages of the *Congressional Record* are filled with absolute quibble. They use up more space in the exchange of personalities than in any discussion of important or economic questions. The output of unimportant stuff is enormous. It runs to billions of words. The output of good stuff which in the slightest degree is interesting to the average business-man is so negligible that a supplement to the *Congressional Record* once a year consisting of about forty-eight pages would give everything that could be called constructive. I have not exaggerated this comparison of quantity with quality. Can anyone remember a single constructive or beneficial bit of legislation enacted at the present session? Yet the current issue of the *Congressional Record* before me includes pages 12233 to 12290. (Who knows when congress will adjourn?) They start with

page 1 at each session. If they did not, they would need a wider page after a few years. And we are told that practically all of the real (the word should probably be spelled "reel") business in Washington is conducted in committee meetings, whose proceedings do not appear in the *Congressional Record*. If anyone is interested in this matter of word-output, look up the expenditures of the public printing office.

Is it fair to say that our own output of words produces anything worth while? The answer to this is that our representatives in congress are supposed to be specialists in public affairs. They are supposed to spend all of their time and energy in the study of questions of public interest. They are supposed to be conversant with national as well as international problems. Unfortunately, our criticisms of congress are usually destructive criticisms. Unquestionably, we should confine ourselves to constructive criticisms. But you cannot reconstruct an utter failure. I make no apology for my strictures upon the makeup of the present congress or those which have preceded it during the last dozen years. I rest my strictures upon an impregnable foundation. I have the very highest authority for my statements that nothing of any importance constructively is accomplished from day to day. I also speak largely from personal experiences in Washington. Much that I say is based on first-hand information. There are a few, very few, senators and representatives who once in a while are constrained to tell the truth.

It is conceded that one of the ablest men in congress is Senator Borah. He has been there long enough to know the exact truth about what is going on. If he makes a well-considered statement which is uncontradicted, it may be assumed by the layman or outsider that it is literally the truth. If it is admitted in Washington by those who know that we have too many poor laws, that our taxes are too high, that extravagance is rampant, and if the business public as a whole knows definitely that it is so, why then is it not possible to do something constructive? Why can't we insist on some relation of output to the time or words consumed, say one good law to each billion words? People who get their living from public funds and contributors to campaign funds are responsible for the present situation. Let us consider a few plain facts made public by Senator Borah. I shall quote at some length from his speech delivered in the

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United States senate, July 6, 1922, because I want to emphasize and repeat that what I am saying is based on facts and not on fancies. After that we can consider the remedy.

. . . Not a single one of the measures upon the programme which is now before us but draws upon the people for an additional sum and weighs upon them in the form of additional taxation and increases the obligations of the government not only by millions but by billions of dollars.

Mr. President, therefore, while I have sat here and listened to this debate or while I have known that it was going on, I have not felt the impatience which I otherwise would if I knew that there would follow the tariff bill measures which would, in my judgment, afford relief to the country. I ask our friends who are meeting at the headquarters of our leaders if there is a single item in this programme that does not increase the taxes of the people of the country? Is there a single part or parcel of the programme that does not increase the obligations of the government? It is the character of the programme which makes hesitancy and delay in the consideration of the tariff bill a virtue.

Mr. President, we know that there is already great discontent throughout this country, and when discontent is widespread it is never without justification. That condition is apparent in the United States and it exists throughout the world.

It is evident that the burden which governments continue to impose upon the people is becoming unbearable. It is getting, as it were, upon the nerves of the public. The first underlying cause in my judgment of the world-wide unrest, of the almost universal criticism which we hear against governments, is exorbitant and unconscionable governmental expenditures, and particularly the outlook that these expenditures are not being diminished to any appreciable extent. Indeed, I do not believe that the burdens already placed upon the people are so disturbing, so fruitful of dissatisfaction and discontent, as those burdens which present policies indicate are yet to come. The present demands are sufficient to take people's earnings, but the proposed policies take away their hope for better days.

The protest upon the part of the people is now being manifested in this country and throughout the world. It makes itself known in strikes, through the ballot box, and finally in rioting and bloodshed. The most prolific source of misery and crime is oppressive taxation, and when you stop to think of the load now carried by the masses, we can not be surprised at the disorder and lawlessness everywhere prevailing.

In some countries it seems to be believed that this discontent and hunger can be fed upon repression and executions. In other countries, particularly our own, the belief seems to prevail that the remedy is in still greater appropriations, increased national obligations and necessarily higher taxes.

The author of *The Mirrors of Washington* is conceded to be extraordinarily well informed regarding our lawmakers. This is what he says about congress:

"For years it has been the home of small men concerned with petty things which it approached in a petty spirit, incompetent, wasteful and hypocritical, a trial to the executive, almost a plague to the country."

What is the remedy for the inexcusable extravagance and waste which Senator Borah says is too greatly extended? Is it a new tax law, with further penalties on success and thrift? It is often said that the remedy lies in the vote, but I doubt it. In my opinion, the remedy lies in the temporary withdrawal of campaign contributions by business-men.

My suggestion is that Republican and Democratic business-men alike refuse to contribute a single dollar to either party unless and until legislation has been enacted—not promised—which means lower expenditures. Then we can have lower tax rates. After that and not before business-men should demand a new tax law.

In the meantime, congress should not be permitted to *change* the present law by so much as a comma. We should not trust our representatives until by repentance and good conduct they show themselves worthy of trust.

Our representatives claim that in this country the majority must rule, that the corner-stone of our republic is the principle of representative government and that majorities express their wills through chosen representatives. The rights of the great body of citizens are thus in theory protected by those who devote their time and talents to supervisory duties and the enactment of beneficial laws.

It is claimed that the minority acquires more wealth than the majority of the people and more than a fair share of the wealth of the world. Therefore, these representatives of the majority think they must do one of two things: take it away from those who have and give to those who have not, or have the government take it away and use it for the good of all.

In reality they do nothing logical. They have invented a way of their own. They do take it from those who have and in a sense those who have not may get a little of it when it is wasted. Most of the money which is taken away from the rich is spent by the government, not held for the good of anyone, because the spenders and recipients of ill-gotten wealth rarely benefit therefrom.

We are probably the only country in the world, except Russia, where discrimination is exercised in favor of the idle rich against the industrious and productive rich. The idle rich are permitted to buy tax-free securities and live in luxury free from a proper share of the burdens and cost of government. When

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there is a premium on idleness and waste, why attempt to create new wealth, if all of the wealth which you create is to be excessively taxed or taken away from you in some other way?

Congress in practice disregards the ethics of election methods. In public they make much of the use of improper methods. In public they assail the wicked rich minority. At election time they depend upon the contributions of precisely the same minority to elect them.

If the pure and poor majority want representation to protect themselves against the corrupt and rich minority, why do not the minority compel these representatives to look to the majority for election expenses?

If the representatives are in duty bound to legislate for the majority why do they need or accept help from the minority?

We follow Russia's lead in damning and taxing the industrious rich, but so far we have not followed her lead in killing the idle rich. I hesitate to mention this, because I feel sure that it is a thought which will appeal to some of our congressmen and many of their constituents. When they realize the vote-getting potentialities and how few men there are to kill compared with the possible number who will be pleased, we may expect some weird new laws. Men of ability, of daring and superior imagination must not be allowed to accumulate wealth! Shall they be taxed to death or locked up?

Some who have given much thought to the subject favor the repeal of income taxes on business and the substitution of a tax on gross receipts. It may be worth while to try it. It would be no worse than the excess-profits tax.

I have an open mind on a turnover or general sales tax. The arguments of the proponents are highly inconsistent and are weakened by overzeal. There is no agreement on the exceptions. If farmers and bankers and professional men and many others are not subject to the tax, it would seem to throw an undue burden on commercial business. I am not convinced that one or more billions of dollars when extracted from gross income is less of a burden than if it is imposed on net income. I am not sure that the tax can be passed on when it is vitally important to do so. When large profits are being made no doubt the tax can be passed on, but when a corporation is earning large profits a tax of 12½ per cent. of such profits is not oppressive. When a business is losing money or making very little I feel quite confident that

there will be difficulty in passing a sales tax on. If it is within the power of business-men to pass on increases in prices, why haven't they done more of it during the last year or two? Raising and passing are troublesome factors in business as well as in other pursuits. If the sales tax cannot be passed on, the burden will be vastly greater than a 12½ per cent. tax on net income.

I am not impressed with the records of sales-tax experiences in our own and other countries. The Philippines and Mexico are held up as successful users of a sales tax. It has been so successful in the Philippines that they are about to double it! In Mexico, on authority of one of its financial officers, it was largely helpful in the rehabilitation of the country's finances! The officer says in a letter addressed to the Tax League of America, dated April 15, 1921:

The amount of the tax at present is one-half of 1 per cent. This tax has been in existence so long, and the people have become so thoroughly accustomed to it that it is collected without friction or difficulty of any kind and on account of the amount being so small the customer pays it unconsciously. It is economically collected and uniformly produces a very important item of the revenue.

Secretary Mellon must be stubborn, because he has refused to recommend it in the financial plans for the financial rehabilitation of this country. Of course, he may be ignorant of the fact that Mexico ever did rehabilitate her finances, either through a sales tax or in any other way.

For the present we are not likely to have a sales tax in the place of all other business taxes. But the possibility of the enactment of such a law is another argument against any change, during 1923, in the present revenue act.

A few days after I wrote the foregoing, the *Wall Street Journal* contained the following:

Wall Street has been so long disfranchised that it is inclined to take less interest in election results than politicians suppose. The same could be said for the general business of the country, but with reservations. People in the wool-growing business, for instance, want favors from congress and are willing to pay for them. No doubt the beet-sugar interests will come across with a handsome contribution for the expenses of the November election. But the only favor Wall Street would be willing to buy from congress, through campaign contributions, would be the assurance that congress would refrain from meddling with what it doesn't even want to understand. * * *

So far as the members of the house of representatives and the senate are concerned, the overwhelming part of the business of the country not interested in tariff favors owes them no thanks.

To those greatly influential business men who read *The Wall Street Journal* it is therefore said that in the forthcoming election

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they should not subscribe a single penny toward the election of any candidate. The proportion of such candidates with any sound business principle or sense of proportion is so small that it is not worth consideration. Congress has done its worst to us. Campaign contributions now are merely blackmail. But if the men who can afford contributions will consistently refuse to make them we shall soon have a different kind of politician. He will realize that he should be part of the prosperity of the country, with its government conducted on strong and sane lines. It is obviously better that this lesson should be learned now rather than in 1924.

It is thus evident that serious consideration is being given to the mistakes of the past. When those who contribute to campaign expenses can be assured that business will receive a square deal it will be time enough to talk about a new tax law.