Prospects for Income Tax Law

The prospect of ratification by the required number of state legislatures of the proposed sixteenth amendment to the federal constitution, providing for an income tax, is growing brighter daily. Only four states have rejected the proposal and of these the most powerful (New York) is giving signs of an inclination to reverse its former attitude. Governor Dix has expressed unequivocal approval of the measure and has announced that he will work for its ratification. On January 25 a concurrent resolution committing the state to the proposed amendment was reported favorably by the senate judiciary committee. When the amendment was up last May the senate adopted the Davenport resolution favoring the income tax, by a vote of twenty-six to twenty. It was defeated in the assembly by a small majority. New York's action by no means is irrevocable, and if the matter should come to a vote once more the governor's influence might avail to throw it into the progressive column.

With the changed complexion of other legislatures, moreover, the classification of states which were regarded as hostile or apathetic probably will require revision. Alabama, which was one of the few southern states originally regarded as doubtful on account of the enormous influence exercised there by New York capital, ratified the income tax last July after a spirited struggle which occupied the lower house for almost a week. New Hampshire, which was bracketed with the other New England states as opposition territory, was urged to favorable action by Governor Bass in a special message. On January 25 last the lower house passed an income tax resolution by a viva voce vote and sent it to the senate.

The new year has brought active support by a number of other assemblies. On January 20 the Ohio house of representatives concurred in the action of the senate, adopting a favorable resolution by a vote of 100 to 3. The first measure to be passed by the Michigan senate was such a resolution. It is now pending in the house. The senates of North Carolina and Kansas have approved the measure. The Arkansas house of representatives favored the amendment by a vote of eighty to three. Illinois last year enjoyed the distinction of being the first northern state to express its approval; there was so little opposition that the resolution passed the house almost without debate.

The present alignment of states in which both senate and house have acted follows:

FOR

Alabama	Mississippi
South Carolina	Ohio
Georgia	Oklahoma
Illinois	Oregon
Kentucky	Texas
Maryland	

AGAINST

Louisiana	New York
Massachusetts	Rhode Island

Ratification by three-fourths of the states must be obtained if the amendment is to be adopted. Twelve states ignoring or rejecting it will prevent it from becoming a law.

In view of the fact that ratification or rejection of the proposed amendment is regarded generally as the most important single measure which confronts legislatures at this time, a brief review of its more immediate history may not be untimely. The amendment is designed to dissolve certain restrictions on the taxing power of the federal government, contained in sections two and nine of article one of the constitution, which reads as follows:

Article 1, section 2—Representatives and direct taxes shall be apportioned among the several states which may be included within this union according to their respective numbers, etc. (Amended, but not in this respect by the Fourteenth amendment.)

Article 1, section 9—No capitation or other direct tax shall be laid unless in proportion to the census or enumeration before directed to be taken.

Direct taxes, then, under the reading of the constitution, must be laid in proportion to population. In 1895 an income tax law which was incorporated in the Wilson tariff measure of 1894 came before the supreme court in the case of Pollok vs. the Farmers' Loan and Trust company. The case was heard twice. On the first hearing the court decided, two judges dissenting, that a tax on incomes derived from real estate must be regarded as a direct tax, because a tax on real estate itself would be a direct tax. The judges divided equally on the question as to whether a tax on incomes derived from personal property should be regarded as a direct tax and apportioned. On the second hearing, however, the court decided by a vote of five to four that such tax must be regarded as a direct tax. The effect of the decision was to leave the tax in full force so far as it related to incomes derived from business and occupations of whatever sort, while exempting landlords and bondholders.

The practical effect of this decision, which rendered the act odious to the mass of the people, was to make it inoperative. It was recognized at once that its purpose had been defeated and there was an immediate clamor for its repeal. Justice Harlan, who prepared a dissenting opinion, said:

"In its practical operation this decision withdraws from national taxation not only incomes derived from real estate, but the personal property of the whole country—personal property, bonds, stocks, investments of all kinds, and the income that may be derived from such property. This results from the fact that under the decision of the court such incomes cannot be taxed otherwise than by apportionment among the states on the basis simply of population. No such apportionment can possibly be made without doing monstrous, wicked injustice to many for the benefit of the favored few in particular states. Any attempt upon the part of congress to apportion taxation of incomes among the states, upon the basis of their population, would and properly ought to arouse such indignation among the free men of America that it would never be repeated. The majority opinion practically decides that without an amendment to the constitution such incomes can never be made to contribute to the support of the national government."

The evil to be remedied by the proposed amendment, which was introduced into congress in the summer of 1909, was the disability of the national government to collect taxes on real estate and personal property which resulted from the supreme court decision of 1895. The amendment reads:

Article 16—The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states and without regard to any census or enumeration.

It was rumored that powerful interests were conspiring to insure the defeat of the measure. Opposition was concentrated in New York and Massachusetts. The opponents received support from an unexpected source when former Governor Hughes objected to the income tax on state's rights grounds. While admitting that the United States ought to have the power to lay an income tax without apportionment, he contended that such a measure as that proposed would place states and municipalities "at the mercy of the federal taxing power," and thus impair their borrowing power.

This ingenius argument was met by many able constitutional lawyers, including Senators Root and Borah, and it is interesting to note that Justice Harlan, in his first dissenting opinion, had touched upon that phase.

"I am of the opinion," he said, "that under numerous decisions of this court the interest or income derived from bonds issued by a municipal corporation of a state is not the subject of specific taxation in any form or for any purpose by the United States any more than the interest or income directly derived from state bonds is the subject of national taxes. The states cannot tax the instrumentalities of the United States nor can the United States tax the instrumentalities of the state. * * * Under the decisions of this court the United States cannot by any form of taxation impose burdens on the instrumentalities employed by the states in execution of the powers lawfully committed to them."

Senator Root cited Judge Cooley's authoritative work on constitutional law, in which the author, summarizing his argument to the effect that the federal government cannot tax the instrumentalities of the state, says: "The taxing power of the federal government does not, therefore, extend to the means or agencies through or by the employment of which the states perform their essential functions, etc."

"This rule or construction," said Senator Root, "has been maintained for generations. Under it, from the earliest times of our government, the apparently unlimited taxing power conferred by the terms of the constitution has been held not to apply to the instrumentalities of the state. Under it acts of congress, which by their express terms appeared to include instrumentalities of state governments, have uniformly been held not to include them. This uniform, long-established and indisputable rule, applied to the construction of our constitution—a rule which has been declared to be essential to a continuance of our dual system of government—forbids that the words of the instrument conferring the power of taxation shall be deemed to apply to anything but the proper subjects of national taxation. Under it we are forbidden to apply the words 'from whatever source derived' in the proposed amendment to any of the instrumentalities of state government."

Turning to the practical phase of the issue, Mr. Root urged ratification of the New York resolution in these terms:

"The circumstances that originally justified the establishment of the rule of apportionment have long since passed away. It is universally conceded that its application would be so unjust and inequitable as to be impossible. The power of taxation which the rule makes it impossible for the nation to exercise may be again, as it has once been (during the civil war) vital to the preservation of national existence. It would be most unfortunate if the several states of the union were to insist upon the continuance of this unjust and useless limitation upon the necessary powers originally and wisely granted to the national government."

Senator Borah, charging in a powerful speech that there was a plan to defeat the amendment, concluded his appeal for its adoption by saying:

"The scheme and plan is to defeat this amendment. Having as a legislative body declared our acceptance of this construction of the constitution (that delivered by the supreme court in 1895), thereby making it practically impossible again to appeal to the courts, now if this amendment can be defeated, this government of the people, for the people and by the people will stand alone among the civilized nations of the earth, shorn of the power to divide the burden of government between consumption and the various forms of wealth."

Although arguments by constitutional lawyers have been accorded respectful hearing by the press and the legislatures, the question generally has been discussed by both on grounds which are not technical. The importance of providing the federal government with a means of distributing a tax, in time of need, more equitably than can be done under the present constitutional restrictions has been the main consideration.

Alabama was the first southern state to take favorable action. It was followed by South Carolina. No question of "state rights" was raised in either assembly. The matter was regarded as a practical one and was so dealt with. Louisiana rejected the proposal, but this was ascribed largely to the influence of eastern capital.

In the northern states of the west and middle west the majorities in favor of an income tax have been large. In Illinois the senate ratified it by a vote of 40 to 0, the house concurring by a vote of 80 to 8. The vote in the Ohio house has been given. Oregon showed a similar strength in support of the measure. The sentiment of such states as Michigan, Kansas, Wisconsin, etc., is not a matter of doubt.—Chicago Record-Herald.

CUTTING DOWN SALARIES

The big corporations are beginning to cut down salaries. It is a wise move. There is no sense in paying presidents of banks, insurance companies, and other large corporations the princely salaries they have been receiving. The steel corporation has reduced the president's salary from $100,000 to $50,000, and with Paul Morton's death the salary of the president of the Equitable comes down from $80,000 to $50,000. Retrenchment seems to be the order of the day.

If the Lorimer whitewash goes through the people will be justified in concluding that they have overestimated the character required for the senate.