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SOME COMMENTS ON THE TAX QUESTION.

The editor of the Journal has been good enough to offer me space for some comments called forth by criticisms of the report of the Kentucky Tax Commission which have appeared in several newspapers and which have been made in various personal letters and private conversations since the publication of that report. While only a few of these comments involve peculiarly legal questions, I gladly avail myself of his offer, for the readers of the Journal in common with all other citizens are vitally interested in the subject of taxation.

The Tax Commission had imposed upon it a task involving an attempt to solve three problems: First. The State's revenues at present lack nearly three-quarters of a million dollars annually of meeting current expenses and existing permanent appropriations. For a number of years now the Auditor's report has shown a bal-
ance in the red, and there are now outstanding several million dollars' worth of interest-bearing warrants—orders directing the Treasurer to pay out money when there is no money wherewith to pay—substantially cold checks. Increasing interest makes the annual deficit greater each year. While the amount of this floating indebtedness is not alarming, its form is discreditable. The debt ought to be paid off, but the annual deficit must be remedied.

Second. Constant complaints are heard of injustice in taxation. One piece of real estate is assessed at a fraction of its true value, another is actually sold for less than its assessment. In some counties where real estate which has remained in the same family for many years is assessed at say half its market value, a farm which is sold is assessed at 80% of the sale price, for the purpose of misleading the State Board of Equalization but to the great discomfiture of the new owner. In spite of the well known fact that there are great quantities of corporate stocks and bonds and other forms of intangible wealth owned in Kentucky, and legally subject to taxation, only trifling amounts are assessed, so that our so-called general property tax as at present administered amounts practically to a single tax upon real estate, coupled with a tax upon a few forms of tangible personality. The well known comparison between the revenue from intangible and the revenue from the dog tax, is too tragic to be funny. Furthermore, where land notes are taxed, although not technically double taxation, there is nevertheless taxation twice of the same value. For no credit is given in assessing the land on account of the incumbrance. The Tax Commission was expected and has attempted to find partial remedies for these injustices.

Third. It is claimed that Kentucky's tax system is a brake upon the wheels of industrial progress. Certain it is that our neighboring states, younger than Kentucky, poorer in natural resources, and having a citizenship no more intelligent, have outstripped us in business. The Tax Commission has tried to recommend measures which would attract manufactures and capital to Kentucky.

While these three aims can be separately stated, they are interrelated. If one object is achieved, that may help to accom-
plish the others. For example, there is no better way to increase the public revenue without raising either rate or assessment ratio than to increase the amount of property. The result can be increased by increasing the multiplicand while reducing the multiplier. There is in turn no better way to attract capital into the State and hasten its development than by holding out the assurance that taxation here will be just.

A failure to recognize the threefold object of the commission is the cause of some of the criticism of the report. One prominent citizen said to me the other day: "Why don't you just increase the tax rate twenty cents on the hundred dollars? That is simple and will accomplish your object." That would indeed accomplish the first object outlined above, but instead of promoting the second or third object, it would do the reverse.

Again the commission has been criticized for not recommending a reduction of the rate on banking capital below the rate paid by tangible property. Such a course would undoubtedly tend to encourage the increase of bank capital to the great advantage of business generally, but it would cut off revenue which cannot well be spared, tending to defeat the first object outlined above.

At this point it would be well to notice another criticism of the report in connection with banking capital. One critic claims that the provision exempting from local taxation, notes, accounts, bonds, and other choses in action which easily evade assessment will automatically exempt from local taxation shares of stock in national banks, although the bill itself expressly says that bank shares are to remain subject to local taxation. This criticism is based upon the idea that U. S. Rev. St., sec. 5219, would place national bank shares on the same basis as the more favored class of intangibles. It is true that under the doctrine of the celebrated case of McCulloch v. Maryland, since national banks are in a way agencies of the federal government, their shares can not be taxed by the States, except in the manner and to the extent authorized by Congress. Congress has expressly provided for such taxation but subject to two restrictions, one of which is that it shall not be "at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State." But this has
been construed to mean only that there must be no discrimination against national banks in favor of their competitors; State, commercial banks, saving banks, and private bankers. See Amoskeag Savings Bank v. Purdy, 231 U. S. 373, 34 Sup. Ct. 114, 58 L. ed. 274, and the cases there discussed. See also Raton First National Bank v. McBride, N. M. ---, 149 Pac. 353; Head v. Board of Review, ---, 152 N. W. 600; First National Bank of Nephi v. Christensen, 39 Utah 568, 118 Pac. 778. The bill proposed for Kentucky places banks, trust companies, and combined banks and trust companies incorporated under State laws upon the same basis in this matter as national banks. Private banking is prohibited by law in Kentucky. It follows that the provision proposed does not offend Section 5219 as construed by the courts and that the critic, who thought he had discovered a "joker" here, was mistaken.

Various persons have found fault with the commission for its failure to recommend a tax upon coal exported from the State. Without attempting to discuss the merits of such a measure, it is a sufficient answer to call attention to its unconstitutionality. U. S. Cons., Art. I., Sec. 10, provides that:

"No state shall, without the consent of the Congress, lay any imports or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the Treasury of the United States."

Other persons have wondered why the commission did not recommend an output tax upon all coal mined within the State in lieu of the property tax upon coal lands or in lieu of any property tax on such lands except upon the surface value. Such a plan would not offend the federal constitution and has proved a very satisfactory way of dealing with mineral properties in some other States, notably in Oklahoma. Our State Constitution, however, requires all property to be assessed at its fair cash value and subjected to an annual tax for State purposes, so that if we had an output tax it would have to be a sort of occupation license in
addition to the regular property tax, like the present license tax on rectifiers.

The subject of license taxes is expressly reserved by the report for further investigation and later recommendations. This makes it improper for me to discuss at this time the propriety of a license upon persons engaged in the occupation of mining coal, or to attempt to reply now to those who have criticized the commission for not recommending increases in saloon licenses and other increased or new licenses.

It is hardly worth while to notice those who have criticized the commission because, as they think, whiskey is assessed too low. The law leaves whiskey, like other stocks of merchandise, subject to taxation for both State and local purposes at the same rates as real estate. The assessment should, under the Constitution, be made at fair cash value, estimated at the price it would bring at a voluntary sale. The statute could not constitutionally prescribe any other standard. The present commission is not an administrative body; it has no assessing powers; it has no duties except to recommend needed changes in the statutes. If those officials who are charged with the duty of assessing whiskey at its fair cash value have not performed their duty properly (a matter concerning which I have not sufficient information to form an intelligent opinion); that is their fault, not ours.

Many persons have commented upon the omission from the report of any estimate of the amount of revenue which will be realized from intangible personal property if the proposed plan for dealing with such property is adopted. Second thought ought to tell such persons that an estimate of that sort must necessarily be largely guesswork. On a basis of the assessment as of September 1st, 1916, the total revenue derived from the intangibles which it is proposed to exempt from local taxation, including bank deposits, was $465,782.60, calculated at the fifty-five cent rate. This is almost exactly seven and one-half per cent. of the total State revenue from the property tax alone, without considering licenses, fees, the inheritance tax and other sources of State revenue. Everybody knows that this is ridiculously small. The ratio of bank deposits assessed to bank deposits owned is about
one to fourteen, as pointed out in a marginal annotation to the report. Using data compiled from thirteen typical counties as to the amount of mortgages recorded and making my best guess as to the average life of a mortgage, the proportion of mortgages really owned by banks and trust companies, and the amount owned by life insurance companies, building and loan associations and non-residents, I undertook to calculate the ratio of mortgage notes assessed to those legally taxable in the name of the owner. The result reached, one to ten, is, however, wholly unreliable on account of uncertainty as to the factors mentioned. Yet one who knows the ease with which the true ownership of a mortgage note can be concealed by letting the record stand in the name of a bank, trust company, or non-resident, and who knows the frequency with which such devices are used, will not doubt that the amount of mortgages legally taxable is several times the amount assessed.

In 1915, the total value of stocks and bonds assessed in the name of the owner was $10,257,006. Several investment brokers were asked to estimate the amount of such securities subject to taxation owned in Kentucky. The lowest estimate was $250,000,000, and investment brokers are in a better position to know than anyone else. Any attempt to estimate the amount of notes not secured by mortgage, of book accounts and of other intangibles would be pure speculation. Suffice it to say that a glance at the report of the State Board of Equalization will convince anyone that their assessed value represents but a small part of their actual value. If it would be mere speculation to attempt to name a figure which would be approximately the amount of the intangible personalty now legally subject to taxation, it would be rank guesswork to attempt to set a figure which would be approximately the amount of revenue received from that source under the proposed plan. This answers those who have asked why no estimate was made of the amount of revenue which will be produced.

It does not follow that the commission recommended the proposed change blindly or that the public are entirely in the dark as to how it will work. We know enough to assert that but a small fraction of such property has been assessed under the pres-
ent law. We know enough to assert that as long as such property is legally subject to taxation at the full rate for all purposes, the most drastic penalties and the most vigorous administration will accomplish practically nothing in securing the assessment of intangibles. We can back that assertion up with the experience of states like Ohio, where, in spite of an administrative system almost ideal, they are succeeding little better than Kentucky in getting such property on the assessment rolls. We know that in States which have tried the low rate on intangibles, such legislation as is proposed for Kentucky is invariably followed by an amazing increase in the total revenue from that source. The statistics as to results in those States were given such wide publicity during the discussion of the constitutional amendment ratified by the people in 1913 and 1915, that there is no occasion to repeat those figures here. Upon this information as to the facts in Kentucky and the experience of other States, one can with assurance predict that the State revenue from intangibles under the new plan will greatly exceed the revenue from intangibles for both State and local purposes under the present law. When one is sure of that, he knows enough to decide whether that change should be made.

By increasing the revenue from intangibles, the proposed plan will help to achieve the first object outlined at the beginning of this paper. It will also help accomplish the second and third objects. Greater revenue from intangibles will bring about a closer approximation to justice as between the owners of such property and the owners of real estate, for real estate now bears much more than its fair share of the burden of taxation. A more nearly complete assessment of intangibles will bring about a closer approximation to justice as between the owner of such property who has been evading assessment and the few less fortunate, more ignorant, or more honest owners of such property, who have been paying all the taxes heretofore derived from intangibles. The new plan will in part remedy the injustice of taxing both the mortgage or vendor's lien note and the land encumbered. The borrower has been bearing the burden of a higher interest rate by reason of local taxes paid on the note by the
lender or more often by reason of the lender’s fear that he might get caught and have to pay the high tax. No one seems to doubt, at least no one has expressed a doubt, that the proposed plan for taxing intangibles will encourage the influx of capital and the development of business.

A few farmers and “friends of the farmer” have expressed a fear that the power proposed to be given to the permanent tax commission or central tax board, would result in a greatly increased assessment of farm lands. The proposed law does provide for the assessment of all property at its fair cash value. So does the present law, so must any law under our State Constitution. But there is less reason for supposing that the proposed central board would undertake to make violent increases in the assessments of farms, than for supposing that the present State Board of Equalization will take a sudden notion to make violent raises on real estate. Indeed, unless the system is revised or the tax rate increased, there is no way out of the State’s financial mess except for the Board of Equalization to do something of that sort. They have the same power to increase assessments as it is proposed to give to the new tax commission. The great difference is that they have not the same opportunity to use that power in such a way that the increased assessment will fall upon property heretofore omitted and undervalued, instead of falling uniformly upon all property assessed and missing altogether property not already assessed.

It will not do to conclude from the space which has been given here to commenting upon adverse criticism, that the adverse criticism predominates. Most of the discussion of the report has been favorable. It would, however, be unbecoming for me to dwell upon that or do more than express gratitude for the many kind words which have greeted our work from the press, from hundreds of individual citizens, and from distinguished tax experts outside of Kentucky. These favorable opinions and the fact that adverse opinions are based upon easily demonstrable misconceptions, strengthen the hope that Kentucky will soon have a tax system as sound in principle and as satisfactory in practice as that of any State in the Union.

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