

CHAPTER XVIII

Some Specific Taxes

PERSONAL PROPERTY TAXES, SALES TAXES, LICENSES AND INHERITANCE TAXES ARE CONSIDERED.

When more of the people's sustenance is exacted, through the power of taxation, than is necessary to meet the just obligations of government and expenses of its economical administration, such exaction becomes ruthless extortion and a violation of the fundamental principles of a free government.

—GROVER CLEVELAND—Second Inaugural, 1880

The marvel of all history is the patience with which men and women submit to burdens unnecessarily laid upon them by their government.

—SENATOR WILLIAM E. BORAH

THE personal property tax, levied in many states on practically everything owned, is most objectionable. Aside from the tax on real estate, which is of a peculiar nature and merits special consideration, "personal property" is of two totally different kinds: "tangible property," meaning material possessions in broad and general terms, and "intangible property," meaning stocks, bonds and similar documents.

As we have seen when discussing wealth, such intangible property is not wealth and is nothing real. Stock certificates are simply evidence of a share in ownership of something already taxed, and to tax these certificates is double taxation, like taxing both a house and the ownership of a house. Bonds, promissory notes, mortgages, and the like are evidences of a claim on future earnings or income, but in themselves they are nothing. Organize a manufacturing business or erect a factory and you are taxed on it, but incorporate the business and you are taxed twice; once on the factory and again on its stock. Buy a farm with your own money and you are taxed once; but if a poor man buys on mortgage, both farm and mortgage are taxed. If you finance your factory by selling bonds, both factory and bonds will be taxed. Such taxation is actually quadruple taxation. The factory is taxed, your stock in it is taxed, its earnings are taxed once as corporation earnings and again as dividends when received by the owner. Can we wonder that many a corporation finds it almost impossible to keep both owners and workers happy and satisfied?

The tax on tangibles is levied in a hit-or-miss, happy-go-lucky way, a "compromise between guesswork and perjury"; often arrived at by the former process and defeated by the latter. Years ago the writer knew two old gentlemen—if you would call them that—brothers, old bachelors, well blessed with worldly goods acquired by methods a bit dubious. The first of January the coachman would drive them—this was in the "horse and buggy days"—to their lawyer's office, where the elder would execute a deed of gift transferring everything he owned to his brother, then to the assessor's office, where the old boy would file a sworn statement that he owned no property and get his name erased from the tax books. Back they would go to the lawyer again and to the assessor's where the younger brother would go through similar nonsense, getting his name off the tax rolls, and home they would go well satisfied with their morning's work. Just how they got away with so transparent a fraud was not clear, but perhaps their ownership of a string of unsavory political hang-outs may have had something to do with it.

In many states taxpayers are required to file sworn inventories of all personal property, each item properly valued; and do they include, or try to include, all property! One such blank, typical of many lists thirty classifications of property of every sort and kind—money, bank balances, stocks, bonds, jewelry, silver, clothing, house furnishings, books, automobiles, animals of every kind including dogs and goats, and finally, to make sure that nothing is overlooked, "all other articles not previously enumerated"! We knew of one case where a wealthy woman owning four very high-priced cars put a valuation of five hundred dollars on the lot! The whole business is guesswork and swindle.

Just try making up such a list even in good faith; put a value on your old shoes and the old arm-chair that wouldn't bring a dollar and a quarter at auction but which suits you better than would a new one for a hundred dollars. What value will you put on faithful old Rover: he is probably like the old woman's ten children—she wouldn't sell one for a million dollars but wouldn't give a plugged nickel for another. How about that old portrait of Aunt Mehitabel? You couldn't get a dime for it; but if you don't cherish it and treat it respectfully, and give it a prominent place and value it highly, she will strike you out of her will!

Another class of taxes—"death duties"—is worthy of study. There are two kinds of levies on the estates of the dead; the inheritance tax levied on each bequest, the rate generally varying

according to the degree of relationship of the heir to the deceased and increasing as kinship becomes more remote; and the estate tax based on the value of the entire estate, which is a progressive tax. The writer believes that some such tax is justified, if properly imposed and if not progressive; but a friend says that "the way we tax the living is bad enough but it is still worse when, like ghouls, we rob the dead!" The writer does not see it in this light, for there is something to be said for the idea, common among primitive people, that the dead can own no property and that it reverts to the tribe. It is an open question and a good argument can be put up for either side.

It should certainly be the right of the living to give his property as he pleases, and it may be a man's right to say to whom his estate is to go when he must leave material things behind; but sometimes we wonder if those who are beyond the enjoyment of these things have any rights whatever in the world that they have left. Perhaps title fails with the ability to avail one's self of it, and it is always true that there are no pockets in a shroud. If, as Jefferson says, "The earth belongs in usufruct to the living," then death cancels claims to the things of this life; and, when we relinquish hold on what we have called ours, we should recognize that the dead have no right to bind the living, still less to bind the unborn. Sometimes "the evil that men do lives after them," as when dead hands bind for generations the use of property which they have amassed, however good may have been their intentions. Even if we grant that a decedent has a right to direct the disposition of his estate, is not the right of the heir to claim it a right to accept a gift rather than a right to claim what is absolutely his? The right to give does not always imply the right to take.

This question of inheritance is a knotty one on which men often differ. Bruce in *Property and Society* says, "Must the right to inheritance be unlimited? It is in no sense a natural right, and the power of the state either to limit it or to deny it altogether cannot be denied even under safeguards to property rights which are afforded by the provisions of our American state and federal Constitutions." Recognizing that the state has a certain interest, the question arises whether it might not exercise a measure of control.

It is not easy to see just where justice lies and hard and fast principles shade off into a penumbra of doubt. The writer would incline to the opinion that a decedent has no *absolute* right in property after death and this is generally recognized by our laws

restricting bequests, but there are difficulties aplenty. For one thing, it is not always easy to say what was his alone and what was his jointly with others. Any man happily married knows how impossible it is to say, "This is mine, and this is my wife's." Even if title is clear, some things one might legally claim belong quite as much to others, who, by industry and thrift, have done much to accumulate what is common property. Children, too, have a moral title often quite as good as that of the parents in heirlooms, portraits, the old homestead, and the burial plot.

It is wise, for the general good, to allow some latitude for the disposition of an estate as an incentive to industry, thrift and conservation, and often a testator is the best judge of conditions and needs. Children and heirs should be allowed to inherit what is necessary for their education and preservation of standards, and they may have a just moral claim on a good many other things besides. On the other hand, there is the argument that heirs are entitled to no consideration or advantage beyond what is given to all the sons of men and that they have no right to demand special privilege, opportunity, education or capital which they have not earned. There is, too, the argument that inheritance of excessive wealth brings disaster more often than benefit to its recipients.

If we must have a graded tax applied to inheritances, it would seem that it should be graded, not on the size of the estate which the decedent leaves but upon the total amount which any person may inherit from all estates and testators, to prevent the accumulation of large unearned fortunes from several sources. This idea was advanced by John Stuart Mill: we do not think it has ever been accepted in the United States, but it seems sound and just. Surely, if we must have a graded tax, the man who inherits over a million dollars from a dozen estates, as happened in the case which recently came to the writer's attention, should be taxed at a higher *rate* than the man who inherits a few thousand dollars from a single wealthy benefactor. Such a change would have the advantage that it would eliminate multiple taxation. Today, a tax is often levied in states where the property is located, as well as in the state of residence of the decedent; for the tax could fall directly on the heir and be paid by him in his home state preventing controversy between states.

Although we reject the idea of a *progressive* tax, there is something to be said for a *varied* rate in the case of inheritance, because those closely related to the deceased may have a certain moral claim on the estate which others do not share. For example, a

young man who goes into business with his father assumes responsibility and carries a good deal of the load, has a certain claim on that business as against anyone else. We therefore see justification for low taxes, and even complete exemption to a certain point, in bequests to husband, wife, to children, to grandchildren, parents, brothers and sisters. Bequests to others of more remote kinship, or entirely unrelated, might be taxed at a higher rate on the theory that they have no moral claim.

We suggest it would be well to eliminate entirely all claims of "next-of-kin" beyond these relationships, unless specifically mentioned as heirs in the will. *We cannot see that there is any reason whatever why remote kinship should give a claim on property.* We all of us have relatives, cousins of the third and fourth degree perhaps—whom we have never seen, of whose existence we are not even aware, and who mean absolutely nothing to us. It is ridiculous that such relationships should constitute any claim on the estate. What of the estate of two very wealthy, very parsimonious and very peculiar brothers who left no near relatives? After litigation, advertising and expensive court proceedings, the estate, or what was left of it after heavy legal expenses, was finally awarded to twenty-four remote relatives as "next-of-kin." To the writer's mind, this kind of thing seems utterly unreasonable. Not long ago, looking over a genealogy with three friends, we discovered that, entirely unknown to us, we were all related to one another, mostly third and fourth cousins. Would it not be ridiculous for anyone to put in any claim to an estate based on such a relationship of which neither party was cognizant? Under such circumstances, the property of those dying intestate might better revert to the state than be distributed among unknown and unnamed remote relatives.

Before leaving this subject of taxation of the estates or bequests of the dead, we should make one other point: we find no justification in the Constitution for such taxation by the federal governments, and believe it would be far wiser to leave all such taxation to the states. Taxes or bequests or on the estates of the dead are direct taxes and the Constitution specifies that no direct tax, other than the income tax, shall be laid unless in proportion to the census. In other words, any direct tax must be levied in such a way that it falls with equal force on all our people and is distributed among the states in proportion to population; whereas any tax on inheritance or on bequests is based not at all on population but on wealth. It was this clause in the Constitution which made the sixteenth amendment authorizing

an income tax necessary, and this amendment does not cover any inheritance tax.

Today throughout a good part of the country we have sales taxes, levied on commercial transactions; and we have what are called excise taxes, which are practically sales taxes on certain classes of goods. What shall we say of such taxes? The right to own property implies a right to give, sell or trade it: generally no human being has any moral right to interfere with such transactions, and, as a matter of policy, it is desirable to encourage trade. Incidentally, sales taxes are annoying, expensive of collection, and a nuisance; and they are directly inflationary, for price is increased by the amount of the tax without any compensating increase in value.

There has been much discussion about the liquor tax. Actually the price of a bottle of distilled liquor at retail is mostly to cover tax, which far exceeds the value of the contents. Henry George, the distinguished American economist, maintained that there was no justification for a tax on liquor. If the business is desirable and to be encouraged, it should, like other commerce, be free from taxation; but, if objectionable, immoral or against social interest, it should not be permitted for the sake of a "cut" which the government takes.

George's argument was valid and logical, but the difficulty is that we cannot agree on our premise. One says the business is unobjectionable and should be encouraged and the other says it is evil and should be prohibited; and, if we cannot agree on the premises from which the argument starts, it is impossible to develop any logical reasoning. We would agree with George, if there were unanimity as to whether the use of alcohol is to be encouraged or discouraged; but, as long as there is no agreement, it would seem that compromise is the only answer, making the liquor traffic meet some of the evils which many say it engenders. The question of tobacco is somewhat parallel, for many would discourage its use. But these are questions of personal opinion upon which we do not wish to dogmatize. Think them over and form your own opinion.

As for most of the excise taxes levied by the federal government—such as the tax on cameras, sporting goods, jewelry, watches, clocks, traveling-bags, toilet goods and preparations, and countless other things—it is hard to see any justification. Traffic in such goods as these is entirely legitimate: there is no reason whatever for penalizing it, and *it is dangerous for the government to discriminate in its treatment of different industries*, using

its powers to stimulate spending in some lines and to discourage it in others.

As a practical matter nearly all sales taxes, whether excises on particular commodities or a general tax on all sales, are, in the writer's opinion, objectionable and injurious. Such taxes, raising prices artificially, are always inflationary, and they are often easily evaded. There can be little question that they often drive business away from a city, as we saw when many automobile dealers of New York City moved beyond the city lines. Can we wonder that a person will not purchase an expensive car in a city, where there is a heavy tax on the transaction, if by going a few miles out he can buy it tax free? In lesser degree we saw the same thing with the New York State tax on cigarettes, forcing the purchase of cigarettes in New Jersey. Many canny motorists, when crossing state lines, are careful to buy their gasoline and oil in states where the tax is relatively light; and there is a similar traffic in liquor.

Closely parallel to sales taxes are taxes on occupations, professions and industries. In many states, to engage in almost any business or to follow any profession necessitates a license, which is actually a tax, for it is imposed as a source of revenue and not for control. Such taxation is utterly unreasonable, for we do not want to discourage trades and professional practice or to penalize useful service and subsidize idleness.

This brings us to the question of licenses and taxes, which often overlap. To true licenses there can be no objection. Many activities and businesses require legislation, supervision, and sometimes limitation; and we see no reason why those whose activities require such supervision should not pay the costs. There seems to be general agreement that the sale of liquor should be regulated and controlled. Pawn shops, junk-dealing and dance halls require an alert watchfulness. The sale, transportation, and storage of high explosives must be supervised, and those conducting such operations may be expected to meet the costs. To curb a surplus, and often unwanted, canine population and as a check on sheep-killing, dogs are licensed, and it is imperative that automobiles be registered, licensed and bear plates for identification. Such licenses are just and proper; but when fees and receipts exceed reason and are for beyond any attendant costs, the license becomes a tax. Then, it is justified only when the funds so raised are returned to those who pay, as when automobile and gasoline taxes are used to build roads, or when the

purpose is to restrict and curb operations, as in the case of liquor retailing.

Another tax, the source of endless political controversy, although we have it in only six states, is the poll tax—an annual *per capita* levy sometimes imposed as a condition of voting. Unpopular as such a tax is, we see no objection to it, for surely citizenship is worth a petty annual fee, and we question if the votes of those unable or unwilling to make such a payment are a very valuable contribution to our political life. There is constant agitation for the abolition of this tax by act of Congress, but we question if such action would be constitutional. Voting is a privilege and not a right. The decision of who shall vote is left to the states by the tenth amendment, and we believe that Congress could acquire the right to pass such legislation only through constitutional amendment.

QUESTIONS

Is it double taxation to tax a farm and the deed to it?

Is it double taxation to tax a factory and the stock certificate evidencing ownership in it?

Is taxation of stock certificates, and proofs of ownership, unjust taxation?

Is it practicable to tax miscellaneous personal property, clothing, furniture, household goods, silver, etc., equitably, justly and easily?

What is your opinion of the inheritance tax?

Should such a tax be levied on the estate of the deceased or on inheritances of the living?

If we are to have graded taxation of legacies, should they be graded according to the size of the estate from which they are derived, or according to all bequests from all sources of each heir?

Do you think that the remote relatives of one who dies intestate, or who are not mentioned in the will, have any just claim on the estate, or might it better revert to the state?

Are license taxes justified when levied to control potential evils or hazards, or to pay for definite benefits, as for instance when the taxes on automobiles and gasoline are used for roads?