Florida Law Review

Volume 29 | Issue 1 Article 5

December 1976

An Individual Income Tax for Florida: The Next Step in Tax Reform?

David M. Hudson

AN INDIVIDUAL INCOME TAX FOR FLORIDA: THE NEXT STEP IN TAX REFORM?

INTRODUCTION

Utilization of an individual income tax[1] as a source of state and local government revenue is not a new concept, having been tapped by three states[2] prior to the adoption of the modern federal income tax in 1913. The individual income tax became increasingly popular among the states until the mid-1930's,[3] but from 1937 until 1961 only one state adopted the tax.[4] Since 1961 the individual income tax has again been increasingly relied upon as an additional source of state and local revenue; today only six states, including Florida, do not impose an individual income tax.[5] In addition to the greater number of states imposing the tax, the individual income tax has provided an increasing share of total state and local revenue during the past twenty-five years. In 1961 individual income taxes accounted for 3.7 percent of state and local revenue, but by 1972 the figure had more than tripled to 12.3 percent.[6] During the same period, the portion of state and local taxes attributable to corporate income taxes declined from 4.3 percent to 3.9 percent.[7]

In its hypothetical model of a high-quality, well-balanced, state-local fiscal system, the Advisory Commission on Intergovernmental Relations recommends: "The personal income tax should stand out as the single most important revenue instrument in the State tax system capable of producing close to 25 percent of total State-local tax revenue."[8] The individual income tax is often touted by its supporters as potentially the most equalitarian tax.[9]

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1. The term "individual income tax" refers to a tax on or measured by the income of natural persons.

2. The states are Hawaii, Wisconsin, and Mississippi. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, FEDERAL-STATE-LOCAL FINANCES: SIGNIFICANT FEATURES OF FISCAL FEDERALISM 159 (1974) [hereinafter cited as "ACIR"].

3. Sixteen states adopted individual income taxes from 1931 through 1937. ACIR, *supra* note 2, at 159. For a more detailed history of state imposed income taxes, see C. PENNIMAN & W. HELLER, STATE INCOME TAX ADMINISTRATION 1-8 (1959).

4. Alaska adopted the individual income tax in 1949. ACIR, *supra* note 2, at 159.

5. Forty-four states, plus the District of Columbia, currently impose some form of tax on or measured by personal income. The six states which do not are Florida, Nevada, South Dakota, Texas, Washington and Wyoming. Thirty-nine states, plus the District of Columbia, impose a broad based individual income tax utilizing federal income tax law and principles of a major extent. PRENTICE-HALL STATE INCOME TAXES, ALL STATES §1002.

6. ACIR, *supra* note 2, at 7.

7. *Id.*

8. *Id.* at 1.

9. R. GOODE, THE INDIVIDUAL INCOME TAX 11 (1964); ACIR, *supra* note 2, at 1. For a contrary view, see F. CHODORO, THE INCOME TAX/ROOT OF ALL EVIL (1954).

By virtue of being a direct tax[10] with a great deal of flexibility,[11] the individual income tax can be levied on those with the greater ability to pay.[12]

The main problems state and local governments have encountered with an individual income tax have been those of administration and compliance.[13] These problems, along with a desire to reduce confusion, unnecessary record keeping, and additional time and effort on the part of taxpayers, have caused states to adopt or convert to individual income tax systems that conform to the federal personal income tax base.[14] Recognizing this trend, Congress enacted the Federal-State Tax Collection Act of 1972[15] (FSTCA), which provides an opportunity to any state with an individual income tax that closely conforms to federal law to allow the federal government to collect and administer its individual income tax. Currently, no state has entered into an agreement with the Secretary of the Treasury that is required to invoke the privilege granted by the Act.[16] Its provisions, however, appear to have many advantages for states like Florida that do not currently impose an individual income tax. Such a state may initially enact its tax in compliance with the provisions of the federal law for a "test drive;" if problems developed, the state could then withdraw from the agreement.[17]

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10. The term "direct tax" is used to describe a tax "which is demanded from the very persons, who it is intended or desired, should pay it." J. MILL, PRINCIPLES OF POLITICAL ECONOMY 823 (Ashley ed. 1936).

11. Provisions for exemptions, deductions or credits in ad valorem property taxes and most excise taxes are often limited by constitutional provisions (see *e.g.*, FLA. CONST. art. VII, §3(b)) and practical considerations, whereas an individual income tax can more easily provide exemptions, deductions, or credits which are more narrowly refined to benefit the intended recipients. Ideally, the intended recipients should be deserving of the tax benefits; however, one commentator has noted that "[o]ur taxes reflect a continuing struggle among contending interests for the privilege of paying the least. . . . Tax legislation commonly derives from private pressures exerted for selfish ends." L. EISENSTEIN, THE IDEOLOGIES OF TAXATION 3-4 (1961). In addition, a progressive rate structure can serve to impose the burden of the tax more heavily on those with higher incomes. A progressive tax or tax system is one that takes a larger percentage of large incomes than of small incomes, whereas with a regressive tax or tax system the converse is true. R. GOODE, THE INDIVIDUAL INCOME TAX 58 (1964). *See also* A. SMITH, THE WEALTH OF NATIONS (Great Books ed. 1952).

12. *But see* H. TUCKMAN, THE ECONOMICS OF THE RICH 111 (1973), which indicates that in 1969 there were 8,278 federal individual income tax returns reporting adjusted gross incomes in excess of $20,000, but upon which no tax was due because of various deductions, exemptions and credits. In a very real sense, individuals such as these have succeeded in shifting the incidence of the federal individual income tax to others. *See also* D. PHARES, STATE-LOCAL TAX EQUITY 43 (1973). *See also* 121 CONG. REC. E4630 (daily ed. Sept. 9, 1975) (remarks of Representative Vanik).

13. R. GOODE, THE INDIVIDUAL INCOME TAX 28 (1964).

14. See ACIR, *supra* note 2, at 275; *compare* ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE-LOCAL FINANCES: SIGNIFICANT FEATURES AND SUGGESTED LEGISLATION 213 (1972).

15. Act of October 20, 1972, PUB. L. NO. 92-512, tit. II, §202(a) 86 Stat. 936-944, *codified as* INT. REV. CODE OF 1954, §§6361-6365.

16. Letter from Claude D. Baldwin, Director, Legislative Analysis Division, Internal Revenue Service, Washington, D.C., dated July 22, 1976.

17. A state is permitted to withdraw from the agreement under the provisions of INT. REV. CODE OF 1954, §6363(b).

This note reviews the tax sources currently available to the state and local governments in Florida, the relative reliance on each of these tax sources, and the impact of the major types of taxes on Florida's population. Following an explanation of how an individual income tax might be enacted and implemented in Florida,[18] the note concludes with a discussion of the provisions of the FSTCA and the advantages and disadvantages of its use by Florida.

THE PRESENT STATE AND LOCAL TAX SYSTEM IN FLORIDA

Currently, Florida derives its revenue from the traditional types of state taxes[19] other than the personal income tax. The major sources of revenue are the sales and use tax,[20] the corporate income tax,[21] the ad valorem tax on intangible personal property,[22] the estate tax,[23] the tax on motor fuels,[24] and a variety of minor taxes.[25] Table I outlines the amounts collected by the State of Florida in the fiscal year ending June 30, 1974, from the various taxes and the percentage of total collections contributed by each.

The types of taxes that may be levied by counties, municipalities, school districts, and special districts in Florida are rather limited.[26] Article VII, section 9(a), of the Florida constitution provides that:

> Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.[27]

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18. Individual income taxes imposed by counties, municipalities and other political subdivisions in Florida are beyond the scope of this paper.

19. *See generally* Qualls, FLORIDA'S TAX SYSTEM: AN ANALYSIS AND EVALUATION, in FLORIDA'S TAX POLICY 3-14 (1976). The receipt of revenue from other sources, such as federal revenue sharing under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. §§1221-63 (Supp. II, 1972), is not considered herein, nor are other *de minimis* payments into the general revenue fund of the state from the non-tax sources.

20. FLA. STAT. §212 (1975).

21. *Id.* §220.

22. *Id.* §199. The state is prohibited from levying ad valorem taxes on real or tangible personal property. FLA. CONST. art. VII, §1(a) (1968). In fiscal year 1931-32, the last year in which the state levied a general property tax, 12.5% of total taxes collected were from this source. Qualls, *supra* note 19, at 5.

23. FLA. STAT. §198 (1975). Florida does not impose an inheritance tax, and its estate tax is merely a "take up" or "sponge" tax which merely absorbs the credit available under the federal estate tax pursuant to INT. REV. CODE OF 1954, §2011(b).

24. FLA. STAT. §206 (1975). The taxes on motor fuels do not go to the general revenue fund of the state. *See* FLA. STAT. §§206.45, 206.60, 206.605, 206.875 (1975).

25. *See, e.g., Id.* §206 (1975) (tax on motor fuels); *Id.* §201 (1975) (documentary stamp tax and surtax); *Id.* §210 (cigarette excise tax).

26. The political subdivisions of Florida have no inherent power to tax and must derive any such power from the state. Amos v. Matthews, 99 Fla. 1, 126 So. 308 (1930).

27. *See also* FLA. CONST. art. VII, §1(a) (1968), which provides: "No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to

Table I – Florida State Tax Revenue
For Fiscal Year Ending June 30, 1974.

Title of Tax	Amount Collected	% of Total
Sales, Use, Rentals, and Admissions Tax	1,196,571,000	43.044
Gas and Special Fuel Tax	357,585,000	12.863
Motor Vehicle Registration and Carrier Fees	203,149,000	7.308
Corporation Income Tax	188,778,000	6.791
Alcoholic Beverage Tax	180,320,000	6.487
Cigarette Tax	174,271,000	6.269
Documentary Stamp Tax	98,327,000	3.537
Intangible Property Tax	94,450,000	3.398
Pari-mutuel Tax	73,987,000	2.662
Insurance Companies Tax	57,195,000	2.057
Estate Tax	40,943,000	1.473
Utility Taxes	35,506,000	1.277
Citrus Fruit Taxes	27,934,000	1.005
Occupational and Business License Fees	17,274,000	0.621
Oil and Gas Conservation and Production Tax	15,666,000	0.564

In addition to the constitutional grant of ad valorem taxing power,[28] the legislature has by general law authorized counties[29] and municipalities[30] to levy occupational license taxes. Municipalities have also been authorized to levy a tax on the purchase of utility services within the municipality of up to 10 percent of the purchase price.[31] Local government units have not been authorized to levy sales[32] or any other types of taxes.[33] Table II outlines the amounts of revenue derived from the various tax sources available to

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the state except as provided by general law." *See also* City of Tampa v. Birdsong Motors, Inc., 261 So.2d 1 (Fla. 1972).

28. The provisions of FLA. CONST. art. VII, §9(a) (1968), for the levy of ad valorem taxes have been implemented for the counties, school districts, and municipalities pursuant to FLA. STAT. §§125.01(1)(r), 230.23(10), and 166.211 (1975), respectively.

29. FLA. STAT. §205.032 (1975).

30. *Id.* §205.042. This does not include regulatory license fees enacted pursuant to municipal police powers under FLA. STAT. §166.221. 1974 ANNUAL REPORT OF THE ATTORNEY GENERAL 074-21.

31. FLA. STAT. §166.231 (1975). *See also* Belcher Oil Co. v. Dade County, 271 So.2d 118 (Fla. 1972).

32. *See* City of Tampa v. Birdsong Motors, Inc., 261 So. 2d 1 (Fla. 1972).

33. Units of local government do have other sources of locally derived revenue which are not taxes within the purview of FLA. CONST. art. VII, §§1(a) and (9)(a) (1968). For example, municipalities may derive fees from granting franchises to private companies to furnish utility services. FLA. STAT. §180.14 (1975). *See also* OP. ATT'Y GEN. FLA. 075-231 (1975).

Table II — Financial Statistics Of Local Governments, Fiscal Year Ending September 30, 1975

Tax Revenue Source	Total all Counties Dollars	%	Total all Cities Dollars	%
Property Taxes	445,991,833	94.919	301,872,513	67.762
Utility Service Tax	20,631,892	4.391	1117,318,764	26.335
Occupational License	3,240,579	0.690	26,298,152	5.903
Total Local Tax Revenues	469,864,304	100.000	445,489,429	100.000

Tax Revenue Source	Total All Special Districts Dollars	%	Total All Governments Dollars	%
Property Taxes	68,995,417	99.953	816,859,763	82.982
Utility Service Tax	0	0.000	137,950,656	14.014
Occupational License	32,305	0.047	29,571,036	3.004
Total Local Tax Revenues	69,027,722	100.000	984,381,455	100.000

SOURCE: FLA. COMPTROLLER REPT., STATE OF FLORIDA LOCAL GOVERNMENT FINANCIAL REPORT, FISCAL YEAR 1974-75 (March 1, 1976); Letter from B.J. Givens, Director, Bureau of Local Government Finance, Florida Comptroller's Office to the author, July 19, 1976.

the counties, municipalities, and special districts, and the relative percentages of the total for the fiscal year ending September 30, 1975.[34]

Consideration of the incidence of a tax — the identity of persons who will actually pay the tax, as opposed to the persons legally liable for payment[35] — should receive emphasis equal to considerations of the amount of revenue a particular tax might produce and its appropriate expenditure. The ultimate incidence of many taxes falls in whole or in part on persons other than those who pay them. A sales tax is an obvious example since it is paid by retailers but intended to be borne by consumers.[36] The incidence of other taxes is more difficult to ascertain. It is often argued, for example, that the incidence of a corporate income tax falls on the shareholders and is not "passed-on" to consumers.[37] Others have concluded that a corporate

34. Units of local government are required to begin their fiscal years on October 1 of each year and end them on September 30 of the following year. FLA. STAT. §218.33(1) (1975).

35. D. PHARES, *supra* note 12, at 17-18.

36. *See, e.g.*, FLA. STAT. §212.05 (1975).

37. *See, e.g.*, Askew, *Preface* to AN INTRODUCTION TO FLORIDA CORPORATE INCOME TAXATION 2 (1972). *See also* Harberger, *The Incidence of the Corporation Income Tax*, 70 J. POL. ECON. 811 (1967); Ratchford & Han, *The Burden of the Corporate Income Tax*, 10 NAT'L TAX J. 310 (1957).

income tax is shifted to consumers; moreover, it is shifted more than 100 percent. Thus, any tax increase results in a price increase that actually exceeds the tax.[38]

An additional factor in determining the incidence of a tax is the extent to which it is "exported" – the degree to which the ultimate burden of at least a portion of the tax falls on persons outside the geographical jurisdiction of the entity that imposes the tax.[39] An example is Florida's sales tax law.[40] Because Florida exempts purchases of necessities of life from the sales tax,[41] and because a large part of Florida's economy is derived from purchases by out-of-state visitors, approximately 18 percent of Florida's sales tax is exported.[42]

Overall, Florida's state-local tax structure is essentially regressive: taxes paid as a percentage of an individual's income decrease as income increases.[43] On a scale of state tax structures rated from the most progressive down to the most regressive, Florida ranks thirty-first;[44] when the ad valorem property taxes are removed,[45] Florida drops to forty-second.[46] Table III presents a breakdown of the effective rates of the major Florida taxes on individuals in nine income classes.[47]

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38. M. KRZYZANIAK & R. MUSGRAVE, THE SHIFTING OF THE CORPORATION INCOME TAX (1963). The theoretical controversy remains unsettled but the Florida supreme court has recently enhanced the ability of regulated utility corporations to "pass on" the incidence of Florida's corporate income tax to consumers. Gulf Power Co. v. Bevis, 296 So.2d 482 (Fla. 1974), *upholding* Fla. Admin. Code 25-14.02.

39. D. PHARES, *supra* note 12, at 33.

40. FLA. STAT. §212 (1975).

41. *See, e.g.*, FLA. STAT. §212.08(1) (1975) (general groceries); *Id.* §212.08(2) (1975) (medicine and medical supplies); *Id.* §212.08(7)(d) (1975) (hospital meals and rooms).

42. Askew, *supra* note 37, at 2. The Advisory Commission on Intergovernmental Relations lists Florida as one of five states whose sales tax law meets its standards of productivity and antiregressiveness. ACIR, *supra* note 2, at 3. But it has been argued that such exemptions merely serve to lessen, not eliminate, the overall regressiveness of the sales tax. D. PHARES, *supra* note 12, at 50.

43. For a discussion of regression analysis, *see* D. PHARES, *supra* note 12, at 62-69.

44. *Id.* at 72.

45. Ad valorem taxes on real and tangible personal property are not levied by the state in Florida. See note 22 *supra*.

46. D. PHARES, *supra* note 12, at 72. These statistics were prepared before Florida began imposing its corporate income tax; however, no statistics are available as to its effect on the overall regressive nature of Florida's tax system. Many believe that an equitable tax system should be progressive. *See* ACIR, *supra* note 2, at 1-4. Others argue, however, that to look solely at the progressive or regressive incidence of a tax system is too simplistic, since it disregards the benefits individuals in a particular income class might receive from the expenditure of public funds. *See* W. BLUM & H. KALVEN, JR., THE UNEASY CASE FOR PROGRESSIVE TAXATION (1953).

47. The income base utilized by Phares was personal income. D. PHARES, *supra* note 12, at 31. He noted, however, that there is considerable controversy in the area and that personal money income does not reflect various categories of imputed or nonmonetary income which do affect an individual's well-being. He also argued that "[e]ffective rates calculated from money income will produce a much less progressive distribution (especially in the lower income classes) than obtains from a broader base. Or with a regressive tax, the regressivity will be considerably greater with money than with broad income." *Id.* at 30.

TABLE III — EFFECTIVE RATES OF TAXATION FOR SELECTED FLORIDA TAXES.

Tax	Income Class $0-1,999	2,000-2,999	3,000-3,999	4,000-4,999	5,000-5,999	6,000-7,499	7,500-9,999	10,000-14,999	over 15,000
General Sales and Gross Receipts Taxes (a)	.01536	.01445	.01487	.01337	.01303	.01242	.01196	.01143	.00860
Public Utilities Tax (b)	.00765	.00573	.00489	.00393	.00360	.00329	.00286	.00239	.00154
Motor Fuel Tax (c)	.01006	.01142	.01313	.01267	.01229	.01180	.00996	.00864	.00438
Property Tax (d)	.04961	.04435	.04363	.03778	.03660	.03421	.03249	.02987	.02197
Total Taxes (e)	.12878	.11710	.11787	.10432	.09991	.09460	.08783	.08143	.05791
Total Taxes Net of Property Tax (e)	.07917	.07275	.07424	.06653	.06331	.06039	.05534	.05155	.03593

(a) Allocated by expenditures for current consumption, net of excluded items.
(b) Allocated by expenditures for gas and electricity.
(c) Allocated by expenditures for automobile operation.
(d) Allocated one-half on the basis of consumption expenditures and one-half on the basis of expenditures for housing, under the assumption that roughly half of the property tax is levied on business and is assumed to be shifted forward to consumers.
(e) Allocated by the sum of the effective rates for individual taxes.
SOURCE: D. PHARES, STATE-LOCAL TAX EQUITY 111-155 (1973).

In contrast to the regressiveness of the taxes imposed in Florida, the individual income tax is unequivocally progressive in nature. Studies indicate that the pattern of effective rates increases consistently from the lowest to the highest income class.[48] The degree to which a state relies on a progressive individual income tax will, of course, affect the overall progressiveness of its tax system. Relatively heavy reliance on the individual income tax by Delaware, for example, counterbalances the state's regressive taxes to the extent that its total tax system is considered to be progressive.[49] In addition to the progressive nature of an individual income tax, its incidence is generally static – the ultimate burden of the tax remains on the persons required to pay the tax.[50] A state individual income tax can also be considered to be exported to the extent that amounts actually paid by residents may be deducted in computing federal income tax liability[51] and to the extent that a state individual income tax may be imposed on nonresidents for income derived within the taxing state.[52]

In summary, Florida's state and local tax structure is heavily regressive, the burden falling more heavily on those with lower incomes than the more affluent. An individual income tax, on the other hand, is clearly progressive in nature, placing more of the burden of financing state and local government on those with a greater capacity to pay.

AN INDIVIDUAL INCOME TAX FOR FLORIDA

Prior to the enactment of an individual income tax in Florida, the Florida constitution must be amended to remove the prohibition against an individual income tax contained in Article VII, Section 5(a).[53]

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48. *Id.* at 46, 56-57, 144-45.

49. *Id.* at 46, 65.

50. *Id.* at 20.

51. Moscovitch, *State Graduated Income Taxes – A State-Initiated Form of Revenue Sharing*, 25 NAT'L TAX J. 53 (1972); D. PHARES, *supra* note 12, at 43. Because the deduction provided by INT. REV. CODE OF 1954, §164 for state taxes paid is available only for those individuals who itemize their deductions rather than take the standard deduction or low income allowance under §141, it is generally of more benefit to individuals in the higher federal income tax brackets, and offsets to some extent the actual progressiveness of a state individual income tax. P. STANLEY, THE ECONOMIC FEASIBILITY OF THE PERSONAL INCOME TAX FOR MAINE 47, 51 (1964).

52. D. PHARES, *supra* note 12, at 43.

53. FLA. CONST. art. VII, §5(a) (1968) provides: NATURAL PERSONS. No tax upon . . . the income of natural persons who are residents or citizens of the state shall be levied by the state, or under its authority, in excess of the aggregate of amounts which may be allowed to be credited upon or deducted from any similar tax levied by the United States or any state. Florida's Constitution appears to be unique in prohibiting income taxes. The first constitutional prohibition against income taxes was adopted on November 4, 1924. In *In re* Advisory Opinion to the Governor, 243 So. 2d 573 (Fla. 1971), the Florida supreme court held that the term "residents or citizens" included corporations. The holding necessitated a constitutional amendment, adding the words "natural persons who are" to subsection (a) and creating subsection (b) of FLA. CONST. art. VII, §5 (1968), to permit the enactment of the Florida Corporate Income Tax Code, FLA. STAT. §220 (1975). The deduction allowed by INT. REV. CODE OF 1954, §164 for state taxes actually paid is

In addition to the repeal of the constitutional prohibition or the passage of an amendment expressly authorizing an individual income tax, there are other matters which should be resolved simultaneously. The first would be to provide that the Florida tax should be based on or measured by the gross income, adjusted gross income, or taxable income as determined for federal income tax purposes;[54] furthermore, the legislature should have the authority to provide that changes in the federal law[55] would automatically be reflected in the Florida tax law. Second, a constitutionally imposed maximum rate, such as currently exists for Florida's corporate income tax[56] should be avoided. These provisions would give the legislature flexibility to formulate an individual income tax in partial or complete conformance with the federal income tax and in the manner it determines best to generate desired revenue and distribute the tax burden. The individual income tax should be designed to eliminate or at least alleviate some of the more regressive forms of taxation, such as the sales tax or the ad valorem taxes levied by school districts.[57] Accordingly, the constitutional amendment could remove the school districts' authority to levy ad valorem taxes for operating expenses[58] or pro-

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not a credit upon or deduction from the federal income tax *liability* as FLA. CONST. art. VII, §5(c) (1968) contemplates. *See* Dickinson v. Maurer, 229 So. 2d 247 (Fla. 1969).

54. See text accompanying notes 117-122 *infra.*

55. Absent constitutional authority, the legislature cannot adopt in advance future and unknown federal statutes or regulations. Presbyterian Homes of the Synod of Florida v. Wood, 279 So.2d 556, 559 (Fla. 1974). The amendments to FLA. CONST. art. VII, §5(b) (1968) which permit a corporate income tax did not make such a provision, and thus the legislature must annually update the Florida Code. FLA. STAT. §220.03(2)(c) (1975). Even though the annual update is made retroactive to cover any changes in the federal law during the preceding year, such a procedure is unnecessarily cumbersome. In addition, should Florida decide to enter into an agreement with the Treasury Department for the collection and administration of Florida's individual income tax under INT. REV. CODE OF 1954, §6363, §6362(f)(2)(A) requires that "[t]he provisions of this subchapter (and of the regulations prescribed thereunder) as in effect from time to time [be] made applicable for the period for which the State agreement is in effect . . . ." Florida's estate tax law appears to prospectively adopt changes in federal law under the authority of FLA. CONST. art. VII, §5(a) (1968). FLA. STAT. §198.02 (1975). The constitutions of Colorado, COL. CONST. art. 10, §19, and Nebraska, NEB. CONST. art. VIII, §1-V, permit prospective adoption of future amendments to the Federal Internal Revenue Code.

56. The Florida corporate income tax is already imposed at the ceiling rate set by FLA. CONST. art. VII, §5(b) (1968), of five percent of net income. FLA. STAT. §220.11(2) (1975). The rate may be increased if authorized by a three-fifths vote of the membership of each house of the legislature. While a state individual income tax imposed as a flat percentage of the individual's federal income tax liability would carry with it the same degree of progressiveness as the federal tax, the constitutional amendment authorizing an individual income tax should not require the Florida tax to be so computed in order to provide more flexibility in determining the degree of progressiveness for Florida. *See* Moscovitch, *supra* note 51, at 53.

57. Others have suggested that should Florida adopt an individual income tax, the ad valorem tax imposed on intangible personal property should be repealed. Qualls, *supra* note 19, at 13.

58. The percentage of the district school boards' operating budgets derived from locally imposed ad valorem taxes has steadily declined over the past thirty years, until for fiscal year 1974-75, they comprised only 35.61 percent, with the state (54.48 percent) and federal (9.91 percent) governments providing the balance. Florida Department of

vide that the sales tax shall not exceed the current rate of four percent. The foregoing provisions not only would provide a sound constitutional framework for the development of an individual income tax but also would result in tax reform that goes beyond the simple imposition of a new tax.[59]

An important constitutional issue that will be raised is whether the tax may be imposed on or measured by unrealized appreciation of property accruing prior to the repeal of the constitutional prohibition against an individual income tax. This issue, raised by Florida's corporate income tax,[60] is currently pending before the Florida supreme court.[61] If the court concludes that unrealized appreciation may not be included in the tax base, the issue could be avoided in an individual income tax by providing by statute that only realized gain attributable to the appreciation in value of the property occurring after the amendment would be taxable.[62]

Besides the Florida constitutional issues, consideration must be given to federal constitutional problems, particularly those arising under the commerce,[63] privileges and immunities,[64] and due process[65] clauses. The principles

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Education, *Profiles of Florida School Districts, Profile V*, 183 (1976). While the percentage is declining, the amount of money it represents is still substantial, $752,329,887.59 in fiscal year 1974-75. *Id.* Nonetheless, the trend has been, and continues to be, toward greater state funding, and less reliance on the local property taxes. See FLA. STAT. §236.25(1) (1975), limiting the maximum millage which may be levied by school boards to eight mills (FLA. CONST. art. VII, §9(a) (1968), authorizes ten mills) if they desire to participate in the distribution of state funds under the Florida Education Finance Program, FLA. STAT. §236.02 (1975). The Advisory Commission on Intergovernmental Relations recommends that a state tax system generate sufficient revenue to finance most of the costs of public elementary and secondary education. ACIR, *supra* note 2, at 1. *See also* Advisory Commission on Intergovernmental Relations, *Financing Schools and Property Tax Relief—A State Responsibility* (1973); and San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973). For a discussion of the regressive nature of the ad valorem property tax see D. NETZER, ECONOMICS OF THE PROPERTY TAX (1966).

59. Studies could be done of income distribution among individuals in Florida in order to determine the optimum income brackets and tax rates. *See, e.g.*, P. STANLEY, THE ECONOMIC FEASIBILITY OF THE PERSONAL INCOME TAX FOR MAINE (1964).

60. FLA. STAT. §220 (1975).

61. Department of Revenue v. Leadership Housing Inc., No. 47,440 (Supreme Court of Florida, argued Jan. 7, 1976).

62. This was the approach taken in the initiation of the federal income tax after the ratification of the sixteenth amendment. Act of October 3, 1913, ch. 16, 38 Stat. 172. Although the original Act did not expressly so provide, the Supreme Court in Lynch v. Turrish, 247 U.S. 221 (1917), interpreted the Act as, in effect, providing a basis for property held on March 1, 1913, equal to its fair market value on that date. *See also* MacLaughlin v. Alliance Ins. Co., 286 U.S. 244, 250 (1931), and U.S. v. Safety Car Heating & L. Co., 297 U.S. 88, 96-97 (1935). The Supreme Court, however, apparently felt that this limitation on the power to tax was self-imposed by Congress and not constitutionally mandated. In Lynch v. Hornby, 247 U.S. 339, 343-44 (1918), the court stated: "[W]e deem it equally clear that Congress was at liberty under the Amendment to tax as income, without apportionment, everything that became income, in the ordinary sense of the word, after the adoption of the Amendment . . . ."

63. U.S. CONST. art. I, §8, cl. 3.

64. *Id.* art. IV, §2, cl. 1.

65. *Id.* amend. XIV, §1.

enunciated in *Northwestern States Portland Cement Company v. Minnesota*[66] with regard to a corporate income tax are equally applicable to an individual income tax. "[W]e conclude that net income from the interstate operations of a foreign corporation may be subjected to state taxation provided the levy is not discriminatory and is properly apportioned to local activities within the taxing State forming sufficient nexus to support the same."[67] A broad-based individual income tax, designed to reach residents[68] and nonresidents alike, is primarily concerned with satisfying the "nexus" requirement. It is well-settled that a state has the power to levy a tax on the income of its residents or citizens[69] regardless of the source of the income.[70] This power exists because the tax is based upon the rights and privileges provided by the individuals' domiciliary state and the concomitant burden to share in the expenses of state government. Neither the privileges nor the burden is affected by the character or the source of the income.[71] The domiciliary state may even tax its residents on income earned before but received after they become residents; however, the state may not tax income received before establishing residence.[72] Nonetheless, to avoid the harshness of double taxation,[73] most states that subject all of a resident's income to taxation provide some sort of credit, refund, or offset for income taxes paid to other states.[74]

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66. 358 U.S. 450 (1959).

67. *Id.* at 452. *See also* Austin v. New Hampshire, 420 U.S. 656 (1975).

68. The term "residents" may be used interchangeably with the term "citizens" for purposes of analyzing a taxing system under the privileges and immunities clause. Travis v. Yale & Towne Mfg. Co., 252 U.S. 60 (1920).

69. Curry v. McCanless, 307 U.S. 357 (1939); Guaranty Trust Co. v. Virginia, 305 U.S. 19 (1938). An individual may be considered a "resident" of a state for purposes of a state individual income tax even though he may not be domiciled there. See text accompanying note 96 *infra*. For a discussion of state's jurisdiction to tax, *see* Clark, *A State's Tax Jurisdiction as Limited by the United States Constitution*, 13 U. FLA. L. REV. 401 (1960).

70. Lawrence v. State Tax Comm'n of Mississippi, 286 U.S. 276 (1932); Matson Nav. Co. v. State Bd. of Equalization, 297 U.S. 441 (1936). *Cf.* Cream of Wheat Co. v. City of Grand Forks, 253 U.S. 325 (1920).

71. New York *ex rel.* Cohn v. Graves, 300 U.S. 308, 314 (1937). *But see* Gillespie v. Oklahoma, 257 U.S. 501 (1922).

72. Clark v. Tax Commissioner, 78 Ariz. 297, 279 P.2d 451 (1955).

73. There is apparently no federal constitutional prohibition against double taxation. Carter Carburetor Corp. v. St. Louis, 356 Mo. 646, 203 S.W.2d 438 (1947); Walters v. St. Louis, 364 Mo. 56, 259 S.W.2d 377 (1953); Murray v. Philadelphia, 364 Pa. 157, 71 A.2d 280 (1950). In the absence of state constitutional or statutory restrictions, double taxation is invalid only if lacking uniformity or denying equal protection. McCarroll v. Gregory-Robinson-Speas, Inc., 198 Ark. 235, 129 S.W.2d 254 (1939); Pullman Co. v. Commissioner of Taxation, 223 Minn. 96, 25 N.W.2d 838 (1947).

74. *See, e.g.*, N.Y. TAX LAW §620(a) (1975), which provides that resident taxpayers may take a credit against the New York tax for income taxes imposed for the taxable year by another state or its political subdivision, or the District of Columbia, on income derived from sources within the other jurisdiction and subject to the New York tax. The amount of credit is limited to the ratio of income taxable in the other jurisdiction to total New York derived income. *See also* FLA. STAT. §220.15(4) (1975) which provides that a multistate corporate taxpayer "shall be entitled to a refund of tax . . . if it can establish that the aggregate amount of its net income subject to tax under this code and in all other

A state may tax income of a nonresident derived from property located within the state[75] or such part of a nonresident's income as is fairly attributable to events or transactions that occur within the state.[76] If a state tax properly applies to a nonresident's income, the problem then becomes how to determine the proper rate to be applied in a state with a graduated rate. For example, assume the state imposes a tax of four percent on taxable income up to $5,000, and of six percent on taxable income between $5,001 and $10,000, and a nonresident has a total taxable income of $10,000, $5,000 of which is attributable to the taxing state. May the individual be taxed at the four percent and six percent rates based on his total taxable income or only at the four percent rate based on the taxable income attributable to the taxing state? Vermont applies the rate applicable to the nonresident's *total* taxable income, and then "[t]he tax imposed upon the income of a nonresident . . . is reduced by a percentage equal to the percentage of his adjusted gross income for the taxable year which is not Vermont derived income."[77] In the example, Vermont's reduction provision would yield a tax of $250.[78] Vermont's taxing rate formula has been upheld against objections to the progressive nature of the tax.[79]

The current economic situation is seriously affecting Florida's revenues.[80] While the population of Florida continues to increase rapidly,[81] the state's budget for 1975-76 is smaller than that for the previous year.[82] An individual income tax would give Florida an additional source of revenue, but, more

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states for the taxable year exceeds 100 percent of the taxpayer's taxable income, as determined for federal income tax purposes, for the taxable year."

75. New York *ex rel.* Whitney v. Graves, 299 U.S. 366 (1937).

76. International Harvester Co. v. Wisconsin Dep't of Taxation, 322 U.S. 435 (1944). In response to the holding of the Supreme Court in Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450 (1958), Congress enacted PUB. L. No. 86-272, 73 Stat. 555-556, *codified as* 15 U.S.C. §381-384 (1974), which denied to states the power to impose tax on income derived within a state by any person, including individuals, if the only activity within the state is a solicitation.

77. VT. STAT. ANN., tit. 32, §5823 (Supp. 1976).

78. CALCULATION: 5000 x 4% = $300
5000 x 6% = $200
Total Tax $500
The total tax is then reduced by the percentage of gross income attributable to non-Vermont income — $5000/10,000, or 50%: x $500 x 50% = 250; 500 — 250 = 250, the tax payable to Vermont.

79. Wheeler v. Vermont, 127 Vt. 361, 249 A.2d 887, *appeal dismissed*, 396 U.S. 4 (1969).

80. Collections were down for fiscal year 1974-75 from fiscal year 1973-74 from the corporate income tax (4.5%), and the documentary stamp tax and surtax (25%), two of the largest sources of revenue for the general revenue fund of the state. See Table I, *supra*. Collections from the sales and use tax were up less than 1% for the same period, but the growth rate over the previous fiscal year slackened during 1974-75 from 7% during the first quarter, to 3% during the second quarter, 1% during the third quarter, and finally 0.29% during the fourth quarter. Fla. Dept. of Rev. Rept. to Governor and Cabinet, Fourth Quarter and Annual Performance and Progress Report for Fiscal Year 1974-75 (July 22, 1975).

81. *See* Burns, Patterns and Characteristics of Migration into Florida, Bureau of Economic & Business Research, Economic Leaflets (October, 1975).

82. *Compare* Laws of Florida, ch. 75-280, *with* Laws of Florida 1975, ch. 74-300.

importantly, it could be part of a comprehensive program of tax reform designed to reduce the overall regressive nature of Florida's state and local tax system. Given the general disfavor with which "new" taxes are viewed by politicians and taxpayers, it is essential that any proposal for an individual income tax be structured either as a form of relief from taxes currently imposed or as an alternative to increasing the existing tax rates. Properly implemented, the individual income tax has great potential for providing a more equitable and just allocation of the tax burden in Florida.[83]

THE FEDERAL-STATE TAX COLLECTION ACT OF 1972

The Act's Provisions

In 1972 Congress enacted the Federal-State Tax Collection Act (FSTCA),[84] authorizing the Secretary of the Treasury to collect and administer a "qualified State individual income tax"[85] for any state which enters into an agreement to that effect with the Secretary.[86] In addition to the collection and administration of the state tax by the Treasury Department, jurisdiction for judicial review of assessments of the tax and enforcement of the state law is given to the United States district courts, the United States Tax Court and the United States Court of Claims, and "such procedures shall replace judicial procedures under State law."[87] The Secretary is required to represent the

83. It is significant that the only states which are considered to have at present an over-all progressive tax structure, Delaware and Wisconsin, employ a progressive individual income tax. D. PHARES, *supra* note 12, at 68. One commentator has recently noted that Florida's consumption oriented tax structure can be an equitable and flexible one, and that an individual income tax may not be desirable for Florida. Shelly, *Is a Personal Income Tax in Florida's Future?*, in FLORIDA'S TAX POLICY 18 (1976). However, Mr. Shelly's examination of the effect of the adoption of an individual income tax in Florida was based on the premise that it would *replace* Florida's general sales tax. *Id.* at 18.

84. Act of October 20, 1972, PUB. L. NO. 92-512, tit. II, §202(a), 86 Stat. 936-44, *codified as* INT. REV. CODE OF 1954, §§6361-6365. *See generally*, STAFF OF THE JOINT COMMITTEE ON INTERNAL REVENUE TAXATION, 92 CONG., 1ST. SESS., GENERAL EXPLANATION OF THE STATE AND LOCAL FISCAL ASSISTANCE ACT AND THE FEDERAL-STATE TAX COLLECTION ACT OF 1972 51-72 (Comm. Print 1973) [hereinafter cited as GENERAL EXPLANATION]; Note, *The Federal Collection of State Individual Income Taxes*, 3 FORD URBAN L.J. 579 (1975). The Treasury has not promulgated any regulations or proposed regulations in implementation of the provisions of this Act. Significantly, the same Act enacted the Federal Revenue Sharing Program, and it has been noted that "[t]he most ignored aspect of Public Law 92-512 is Title II, which provides for the federal collection of state individual income taxes. If a significant number of states elect to have the federal government collect the state income taxes, the concept of revenue sharing could be altered dramatically. Instead of the federal government transferring $5 billion per year to the states and localities in the form of a transfer payment, a transfer of a portion of the federal income tax base directly to the states and localities would achieve the same result. Thus, pure revenue sharing may result from this dormant provision in the legislation . . . ." O. STOLZ, REVENUE SHARING: LEGAL AND POLICY ANALYSIS 143 (1974).

85. *See* INT. REV. CODE OF 1954, §6362(a).

86. *Id.* §6361(a).

87. *Id.* §6361(b). The "small tax case" procedure in the Tax Court is available for disputes involving qualified state individual income taxes. *Id.* §7563(f). The jurisdictional limit of §7463 was raised from $1,000 to $1,500 by PUB. L. NO. 92-512, §203(b)(1), 86 Stat. 945, to take into account state taxes involved.

state's interests in such litigation in the same manner as he represents the interests of the United States in federal tax actions.[88] State courts retain jurisdiction over state constitutional issues;[89] the Secretary would not represent the interests of the state in such a state court proceeding or in any proceeding involving the relationship between the United States and a state.[90] Additionally, the state may impose no civil or criminal penalties for violation of its income tax laws; the federal penalties are exclusive.[91] Administrative determinations of the Secretary regarding tax liabilities or refunds are not reviewable or enforceable by state officials.[92]

To avail itself of the provisions of the FSTCA, a state must impose a "qualified state individual income tax,"[93] which includes both a "qualified resident tax"[94] and a "qualified nonresident tax."[95] The qualified resident tax must be one that is imposed on residents[96] of the state and is either a tax based on taxable income,[97] which would permit proportional or pro-

88. INT. REV. CODE OF 1954, §6361(d).

89. *Id.* §6361(b).

90. *Id.* §6361(d)(1)(B).

91. *Id.* §6362(f)(6). The Joint Committee on Internal Revenue Taxation Staff Report notes that "it is not intended by this provision to provide that only a single sanction may be applied to an act which is violative of both federal and state law. Thus, if an individual willfully attempts to evade or defeat both federal and qualified state individual income taxes by, for example, omitting income from both his federal return and his state schedules, a separate criminal penalty as provided by the INTERNAL REVENUE CODE OF 1954, §7201 of a fine of not more than $10,000 and imprisonment of not more than 5 years may be imposed twice — once with respect to the Federal tax and once with respect to the qualified State individual income tax." GENERAL EXPLANATION, *supra* note 84, at 65.

92. INT. REV. CODE OF 1954, §6361(d)(3).

93. *Id.* §6362(a)(1).

94. *Id.* §6362(a)(2).

95. *Id.* §6362(a)(3).

96. An individual may be treated as a resident of the state with respect to a taxable year only if such person's principal place of residence has been within the state for a period of at least 135 consecutive days, and at least 30 of those days are in the taxable year, or if a citizen or resident of the United States is domiciled in the state for at least 30 days (not necessarily consecutive) during the taxable year. *Id.* §6362(e)(1). In the event an individual qualifies as a "resident" in more than one participating state, section 6362(c)(4) provides a formula for allocating such an individual's income between the states on the basis of the amount of time he or she was a resident of each state. An estate is treated as a resident of the last state of which the decedent was a resident before his or her death. *Id.* §6362(e)(2). See §6362(e)(3) for special rules concerning the residence of trusts.

Individuals who are accustomed to "wintering" in Florida could find themselves qualifying as residents of Florida and thereby subject to an individual income tax imposed in accordance with the Act. This, arguably, could have an adverse effect on Florida's tourist industry; however, studies should be made of the number and duration of visitors' stays in Florida, and the state income taxes of their home states in order to adequately ascertain whether the adverse impact is real or imagined. It is also possible that Florida has reached the point of diminishing returns in her growth (that is, the increased demand on her resources outweighs the short-term benefits of an expanding population) so that any possible deterrent effect an individual income tax might have on new residents or long-term visitors might be advantageous.

97. The term "taxable income" refers to the individual's taxable income as defined

gressive rates as the state sees fit, or a tax that is a flat percentage of the individual's federal income tax.[98] The qualified nonresident tax may be imposed only on wage and other business income[99] derived from sources within the state by nonresidents and only on individuals deriving 25 percent or more of their wage and other business income for the taxable year from sources within the taxing state.[100] Within certain adjustments, the amount of tax imposed on a nonresident may not exceed the amount[101] of tax for which he would be liable under the state's qualified resident tax[102] if he were a resident. A state may also levy a separate tax on income that is not "wage and other business income" and that is received or accrued by individuals who are domiciled in the state but who are not residents.[103]

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in INT. REV. CODE OF 1954, §63 for the taxable year, adjusted as provided in §6362(b): by subtracting interest from obligations of the United States which had been included in gross income; by adding an amount equal to the net state income tax deduction (defined by §6362(b)(3)) for the year; and adding an amount equal to the net tax-exempt income (defined by §6362(b)(4)) for the year. In addition, the state may, but is not required to, permit additional adjustments provided by §6362(b)(2): there may be imposed a tax on the amount taxed under §56 on items of tax preference; and a credit may be allowed for income taxes paid to another state or political subdivision thereof.

98. A "qualified resident tax" which is a percentage of the federal income tax must additionally meet the requirements of INT. REV. CODE OF 1954, §6362(c), and an adjustment must be made by decreasing the liability for the state tax by an amount which would result from excluding from gross income an amount equal to the interest on obligations of the United States which were included in gross income for the year. Additionally, a state may, but is not required to, permit additional adjustments provided by §6362(c)(3) and (4): by increasing the tax liability by an amount which would result from including as an item of gross income an amount equal to the net tax-exempt income for the year; by increasing the tax liability by an amount which would result from including as an item of gross income an amount equal to the net state income tax deduction for the year (these two adjustments must either both be made or neither may be made); and a credit may be allowed for income taxes paid to another state or political subdivision thereof.

99. "Wage and other business income" is defined by INT. REV. CODE OF 1954, §6362(d)(2) as wages, as defined by §3401(a), net earnings from self-employment within the meaning of §1402(a), and the distributive share of income of a trade or business carried on by a trust, estate or electing small business corporation to the extent the distributive share is includible in the gross income of the individual and would constitute net earnings from self-employment if the trade or business were carried on by a partnership.

100. *Id.* §6362(d)(1).

101. INT. REV. CODE OF 1954, §6362(d)(1)(D). The Joint Committee on Internal Revenue Taxation Staff Report indicates that "[i]t is contemplated that in computing the nonresident tax, the regulations will provide that an adjustment will be made for business expenses related to the earning of wages which are deducted from gross income in order to determine adjusted gross income.

Additionally, it is expected that the regulations will include in 'non-business deductions' all those deductions allowable from adjusted gross income in computing taxable income." GENERAL EXPLANATION, *supra* note 84, at 60.

102. The state is required to have in effect for the same period a qualified resident tax. INT. REV. CODE OF 1954, §6362(d)(1)(E). *See also* Austin v. New Hampshire, 420 U.S. 656 (1975).

103. INT. REV. CODE OF 1954, §6362(f)(3)(C). This type of tax is not eligible for federal collection and administration, but would permit a state to stop tax avoidance by individuals who are domiciliaries of a participating state, but who can arrange their

To facilitate administration and compliance, the taxable years of individuals for purposes of the state tax must coincide with their federal taxable years.[104] Married individuals must file joint or separate returns for state income tax purposes in the same manner as they do for the federal income tax.[105] Entities that are treated as conduits for federal income tax purposes, such as partnerships, trusts, estates, and electing small business corporations, must be similarly treated for state income tax purposes.[106] State law must incorporate all future changes in federal law.[107] If a state wishes to make changes in its tax base or rate, it must do so before November 1 of the calendar year for which the tax is collected.[108]

State individual income taxes collected by the federal government under the FSTCA will provide the state with a constant flow of income since the taxes are subject to the withholding[109] and declaration of estimated income tax[110] requirements of federal law.[111] Amounts collected by the Internal Revenue Service are to be transferred to the state on the basis of estimates by the Secretary or his delegate within three business days of their deposit in a Federal Reserve bank for withholding and within thirty days for amounts collected pursuant to a return, declaration of estimated tax, or amendments thereto.[112] At least once a year, the differences between actual and estimated collections are to be reconciled and the difference either charged or credited to the state.[113]

The FSTCA will become effective for taxable years beginning on the first January 1 after at least one state files an election to participate with the Secretary of the Treasury.[114] If a participating state becomes dissatisfied with the arrangement, it may withdraw by notifying the Secretary of the Treasury of its intention to do so; the withdrawal may be effective not earlier than the first January 1 that is more than six months after the date of notification

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affairs so that under the Act they will be regarded as residents of another state. GENERAL EXPLANATION, *supra* note 84, at 64. This tax would have to be separately administered by the taxing state, but in Florida would appear to reach investment income of many individuals who might otherwise escape Florida taxation.

104. INT. REV. CODE OF 1954, §6362(f)(4).

105. *Id.* §6362(f)(5).

106. *Id.* §6362(f)(7). *Accord*, FLA. STAT. §220.02(1) (1975) which provides that Florida's corporate income tax is not to be imposed on partnerships, estates or trusts, and FLA. STAT. §220.13(2)(i) which effectively exempts electing small business corporations, unless they have capital gains taxable under INT. REV. CODE OF 1954, §1378.

107. INT. REV. CODE OF 1954, §6362(f)(2)(A), see note 55 *supra.*

108. INT. REV. CODE OF 1954, §6362(f)(2)(B).

109. *Id.* §§3401 *et seq.*

110. *Id.* 6015.

111. GENERAL EXPLANATION, *supra* note 84, at 63; see also INT. REV. CODE OF 1954, §6362(e)(5).

112. INT. REV. CODE OF 1954, §6361(c)(1).

113. *Id.* §6361(c)(2).

114. The Tax Reform Act of 1976, PUB. L. No. §1372(a)(2), Stat. ( ). The Federal-State Tax Collection Act as originally enacted required that a minimum of two states file an election to participate, and the combined electing states have residents who filed five percent or more of the federal income tax returns filed during 1972. Act of October 20, 1972, PUB. L. No. 92-512, tit. II, §204(b), 86 Stat. 945.

of withdrawal.[115] In lieu of providing notice of an intention to withdraw, a state may effectively terminate participation by changing its laws so that it would no longer have a "qualified State individual income tax."[116]

Advantages and Disadvantages

The advantages to a state of federal administration and collection of the State's individual income tax include: (1) the more efficient overall administration since much of the duplication otherwise required would be eliminated;[117] (2) the minimal expense to the state,[118] since the federal government bears the administrative costs; (3) the avoidance of an additional burden on the state court system since most litigation would be in federal courts;[119] (4) the rapid system for transfer of funds to the state government,[120] thereby permitting a state to receive the funds faster than might otherwise be possible,[121] and (5) the simplification of compliance burdens for both taxpayers and employers since withholding statements, declarations of estimated tax, and returns need be sent only to the federal government, and existing federal forms can be used with slight modifications rather than the imposition of additional reporting forms.[122]

The disadvantages of participation in the FSTCA are both practical and philosophical.[123] A real danger to a state that incorporates federal law in its individual income tax system is that any change in the federal tax law would immediately be reflected in the state's tax structure and revenue system. Since a state is prohibited from making any changes in its tax base or rate for a given calendar year after November 1, it may find its year-end collections far lower than projected.[124]

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115. INT. REV. CODE OF 1954, §6363(b)(1).

116. *Id.* §6363(b)(2).

117. The Joint Committee on Internal Revenue Taxation Staff Report indicates its belief "that a federal collection system of state individual income taxes (often referred to as a 'piggyback' system) will add to the overall efficiency of administration and provide the States with additional revenue for a number of reasons which may collectively be described as relating to efficiency of administration." GENERAL EXPLANATION, *supra* note 84, at 51.

118. For comparison, in fiscal year 1973-74, the first full fiscal year after the initial implementation of Florida's corporate income tax, Florida collected $188,777,865.70 from its corporate income tax at a cost of collection of $1,125,063.41, or $.60 for each $100 collected. Fla. Dept. Rev. Rept. to Governor and Cabinet, Fourth Quarter and Annual Performance Progress Report for Fiscal Year 1973-74, July 31, 1974.

119. See text accompanying note 87 *supra.*

120. See text accompanying note 112 *supra.*

121. The costs of administering a withholding system of its own might be prohibitive, requiring the state to wait until the end of the taxable year to receive the funds. *See* GENERAL EXPLANATION, *supra* note 84, at 54.

122. *Id.* at 52.

123. *See generally* Note, *The Federal Collection of State Individual Income Taxes,* 3 FORD URBAN L.J. 579, 599-600 (1975).

124. This may be of particular concern to Florida because of the constitutional prohibition against deficit spending. FLA. CONST. art. VII, §1(d). Generally, it has been suggested that "[a] possible solution would be for Congress to rule out any tax law changes beyond the date when states could adjust their rates to reflect the new modifications." Note, *supra* note 123, at 600.

Another practical problem with the FSTCA is the potential for reduced efficiency in administration of both state and federal law. Most states with an individual income tax have their own administration and audit resources as well as arrangements for information-sharing with the Internal Revenue Service.[125] Quite often a state will have a more comprehensive audit system than the Internal Revenue Service provides; therefore, if a state abdicates its audit and administration functions to the Internal Revenue Service, some predict that the overall effect will be to reduce efficiency and to decrease state tax collections.[126] For a state that does not yet have an individual income tax, however, the predicted low efficiency of federal enforcement is speculative. Furthermore, nothing in the FSTCA prohibits a state from maintaining its own audit system.

A philosophical objection to the FSTCA is that the Act would eviscerate the legislative prerogatives of the state in formulating its own tax policy.[127] Many of the deductions, exemptions, and credits in the Internal Revenue Code further national policies that are unrelated to the revenue-generating aspect of the federal income tax.[128] Many of these policies may be irrelevant or contrary to the policies of the state and its attempts to raise revenue and equalize the tax burden.[129] However, flexibility in a state's overall tax system would not be lost since a state could make benefits or incentives it deems appropriate available by other means.[130] The FSTCA does not prohibit a state, independently of its qualified income tax, from making direct payments to elderly individuals with respect to state income taxes paid, or to those who purchase solar energy devices, or for whatever purpose would further the policies of the state.[131] The establishment of a structure to administer the provisions of such a direct payment system would require additional expenditures by the state which would offset to some degree the savings to the state from having its individual income tax administered by the federal government. Possibly such a system would not be costly to administer and could incorporate existing state and local agencies and personnel.

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125. Florida has such an arrangement with regard to its corporate income tax. FLA. STAT. §214.21(3) (1975). Federal-state cooperation in tax administration is a longstanding practice, first recognized statutorily in the Act of Aug. 5, 1909, ch. 6, 36 Stat. 11, and presently authorized by INT. REV. CODE OF 1954, §6103(b). *See generally* Turner, *Federal-State Cooperation in Tax Administration*, 9 WM. & MARY L. REV. 958 (1968); ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, INTERGOVERNMENTAL COOPERATION IN TAX ADMINISTRATION, SUMMARY OF REPORT A-7 (1965).

126. *See* Note, *supra* note 123, at 600-01.

127. *See* Note, *supra* note 123, at 599.

128. *See generally* S. SURREY, PATHWAYS TO TAX REFORM (1973).

129. For example, federal individual income tax returns filed for 1972 revealed that Florida reported the fourth largest amount of net capital gains less net capital losses. INTERNAL REVENUE SERVICE, STATISTICS OF INCOME — 1972, INDIVIDUAL INCOME TAX RETURNS 222 (1975). If Florida wished to subject 100 percent of such income to taxation, it would be unable to do so if it participated in the Federal-State Tax Collection Act. *See* INT. REV. CODE OF 1954, §1202.

130. GENERAL EXPLANATIONS, *supra* note 84, at 57-58.

131. The direct appropriation method, rather than using exemptions or deductions, for furthering social policies has been hailed as a method which would not only provide

Although there are definite disadvantages to state participation in the FSTCA, most are remedial and the advantages on balance outweigh the disadvantages. Conformity of state individual income tax laws to the provisions of federal law is steadily increasing;[132] perhaps, if a sufficient number of states participate in the FSTCA they would acquire through their vested interest a more substantial voice in influencing congressional action on federal tax laws.[133]

CONCLUSION

Florida is one of the leading states in terms of the amount of taxable income reported on federal individual income tax returns by its residents.[134] Of the top ten states, only Florida and Texas do not have a state-imposed individual income tax.[135] When the lack of an individual income tax is considered with the highly regressive nature of Florida's state and local tax system, it becomes clear that the next step in tax reform in Florida should be the adoption of an individual income tax. An individual income tax need not and should not be merely an additional tax burden on the people of Florida; rather, it should be a part of a comprehensive plan of tax reform. Any amendment to the Florida constitution to permit an individual income tax should also impose constitutional limitations on some of the more regressive forms of taxation currently imposed. Full state funding of the primary and secondary schools by revenues generated, at least in part, by an individual income tax would also further efforts to provide school systems of uniformly high quality throughout Florida. If the provisions of the FSTCA are utilized,[136] the costs of administering the tax should be small in relation to the potential revenues. If Florida enacts an individual income tax and participates initially in the FSTCA, it may easily withdraw and chart its own course at a later date. An individual income tax can be highly

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a more egalitarian tax system, but would enable the real costs of such provisions to be more easily determined. *See* H. TUCKMAN, THE ECONOMICS OF THE RICH 204 (1973); S. SURREY, *supra* note 128, at 126-74. *See also* Surrey & McDaniel, *The Tax Expenditure Concept and the Budget Reform Act of 1974*, 17 B.C.L. REV. 679 (1976).

132. See text accompanying note 14 *supra*.

133. *See* O. STOLZ, REVENUE SHARING: LEGAL AND POLICY ANALYSIS 143 (1974); Conlon, *Federal Participation in State Tax Administration*, 24 NAT'L TAX J. 369, 375 (1971).

134. In 1972, Florida ranked ninth. INTERNAL REVENUE SERVICE, STATISTICS OF INCOME — 1972, INDIVIDUAL INCOME TAX RETURNS 224 (1975).

135. Texas does have a severance tax on minerals which accounted for 15.9% of its revenues in 1973-74, CCH STATE TAX HANDBOOK 612 (1975), a tax which is "exported" to a large extent. *See* D. PHARES, *supra* note 12, at 48. Nonetheless, Texas' tax system also remains very regressive in nature overall, ranked thirty-seventh compared to Florida's forty-second. *Id.* at 73; see text accompanying note 44 *supra*.

136. The provisions of the Federal-State Tax Collection Act have not yet become effective, see text accompanying note 114 *supra*; however, the process of amending the Florida Constitution to permit an individual income tax is lengthy and the viability of the Act should be easier to ascertain by the time Florida reaches the point of deciding whether to participate.