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The Kentucky income tax bill introduced in the legislature was patterned after the Model Tax Plan, as devised by the National Tax Association committee.[1] Apparently the legislature intended to base the tax largely on recurrent receipts. This is evident from the fact that it largely deleted from the tax base the income from capital gains. However, the law[2] provided for the inclusion of "gains or losses from the sale or other disposition of property, real or personal or mixed if such property be disposed of within two (2) years from the time acquired. " The application of the tax to gains from assets held not over two years sought to impose a tax liability on inventory transactions, that is, current income. Two years is admittedly an arbitrary period of time. Kentucky used that time span because the federal government had used two years for similar tax purposes from 1921 to 1934.[3]

As passed by the House, the Kentucky bill provided for the deduction of "property taxes, poll taxes, and corporation franchise or license taxes paid to the Commonwealth of Kentucky, its taxing subdivisions, or its municipalities."[4] The Senate amended the bill by adding "and income taxes paid to the United States."[5] The proposed bill had been drafted with the assumption that no deduction would be allowed for federal income tax. Thus, the amendment created certain effects not originally contemplated and not forecast by the authors of amendment.

The income tax law, as passed, imposed a maximum rate of 5 per cent on individuals and a flat rate of 4 per cent on corporations (in-

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[1] BULLETIN OF THE NATIONAL TAX ASSOCIATION, VI (January, 1921), 102-125, and VI (February, 1921), 129.

[2] Acts of the General Assembly of Kentucky, Extraordinary Session, March 13, 1936, Codified as Kentucky Revised Statutes sec. 141.010 *et seq.*

[3] 48 STAT. 714 (1934), Internal Revenue Code (hereinafter referred to as I. R. C.), sec. 117.

[4] House Bill No. 29, sec. 3 (c), 1936.

[5] Senate Amendments to House Bill No. 29, compiled as KY. REV. STAT. sec. 141.080 (3).

creased in 1950 to 6 and 4.5 percent respectively).[6] It provided for a definition of net income similar to that in the federal income tax law, but with important exceptions.[7] In the ensuing 14 years, the legislature has made only minor alterations in the original law Because the income tax is a basic source of revenue to Kentucky, equity of operation is of paramount importance. The different treatment of capital gains and losses under the federal and the Kentucky income tax law combined with the provision allowing a deduction of federal income tax in computing income for state purposes produces awkward results. Kentucky law allows deductions for federal taxes on income which it does not recognize as taxable. Thus, the state does not follow the general principle of allowing deductions for only those payments on the acquisition of taxable income.[8] This situation produces inequities among taxpayers and an adverse effect on Kentucky income tax revenue.

A study of differences between federal and Kentucky definitions and between the tax treatment of capital gains and losses and certain alternative provisions will be made to discover tax policies that might avert such inequities. An attempt will be made to evaluate the remedial policies suggested by experience.

DIFFERENCES IN FEDERAL AND STATE CAPITAL GAIN AND LOSS PROVISIONS

Numerous differences between federal and Kentucky income tax provisions exist. This report will deal with only those relating to gains or losses from the sale or exchange of capital assets held more than two years, losses realized in excess of gains, and the distribution of liquidating dividends by corporations.

Differences occasioned by the time period the asset is held

The most important and obvious difference between the Kentucky and federal income tax provisions for capital gains and losses stems from Kentucky's exclusion of gains or losses derived from the sale or exchange of a capital asset held more than two years.

The federal government, since adoption of the income tax amendment to the Constitution, has taxed capital gains as individual income and allowed some deductions for capital losses. From 1913 to 1921 the full amount of the capital gain was taxable as ordinary income.[9]

[6] Acts 1950, chap. 121, sec. 1, compiled as KY. REV. STAT. sec. 141.250.
[7] E.g., KY. REV. STAT. sec. 141.050 (1).
[8] Accordingly, no deductions are allowed for estate, inheritance, and gift taxes or income taxes incurred by corporations or nonresidents on income acquired in other states.
[9] 38 STAT. 166 (1913).

The Revenue Act of 1921 introduced the element of time differentials by providing for an optional tax treatment for gains or losses on assets held more than two years prior to sale or exchange.[10] At the election of the taxpayer, capital gains from assets held more than two years could be taxed as other income or at the flat rate of 12.5 per cent (gains or losses on assets held two years or less were included as other income).

The provisions as to capital gains and losses in the Revenue Act of 1921 remained substantially in force until the enactment of the Revenue Act of 1934, which provided for the taxation of 100, 80, 60, 40, or 30 per cent of the gain from the sale or exchange on capital assets as net taxable income if the asset was held 1 year or less, over 1 but not over 2 years, over 2 but not over 5 years, over 5 but not over 10 years, or over 10 years respectively[11] The Revenue Act of 1938 provided for 100 per cent recognition of short-term gains or losses realized from an asset held 18 months or less, and, in the case of long-term capital gains, 66⅔ per cent if held between 18 and 24 months, and 50 per cent if held more than 24 months.[12]

The Revenue Act of 1942 decreased the holding period in distinguishing between long- and short-term capital gains and losses to six months.[13] Short-term capital gains of individuals were taxed as other income.[14] Otherwise, the 1938 provisions remained substantially intact. Unlike long-term capital gains and losses of individuals, 50 per cent of which are recognized, 100 per cent long-term capital gains and losses of corporations are recognized.[15]

Corporations compute their tax liability at regular rates on the entire income (including the excess of capital gains over losses). If the corporation enjoys long-term capital gains in excess of long-term capital losses, an alternative method of computation is available. It involves the computation of a partial tax on ordinary income (including the excess of short-term capital gains over short-term capital losses, if any) plus 25 per cent of the excess of long-term capital gains over remaining capital losses. The corporation selects the method which will minimize the tax liability Capital losses in excess of capital gains are not deductible from ordinary income. Such excess may be deducted from capital gains for the next succeeding five years.[16]

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[10] 42 STAT. 233 (1921).
[11] 48 STAT. 714 (1934), I. R. C., sec. 117.
[12] 52 STAT. 500 (1938), I. R. C., sec. 117.
[13] 56 STAT. 843 (1942), I. R. C., sec. 117 (a).
[14] 56 STAT. 843 (1942), I. R. C., sec. 117 (b).
[15] 56 STAT. 843 (1942), I. R. C., sec. 117 (c).
[16] 56 STAT. 843 (1942), I. R. C., sec. 117 (d) (e).

Previously it was noted that the Kentucky income tax act provided for the taxation of capital gains and losses only if such capital assets are held two years or less prior to the sale or exchange. Gains realized from the sale or exchange of capital assets held more than two years incur no Kentucky income tax liability Thus, capital gains may incur federal income tax liability and not Kentucky income tax liability By permitting a deduction for federal income taxes paid or accrued on capital gains, Kentucky incurs tax revenue losses and brings about discrimination against taxpayers who have enjoyed no capital gains.

Illustrative of this point is the case of taxpayers A and B, who each have $5,000 net ordinary income before deduction of federal income tax. Both A and B should incur equal Kentucky income tax liability This may very well not be the case. If, during the year, B realized a gain of $7,500 ($3,750 is recognized for federal income tax purposes) from the sale of a farm acquired in 1940, he would be liable for $1,749.68 in federal income taxes.[17] A, who had no such capital gain, would incur a federal income tax liability of $810.72. Allowing a deduction for these taxes, the Kentucky tax liability is $47.51 for B and $77.57 for A. Thus, B incurs $30.06 less in tax liability as a result of federal income taxes paid on income which incurs no Kentucky tax liability[18] It is interesting to note that, if B's capital gain had amounted to $20,511.42 ($10,255.71 of which is recognized for federal income tax purposes), B would have incurred no Kentucky income tax liability Kentucky income tax officials have observed incomes over $20,000 which incurred no Kentucky tax, due primarily to federal payments on capital gains not taxable by Kentucky Thus, the allowance of a deduction for federal income taxes paid during the year, in the light of legal provisions respecting capital gains, results in gross inequities among taxpayers and in improper revenue losses to the commonwealth.

Differences in tax treatment of capital losses

Similar inequities occur under the Kentucky statute as a result of differences between federal and Kentucky income tax provisions for capital losses. Under present provisions, the Kentucky income tax law allows a deduction for losses realized from the sale or exchange of capital assets held two years or less.[19] Deductible losses are unlimited

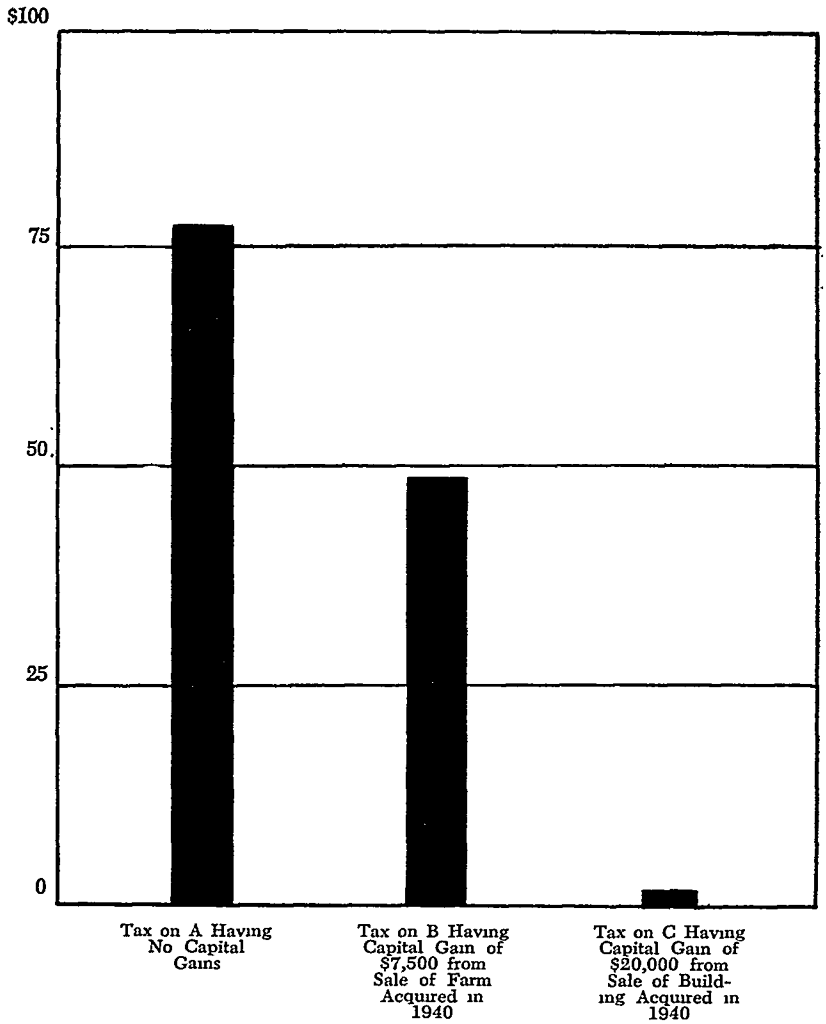
[17] The calculations assume that A and B are single with no dependents and that all income is derived from sources within Kentucky. Tax rates effective August, 1950 were used.

[18] See Chart 1.

[19] KY. REV. STAT. sec. 141.100.

CHART 1

INEQUALITY IN KENTUCKY INCOME TAX ON THREE TAXPAYERS EACH HAVING ORDINARY INCOME BEFORE FEDERAL INCOME TAX OF $5,000 AND EACH SINGLE WITH NO DEPENDENTS, 1950



in amount. There are no provisions permitting losses to be carried forward.

The federal individual income tax law provides for a deduction of recognized losses realized from the sale or exchange of capital assets held more than six months against recognized capital gains. An individual sustaining a recognized loss from the sale of a capital asset may deduct such loss against gross income in an amount equal to but not greater than recognized capital gains plus $1,000.[20] The excess of such losses not deductible in the taxable year may be carried forward for a period not to exceed five years. These losses in subsequent years are regarded as short-term and may be deducted from capital gains to the extent of such gains and from ordinary income up to $1,000 for each year of the five-year period. For example, a man and wife with no dependents have taxable salary income of $3,000 after deductions other than federal income tax. Their state tax is $14.04. Another couple similarly situated have the same income but lost during the year $2,000 on the sale of an old house and lot acquired during World War I. Their state tax is $17.34. Thus, because the couple had suffered a capital loss, their state tax bill was *increased* by reason of the deduction of the loss under the federal statute.

The Kentucky income tax law prescribes substantially the same tax treatment for corporations as for individuals in regard to capital losses. The federal law accords corporations different tax treatment. Corporations must subtract short-term capital losses (which are not offset by short-term gains) from long-term capital gains (reduced by any long-term losses). The excess of losses may not be deducted in the year sustained. Such capital loss may be carried forward and deducted from capital gains enjoyed in any one or more of the following five years.[21] In consequence of this plan, corporate capital *losses* introduce inequities as among Kentucky corporate income taxpayers less frequently than do those of individuals.

In summary, it is apparent that inequities among taxpayers may result from differences between the federal and Kentucky income tax provisions as to allowances for losses sustained from the sale or exchange of capital assets. Specifically, the discriminations among taxpayers arise from (a) differences in the tax treatment depending on the time period such capital assets are held prior to incurring the loss, (b) carry-forward of losses permitted under federal but not the Kentucky law, and (c) the limits placed on the amount of loss deductible under the federal law

Difference in the taxation of liquidating dividends

If a corporation distributes liquidating dividends, the stockholders may incur Kentucky income tax liability[22] The Kentucky tax applies to the distribution to the extent that it does not constitute a return of

[20] I. R. C., sec. 117 (d) (e).
[21] I. R. C., sec. 117 (e).
[22] KY. REV. STAT. sec. 141.010 (3).

the corporation s capital.[23] Therefore the price paid by the stockholder for the stock is immaterial; rather, it is the increase in the corporation surplus that determines the extent of the taxable distribution. This portion of the liquidating dividend represents gross income to the shareholder and is fully taxable. Such tax treatment manifests the intention of the legislature to impose the income tax primarily on recurrent receipts rather than on income from capital gains.

The federal income tax law accords such liquidating dividends substantially different tax treatment. Liquidating dividends are treated as a sale of stock, and the amounts thus received constitute a capital gain or loss for the shareholder.[24] The gain or loss from the liquidating dividend may be either short- or long-term, depending on the length of time the taxpayer held such stock prior to liquidation. The extent of the gain or loss is determined by the difference between the adjusted basis and the amount realized on liquidation.

Thus, the differences in Kentucky and federal income tax provisions for liquidating dividends may mean significant inequalities for taxpayers. The unequal treatment occurs from diverse methods of ascertaining the amount of income subject to taxation. The amount of federal tax deducted may be determined by factors not at all relevant to state tax liability Improper revenue losses or unjustifiable state tax exactions may result.

POSSIBLE REMEDIAL POLICIES

The foregoing analysis reveals the most important differences between federal and Kentucky income tax provisions applicable to the taxation of capital gains and losses. That the adverse effect on Kentucky income tax revenue and the unjustifiable exactions of certain taxpayers, with attendant inequities might be avoided, several remedial policies are suggested by experience in the several states. These alternative tax policies are (a) defining net income for Kentucky income tax purposes to conform with the federal definition, (b) limiting the deduction for federal tax to that paid on income recognized as taxable by Kentucky, and (c) eliminating the federal income tax deduction.

Defining state net income to conform with federal definition

State experience suggests as one solution to the problem the correla-

[23] *Ibid.* See also Reeves v. Turner, 289 Ky. 426, 158 S.W (2d) 978 (1942). In conjunction with the problem of the taxability of liquidating dividends, the court ruled that federal income tax regulations regarding liquidating dividends were not to be used for Kentucky income tax purposes. Differences between federal and state laws make such regulations inapplicable.

[24] I. R. C., 115 (c).

tion of the state income tax base with that of the federal government. Correlation in an economic sense is possible through the use of two general methods: (a) enactment of state legislation defining net income in the same manner as that prescribed by federal law and amendment of the state law as the federal government introduces changes, or (b) imposition of the state income tax on net income as defined for federal income tax purposes. It is important to emphasize that this plan in either form would deny the taxpayer a deduction for federal income tax.

Conformity of income definition would involve subordination of the state's income tax policy to that of the federal government. The plan in either form is objectionable on the ground, among other things, that it involves farming out to the United States government the authority to determine Kentucky tax liability. This remedy would cause the state's general assembly to become even more formally subservient to the Congress than it already is. The present federal influence on Kentucky income taxation is so profound that there is doubt as to whether the actual effect would be greater under the suggested plan; but the revised approach would make the Kentucky tax revenue vary with the federal rather than inversely as now. Modifications in the federal law are based on changes in the demand for federal revenue and on other issues affecting national fiscal policies. The extent to which Kentucky revenue needs vary with or conversely with those of the federal government is questionable.

Although differences exist between federal and state laws, there are similarities, especially respecting concepts of net income. Permitting the federal Congress to establish the tax base would still allow the state to adjust revenue to needs by modifying tax rates and personal exemptions. It has therefore been suggested that the "loss of independence" is not too serious, especially when the resulting advantage of simplicity of compliance is considered.[25]

Numerous changes, as was illustrated above, have from time to time occurred in the federal income tax law. These suggest that any attempt by the Kentucky General Assembly under the biennial sessions to keep pace would be in vain. Experience indicates that state income tax laws enacted with provisions similar to the federal have not been revised in accordance with federal modifications, and to that extent they have failed to secure conformity. Although it is conceivable that states may define taxable income to conform with the federal

[25] J. K. Lasser, *State Income Tax Simplification in Vermont,* I NATIONAL TAX JOUR., 62-66 (March, 1948).

definition by using the same base as the federal law and amending the state law as federal modifications are made (constitutional obstacles being ignored), the record reveals little evidence that any state would do this in fact.

The alternative of imposing the state income tax on net income as used for federal income tax purposes may be accomplished in several ways. A state may adopt by reference the sections of the federal income tax law defining net income and impose the tax on such base. Two constitutional problems are involved directly affecting such a statute. First, in order that the adopted statute not constitute an improper delegation of legislative authority, the federal law would have to be already on the books. Thus, there is the problem of continued correlation as subsequent changes occur in the federal income tax law Second, the federal constitution now precludes state imposition of tax on income from federal instrumentalities. Thus, states desiring to employ the federal income concept could do so only with modifications.

Correlation of state and federal income tax bases was recently accomplished for the time being by the Vermont legislature. With a view toward simplification the legislature defined net income "as defined under the Internal Revenue Code in effect April 26, 1947, excluding (a) income which under such code is expressly exempted from taxation by the states, and (b) capital gains and losses. However, if the taxpayer so elects, net income for any taxable year means the same as net income, as defined under the laws of the United States in effect for such year, with the exclusions above noted."[26] The state sought to overcome possible unconstitutional delegation of legislative authority by providing the alternative tax base. This procedure provides only partial correlation of the tax bases.

In order that the statute providing conformity not constitute an improper delegation of legislative authority several states have resorted to a corporation excise tax measured by net income as defined by federal statutes rather than to a corporation income tax. Pennsylvania imposes such tax based on "net income for the calendar year or fiscal year as returned to and ascertained by the Federal Government."[27] In sustaining constitutionality, the court ruled that the tax was not an income but an excise tax and that the reference to the federal statute embodied a criterion for measuring tax and not the tax base itself.[28] Similar taxes applicable to corporations have been en-

[26] VERMONT STAT. chap. 43, sec. 932.
[27] Laws of 1949, Act No. 26.
[28] Commonwealth of Pennsylvania v. Warner Bros. Theaters, Inc., 345 Pa. 270, 27 A(2d) 62 (1942).

acted in Connecticut,[29] Massachusetts,[30] and Rhode Island.[31] The Kentucky income tax "partakes of the nature of an excise tax" but is not an excise tax.[32] Thus, to correlate the Kentucky income tax with the federal tax, as certain other states have sought to do, would apparently require rewriting as an excise tax. It is not clear whether this could constitutionally be done in the case of the personal tax.

Limiting deduction for federal income tax

The ill effects occasioned by differences in federal and state tax treatments of capital gains and losses might be ameliorated by utilizing an apportionment equation which would allow taxpayers to deduct only that portion of federal income tax payments incurred on income recognized as taxable by Kentucky Similar allocation formulas have been used by most states in taxing nonresidents and corporations. Kentucky uses a somewhat similar procedure in taxing nonresidents and certain corporations.[33] The Oregon income tax law provides a deduction for federal income taxes to the extent imposed on income subject to the Oregon income tax.[34] In complying with this provision, taxpayers having the same gross income for both state and federal tax purposes may deduct all federal income tax paid during the year. Taxpayers with different incomes determine the ratio of their state income to their federal income and take the same proportion of federal income tax paid during the year as a deduction for state income tax purposes.[35] Statutes of Alabama,[36] Georgia,[37], Idaho,[38] Minnesota,[39] North Dakota,[40] and Wisconsin[41] have similar limits applicable to the federal income tax deduction.

To effect a proportionate deduction for use in Kentucky the taxpayer would have to determine his net taxable income as reported for federal income tax purposes together with his federal income tax liability on such income. By dividing the income subject to the federal tax by the income (before deduction of federal tax) which is

[29] CONN. GEN. STAT., 1949, chap. 91, sec. 195a.
[30] MASS. GEN. LAWS chap. 63.
[31] R. I. GEN. LAWS chap. 37.
[32] Reynolds Metal Co. et al. v. Martin et al., 269 Ky. 378, 107 S.W (2d) 251 (1937).
[33] KY. REV. STAT. sec. 141.020 (2); *Income Tax Regulations,* art. 20-3 (nonresidents); KY. REV. STAT. sec. 141.120 (corporations).
[34] ORE. COMP. LAWS ANN. sec. 110-1611 (3) d.
[35] *Oregon Personal Income Tax Law and Regulations,* art. 611-3-f.
[36] ALA. CODE, title 51, sec. 385 (c) and 402.
[37] GA. CODE sec. 92-3109 as amended 1950.
[38] IDAHO CODE ANN. sec. 61-2413 and 61-2429.
[39] MINN. STAT. sec. 290.09, 290.10, and 290.18.
[40] N. D. REV. STAT. sec. 57-3822.
[41] WIS. STAT. sec. 71.04 (3) and 71.05 (4).

subject to the Kentucky tax, one obtains a quotient that equals the fraction of the federal income tax to be deducted. This procedure would result in a deduction for federal taxes actually paid in proportion to the income incurring Kentucky tax liability

A second, more complex method would be to disallow as a deduction federal tax attributable to income incurring no Kentucky liability This method would involve computing the federal tax applied only to income subject to the Kentucky tax to determine the allowable deduction. That is, the taxpayer would compute the federal tax attributable to the portion of income subject to the Kentucky income tax, and this amount would be the deduction for Kentucky purposes. This method would generally reduce the deductible amount as it would allow only the amount of income tax payable had the United States taxed only the income subject to the state imposition.

The effects of the two methods may be illustrated by the tax deductions allowed a single individual with no dependents having a $5,000 income plus a capital gain of $20,000 from the sale of real estate acquired in 1940.[42] This person would pay a federal income tax of $3,894.24. By calculating the amount of federal tax deductible for Kentucky income tax purposes according to the ratio of the income subject to state tax to that subject to federal tax, the deduction would be one-third of $3,894.24, or $1,298.08. The latter method would result in a deduction of $810.72 which is the federal income tax on the $5,000 taxable in Kentucky The $487.36 difference between the two deductions may be attributed to the highly progressive federal tax rates.

The second method adds to the compliance burden. However, under it no deduction would be permitted for federal taxes on income not subject to the Kentucky tax. In addition to simplicity the former method results in a deduction for a portion of federal income taxes attributable to subject matter not taxable in Kentucky The former method is utilized by several states in regard to resident taxpayers and by most states in computing nonresident and foreign corporation income tax deductions.

Eliminating the federal income tax deduction

The inequities of the existing situation could be rectified by eliminating the deduction for federal income tax and making appropriate rate reductions. Adoption of this approach would extend the state tax to income part of which is paid out as federal income tax. There-

[42] Calculations assume that the salary is derived from sources within Kentucky and that all deductions, except for federal income taxes paid and personal exemption, have been subtracted.

fore, incorporated in the suggestion is the downward adjustment of state rates to secure about the same yield. Of the 30 states (including the District of Columbia) imposing individual income taxes, 13, or 43 per cent, allow no deductions for the federal income tax[43] Of the 33 states (including the District of Columbia) now imposing corporation income taxes, 16, or 48 per cent, allow no deduction for federal income tax.[44] In general, states making extensive use of income taxation do not allow a deduction for federal income taxes. Indeed, in 1949, about 72 per cent of all state personal and corporate income tax revenue was collected by states which do not authorize the deduction.

Although elimination of the inequities already discussed may be sufficient to justify denying the deduction, other compelling considerations support the same policy

The utilization of the income tax as a revenue measure in Kentucky was regarded as an attempt to introduce a progressive element to the state tax structure. In effect, the deduction of federal income tax tends toward regressivity in the Kentucky tax. The allowance for the federal income tax is of much greater significance for the high-income than for the low-income taxpayers. The present law permits much larger percentage deductions for the former taxpayers than for the latter.

The revenue lost as a result of allowing a deduction for federal income tax must come from other sources. Alternative tax sources are, in general, more regressive than the income tax. That is, few other sources lend themselves toward providing a progressive element as does the income tax.[45]

Studies indicate that state income tax revenues in states which allow a federal income tax deduction vary inversely with the federal rates.[46] Substantial fluctuations in state income tax revenue occurring for no other reason than changes in federal income tax policy may be regarded as an unwholesome feature of the Kentucky income tax. Significant increases in federal income taxes are necessary during

[43] Arkansas, California, Delaware, Maryland, Massachusetts, Mississippi, New York, North Carolina, South Carolina, Vermont, Virginia, and Wisconsin (permits a deduction limited to 3 per cent of net income).

[44] Arkansas, California, Connecticut, Maryland, Massachusetts, Mississippi, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and Wisconsin (permits a deduction limited to 10 per cent of net income).

[45] If the rate readjustments are made, as the suggestion contemplates, this revenue consideration would be nullified.

[46] See Francis John Shannon, *Kentucky's Recent Income Tax Experience*, THE SOUTHERN ECONOMIC JOURNAL, XVI, No. 4 (April, 1950), 471-475, for a discussion of the effect of federal tax deduction on Kentucky income tax revenue, and John Chambers, *The New York State Personal Income Tax*, Special Report of the State Tax Commission, No. 16, 1948, p. 58, for a similar discussion related to New York.

war periods. Higher federal rates result in increased deductions in computing state income taxes, thereby decreasing state income tax revenue when the costs of state government may be rising.

The federal income tax, since 1913, has permitted varying exemptions, depending upon the number of dependents. Deductions in the form of tax credits or exemptions are incorporated in all state income tax laws at the present time. The allowance for such exemptions or credits, depending upon the number of dependents, is based, in part, on the principle that taxpayers with several dependents should have less income tax liability than those with the same income but fewer dependents. The tax credits allowed under the Kentucky income tax law are rendered partially ineffective when the deduction for the federal income tax is considered. Chart 2 reveals that a single person with no dependents and a $7,000 income incurs a Kentucky income tax liability of $146; a married person with the same income and no dependents, $183. Even though the statute prescribes a 100 per cent increase in the tax credits, presumably to decrease state tax liability of the married person as compared with the single person, the deduction for federal income tax offsets the extra tax credit and results in a 25 per cent greater tax liability for the married taxpayer. Thus, an allowance of a deduction for federal income tax paid during the year may have a greater effect than the allowance for tax credits for dependents. This is particularly true in the high-income brackets.[47]

The federal income tax law permits a deduction for state income taxes in the year such taxes are paid (i.e., state income taxes paid on the previous year's income).[48] The Kentucky law permits a deduction for federal income taxes paid during the taxable year for which the return is filed.[49] Thus, the deduction for the federal tax will decrease the state tax liability which will, in the next year, decrease the deduction in computing the federal income taxes.[50] The decreased deduction in federal income tax will result in higher federal income tax liability. The taxpayer thus has smaller and smaller deductions in computing the federal tax and larger deductions for the state tax. The vast difference between the federal and state rates suggests that the elimination of the federal income tax deduction would result in sizeable increases in state income tax revenues, largely at the expense of federal income tax revenue.

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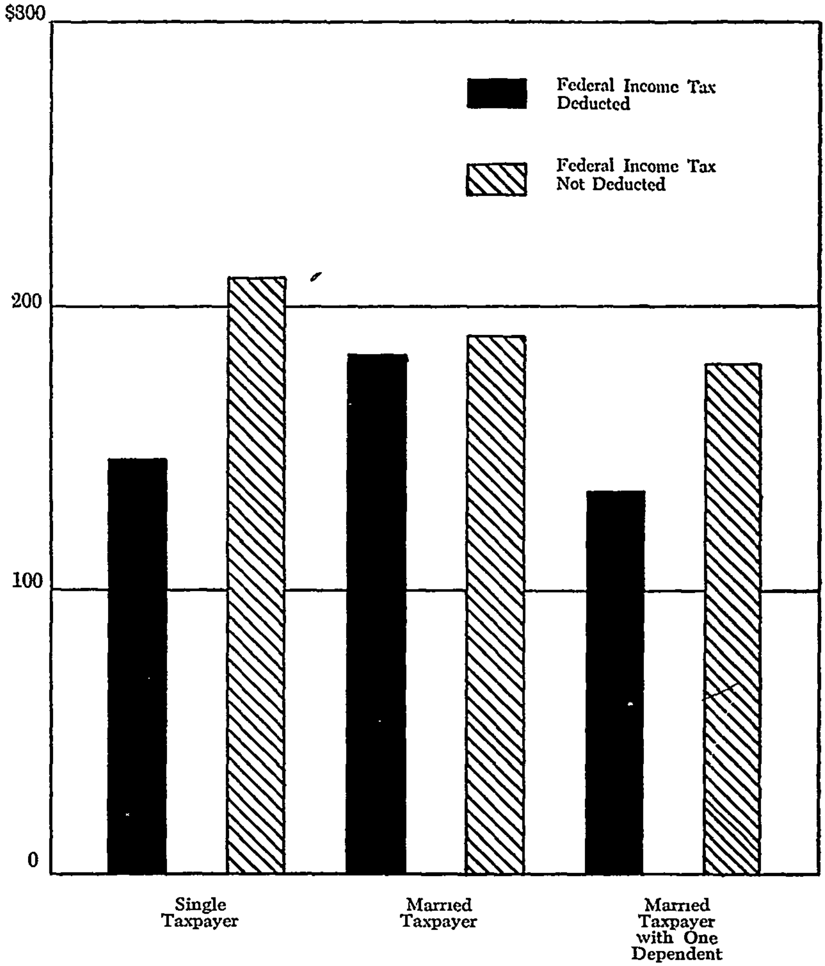
[47] See Chart 2.
[48] I. R. C., sec. 23 (c).
[49] KY. REV. STAT. sec. 141.080 (3) and *Income Tax Regulations*, art. 80-13.
[50] This effect on tax revenue is valid primarily for taxpayers operating on a cash basis.

CHART 2

KENTUCKY INCOME TAX LIABILITIES UNDER PRESENT LAW AND IF NO DEDUCTIONS WERE ALLOWED FOR FEDERAL INCOME TAX FOR VARIOUS TAXPAYERS EACH HAVING INCOME BEFORE FEDERAL INCOME TAX OF $7,000, 1950



If Kentucky should eliminate the deduction for federal income taxes, differences in tax treatment between the federal and state tax laws would not cause the excessive taxation of certain individuals and the improper revenue losses currently occurring. Elimination of the deduction would also cure the regressive effect of the deduction, the adverse effect on the yield of the income tax, the cumulative adverse effects on the state revenue over a period of years, and the questionable policy of permitting Congress in making national tax policy to determine the state income tax revenue.

CONCLUSIONS

There are significant diversities between federal and Kentucky income tax provisions applicable to capital gains and losses. The one probably causing most discrimination is Kentucky's exemption of capital gains and losses from assets held more than two years, combined with the policy of allowing a deduction of federal income tax. Other differences occur incident to varying provisions as to capital losses and as to gains and losses from liquidating dividends.

Alternative remedial tax policies would be (a) employing the same tax base as that used by the federal government, (b) allowing deduction of federal income taxes only to the extent incurred on income recognized by Kentucky, and (c) eliminating the deduction for federal income taxes. Experience in the several states and the District of Columbia, especially in jurisdictions making most serious use of income taxation, suggests that Kentucky eliminate the deduction for federal income taxes. The elimination of the deduction, besides correcting particular inequities, would also solve other problems arising out of the deduction.