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Tinkering With the Tax Laws

REPORT OF TAX COMMISSION (1929)

THE *Final Report of the California Tax Commission* (1929) deals with a matter more vital to the people of the state than any other subject. The size of the volume (317 pages with numerous tables and charts) makes the conclusions of the commission inaccessible to the average person interested in the subject. A review of the report is therefore in order. The commission making the report was composed of five public officials and three laymen, and was assisted by a formidable technical staff.[1]

THE REPORT OF THE 1906 TAX COMMISSION

The most prominent feature of the report is its wholesale condemnation of an equally voluminous report prepared by a like commission appointed in 1906, assisted by an equally eminent, if not so numerous, array of experts.[2] The recommendations of the 1906 commission have served as the basis of the tax laws of our state since 1910. The report of the 1906 commission is declared by the report under review to be fundamentally wrong, and the present commission seems to find little merit in it.

THE REPORT OF THE 1917 TAX COMMISSION

It, however, does note the fact that another commission in 1917 filed an equally learned report, denouncing the report of the 1906 commission, and that the legislature and the people ignored this report. It is at least significant that the last legislature likewise failed to carry out the recommendations of the commission making the report under review, with the exception of the recommendations regarding the bank and corporation franchise tax, and the nominal tax on foreign securities.

PRELIMINARY REPORT ON BANK TAXES

It is equally significant that preceding this *Final Report,* the present commission made a *Preliminary Report* regarding the taxation of banks,

[1] Irving Martin, member of the Railroad Commission of California, H. L. Carnahan, Lieutenant Governor, W. J. Carr, member of the Railroad Commission of California, R. B. Hale, Dr. John R. Haynes, Alexander R. Heron, Department of Finance, Ray L. Riley, Controller, and Chester H. Rowell constitute the members of the commission. The technical staff consists of Robert Murray Haig, Mabel Newcomer, Donald H. Davenport, Frank L. Guerena, Lester S. Ready, William C. Fankhauser, Marguerite N. Keller and L. Scott Dayton. The report is generally referred to as the Haig Report, so it may be assumed that Professor Haig was largely responsible for it.

[2] The 1906 commission was composed of Governor George C. Pardee, Professor Carl C. Plehn, expert on taxation and public finance, Senators John B. Curtin and M. L. Ward, and Assemblymen H. S. G. McCartney and Edward F. Treadwell.

recommending a constitutional amendment, which recommendation was approved by the legislature under the hysterical urge of the commission that unless adopted, the state would lose $22,000,000. The ink was hardly dry on the amendment before the United States Supreme Court held such a measure to be fundamentally unconstitutional,[3] resulting in a loss of revenue from the banks of about $4,000,000 a year, the burden of about half of which was transferred to others.

A dispassionate statement of certain facts will go far toward giving the taxpayer an intelligent idea of what, if anything, is wrong with our tax system, as well as with these reports.

TAX LAWS BEFORE REPORT OF 1906 COMMISSION

Prior to the adoption of the changes recommended by the 1906 commission, California had a simple system of taxation, namely, a property tax for state, county and municipal purposes, theoretically on all property, real and personal, supplemented by certain business taxes and licenses for local purposes, and by an inheritance tax and a corporation license tax for state purposes. Under the property tax, franchises were supposed to be taxed, and likewise stocks, except so far as such stocks represented property within the state, and bonds and other indebtedness, except that if secured by real estate within the state, they were assessed as an interest in the land.

Theoretically much could be said in favor of that system. The rate of taxation was fixed annually by the local authorities for local purposes, and by the legislature for state purposes, thus making the party in power clearly responsible for the amount of the taxes levied. If the present commission had reverted to that system, there could be much said in favor of the theoretical soundness of its position; but it has not done so.

DEFECTS IN OLD SYSTEM

There were really only three things which impelled the 1906 commission to recommend a change in that system. They were: (1) That such a system required a state equalization of local assessments, because otherwise each county would under-value its property in order to avoid state taxes, and that such equalization had proved to be impracticable; (2) that certain classes of property, such as franchises, and properties of railroads, gas and electric companies, express companies, telephone and telegraph companies, banks and insurance companies, were difficult of appraisement with reference merely to the location of the physical properties; (3) that this difficulty had led to lack of uniformity in such assessments, and had encouraged such companies to engage in

[3] Macallen Co. v. Mass. (1929) 279 U. S. 620, 49 Sup. Ct. 432.

politics, if not corruption, in order to obtain a low assessment of their properties, resulting in a grossly inadequate tax upon such properties.

SEPARATION OF STATE AND LOCAL TAXES

In order to avoid these difficulties, the 1906 commission recommended a separation of state and local taxes, so that state taxes should be obtained entirely from properties of this character, leaving local taxes only to be raised by the general property tax. While the present commission says this was "fundamentally" wrong, it does not question the existence of the three faults in the old system, nor does it recommend a change in the system of separation, except in one particular.

WAS SEPARATION OF STATE AND LOCAL TAXES NECESSARY?

1. Failure of Equalization

It might be argued that these defects could have been cured without resorting to a separation of state and local taxes. As to the first defect (failure of equalization), it might be removed by abandoning the local assessment of property, and providing for the assessment of all property by the state, for state, county and municipal purposes. Much could be said in favor of such a system, but the 1906 commission did not believe such a radical change would be practicable and the present commission has not recommended it. On the contrary, it has recommended an elaborate system of local and state control of assessments. It proposes the abolition of the elected State Board of Equalization and the substitution therefor of a permanent appointed tax commission. Thus the commission hopes by the mere change of a name to make a plan successful which has admittedly been unsuccessful heretofore. In fact, throughout the report the State Board of Equalization is spoken of in the most disparaging manner (although some of its members have been reëlected for many years), while it is predicted that the yet unappointed commission will "supply a type of leadership in taxation matters which has been sadly lacking in California in recent years."

No true student of taxation can fail to admit the woeful failure of the dual control of assessments. This could be avoided only by separation or by state control. As part of a new constitution, the latter might be possible. Obviously no tax commission cares to assume the burden of such a radical change.

2. Ad Valorem Tax Not Adequate for Certain Classes of Property

As to the second defect of the old system (that certain classes of property do not lend themselves to an ad valorem tax), it might be claimed that this could be avoided in one of two ways: First, by a state valuation of the utility property and the imposition thereon of the

ordinary state rate, and the apportionment of the property by state authority to the local governments, and the imposition thereon of the ordinary local rates. This would be far superior to local assessment, but would still leave in the state authorities a wide discretion in arriving at the value. This difficulty is illustrated by the various methods suggested in the report under review for valuing utility property. (Report, page 54.) It there appears that different methods of valuation produce results differing to the extent of almost five million dollars. Passing this difficulty, the next problem would be the segregation of the properties to the various localities. The theory of the 1906 commission that the utility property, including the franchises, constitutes a unit, is one which has received judicial approval,[4] and seems to more nearly approach the fact. The franchise and "going concern" values of the utilities cannot be readily segregated to localities, and if segregated the question whether they should be in proportion to the physical properties located in each county and municipality, or in proportion to the business done therein, presents a difficult question. The 1906 commission solved these difficulties by concluding that the operations of these utilities are almost state wide, and the taxes are in effect paid by the consumers, and a segregation of the utility property to localities would be difficult, and, therefore, it was selected as a subject for state taxes only. While the writer believes that such segregation could be made, it would be fraught with difficulties and probably dissatisfaction between the contending communities.

A second possible method would be to tax the utilities on their gross earnings as at present, and then apportion the tax between the state and the local governments. This would be subject to only the one difficulty of making the apportionment between the state and the local governments, and between the local governments. If the latter could be fixed by a statutory rule, as for instance, in proportion to the business done in each locality, this difficulty would not be serious. As applied to railroads, this might not be practicable. Then no satisfactory way occurs to the writer of determining the proportion which should go to the state.

3. Favoritism, Corruption and Under-assessment

The third defect of the old system which influenced the 1906 commission (the keeping of the utilities in politics, resulting in favoritism and possibly corruption) is even more difficult to overcome. Under the old system the 1906 commission found the utilities and the banks woefully undertaxed. They found the utilities in politics. They found

[4] Pacific Gas & Electric Co. v. Roberts (1914) 168 Cal. 420, 143 Pac. 700.

a total lack of uniformity in the taxation of their properties. The suspicion was natural that this resulted from political influence and possibly corruption. The commission cut the knot by an automatic assessment. The value of the property was to be determined absolutely by gross earnings. The tax rate was fixed by the constitution and could only be changed by a two-thirds vote of the legislature. All incentive for political activity or corruption was thus practically removed. Could this have been accomplished without separation? Possibly so. A state assessment would at all events greatly reduce the evil, particularly if based on gross earnings. The apportionment would, however, involve, as we have seen, wide discretion and leave room for varying results, depending on the question whether location of physical properties or earnings should control. This, however, might likewise be controlled by a statutory rule.

TAX LAWS MUST BE PRACTICAL

As one of the members of the 1906 commission, the writer believes that the 1906 commission did the most practical thing that could have been done under the conditions; still in connection with the framing of a new constitution it might be possible to achieve all of the advantages of the present system without separation of state and local sources of taxation.

At all events it is certain that no mere tinkering with the present system, such as is recommended by the present commission, can result in a system fundamentally right. We borrow this word "fundamental" from the report of the commission under review, although there is not much fundamentally right or wrong in the matter of taxation after we leave the kindergarten of tax education. Even the rule of equality of burden ceases to present any fundamental objection to a tax when the questions of policy or expediency are given due weight. No tax is perfect. No tax is fundamentally right or wrong when tested by the divergent views of tax experts and political economists. We tax property by a uniform rate; we tax incomes by a sliding scale. Why inquire which is right, when political expediency and historical habit have approved them both? In fact, the experts who assisted the present commission do not seem able even to agree as to the authorship of the saying that "the ideal tax is one which plucks the feathers with the minimum amount of squawking."

IS SEPARATION FUNDAMENTALLY WRONG?

The report under review is far from clear as to the particulars in which the present system is deemed fundamentally wrong. Possibly it is contended that separation itself is fundamentally wrong. This, we think, will hardly be claimed. The relation between the Federal

Government and the states is not materially different from the relation between the state and the local governments therein. The Federal Government selects certain sources of revenue which are deemed to be sufficiently general to result in a fair distribution of the burden, and levies no property tax at all. So the state selects certain sources of revenue, such as inheritance taxes, and the local governments in which the estates are located get nothing from that source. So the principle of separation of sources is too well established to be questioned, and the present commission has, if anything, extended the theory of separation.

IS THE BURDEN BETWEEN THE UTILITIES AND OTHER PROPERTY EQUALIZED?

But the difficulty found by the commission is that since the tax on the utilities is a property tax, measured by gross receipts, it should be equal to the taxes paid locally by other property, and this, in turn, requires careful consideration in fixing a rate on gross earnings which will make the tax commensurate with the local tax on other property. This is true. It is also true that it is a difficult matter to make this apportionment. But no matter how difficult it may be, the report under review shows that the result has been quite fairly accomplished. The commission itself refuses to commit itself further than to say that property generally pays between 1.42 and 1.73 per cent on its true value, while the utilities pay from 1.42 to 1.81 per cent, according to which of several permissible methods is used to find the value of their properties.

DIFFICULTY OF EQUALIZATION PRESENT IN ANY SYSTEM

But is not this difficulty present in any tax system? Suppose the utility property and other property are assessed by the same assessor. True, the rate would be uniform, but unless the true value is found and unless the same proportion of true value is used as is employed in assessing other property, the result will be unequal. And the same room will exist for the different theories of arriving at the value of a thing so uncertain as a public utility. If the present system has accomplished nothing else except to point the necessity of carefully inquiring as to the actual value of properties assessed, and carefully trying to make the assessments on utility property comparable with assessments on other property, and *vice versa*, it has much to commend it.

FACT THAT GROSS EARNINGS TAX IS NOT UNIFORM AS TO NET EARNINGS

Another criticism of the gross receipts tax made by the tax commission is that it does not produce an equal tax based on *net* income of the

various utilities. The answer to that is that no property tax accomplishes that result. Some property is unproductive, and produces no net income. Some property is uneconomically operated and the net income is small. But the tax on the value of the land remains the same. If the local assessor attempts to assess a reservoir on the basis of the value of the land and the masonry, he will make an assessment which may be equally out of line with net income. Gross income at least shows what the property can be made to produce. Net income involves the personal equation, management, accidents, and many elements which have little to do with value. Any theoretical advantage of considering net earnings is overcome by the difficulty of ascertaining net earnings, and the opportunity afforded of misrepresenting them.

PROPOSALS OF 1929 COMMISSION

Passing then from the claimed defects in the present system to the proposals of the present commission, we find the commission recommends: (1) the local assessment and taxation of real estate of public utilities; (2) a state tax on real and personal property of public utilities, and (3) a state franchise tax on public utilities based on net income. It is conceded that this will increase their taxes $1,400,000. Obviously since their present taxes are proportionately equal to, if not greater than, the taxes on other property, this must contemplate a proportionate increase in the taxes on other properties. As the tax on public utilities is less than ten per cent of all state, county and municipal taxes,[5] the amount of the increase which will be necessary to accomplish this result can readily be seen.

PROPOSALS RESULT IN GREATER DIFFICULTIES IN EQUALIZATION

But, passing that, we are immediately faced with this difficulty. Obviously these three taxes should amount in the aggregate to the taxes paid by other property of equal value, if we are to continue to endeavor to make the tax on utilities bear a proper relation to the taxes on other property. The three taxes are all variable. The local tax will depend on the value of the real estate fixed by the assessor, after all political pressure has been exerted, and on the local tax rates. The state tax will depend on the value of the real estate and personal property fixed by the assessor, or by some state officer, and the rate fixed annually by the legislature. The state income tax will depend on a determination of what is net income (on which federal tax officials have differed to the extent of many millions), and the rate fixed by the legislature. These combined variables must then be compared with the taxes paid by other

[5] The utility tax is about $30,000,000 and the total state, county and municipal taxes are about $370,000,000.

property, which, in turn, will depend on the true value of other property, and the local rates. Assuming the possibility of determining all of these things, it certainly involves more complexities than the equalization which has taken place under the present system.

PROPOSALS BRING UTILITIES INTO POLITICS AND CORRUPTION

Besides that it leaves every utility open to the exactions of every locality in which the property is located. The legislature will fix the state rates between January and March and then every local government may levy taxes based on its needs and the peculiar views of the local assessors of the value of the real estate of the utility. One assessor may use "reservoir" value, another "agricultural" or "mineral" value of reservoir lands. One may contend for "value in use" or as part of a going concern. One may measure the value by gross earnings, and another by potential power.

If in order to avoid some of these difficulties some state board attempts to change local assessments, it must not only find the value of the utility property, but apportion it to the various counties and local subdivisions.

Then when the legislature fixes the rate of the income tax, it must investigate so that the tax thus produced, plus the local real estate tax, plus the state tax on real and personal property of the utility, bears a proper relation to the tax burden of other property. The present relative burden of public utility and other property, based on the gross receipts tax, has been arrived at after several investigations, and has been upheld by the highest court in the land. Why then introduce new and more difficult problems of equalization?

We conclude, therefore, that whatever may be the defects of the simple tax on gross earnings of public utilities, entirely for state purposes, it is far superior to the recommendations of the 1929 commission of (1) a local tax on real estate; (2) a state tax on real and personal property; and (3) a state income tax on net earnings.

PROPOSED FRANCHISE TAX PROBABLY UNCONSTITUTIONAL

It should be noted that the 1929 commission recommends a franchise tax on public utilities measured by the net income of the utility. Such a franchise tax measured by the gross income of the utility has recently been held to run counter to the Federal Constitution, so far as it applies to corporations engaged in interstate commerce.[6] The gross earnings tax formulated by the 1906 commission was held constitutional, because it was not only in name, but in fact, a tax on the

[6]See New Jersey Bell Tel. Co. v. State Board of Taxes & Assessment (1930) 280 U. S. 338, 50 Sup. Ct. 111, also note *infra* 512.

properties of the utilities measured by their gross earnings rather than a tax upon their earnings, but the net earnings of a utility do not seem to have sufficient relation to the franchise of the corporation to constitute a tax based thereon a tax on property. It is more in the nature of a tax on the earnings themselves, and as such constitutes an unauthorized interference with interstate commerce. It is true that the case referred to dealt with a tax on gross earnings, whereas an income tax has been held to be constitutional, although part of the income may come from interstate commerce, but it is hardly thought that a tax on a franchise based on net income would come within the reasoning of the Court in the income tax cases. However, even if it did, there would be a substantial objection to the proposed measure, in that the tax on the franchise based on net income might be considered so arbitrary as to violate other constitutional principles. As the Court said in the case referred to:

> "There has been called to our attention no precedent for the use of gross earnings as a measure of value of a single element of such a plant."[7]

BANK TAX FIASCO

We now approach the fiasco regarding the tax on banks. The 1906 commission formulated a tax on the shares of stock of banks at a fixed percentage on the value thereof, ascertained by taking the entire capital and surplus of the banks. That system was held constitutional on the theory that other stockholders in other corporations were in effect taxed on all the property of the corporation by the property tax on its real property and franchises.[8] For years the tax was paid without question. And then the tinkering with tax legislation began. First, obligations secured by mortgage on real estate were exempted from taxation.[9] This resulted in permitting a corporation other than a bank to hold such securities without taxation, while such securities when held by a bank were a part of the capital of the bank, and would be included in the valuation of its share and taxed accordingly. Thus, a doubt was caused as to the constitutionality of the bank tax.

In this emergency the tax commission undertook the task of finding a remedy and attempted to formulate a new bank tax. It admitted that the proposed plan would reduce the bank tax over $2,000,000 a year. The new tax was in effect an income tax on the net income of the banks. It was designated "a tax according to or measured by" net income. The commission urged that there would be a loss of $22,000,000

[7] 280 U. S. at 349, 50 Sup. Ct. at 114.

[8] Crocker v. Scott (1906) 149 Cal. 575, 87 Pac. 102.

[9] CAL. CONST., art. XIII, §4, repealed November 8, 1910, and §5, repealed November 6, 1910.

unless the measure was passed. As a result it was hastily adopted by the legislature and approved by the people. In order to make up the admitted deficit in the bank tax, the tax was extended to all business corporations, and the franchise tax on corporations, which was one of the principal features of the plan formulated by the 1906 commission, was abolished.

The commission gave another reason for the necessity of changing the basis of the bank tax, but that was of the commission's own making. The old tax on the shares of banks was upheld on the theory that all foreign securities held by individuals were taxed as property, so there was no discrimination in including them in the capital of the banks used to determine the value of the stock of the banks. But the legislature proposed certain changes in the constitution which were adopted, authorizing the legislature to tax such securities at a nominal amount.[10] This clearly created a discrimination which could hardly be expected to pass constitutional scrutiny.[11] The Supreme Court of the United States, however, held such discrimination to be invalid before the legislature had passed any valid law taxing foreign securities at a nominal amount as recommended by the commission. The commission, therefore, recommended the nominal value tax, although it knew it would invalidate the bank tax which was then in force in the state.[12]

BANK TAX LEGISLATION INVALID

In the new piece of legislation recommended by the tax commission it overlooked a well recognized rule of law, namely, that a tax on the stock of a corporation is not rendered unconstitutional merely because the corporation owns securities of the United States which are exempt

[10] CAL. CONST., art. XIII, §12½, added November 4, 1924.

[11] First Nat. Bank of Hartford v. Hartford (1927) 273 U. S. 548, 47 Sup. Ct. 462.

[12] At the time the 1929 tax commission made this recommendation, no valid law had been enacted exempting foreign securities or taxing them at a nominal amount, so loss from that source was caused by the deliberate act of the commission recommending such liquidation, the Supreme Court of California having, in Arnold v. Hopkins (March 8, 1928) 203 Cal. 553, 265 Pac. 223, held all legislation on that subject invalid. We have not attempted here to question the propriety of such legislation, but if one person invests a thousand dollars in a farm, on which the federal census shows he only gets between two and three per cent return, and pays between 1.42 and 1.72 per cent taxes, and another invests one thousand dollars in a bond, on which he gets a return of 6 per cent, why should he not also pay a tax of 1.42 to 1.72 per cent? If he buys speculative stock so that the tax would take a larger proportion of the income, is that any reason why he should not pay taxes on his property? Even if the tax discouraged such speculation, no great harm would be done. Why should the owner of real estate pay a tax on the value of his property even if he has no earnings and the owner of stocks and bonds not even be adequately taxed on the basis of income?

from taxation, while a tax on the United States securities or a tax on the income therefrom, would be invalid.[13] The old tax on the shares of banks, therefore, was probably not rendered invalid merely because the banks might hold such securities in their portfolios, but a somewhat different situation is involved in the recommendation of the tax commission to impose a tax on the bank itself "according to or measured by net income." While the commission may have thought that such a tax was an "excise" tax and sustainable even though the income came in part from non-taxable securities,[14] this has been rather clearly shown to be unfounded by a late decision of the Supreme Court of the United States.[15] The idea of a state levying an "excise" tax on a federal agency such as a national bank also seems contrary to the relation between the state and federal governments.

At all events the banks immediately took advantage of this situation and refused to include income from tax-exempt securities, and this resulted in a reduction of the tax on banks from over $4,000,000 to about $400,000.[16]

But this was not all. The commission's preference for a tax on net income caused a further undoing. For, after certain corporations had made the allowable deductions from their gross earnings, their income tax was far less than their old franchise tax. The following conspicuous examples will suffice to indicate the serious nature of this difficulty:

	1928 ASSESSMENT	1929 ASSESSMENT
Ford Motor Company	$45,864.00	$25.00
Standard Oil Company	368,910.00	25.00
Shell Oil Company	79,200.00	25.00
Richfield Oil Company	52,164.00	25.00
Associated Oil Company	58,950.00	25.00
Union Oil Company	108,747.00	25.00

STATE TAX ON UNITED STATES SECURITIES

The commission does not admit its error and has suggested no substitute, but complains that the state should be entitled to thus tax the

[13] Bank of Cal. v. Roberts (1918) 248 U. S. 476, 492, 39 Sup. Ct. 165, 169.

[14] Flint v. Stone Tracy Co. (1911) 220 U. S. 107, 31 Sup. Ct. 342.

[15] Macallen Co. v. Mass (1929) 279 U. S. 620, 49 Sup. Ct. 432.

[16] The total tax on national banks in 1928 was $2,541,150.36 and in 1929 only $206,390.59. The total tax on state banks in 1928 was $2,217,275.68 and in 1929 only $232,623.51. These figures are furnished by the State Board of Equalization from the returns filed by the banks, upon which payment of the tax has been made. While the amount of the tax is claimed to be still subject to revision by the Franchise Tax Commissioner, over a year bas passed without any such revision, so the amounts given berein may safely be taken as indicating the actual taxes on banks which will be yielded by the new law.

income of bonds of the United States. In doing this, it overlooks the fact that the United States income tax does not reach the income from securities of the states or their subdivisions. State bonds, municipal bonds, school bonds, reclamation bonds, irrigation bonds, etc., are all exempt from federal taxation. Why, then, should the state claim the right to tax the income from federal bonds? No just reason can be assigned for such discrimination.

SINGLE TAX

There are other features of the report under review which are significant. In every line of the report, preference is shown for the discredited doctrine of the single tax, so many times rejected by the people of the state. Thus, it recommends the abolition of the local personal property tax on corporations. This would leave individuals subject to taxes on personal property and exempt corporations therefrom. This would result in the further necessity of an investigation to determine whether the one per cent recommended as an additional tax is equal to the tax paid by other taxpayers on personal property, the very thing which the commission deprecates in connection with the utility tax. In fact, the commission treats the state as having "what amounts virtually to a proprietorship interest in land values," a doctrine quite as advanced as any formulated by Henry George, and finally it is stated that "to the commission it seems an attractive prospect ultimately to resolve the property tax into a tax on real estate alone, gradually eliminating all personal property, both tangible and intangible, from the base." What prospect could be more alluring to the most ardent single-taxer!

INCOME TAXES AND BUSINESS TAXES

Regarding the federal income tax, the commission makes this remarkable statement: "The existence of the federal income tax, the rates of which have been steadily declining for a number of years, appears to the commission to be an asset rather than a liability."

All that can be said is that it may be so regarded by public officials who pay no income tax, but not by those who are required to pay it. Much less will they regard the state income tax recommended by the commission, or the state "business" tax, which is also recommended until the people have approved the income tax. The most obvious objection to this income tax is that it invades a field already occupied by the federal government. The most obvious objection to the state "business" tax is that it invades a field now occupied by the local governments.

WHAT IS WRONG WITH OUR TAX SYSTEM?

What, then, is the matter with our tax system as established in 1910? It has been upheld by every court in the land.[17] The report of the 1906 commission has been praised by every court which reviewed it.[18] Under that system the state taxes have increased with the growth of the state, growing from about ten million to forty-five million dollars a year. The difficulty of equalizing the burden between the utilities and other property has been satisfactorily solved. The portion dealing with bank taxation was working satisfactorily, until tinkered with by other legislation. The measure proposed by the present commission to avoid the effect of this unfortunate tinkering is clearly invalid. The sooner the commission realizes that and recommends its repeal, the better.

Our tax system is not perfect, and never will be, and possibly in connection with the formulation of a new constitution an improved system could be devised. The recommendations of the present commission involving:

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[17] The validity of the tax on interstate railroads was upheld in Pullman Co. v. Richardson (1921) 185 Cal. 484, 197 Pac. 346; (1923) 261 U. S. 330, 43 Sup. Ct. 366. The validity of the franchise tax was upheld in Utah Construction Co. v. Richardson (1921) 187 Cal. 649, 201 Pac. 401. The validity of the tax on gas and electric companies was upheld in Pacific Gas & Electric Co. v. Roberts (1917) 176 Cal. 183, 167 Pac. 845. The validity of the tax on car-loaning companies was upheld in Union Tank Line Co. v. Richardson (1920) 183 Cal. 409, 191 Pac. 697. The validity of the tax on insurance companies was upheld in Northwestern Mutual Life Insurance Co. v. Roberts (1918) 177 Cal. 540, 171 Pac. 313; Hartford Fire Insurance Co. v. Jordan (1914) 168 Cal. 270, 142 Pac. 839. The validity of the tax on banks was upheld in Bank of Cal. v. Roberts (1916) 173 Cal. 398, 160 Pac. 225; Southern Trust Co. v. Los Angeles (1914) 168 Cal. 762, 145 Pac. 94.

[18] In Pullman Co. v. Richardson (1921) 185 Cal. at 489, 490, 197 Pac. at 348, 349, it is stated that the report shows that the commission fully considered the legal questions involved, that the apportionment made of interstate earning was the "fairest possible method." The report is quoted at pages 504-5. In Pacific Gas & Electric Co. v. Roberts (1914) 168 Cal. 420, 423, 424, 143 Pac. 700, 101, it is stated that the old system of taxing utilities "was crnde and cumbersome and it came to be believed that it was unjust and unequal." The opinion quotes the report to show that it was the theory of unity of use which enabled $23,400 worth of horses, wagons, safes, and so on, of the express company in the state to produce $275,466 in a single year. It is further stated that "the report is very valuable and enlightening." The report is also quoted in Union Tank Line Co. v. Richardson (1920) 183 Cal. 409, 191 Pac. 697. In Hopkins v. Southern California Telephone Co. (1928) 275 U. S. 303, 48 Sup. Ct. 180, it is said that "'Amendment No. 1' was proposed by a commission which gave the matter much consideration and made an elaborate report. It is the result of an earnest effort to provide for enforcement of adequate contributions from public service and some other corporations, while avoiding double and unjust taxes."

1. A local tax on real property of public utilities;
2. A local tax on all other real and personal property;
3. A state tax on real and personal property of public utilities;
4. A state income tax on net income of public utilities;
5. A state deficiency tax on all real and personal property;
6. A state business tax;
7. A state tax on corporations, based on net income;
8. The gradual abandonment of taxes on personal property and the substitution of an income tax;
9. A tax on banks which is clearly unconstitutional;

can hardly be accepted as a solution of any of our problems.

Edward F. Treadwell.

SAN FRANCISCO, CALIFORNIA.