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State Taxation

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There likewise is no indication of a bill to give the President the standby power he requests to reduce taxes although one may be forthcoming later in the Session.

CONCLUSION

While the tenor of the President's latest message indicates that he will not present to this Session the comprehensive tax program he forecast in April of 1961,[36] there has been one bill passed,[37] and other significant proposals indicate that major tax consequences will stem from the work of this Session.

ROBERT F. SYLVIA

STATE TAXATION

During 1961 state legislatures enacted numerous new tax laws. The most important developments occurred in the areas of sales and property taxation and the taxation of net income of multistate businesses. Many of these new laws have a direct and important effect on the business taxpayer, especially the taxpayer who conducts business in more than one state.

SALES AND USE TAXES

Perhaps the most significant items of state tax legislation which were passed during 1961 were new sales and use taxes in Texas and Wisconsin. The Texas act, which took effect on September 1, 1961, imposes two per cent sales tax complemented by a two per cent use tax. The tax applies to all retail sales of personal property within the state.[1] Wisconsin imposed a three per cent sales tax on a more restricted basis. The main items covered by the Wisconsin tax are alcoholic beverages, tobacco products, motor vehicles, aircraft, and household and commercial furniture. A three per cent tax is also imposed on gross receipts from the sale of admission to theatres and other amusements, the furnishing of rooms by hotels, and sales of telephone or telegraph service. This tax became effective on February 1, 1962.[2]

With the addition of Texas and Wisconsin thirty-five states now depend on some form of sales tax for a large part of their revenue.[3] This type of

[36] Supra note 30.
[37] Supra note 2.

[1] Tex. Acts 1961, H.B. 20.
[2] Wis. Laws 1961, H.B. 716.
[3] Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, Wyoming. See generally, Haig & Shoup, The Sales Tax in the American States (1934); Jacoby, Retail Sales Taxation (1938); Cline, The Literature of Sales Taxation, 9 Vand. L. Rev. 360 (1956); Due, The Nature and Structure of Sales Taxation, 9 Vand. L. Rev. 123 (1956).

tax is now the chief single source of state income from taxation.[4] Sales taxes were designed to meet the financial problems which followed in the wake of the 1929 Depression. State revenues were greatly reduced and expenditures for relief and public welfare were enormously increased. Property taxes could not be increased because such measures would have placed heavy burdens on those who could least afford to pay. It was therefore necessary to find other sources of revenue. In 1933 Mississippi enacted the first sales tax on an experimental basis. This type of tax soon appeared to be the answer to state revenue problems, as large amounts of revenue could be raised at low rates of taxation. By 1937 twenty-two states had enacted sales tax laws.[5]

Sales taxes are generally designed to place the burden of payment on the purchaser, while requiring the retailer to collect the tax. This provides a simplified method of collection, and evenly distributes the burden of payment, insuring that those who are called upon to pay are able to pay by the very nature of the tax. The sales tax seems to be the easiest and most painless method of increasing state revenues, and it is submitted that the states which presently do not have sales taxes would do well to enact them. This is especially true in states relying primarily on property taxation with the resultant creation of an unnecessary burden on the individual property holder and a prohibitively high expense for the corporation which has extensive tangible assets but meager profits.

States which impose sales taxes generally impose use taxes which are calculated to reach transactions which would escape taxation under the sales tax as sales made in interstate commerce. These use taxes are designed to protect retailers in the taxing state from competition by retailers who are not subjected to sales taxes by the states where they do business, and are also designed to protect state revenues, *i.e.*, buyers are no longer tempted to place orders in other states in order to escape the taxes levied on local purchases. The United States Supreme Court has declared that where a retailer sends salesmen across a state line, the state where the sale is made has the power to assess a use tax on the out-of-state retailer.[6] In 1960 the Supreme Court extended this doctrine in the *Scripto* case to include sales made by a foreign corporation selling through an independent broker in the taxing state.[7] During 1961 several bills were filed in Congress to limit the holding of the *Scripto* case, but none of these has yet been enacted.[8]

PROPERTY TAXES

The property tax has always been the wheelhorse of state and local taxation in the United States. In the early days of the republic, when an

[4] In 1955 sales taxes yielded 21% of the total state tax revenue. In the individual states having such taxes it brought in about one third of total tax income. Due, supra note 2, at 123. See also chart showing a state-by-state breakdown for the year 1955 in Due, at 136.

[5] Id. at 127.

[6] General Trading Co. v. State Tax Comm'r, 322 U.S. 335 (1944).

[7] Scripto, Inc. v. Carson, 362 U.S. 207 (1960).

[8] S. 581, H.R. 1148, H.R. 3055, H.R. 2557, 87th Cong., 1st Sess. (1961).

individual's worldly wealth was principally composed of land and other tangibles, it was only reasonable that states should see fit to place an assessment on a person's tangible goods as being valid evidence of his ability to pay.[9] Today, the assumption that ability to pay is directly proportionate to the amount of property owned by an individual or business is no longer always true. This is most evident in the case of businesses which operate on small profit margins or which are subject to long periods of low earnings. Property taxes are therefore of vital importance to railroads which, although owning large amounts of property, are often financially unable to pay such taxes because of increased competition with other carriers, federal regulation, and other economic factors.[10] This is a problem which has been especially crucial in New England and in 1961 Maine, Massachusetts, Vermont, Connecticut, and Rhode Island enacted laws giving railroads relief from property taxation, while New York passed additional measures giving tax relief to commuter railroads.[11]

Property taxes have become an increasingly important factor in corporate decisions regarding areas for expansion of industrial facilities. With this in mind, many states have enacted laws exempting new industries from property taxes for a given number of years. In 1961 Mississippi followed this trend by amending its constitution to permit the legislature to grant tax exemptions to new factories and public utilities as well as for any additions to existing facilities. Such exemptions would be allowed for periods up to ten years.[12] In varying degrees about a dozen states now grant an exemption from property taxation to new industries.

These exemptions represent an indirect subsidy to new industry in the form of lower operating costs and an indirect cost to the state and local government in the form of lost revenue. Some doubt has arisen as to the actual value of these exemptions, as it does not appear that the amount of industry attracted to the states involved is offsetting the initial loss of revenue.[13]

Income Taxation

Perhaps the most notable development in the field of state income taxation during 1961 was the consideration by Congress of means for the imposition of a uniform formula for the allocation of the income of multi-state businesses for state income tax purposes. The most significant piece of legislation in this area was the adoption of the Uniform Division of Income for Tax Purposes Act by Arkansas.

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9 Gere, Some Aspects of Massachusetts Public Finance 10-11 (1961).

10 See Grotewohl, The Railroads' Problem of Inequitable Property Taxes, 11 Miami L. Q. 206 (1956).

11 Me. P.L. 1961, H.B. 1176; Mass. Acts 1961, S.B. 632; Vt. Acts 1961, H.B. 273; Conn. Pub. Acts 1961, S.B. 1091; R.I. Public Laws 1961, H.B. 1390; N.Y.L. 1961, H.B. 4821.

12 Miss. Laws 1961, S.C.R. 101; Miss. Laws 1961, S.B. 1502.

13 Floyd, The Effect of State and Local Taxes Upon the Selection of Industrial Locations, 1951 N.T.A. Proceedings 435; Garwood, Taxes and Industrial Location, 5 Nat'l Tax J. 365 (1952); Ross, Louisiana's Tax Exemption Program to Attract Industry Proves Costly, 9 J. Taxation 109 (1958).

There are thirty-four states which levy either a net income tax or a privilege or franchise tax measured by net income. Twenty-two states impose a tax directly on net income.[14] Seven states and the District of Columbia refer to their taxes as franchise or privilege taxes and utilize net income as the measure of the tax.[15] Four states supplement their franchise taxes with a direct tax on net income.[16] Montana imposes an excise tax in the form of a license fee for carrying on business in the state.[17] One of the most important issues in this field is what proportion of the net income of a corporation doing a multistate business is subject to state taxation. The general rule seems to be that a state may tax all the income of a domestic corporation and that portion of the net income of a foreign corporation which is reasonably attributable to the taxing state.[18] In 1960, the Supreme Court declared in the *Northwestern-Stockham* case that a fairly apportioned tax may be levied by a state even on a foreign corporation engaged exclusively in interstate commerce provided, however, that such tax is not discriminatory and that there are local activities forming a sufficient "nexus" or link with the taxing state.[19] On the other hand, apportionment will not make a fran-

[14] Alabama—Ala. Code Ann. tit. 51, § 400 (1940); Alaska—Alaska Comp. Laws Ann. § 5(a) (1949); Arizona—Ariz. Code Ann. § 43-102 (1956); Arkansas—Ark. Stat. § 84-2204 (1947); Colorado—Colo. Rev. Stat. Ann. § 138-1-3 (1953); Delaware—Del. Code Ann. tit. 30, § 1902 (Supp. 1958); Georgia—Ga. Code Ann. § 92-3102 (1937); Idaho—Idaho Code Ann. § 63-3001 (Supp. 1959); Iowa—Iowa Code Ann. § 422.33 (1949); Kansas—Kan. Gen. Stat. Ann. § 79-3203 (Supp. 1957); Kentucky—Ky. Rev. Stat. Ann. § 141.040 (Supp. 1959); Louisiana—La. Rev. Stat. Ann. § 47:31(3) (1952); Maryland—Md. Ann. Code art. 81, § 288(b) (1957); Missouri—Mo. Ann. Stat. § 143.030 (1949); New Mexico—N.M. Stat. Ann. § 72-15-1 (1953); North Carolina—N.C. Gen. Stat. § 105-134 (1958); North Dakota—N.D. Rev. Code § 57-3830 (1943); Oklahoma—Okla. Stat. Ann. tit. 68, § 876 (1954); Rhode Island—R.I. Gen. Laws Ann. § 44-11-2 (Supp. 1958); South Carolina—S.C. Code § 65-222.1 (Supp. 1958); Virginia—Va. Code Ann. § 58-128 (1959); Wisconsin—Wis. Stat. Ann. § 71.01 (1957).

[15] Connecticut—Conn. Gen. Stat. § 12-214 (Supp. 1958); District of Columbia—D.C. Code Ann. § 47-1571 (1951); Massachusetts—Mass. Ann. Laws c. 63, §§ 32-39 (Supp. 1958); New Jersey—N.J. Stat. Ann. § 54-10a-2 (Supp. 1958); New York—N.Y. Tax Law § 209; Tennessee—Tenn. Code Ann. § 67-2701 (Supp. 1958); Utah—Utah Code Ann. § 59-13-3 (Supp. 1959); Vermont—Vt. Stat. Ann. § 32-5902 (1959).

[16] California—Calif. Rev. and Tax Code §§ 23151, 23501 (1958); Minnesota—Minn. Stat. Ann. § 290.02 (1945); Oregon—Ore. Rev. Stat. §§ 317.010(8), 318.020 (1957); Pennsylvania—Pa. Stat. Ann. tit. 72, §§ 3420(a)-(c) (Supp. 1958).

[17] Mont. Rev. Code Ann. § 84-1501 (Supp. 1958).

[18] U.S. Glue Co. v. Oak Creek, 247 U.S. 321 (1918); West Publishing Co. v. McColgan, 328 U.S. 823 (1946).

[19] Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450 (1959). This decision consolidated two cases, Northwestern States Portland Cement Co. v. Minnesota and Williams v. Stockham Valves and Fittings Inc. In the *Northwestern* case the cement company was an Iowa corporation which had a sales office in Minnesota. Taxpayer's activities in Minnesota consisted only in the systematic solicitation of orders for its products. All orders were sent to the home office for acceptance or rejection, and all merchandise was shipped from there. Minnesota sought to tax the cement company on its net income attributable to sales in the state. The facts in the *Stockham* case were similar. The Court held that the taxes were validly imposed. "We 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

chise or privilege tax measured by net income valid when it is applied to a foreign corporation exclusively engaged in interstate commerce.[20]

The Supreme Court has taken the position that state allocation formulas will not be overturned unless they are clearly arbitrary or unreasonable. The Court tends to take a very liberal view toward the decisions of state tax administrators as to just what is unreasonable;[21] the attitude being that many difficult and technical problems are involved in determining whether a given formula is in fact arbitrary.

For a number of years there have been attempts to secure federal legislation setting up rules declaring how much of the income of a multistate corporation a given state can tax. The reason for this lies in the great variety of state allocation formulas, many of which lead to a corporation's being taxed on more than one hundred per cent of its net income. Because of the complete lack of uniformity among these formulas no general rule can be given as to their nature and scope. However, there are three broad categories into which methods of assigning income to a particular state may be divided. First, particular classes of income may be allocated to the state where the income is said to have a taxable situs. Although the owner of the income may not be a resident of the taxing state, some forms of income may be treated as having their source within the state, and therefore being taxable on the basis that the taxing state has jurisdiction over the income, although it may not have jurisdiction over its recipient. This method is referred to as specific allocation and usually involves "non-business" income. Such income typically includes: rents, capital gains and losses, dividends and interest, compensation for personal service, and royalties.[22] The second method of allocation is by means of separate accounting by the firm for the taxing state. This is usually permitted either where the business is not-unitary and therefore permits an effective separation of the income attributable to a given jurisdiction, or where separate accounting is allowed as an alternative to the application of a statutory apportionment formula although the business may be characterized as unitary.[23] The third method of allocation is to apportion income by means of a prescribed mathematical formula. In this case the entire net income of a business is first determined. Then net income which is "non-business" and therefore should be specifically allocated is deducted. The remaining income is then apportioned according to the

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local activities within the taxing state forming a sufficient nexus to support the same." Id. at 452. In order to limit the effect of the *Northwestern* decision Congress passed 73 Stat. 555 (Pub. L. No. 86-272) (1959). The law permits a company to send a representative into another state to solicit orders for the sale of tangible personal property without paying a state net income tax to the state of solicitation.

[20] Alpha Portland Cement Co. v. Commonwealth, 268 U.S. 203 (1925); Spector Motor Service Inc. v. O'Connor, 340 U.S. 602 (1951).

[21] Nashville, Chattanooga & St. Louis Ry. v. Browning, 310 U.S. 362 (1940); International Harvester v. Evatt, 329 U.S. 416 (1947).

[22] Hartman, State Taxation of Corporate Income From a Multistate Business, 13 Vand. L. Rev. 57-61 (1959). This article gives a state-by-state survey of the various methods of specific allocation.

[23] Id. at 61-64.

formula used by the state in question. This is done on the basis of the ratio which the average of the income producing factors used by the formula within the state bears to the total value of such factors attributable to the corporation nationwide. The most common factors currently in use are property owned by the business, its payroll, and its sales. Some states, however, use such different factors as costs of manufacturing, average inventory, or gross receipts. There are eleven different combinations of these factors now in use by the states.[24]

The greatest difficulties in this area appear when inquiry is made as to just how each state defines a given factor. Here one finds wide variations which are usually dictated by the economic needs of the state imposing the tax. The most notable differences occur in definitions of the "sales" factor. Some states declare that income from a sale is to be attributed to the state where delivery to the purchaser is made.[25] This form of definition tends to favor the "buyer" or agricultural states. Others allocate income from a sale to the state where the goods originated or were produced.[26] This tends to favor the more heavily industrialized or "producer" states. Still other states attribute income from a sale to the state in which such sale was negotiated or executed.[27] A few formulas attribute income from a sale to such state if the sale was the result of promotion or solicitation within the state.[28] This can lead to serious problems for the business taxpayer. If a corporation promotes or solicits a sale in State A, which has the "state of solicitation" definition of sales, negotiates the sale in State B, which has the "state of negotiation" definition of sales, and ships the goods from State C which has the "state of origin" definition of sales to State D, which has the "state of destination" theory, the firm may well be taxed on 400% of its net income on the sale.

As a part of P.L. 86-272 Congress directed the Senate Committee on Finance and the House Committee on the Judiciary to hold hearings and formulate legislation to provide uniform standards for state taxation of net income from multistate business. The committees' report is due on July 1, 1962.[29] During December of last year the House Judiciary Committee's Special Subcommittee on State Taxation of Interstate Commerce held public hearings on this issue.[30] During the hearings certain business interests argued that uniform allocation formulas should be imposed on the states both because of the high compliance costs which result from lack of uniformity among the states in defining and applying allocation formulas, and because

[24] Id. at 64-74. See also Lynn, Formula Apportionment of Corporate Income for State Tax Purposes: Natura Non Facit Saltum, 18 Ohio St. L.J. 84 (1957).

[25] Alabama, Alaska, Colorado, Delaware, Georgia, Iowa, Kansas, Louisiana, Montana, New Jersey, North Carolina, Oklahoma and South Carolina.

[26] New Mexico, Tennessee, Virginia and Wisconsin. Kansas, New Jersey and Oklahoma may be said to follow both a "state of origin" and "state of destination" rule.

[27] Connecticut, Kentucky, Minnesota, North Dakota and Rhode Island.

[28] Arizona, California, District of Columbia, Montana and Oregon.

[29] 73 Stat. 555 (Pub. L. No. 86-272 (1959)).

[30] Hearings Before the Special Subcommittee of the House Committee on the Judiciary, 87th Cong., 1st Sess. (1961); 23 CCH State Tax Rev. No. 3 (Jan. 25, 1962).

of the fact that as a result of such diversity more than one hundred per cent of net income is often taxed. For many companies the cost of compliance exceeds the actual tax paid to many states.[31]

The manager of the tax department of one large corporation stated that his firm's chief problem in the field of taxation has been that the firm is taxed in states where it has no income. The corporation and its subsidiaries operate 468 drugstores in 36 states, and maintain very detailed records, which often show that no profit was incurred in some states. Such states have usually ignored the corporate records and have taxed the firm because its national operations resulted in a net profit.[32] The firm chose to litigate this problem in a recent Minnesota case. Minnesota taxes all firms on a three factor basis, these being sales, payroll and property. A Minnesota statute provides that where the formula does not work equitably, the taxpayer may report on the basis of separate accounting. Because the records of the firm showed a much smaller profit than was attributed to the state by the formula, permission was sought to use separate accounting as the basis of allocating income to the state. However, the State Tax Commissioner chose to tax the firm according to the regular formula. The Minnesota Supreme Court held the fact that the firm's separate accounting showed much less income allocable to Minnesota than was claimed by the Tax Commissioner on the basis of the state allocation formula made no difference in determining whether the application of the formula resulted in a fair reflection of the firm's net income in the state. The court stated that the separate accounting method was "inherently incapable of accurately allocating income."[33]

Contrary to the position taken by business, state tax officials are strongly opposed to any federal regulation of this area. At the 1961 Biennial General Assembly of State Legislators and Administrative Officials a resolution was adopted requesting Congress to delay enactment of standards for apportionment of interstate business income until the states have had an opportunity to achieve uniform standards of their own.[34] Similar proposals were made by state tax officials during the hearings before the Special Subcommittee on State Taxation of Interstate Commerce in December.[35]

As we have seen, all parties are agreed that there should be some attempt to reach uniformity in this field. When the question of just how this should be done is raised, we once again find that of the several solutions which have been offered none are wholly satisfactory to all concerned. A

[31] Hearings Before the Special Subcommittee of the House Committee on the Judiciary, 87th Cong., 1st Sess. (1961); 23 CCH State Tax Rev. No. 3 (Jan. 25, 1962). See also Silverstein, Problems of Apportionment in Taxation of Multistate Business, 4 Tax L. Rev. 207 (1949); Studenski and Glasser, New Threat in State Business Taxation, Harv. Bus. Rev., Nov.-Dec. 1958, p. 77.

[32] Supra note 30.

[33] Walgreen Co. v. Commissioner of Taxation, 258 Minn. 522, 104 N.W.2d 714 (1960). See also Virginia Electric and Power Co. v. Currie, 254 N.C. 17, 118 S.E.2d 155 (1961), cert. denied, 81 S.Ct. 1919 (1961), 3 B.C. Ind. & Com. L. Rev. 81.

[34] 22 CCH State Tax Rev. No. 2 (Jan. 9, 1961).

[35] Supra note 30.

great deal of material has been written on the subject,[36] and a number of different approaches to the problem have been suggested.

If the states were to be made to withdraw wholly from the field of corporate income taxation the problem would be eliminated. This is the approach which has been taken by Canada,[37] but it is unlikely that the states would willingly forego this source of income and it would be poor fiscal policy for Congress to deprive the states of one of their basic sources of revenue.

A second suggestion is that the states themselves should attempt to achieve uniformity in allocation formulas. The National Conference of Commissioners on Uniform State Laws has proposed a Uniform Division of Income for Tax Purposes Act which is designed to serve this purpose. The function of the act is to assure that no more than one hundred per cent of the net income of a corporation may be taxed by states having a corporate net income tax. The act does not deal with the problem of jurisdiction to tax, nor does it declare what is to constitute income. It merely provides a fair method of allocating net income from a multistate business where the state in question has already defined what is to constitute such income and has determined the tax rate.[38] The act does not apply to individuals rendering purely personal services, to public utilities, or to banks and other financial organizations, such as trust companies or insurance companies.[39] These forms of business are exempted because it is not difficult to set up a separate system of accounting for the taxing state in such situations. The act allocates specific classes of "non-business" income to the state where such income has its source. Rents and royalties from real and personal property,[40] capital gains and losses,[41] interest and dividends,[42] and copyrights and royalties[43] are all specifically allocated. In sections nine through seventeen the act provides that income shall be apportioned according to a three factor formula of property,[44] payrolls,[45] and sales.[46] The property factor

[36] Altman and Keesling, Allocation of Income in State Taxation (1950); Ford, The Allocation of Corporate Income for the Purpose of State Taxation (1933); Stapchinskas, Congress Should Require Uniform Allocations in State Taxation, 13 J. Taxation 56 (1960); Lynn, supra note 24; Cohen, State Tax Allocations and Formulas Which Affect Management's Operating Decisions, 1 J. Taxation 2 (1954); Silverstein, supra note 31.

[37] Lynn, supra note 24, at 86.

[38] The Uniform Act is reprinted at 18 Ohio St. L.J. 100 (1957). For discussions of the act see Chevals, The Uniform Apportionment Formula for State Income Taxes, 33 Taxes 212 (1955); Lynn, supra note 24, at 95-100; Lynn, The Uniform Division of Income for Tax Purposes Act Re-Examined, 46 Va. L. Rev. 1050 (1960); Price, The Uniform Division of Income for State Tax Purposes, 35 Taxes 747 (1957).

[39] Uniform Allocation and Apportionment of Income Act § 1. [Hereafter footnoted by section.]

[40] Section 5(a).

[41] Section 6(a).

[42] Section 7.

[43] Section 9(a).

[44] Section 11.

[45] Section 14.

[46] Section 16.

includes property rented in the state.[47] The sales factor is defined in sections seventeen and eighteen. The act distinguishes between sales of tangible and intangible personal property. Sales of tangible property may be taxed if the property is shipped to a purchaser in the state, or if it is shipped from within the state, and the sale is not taxable in the state of destination.[48] Sales of intangible property may be taxed if the income producing activity is performed within the state, or if it is performed both in the taxing state and in other states and a greater proportion of the income producing activity is performed in the taxing state than in any other state, based on costs of performance.[49]

The sales factor of the Uniform Act has been strongly criticized because it attributes the situs of the sale to the state of the purchaser.[50] Although the allocation of sales to the state of origin would simplify the accounting and filing problems of most multistate corporations, such allocation would tend to concentrate income from sales in a few "producer" states, and thereby cut off the greater number of states from this source of revenue. A state of destination formula makes a more even distribution of taxable income.

In section nineteen of the Uniform Act provision is made for a situation in which the prescribed allocation formula represents an inequitable burden on the taxpayer. In such a situation the tax administrator may, in his discretion, require separate accounting or prescribe an appropriate method of apportionment which is acceptable to the taxpayer.[51] On the whole, the Uniform Act seems to be a just and equitable solution to the problem, although it has been subject to some criticism.[52]

In spite of the fact that one of the major items of state tax legislation during the past year was the enactment of the Uniform Act by Arkansas,[53] the main objection to waiting until all states freely adopt this formula is that during the last forty years only one other state, Alaska, has substantially adopted the Uniform Act.[54] It would seem that the basic reason why states refuse to adopt the act lies in the differing economic needs of the states, and the differences in availability of taxable sources. Such considerations are not easily overcome, and states are not apt to sacrifice their own economic interests for the sake of uniformity.

The first really novel idea which has appeared in a long time was recently aired in the hearings before the Senate Judiciary Committee's Special Subcommittee on State Taxation of Interstate Commerce. Spokesmen for both the U.S. Chamber of Commerce and the National Association of Manufacturers suggested the adoption at the state level of the "permanent establishment" concept which is contained in some form in all existing

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47 Section 11.
48 Section 17.
49 Section 18.
50 Studenski & Glaser, supra note 31, at 86-91.
51 Id. Section 19. But see note 33, supra.
52 Lynn, supra note 37, at 96. See also Stapchinskas, supra note 36.
53 Ark. Acts 1961, H.B. 329.
54 Hartman, supra note 22, at 80.

tax treaties with other countries.[55] The signers of such treaties agree that citizens of each country shall be exempt from taxation by the other unless engaged in business in the country of the other through a branch, factory, or other place of business. This does not include having agents in the taxing country unless the agent has either general authority to negotiate and conclude contracts, or has a stock of merchandise from which he regularly fills orders.[56] It is doubtful whether states which have refused to enact uniform allocation laws would choose to do so by treaty. This suggestion seems in effect to be merely a method of preventing state taxation of income from interstate commerce beyond very definite limits.

In his dissenting opinion in the *Northwest-Stockham* case,[57] Mr. Justice Frankfurter stressed the need for Congressional action in this field, and made the observation that, "Australia has resolved the problem of conflicting and burdensome state taxation of commerce by a national agreement whereby taxes are collected by the Commonwealth and from this revenue appropriate allocation is made annually to the States through the mechanism of a Premiers' conference—the Prime Minister of the Commonwealth and the Premiers of the several states."[58] It is submitted that such a plan would be apt to be very difficult to administer in the United States, which is much more highly industrialized than Australia, and which has fifty states rather than seven.

Perhaps the most effective and speedy solution would be the enactment by Congress of legislation denying states the right to tax interstate commerce unless such income as is taxed is apportioned among various states in which a firm does business in accordance with a uniform apportionment formula.[59] Such a formula now exists in the Uniform Division of Income for State Tax Purposes Act which was discussed previously.

No matter what Congress sees fit to do in this area, it would seem imperative that it do something to resolve the tangled and cumbersome mass of state tax legislation which now besets the businessman who does a multi-state business. It is to be hoped that the report of the Congressional committees which have been studying the problem will suggest a legislative solution to a problem which cannot be fairly solved in any other way.

HENRY S. HEALY

TRADE REGULATION

Since the last issue of the REVIEW there has been no new federal legislation in the field of trade regulation. However, a number of significant proposals are being considered by Congress.

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[55] Supra note 30.

[56] Ibid.

[57] Supra note 19, at 476.

[58] Ibid.

[59] Stapchinskas, supra note 36, at 59.