

## APPENDIX

### CONSTITUTIONAL LIMITATIONS ON TAXATION IN THE UNITED STATES

The constitution of the United States originally contained two restrictions on the taxing power of the federal government.

1. Direct taxes (by which is meant the ordinary taxation of property, such as is imposed by states and municipalities) must be levied against the states in proportion to their respective population; which would cause the rate on similar property to vary in different states according to the density of population. This limitation has been modified by the 16th amendment, ratified in 1913, and which permits congress to levy taxes on incomes from whatever source derived and without regard to population; that is, at a rate uniform throughout the United States.

2. Customs, duties, and excises are subject only to the limitation, that the tax imposed (on any article or for the exercise of any privilege) must be uniform throughout the United States. Duties on exports are forbidden.

The federal constitution limits the taxing power of the states in several ways. No state may tax interstate commerce as such; nor imports, consequently goods in unbroken packages are exempt while owned by the original importer. Agencies of the federal government are exempt; this includes salaries of federal officials and national banks; the latter are taxed only by permission of congress. The 14th amendment (guaranteeing equal protection of the laws throughout the United States) has been construed to prevent a State (1) from taxing a non-resident more heavily than a resident, (2) from taxing the property owned by a corporation at a higher rate than similar property of an individual. It does not prevent a state from taxing different kinds of property by different methods or rates that are uniform on a given class, nor does it prevent exemptions; nor prevent a special tax on corporations for the privilege of carrying on business in a corporate capacity. This limitation on the states may be summarized as permitting different treatment of various classes of property but requiring similar treatment of individuals owning the same kind of property, or otherwise similarly situated.

In nearly all the states the power of the legislature to deal with taxation is restricted by constitutional provisions. The constitutions of many of the states require that all property, real and personal, shall be assessed at full value and be taxed at a uniform rate; that is, a rate which shall be the same throughout the State for State purposes, throughout a county for county purposes, and throughout a local tax district for local purposes.

This constitutional requirement is often termed the "uniform rule," and the method of taxation which it imposes is known as the "general property tax."

A typical provision of this kind is that of the constitution of Indiana, adopted in 1851, and which reads as follows:

Art. 10, Sec. 1. The general assembly shall provide, by law, for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious or charitable purposes as may be specifically exempted by law.

Similar provisions were inserted in the new constitutions of practically all states west of the Alleghanies when admitted to the Union.

In the states whose constitutions prescribe this uniform rule, taxes on corporations for the privilege of doing business (in addition to their taxes on real and personal property) usually have been sustained by the courts as being excises. Inheritance taxes are sometimes authorized in the constitution and in other cases have been sustained as a tax on the transfer of property (or the privilege of inheritance) and not on property itself. In some instances, "graded" inheritance taxes only are permitted; that is, a different rate upon direct than upon collateral legatees; in other cases, "progressive" taxes are permitted; that is, the rate may be increased according to the amount of the bequest.

Real estate occupied exclusively for religious, charitable or educational purposes, and sometimes personal property devoted to such uses, is usually exempted by the constitution, or the legislature is authorized to grant such exemption. Other slight modifications of the rigid uniform rule are occasionally provided, such as exemption of a small sum, or specific items, of personal property, and the deduction of debts from credits; in a few instances new manufacturing plants may be exempt for a term of years.

In recent years there has been a strong movement toward abolishing the uniform rule, and various amendments that range from permitting some degree of elasticity, to giving entire freedom to the legislature, have been adopted in the following states:

Virginia, 1902 (effective 1912); Minnesota, 1906; <sup>1</sup>Oklahoma, 1907; Michigan 1909; <sup>1</sup>Arizona, 1911; Maine, 1913; New Mexico, 1914; North Dakota, 1914; Kentucky, 1915; Maryland, 1915. In Kansas, a classification amendment failed by only a few votes in 1914; the same year a similar amendment in Nebraska failed only because it did not obtain a vote equal to a majority of the votes cast for state officers.

A number of constitutions fix a maximum tax rate; some fix it for state purposes only, others for local taxes. Such limitations relate only to the gen-

<sup>1</sup>When admitted to statehood. Replacing uniform rule in territorial law.

eral property tax and do not prevent the raising of revenue from special taxes, such as those on corporations or inheritances.

Some constitutions limit local indebtedness to a percentage of assessed valuation of real estate or of real estate and of personal property. Many constitutions forbid the legislature to incur indebtedness unless the law is approved by the voters.

In the following summary of constitutional provisions, those states where no classification or exemption is permitted by the constitution are referred to as having the "uniform rule."

Most of the states whose constitutions do not require uniformity nevertheless have had the general property tax system by law, though there has been a tendency in recent years towards classification of property and special methods of taxation. Brief references are made to such laws.

**ALABAMA.** Property taxed must be assessed uniformly in proportion to its value, but the legislature may grant exemptions. Mortgages pay only a recording tax, and money and credits have been exempted.

**ARIZONA.** Constitution permits classification. Requires separate assessment of land and improvements.

**ARKANSAS.** Uniform rule.

**CALIFORNIA.** Operating property of public service corporations is taxed on gross earnings for state purposes and not taxed locally. Financial institutions specially taxed. Otherwise constitution requires general property tax. Income tax permitted.

**COLORADO.** Constitution requires uniform rule. A recently adopted provision giving home rule to cities is claimed to confer power of classifying or exempting property for local taxation; this is a doubtful question and has not been settled by the courts.

**CONNECTICUT.** Constitution contains no restraint upon the legislature, and various departures have been made from the general property tax, such as gross earnings taxes on corporations in lieu of property taxes, and a four-mill annual tax on choses in action (bonds and notes).

**DELAWARE.** The legislature may grant exemptions, subject to the provision adopted in 1897 that "in all assessments of the value of real estate for taxation the value of the land and the value of the buildings and improvements thereon shall be included. And in all assessments of the rental value of real estate for taxation, the rental value of the land and the rental value of the buildings and the improvements thereon shall be included." There is another provision, that the legislature may by general laws exempt such property as in its opinion will best promote the public welfare. The tax laws of Delaware are quite liberal in respect to personal property.

**FLORIDA.** Uniform rule.

**GEORGIA.** Uniform rule.

**IDAHO.** Legislature may grant exemptions and has exempted mortgages, certain securities, growing crops, and fruit trees.

**ILLINOIS.** Uniform rule.

**INDIANA.** Uniform rule.

**IOWA.** The legislature may establish different rates for different classes of property, but cannot set aside any particular class for state or for local taxation. Money and credits are taxed at the special rate of 50c. per \$100.

**KANSAS.** Uniform rule.

**KENTUCKY.** The constitution was open until 1891, when a "uniform rule" provision, similar to that of Ohio and Indiana, was adopted. At the November election, 1915, the voters approved an amendment giving the legislature the power to classify property, subject to referendum.

**LOUISIANA.** Uniform rule.

**MAINE.** A recent constitutional amendment (1913) authorizes the taxation of intangible personal property—money, credits, securities at special rates, but no change has been made in the law so far. Otherwise the general property tax seems to be required.

**MARYLAND.** The legislature has passed several laws in recent years for special taxation of certain kinds of property, such as securities and bank shares; and has empowered localities to exempt manufacturing machinery. There has been a question as to the constitutionality of this legislation, and therefore a constitutional amendment was submitted to the people and ratified November, 1915, which authorizes the legislature to classify and sub-classify improvements on land and personal property, and to permit localities to tax such classified property at such rates as they see fit or to exempt it.

**MASSACHUSETTS.** The legislature may exempt any class of property entirely, but if taxed at all the rate must be uniform with that on other taxable property. At the 1915 election an amendment was adopted authorizing the legislature to impose income taxes and to exempt the property from which the income is derived. In 1916 an act was passed taxing the income from securities and money and exempting such property. There is also an income tax on professional men, and individuals in business, but no exemption of property thereby. An amendment of 1912 permits special taxation of woodland.

**MICHIGAN.** The legislature may exempt any class of property, and may impose specific taxes, within certain limitations; and has enacted a mortgage recording tax and a similar registry tax on securities.

**MINNESOTA.** Railroads pay a gross earnings tax only. The legislature may classify other property for taxation by general laws (pursuant to an amendment adopted in 1906), and has enacted a mortgage recording tax and a three mill tax on money and credits. An act passed in 1913 provides for the assessment of certain property at different ratios to full value; for example, iron ore mined or unmined, 50%; household goods, 25%; live stock and merchandise, unplatted real estate, 33½%; other property, 40%. Inheritance taxes may be enacted but not to exceed five per cent.

**MISSISSIPPI.** Uniform rule.

**MISSOURI.** Uniform rule, modified by a special provision allowing St. Louis to levy a lower tax on merchandise and manufacturers materials than on real estate. A low rate tax on securities, however, has been enacted, (1917); also an income tax.

**MONTANA.** Uniform rule.

**NEBRASKA.** Uniform rule.

**NEVADA.** Uniform rule.

**NEW HAMPSHIRE.** The legislature may, as in Massachusetts, exempt any class of property, but that which is taxed must pay the same rate as other property. In New Hampshire (as in Pennsylvania) no class of property is taxable unless specifically named in the law, and many items of personal property are exempt that in other states are taxable.

**NEW JERSEY.** Property must be *assessed* under general laws and by uniform rules according to its true value. This language, however, does not prevent state-wide classification or exemption. Railroads and financial institutions are taxed in a different way from other property.

**NEW MEXICO.** Constitutional amendment of 1914 abolished uniform rule. Taxes on tangible property are to be in proportion to value thereof, and equal and uniform on subjects of the same class.

**NEW YORK.** Constitution is silent on taxation. The legislature may classify or exempt property, or set any kinds apart for state or local taxation, or establish special rates or methods for different kinds of property, and many such laws have been enacted.

**NORTH CAROLINA.** Uniform rule.

**NORTH DAKOTA.** The constitution was amended in 1914, to abolish the uniform rule, and leaves the legislature free, but no change has been made yet in the general property tax.

**OHIO.** The uniform rule has been in effect since 1851. For a few years bonds of the state and its municipalities were exempt, but they were made taxable again by the convention of 1912. At the same time a provision

was added to permit income taxes, but in addition to property taxes; and inheritance taxes were authorized provided half of the revenue is given to the locality where the decedent resided. These provisions were ratified in that year and amendments submitted since then to permit classification and to exempt public bonds have been defeated, the last in 1915.

**OKLAHOMA.** Legislature may classify property.

**OREGON.** Uniform rule.

**PENNSYLVANIA.** The constitution leaves the legislature practically free to deal with the subject and the state has not had the general property tax. Public service corporations are taxed by the state and exempted locally. There is no tax on merchandise, furniture, and other tangible personal property, except on live stock. Certain intangible personal property is taxed at a low rate uniform throughout the State. Machinery that is personal property is exempt; and by recent legislation, machinery must not be included with the real estate assessment in first-class (Philadelphia) and second-class (Pittsburg and Scranton) cities; all kinds of machinery are therefore exempt in those cities. By an act of 1913 the tax rate on buildings in second-class cities (Pittsburg, Scranton) is to be reduced ten per cent. every three years, beginning with 1914 (when it was only ninety per cent. of the rate on land) until the rate on buildings is half that on land.<sup>1</sup>

**RHODE ISLAND.** The legislature is free to deal with taxation, and has enacted a number of laws establishing different rates and methods of taxing various kinds of property. Localities are permitted to exempt certain personal property from local taxation.

**SOUTH CAROLINA.** Uniform rule.

**SOUTH DAKOTA.** Uniform rule.

**TENNESSEE.** Uniform rule.

**TEXAS.** Uniform rule.

**UTAH.** Uniform rule.

**VERMONT.** Constitution leaves legislature free. Replanted timber land is exempt for 10 years. Localities may exempt for 10 years abandoned farms that are recultivated, and factories.

**VIRGINIA.** The legislature may classify property (since 1912) and has recently enacted lower taxes upon intangible personal property.

**WASHINGTON.** The constitution requires a uniform and equal rate of assessment and taxation on all property in the State. The legislature in 1907 exempted credits and securities. This exemption was sustained by the Supreme Court on the theory that these items were only the evidences

<sup>1</sup>See page 62 for Pittsburg and Scranton.

of property, and to tax them was a double taxation which, while permitted, was not required by the constitution.

**WEST VIRGINIA.** Uniform rule.

**WISCONSIN.** The constitution permits an income tax; which is levied and much personal property is thereby exempted. The rate must be uniform on property taxed *ad valorem*.

**WYOMING.** Uniform rule.

—A. C. P.