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Florida Taxation: A State in Chains

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FLORIDA TAXATION: A STATE IN CHAINS

RICHARD J. HORWICH*

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The need for flexibility is clearly evident. Unless state governments can and will adapt themselves to changing economic and social environments, their importance in the total structure of American government will diminish. Certainly the experiences of these last three decades have demonstrated that the focus of power moves to that level of government which has fiscal capacity to act, and which does act. One of the clear lessons from the "failure" of state and local governments during the economic depression of the 1930's is that the people tend to rely upon the unit of government which produces the services they need and want.¹

I. INTRODUCTION

A steep increase in state and local government expenditures is almost inevitable.² This is an ongoing trend which has already produced fiscal crises in many states.³ Election promises to "hold the line" or "trim the fat" are understandable in light of the "tax mortality" of governors,⁴ but increased needs are real⁵ and the only way to reduce

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1. Landers, *Constitutional Provisions on Taxation & Finance*, 33 STATE GOV'T 39, 40-41 (1960).

2. Ecker-Racz, *State Taxes for the 1970's*, 39 STATE GOV'T 14-15 (1966); MAXWELL, *FINANCING STATE & LOCAL GOVERNMENTS* 19-23 (1965); Anderson, *Can the State Live on Crumbs?*, Saturday Rev., Jan. 9, 1965, p. 31. These sources indicate that state and local expenditures may double each ten-year period and may even exceed federal spending within another decade, depending on international developments. They tend to be confirmed by recent news that 1965 state and local tax collections exceeded those of the preceding year by 8.2 per cent, increasing from 49.8 to 53.9 billion dollars. 44 TAXES 360 (1966).

3. E.g., Myers & Stout, *The Changing Pattern of State Tax Systems: Pennsylvania, New Jersey, Indiana, Michigan & Wisconsin*, 1964 NAT'L TAX A. PROC. 198-99.

4. Anderson, *supra* note 2, at 31; Senior Scholastic, April 1, 1965, p. 12.

5. VIEG ET AL., *CALIFORNIA LOCAL FINANCE* 101-03 (1960) (special significance of increasing teachers' salaries).

costs substantially would be to adopt a different set of values regarding the obligation of society to help its less fortunate members."⁶

Tax resources, like the economy itself, have become national rather than local,⁷ so it is not surprising to find a vast growth in federal grants to state and local government, coupled with substantial pressure to increase that assistance by leaps and bounds.⁸ But massive federal aid casts a shadow over the whole system of federalism.⁹ Of the possible varieties of increased federal support,¹⁰ a likely choice is a credit against the federal income tax for state taxes, so as to recognize the efforts of each state to tax its own citizens.¹¹ Thus, state and local governments should not rely on federal funds to meet growing needs.

Other non-tax revenues must be mentioned. User charges for some public services could be increased, such as downtown parking,¹² but user charges are appropriate only in the narrow area where there is a direct benefit of measurable value and only in small amounts for which the ability to pay may be assumed.¹³ State lotteries are of wide current interest for "escapists" from the problems of fair and adequate taxation.¹⁴ Reliance on such a means of raising revenue seems both improbable and undesirable.¹⁵ More likely, the bulk of increasing state and local needs must be met by taxation, as they are now.¹⁶

On an overall basis, Florida's efforts to use its tax resources do not appear unusually good or shockingly poor.¹⁷ Yet, a recent survey

6. *Id.* at 101. Federal, state and local tax funds already pay more than half of hospital care and nearly one-third of other medical services for all New York City families. Piore, *Metropolitan Medical Economics*, Sci. Am., Jan. 1965, p. 19. On the other hand, as of June, 1963, Florida was one of the minority of states placing a dollar limit on aid to families with dependent children and, of the states with limits, Florida has set the lowest ceiling on aid to each family unit. Sparer, *Social Welfare Law Testing*, Practical Lawyer, April 1966, p. 13, at 21.

7. Ecker-Racz, *supra* note 2, at 17.

8. See Anderson, *supra* note 2. During the fiscal year ended June 30, 1965, Florida state revenues included about 850 million dollars in taxes and about 232 million dollars in federal aid. FLORIDA COMPTROLLER, FLORIDA TAXES & EXEMPTIONS, 1965-1966, at 18-19.

9. Ecker-Racz, *supra* note 2, at 17; quotation in text accompanying note 1 *supra*.

10. See Anderson, *supra* note 2.

11. N.Y. Times, Feb. 6, 1966, p. 1, col. 1 (recent recommendations of the federal Advisory Commission on Intergovernmental Relations [hereinafter referred to as ACIR]).

12. Prentice, *The Great Urban Tax Tangle*, Fortune, March, 1965, p. 106, at 195-96.

13. VIEG ET AL., CALIFORNIA LOCAL FINANCE 210 (1960). Also, the cost of administration must be low. *Ibid.* Pricing benefits is appropriate for business regulation and inspection, not for welfare functions. Chatters, *New Money for Cities*, 50 NAT'L CIVIC REV. 298, 303 (1961). Official fees not based on the value of the services are really taxes. 1 COOLEY, TAXATION 108-10 (4th ed. 1924). Compare *Finlayson v. Conner*, 167 So.2d 569 (Fla. 1964).

14. New Hampshire is the principal exponent; it has neither a sales tax nor an income tax and sells close to ninety per cent of its lottery tickets to out-of-staters. Time, April 1, 1966, p. 80; see American City, July, 1963, p. 7.

15. Rosen & Norton, *The Lottery As a Source of Public Revenue*, 44 TAXES 617 (1966). It has been called "the most extreme form of 'sucker finance.'" SLY, TAX ASSETS & TAX POLICIES IN FLORIDA 2 (1964).

16. ACIR, MEASURES OF STATE & LOCAL FISCAL CAPACITY & TAX EFFORT 1 (1962).

17. *Id.* at 75-77.

concluded that "its present tax structure in its present condition will not rise to its expanding requirements in either quantity or quality of service."¹⁸ Reapportionment and urban domination of the Legislature do not solve this problem automatically. It is necessary to examine the opportunities open to the Legislature to raise needed funds by changes in Florida taxation.

To a large extent, the Florida Legislature will find itself tied hand and foot.¹⁹ Many of these fetters have been imposed by the people of the state and are imbedded in the Florida Constitution; with respect to these, the Legislature can only initiate the desirable changes. Other limitations stem from acts or omissions of earlier Legislatures and can be remedied by statute. This study, however, will group the problems as state, or as local, rather than according to whether the barriers are constitutional or legislative.

II. STATE TAXATION

A. *The Income Tax*

"No taxes . . . upon the income of residents or citizens of this State shall be levied by the State of Florida, or under its authority, . . ."²⁰ Only Florida has such a constitutional prohibition.²¹ Many states, however, have or had a constitutional requirement of "uniform and equal" taxation; in some of these states it has been held applicable to income taxes, barring any income tax except a strictly proportional tax without graduated rates or minimum exemptions.²² Florida has a constitutional imperative of "uniform and equal" taxation,²³ but, in the face of the express ban against any income taxation, the Florida courts have not had to decide whether or not an income tax must be precisely proportional. To grant the Legislature full power in the area of a state income tax, therefore, it would be best to modify or eliminate the "uniform and equal" clause as well as repealing the specific ban against income taxation.²⁴ (No attempt is made here, however, to decide for the Legislature "the uneasy case for progressive taxation.")²⁵

18. SLY & FRANK, *BUSINESS TAXES IN FLORIDA* 39 (1964).

19. Such limitations, although criticized severely in this and other studies, are not peculiar to Florida. Morrow, *State Constitutional Limitations on the Taxing Authority of State Legislatures*, 9 NAT'L TAX J. 126 (1956); ACIR, *STATE CONSTITUTIONAL & STATUTORY RESTRICTIONS ON LOCAL TAXING POWERS* (1962).

20. FLA. CONST. art. IX, § 11.

21. NEWHOUSE, *CONSTITUTIONAL UNIFORMITY & EQUALITY IN STATE TAXATION* 32, 744-45 (1959); INDEX DIGEST OF STATE CONSTITUTIONS 1021-22 (2d ed. 1959).

22. NEWHOUSE, *op. cit. supra* note 21, at 690-766; HELLERSTEIN, *STATE & LOCAL TAXATION* 39-43 (2d ed. 1961).

23. FLA. CONST. art. IX, § 1.

24. NEWHOUSE, *op. cit. supra* note 21, at 765-66.

25. See generally BLUM & KALVEN, *THE UNEASY CASE FOR PROGRESSIVE TAXATION* (1953).

Is there a place for a state income tax in Florida? Around the turn of the century, Professor Seligman effectively urged the taxation of income as the best measure of the ability to pay.²⁶ Income is an especially significant element in describing potential tax resources in Florida today.²⁷ But in 1924 the Florida Constitution was amended to prohibit income taxation, as described above, and Florida has become a "sales and excise tax state."²⁸ Consequently, evaluation of the income tax raises the same question in Florida that it does in so many states: How does an income tax compare with a sales tax?²⁹

One issue, although of doubtful relevance to equity, is of extreme practical importance to legislators—voter acceptability. It appears that the same amount of revenue can be extracted from the taxpayers with far less complaint by the relatively concealed burden of the sales tax than by the obvious burden of the income tax.³⁰

On the other hand, the burden of the sales tax, although substantially concealed, clearly rests on the consumer.³¹ This gives rise to the most serious criticism of sales taxation; it is regressive because the burden is allocated according to consumption expenditures and people in low-income classes spend a larger proportion of their income on such taxed items than people with larger incomes, who can retain savings and invest them in non-taxable transactions.³² As the leading student of sales taxation explains, it is less fair than the income tax because it penalizes those whose circumstances compel them to spend comparatively higher percentages of their income, such as taxpayers with many dependents.³³ In reply, it can be pointed out that steeply progressive federal income taxes result in an overall tax burden that is roughly proportional for annual incomes up to about fifteen thousand dollars and progressive above

26. SELIGMAN, *THE INCOME TAX* (2d ed. rev. 1914).

27. "Income is the best single measure of tax capacity, . . ." SLY, *TAX ASSETS & TAX POLICIES IN FLORIDA* 6 (1964).

28. *Id.* at ii.

29. The issues discussed in the text, other than those peculiar to Florida, are based on the summary in MAXWELL, *FINANCING STATE & LOCAL GOVERNMENTS* 100-03 (1965). If all the states were to act in unison, the comparison might clearly raise issues important to the overall national economy and not treated in this study. See generally SHULTZ & HARRISS, *AMERICAN PUBLIC FINANCE* 169 (8th ed. 1965); DUE, *GOVERNMENT FINANCE* 251 (3d ed. 1963); both note the influence of KALDOR, *AN EXPENDITURE TAX* (1955). Yet, the significance of comparing savings or investment results has been challenged. Goode, *Income, Consumption & Property as Bases of Taxation*, 52 *AM. ECON. REV. PAPERS & PROC.* 327 (1962).

30. MAXWELL, *op. cit. supra* note 29, at 100-01.

31. OSTER, *STATE RETAIL SALES TAXATION* 3 (1957).

32. MAXWELL, *op. cit. supra* note 29, at 96.

33. DUE, *SALES TAXATION* 39-40 (1957). There is still substantial current debate about this view, particularly in light of sophisticated new concepts of "income." For a summary, see the following series of articles in *NAT'L TAX J.*: Morgan, *Reappraisal of Sales Taxation: Some Recent Arguments*, vol. 16, p. 89 (1963); Davies, *A Further Reappraisal of Sales Taxation*, vol. 16, p. 410 (1963); Morgan, *A Comment on "A Further Reappraisal of Sales Taxation,"* vol. 17, p. 418 (1964).

that.³⁴ However, the likelihood of state and local taxation soon pulling far ahead of federal taxation threatens increasingly regressive distribution of tax burdens.³⁵

Another issue is revenue stability. Income tax revenues expand and contract with business cycles while sales tax revenues are more stable, avoiding the problems of state and local borrowings to cover deficits during bad times. By the same token, income taxation is elastic enough to keep up with the growth of the economy without change in rate or base while new state and local spending requires rate hikes or increased bases for sales taxes, as well as for the other primary state and local revenue source, the property tax.³⁶ Some areas in the United States already pay a combined state and local sales tax rate of six percent, and previous expert estimates that even much smaller rates would be reduced have proved thoroughly wrong.³⁷

Administration costs may be slightly lower for the income tax and the burden of compliance less centered on the business community.³⁸ State income tax administration could lean heavily on the federal tax system with proper cooperation and state laws.³⁹ The cooperation, as is well known, has been forthcoming, but state income tax laws have varied widely from the federal provisions, partly because of state constitutional limits (and any Florida constitutional amendment should permit incorporation by reference of the Internal Revenue Code and, automatically, of all changes adopted by Congress).⁴⁰ Sales tax admin-

34. Bishop, *The Tax Burden by Income Class, 1958*, 14 NAT'L TAX J. 41 (1961). Perhaps this is the basis of Dr. Sly's report that Florida emphasizes proportional taxation. SLY, *TAX ASSETS & TAX POLICIES IN FLORIDA* iii (1964); otherwise it may be more of a hope than a fact.

35. Ecker-Racz, *State Taxes for the 1970's*, 39 STATE GOV'T 14 (1966). Higher social security taxes may be a regressive factor. Aaron, *Rate Progressivity & the Direct Taxation of Personal Income*, 44 TAXES 497 (1966).

36. MAXWELL, *op. cit. supra* note 29, at 22-23, 103.

37. House Comm. on Judiciary, Spec. Subcomm. on State Tax of Interstate Commerce [hereinafter referred to as Spec. Subcomm.], 3 *State Taxation of Interstate Commerce*, H.R. REP. NO. 565, 89th Cong., 1st Sess. 611-13 (1965).

38. MAXWELL, *op. cit. supra* note 29, at 102.

39. PENNIMAN & HELLER, *STATE INCOME TAX ADMINISTRATION*, ch. IX (1959). Even Professor Seligman originally favored income taxes only at the federal level, but he changed his mind after adoption of the federal tax on the grounds that state tax administration had improved and that reliance on federal returns would materially help state administration. SELIGMAN, *ESSAYS IN TAXATION* 650-52 (10th ed. rev. 1925).

40. PENNIMAN & HELLER, *op. cit. supra* note 39; Spec. Subcomm., 1 *State Taxation of Interstate Commerce*, H.R. REP. NO. 1480, 88 Cong., 2d Sess., chs. 8, 17 (1964). To resolve disputes about state and local taxation of interstate commerce, a special House subcommittee has proposed, among other things, that state and local income taxation of interstate corporations be required to use the federal base with only a few types of deviations permitted. Spec. Subcomm., 4 *State Taxation of Interstate Commerce*, H.R. REP. NO. 952, 89th Cong., 1st Sess. 1158-61 (1965), incorporated in H.R. 11798, 89th Cong., 1st Sess. (1965).

istration also requires a variety of reforms,⁴¹ but there is no corresponding federal system to look to for assistance.⁴²

Perhaps the determinative issue is the effect of high federal income taxes; it is argued that the cumulative burden of two income taxes will induce persons with high incomes to leave the state.⁴³ Sales taxation may be uniquely useful in a federal system where one level of government has pre-empted income taxation.⁴⁴ But the very fact of regression in state taxation discourages the reduction of federal taxes to make room for state and local levies.⁴⁵ Indeed, a recent recommendation of the Federal Advisory Commission on Intergovernmental Relations is that there be a federal income tax credit, of about 40 per cent perhaps, for state income taxes; the proposal is that any state without an income tax should adopt one since only the elastic income tax can keep abreast of rising state and local expenditures.⁴⁶ This would be economic coercion, and Florida has surrendered to similar pressure once before, in connection with the death tax.⁴⁷

Although it is said that there is no basic pattern of state sales taxation, the Florida sales tax seems to have little that is unique in the way of defining base or granting exemptions.⁴⁸ There is a possibility that sales taxation is unusually useful to Florida as a way of allocating some of the tax burden to tourists (if that is a wise thing to do).⁴⁹ On the other hand, there are certain penalties Florida's tax system pays for the absolute prohibition of income taxation, despite the chosen emphasis on sales and other taxes.

For example, the Florida intangible tax cannot reach the life estate of a Florida beneficiary in an out-of-state trust unless the beneficiary

41. DUE, *STATE SALES TAX ADMINISTRATION*, ch. XII (1963).

42. *But see* Spec. Subcomm., 4 *State Taxation of Interstate Commerce*, H.R. REP. NO. 952, 89th Cong., 1st Sess. 1183-87 (1965), incorporated in H.R. 11798, 89th Cong., 1st Sess. (1965). A voluntary model sales tax law is proposed for states wanting to participate in broader sales taxation of interstate sellers. However, it is not comprehensive; for example, the question of what services to tax is left open, and that is a major contemporary issue in state sales taxation. Conlon, *Some Tax & Revenue Problems of the States*, 33 *STATE GOV'T* 114, 115-16 (1960).

43. MAXWELL, *op. cit. supra* note 29, at 101-102.

44. DUE, *SALES TAXATION* 40-41, 387 (1957) and, later, *GOVERNMENT FINANCE* 301-02 (3d ed. 1963).

45. Anderson, *Can the State Live on Crumbs?*, *Saturday Rev.*, Jan. 9, 1965, p. 31, 32-33.

46. *N.Y. Times*, Feb. 6, 1966, p. 1, col. 1.

47. *Florida v. Mellon*, 273 U.S. 12 (1927) (federal death tax credit upheld); FLA. CONST. art. IX, § 11 (amended in 1930 to permit use of federal death tax credit).

48. See generally Spec. Subcomm., 3 *State Taxation of Interstate Commerce*, H.R. REP. NO. 565, 89th Cong., 1st Sess. ch. 21 (1965).

49. SLY, *TAX ASSETS & TAX POLICIES IN FLORIDA* 7 (1964). *But see* SLY & FRANK, *BUSINESS TAXES IN FLORIDA* 6 (1964) (tourism "subject to rapid and extreme reversals"); MAXWELL, *op. cit. supra* note 29, at 103 ("guess that the net amount of tribute is exaggerated"); Cartwright, *The Washington Tax Structure as Viewed by the Consumer*, 39 *WASH. L. REV.* 1000, 1008 (1965) (better handled in other ways).

has some sort of power over disposition of the principal, the bare right to income being exempt.⁵⁰ The solution to this and other intangible tax problems may well be to replace that tax with an income tax.⁵¹

An entirely different sort of limitation affects the interesting value-added tax developed in Europe; this tax is typically imposed at manufacturing and wholesale levels (and sometimes retail, too) upon the difference between the selling price and the cost of materials purchased, *i.e.*, it falls on wages, rent, interest and profits.⁵² From an economist's viewpoint, it is essentially an improved version of a manufacturers' sales tax,⁵³ but Florida, a sales tax state, cannot safely experiment with supplementing (or replacing) its retail sales tax with a value-added tax because the only such tax in the United States is the Michigan business activities tax, which has been held to be an income tax.⁵⁴

Finally, Florida is one of the sales tax states that exempts groceries, thus making the sales tax much less regressive.⁵⁵ Every fiscal crisis poses the dilemma of raising the rate or ending the equitable exemption.⁵⁶ Far better than the broad exemption, which benefits the rich more than the poor, is an annual fixed per capita sales tax credit; the best way to handle this, since the sales tax is not remitted by the consumer, is by an Indiana-type credit against an annual income tax.⁵⁷ That Florida cannot unwind its Gordian knot in this fashion is, perhaps, the most ironical by-product of its inflexible constitutional ban against income taxation.

In the last analysis, such inflexibility is the gist of the problem.⁵⁸

50. *Compare* Mahan v. Lummus, 160 Fla. 505, 35 So.2d 725 (1948) (no tax despite trustee's power to invade for emergency), *with* Hexter v. Gautier, 153 So.2d 713 (Fla. 1963) (conditional power to appoint subject to tax). See also [1959-1960] FLA. ATT'Y GEN. BIENNIAL REP. 402, indicating that the power to revoke may not be taxable if consent of any other person is required.

51. SLY & FRANK, BUSINESS TAXES IN FLORIDA 37-38 (1964).

52. Norr, *Sales Taxes in Europe & Canada* in REPORT OF 1962 NATIONAL TAX CONFERENCE OF CANADIAN TAX FOUNDATION 243-253 (1963); Shoup, *Theory & Background of the Value-Added Tax* in 1955 NAT'L TAX A. PROC. 6.

53. Norr, *supra* note 52, at 270-71.

54. *Armco Steel Corp. v. Commissioner*, 359 Mich. 430, 102 N.W.2d 552, *appeal dismissed*, 364 U.S. 337 (1960).

55. DUE, SALES TAXATION 25-29 (1957); Davies, *The Relative Burden of Sales Taxation: A Statistical Analysis of California Data*, 19 AM. J. ECON. & SOC. 289 (1960); MAXWELL, *op. cit. supra* note 29, at 96-97. Professor Due suggests that the "food exemption may become almost imperative" if revenue needs require high rates. DUE, *op. cit. supra*, at 377.

56. SLY, TAX ASSETS & TAX POLICIES IN FLORIDA 30 (1964); SLY & FRANK, BUSINESS TAXES IN FLORIDA 49-50 (1964). The latter authority estimates that eliminating the food exemption would have produced sixty million dollars revenue for Florida and asserts that the change "would make little difference in the budgets of low income groups"; this seems rather harsh, even at present low rates.

57. DUE, SALES TAXATION 378-80 (1957); Ecker-Racz, *State Taxes for the 1970's*, 39 STATE GOV'T 14, 18 (1966); see 43 TAXES 669-70 (1965) (proposals of Michigan and Massachusetts governors).

58. Quotation in text accompanying note 1 *supra*.

No tax is perfect and the essential element missing from the Florida tax structure is balance.⁵⁹ Compared to the other states, Florida relies on sales taxation quite heavily.⁶⁰ Selective excise taxes ordinarily violate the tax principle of economic neutrality by discriminating against the business activities taxes; they seem to be near the limit in Florida, and the general sales tax appears to be headed upward toward its limit, wherever that may be.⁶¹

"The general regressiveness of the tax is not so much an argument against use of the sales tax, but against excessive reliance upon it as an element in the overall tax structure."⁶² It is not proposed to eliminate the sales tax. That would not be realistic because sales taxes, although enacted in emergencies, are so productive they become permanent.⁶³ The trend, however, is for states to use both income and sales taxes.⁶⁴ On such a dual basis, some states have built, or are actively considering, balanced tax structures.⁶⁵ States in fetters are much less successful.⁶⁶

Constitutional provisions cannot avoid increases in total state taxation, but only prevent the states "from utilizing some of the more productive and, by current standards, more equitable tax sources," notably the individual income tax.⁶⁷ The outlook for the coming years compels legislative interest in the potential of state income taxes.⁶⁸ To exclude this major area of taxation from consideration by the Florida Legislature in these times can only be justified by a persistent and overwhelming desire to live in the nineteenth century.⁶⁹

B. Other Taxes

The same provision of the Florida Constitution which prohibits an income tax also bars taxes upon inheritances of residents or citizens of

59. SHULTZ & HARRISS, *AMERICAN PUBLIC FINANCE* 188 (8th ed. 1965); GROVES, *FINANCING GOVERNMENT*, ch. 2 (5th ed. 1958).

60. ACIR, *MEASURES OF STATE & LOCAL FISCAL CAPACITY & TAX EFFORT* 37-43 (1962). See also Allen & Fryman, *Comparison of Revenues & Expenditures in Income & Non-Income Tax States in 1962*, 17 NAT'L TAX J. 357, 359, 361 (1964).

61. SLY & FRANK, *BUSINESS TAXES IN FLORIDA* 20 (1964); SLY, *TAX ASSETS & TAX POLICIES IN FLORIDA* 30 (1964).

62. DUE, *SALES TAXATION* 37 (1957).

63. *Id.* at 386.

64. MAXWELL, *op. cit. supra* note 29, 103. Even Wisconsin, home of the first successful state income tax, now has a sales tax too; some of the new revenues, however, are allocated to local governments on the express condition of limiting property taxes. Becker, *The Wisconsin State Tax Dilemma*, 1963 NAT'L TAX A. PROC. 307.

65. Papke, *Indiana Tax Policy: Revision, Reform, Reconstruction*, 17 NAT'L TAX J. 113 (1964); 43 TAXES 669-70 (1965) (proposals of Michigan and Massachusetts governors).

66. Harsch, *The Washington Tax System—How It Grew*, 39 WASH. L. REV. 944 (1965); see also McClelland, *Nebraska—Taxes in Transition*, 1963 NAT'L TAX A. PROC. 387.

67. Landers, *Constitutional Provisions on Taxation & Finance*, 33 STATE GOV'T 39, 42 (1960).

68. Ecker-Racz, *State Taxes for the 1970's*, 39 STATE GOV'T 14, 17-18 (1966).

69. Item: The Florida Constitutional Revision Committee has decided to retain the prohibition against any income tax. Miami Herald, April 13, 1966, p. 19, col. 1.

Florida, except for an inheritance or estate tax in an amount not more than the credit for state death taxes allowed by the federal estate tax.⁷⁰ The exception was added after Florida unsuccessfully challenged the federal system of credits in the Supreme Court.⁷¹ Recently, the highest court of Florida carried the generous spirit of the constitutional provision to its logical extreme and held that the Florida tax must be reduced by any part of the federal credit consumed by death taxes of other states, so that Florida law never leads to an increased total death tax.⁷² Although the fairness and effects of death taxation may be somewhat unclear,⁷³ the decisions, as in the case of the much more important income tax, should be up to the Legislature; its right to choose outweighs any need to assure a tax haven for wealthy "snowbirds."

Property tax issues, including the constitutional commandments to tax intangibles and exempt motor vehicles, will be treated, for the most part, in the discussion of local taxation. But it seems appropriate to comment here on the idea of a severance tax, a proposal that is politically exciting and theoretically attractive,⁷⁴ though perhaps of limited significance for Florida.⁷⁵ If a severance tax is construed to be a property tax,⁷⁶ it might run afoul of the "uniform and equal" clause of the state constitution⁷⁷ and would probably violate the stricture against state use of ad valorem taxes on tangible property.⁷⁸ There is reason to believe, however, that the Florida Supreme Court would hold a severance tax to be a valid excise tax rather than a property tax.⁷⁹

C. Earmarking

Only about sixty percent of Florida tax revenue becomes part of the General Fund; the rest is earmarked by constitution or statute for specified functions.⁸⁰ Until 1993, two cents per gallon of the gasoline tax is assigned to county road financing by constitutional mandate.⁸¹

70. FLA. CONST. art. IX, § 11.

71. Note 47 *supra*.

72. *Green v. State ex rel. Phipps*, 166 So.2d 585 (Fla. 1964). The court also relied on the precise wording of the taxing statute applying to estates of residents. FLA. STATE § 198.02 (1965). Section 198.03 provides for taking a portion of the federal credit with respect to estates of non-residents; if construed less generously, it might violate rights granted by the federal constitution. *Cf. HELLERSTEIN, STATE & LOCAL TAXATION* 53, 57-58 (2d ed. 1961).

73. SHULTZ & HARRISS, *AMERICAN PUBLIC FINANCE* 387-91 (8th ed. 1965).

74. VIEG ET AL., *CALIFORNIA LOCAL FINANCE* 220-21 (1960).

75. Compared to other states, Florida has a low base for a severance tax. ACIR, *MEASURES OF STATE & LOCAL FISCAL CAPACITY & TAX EFFORT* 68 (1962).

76. See HELLERSTEIN, *STATE & LOCAL TAXATION* 38-39 (2d ed. 1961).

77. FLA. CONST. art. IX, § 1. This is discussed further under local property taxation.

78. FLA. CONST. art. IX, § 2.

79. *Cf. Jerome H. Sheip Co. v. Amos*, 100 Fla. 863, 130 So. 699 (1930) (motor fuel storage tax); *C. V. Floyd Fruit Co. v. Florida Citrus Comm'n*, 128 Fla. 565, 175 So. 248 (1937) (citrus tax).

80. SLY, *TAX ASSETS & TAX POLICIES IN FLORIDA* 11-12 (1964). Some of these earmarked funds go to local governments; this situation will be discussed further under local taxation.

81. FLA. CONST. art. IX, § 16.

Motor vehicle licensing revenues, originally pledged until 1983 to finance education capital outlays,⁸² were repledged until 2001 by a 1964 constitutional amendment.⁸³ The questionable gross receipts tax on utilities and communications⁸⁴ was dedicated until 2015 to university and college capital outlays, by a 1963 constitutional amendment.⁸⁵ At the same time, still another provision was enacted inviting the Legislature to earmark some tax source until 2013 to finance the acquisition of recreational areas;⁸⁶ actually, a stiff excise tax on sports equipment had already been levied and pledged.⁸⁷ Of course, some legislative earmarking is not tied to bond financing;⁸⁸ but, where bonds are involved, the commitment becomes permanent until the bonds are retired.⁸⁹

Several things explain the development of earmarking: the growth of user charges, a history of poor budget procedures, pressure groups, and voter dissatisfaction with legislative decisions.⁹⁰ There are good arguments for its use: assurance of support for long-range programs, the benefit theory of taxation, avoiding repetitive legislative decisions on recurring items, support of borrowing by assuring debt service and matching fees with costs (*e.g.*, regulatory licensing).⁹¹ On the balance, however, it is an inefficient way to allocate resources, preventing the best use of every dollar in light of the whole picture, reflecting a lack of faith in the American legislative system, and resulting in sadly overworking the unearmarked dollar.⁹² In essence, it is a practice that should be avoided.⁹³

This study does not cover borrowing. One cannot help but note, though, that most Florida constitutional earmarking is a substitute for

82. FLA. CONST. art XII, § 18 (1952).

83. FLA. CONST. art. XII, § 18 (1964).

84. See Harriss, *Taxation of Public Utilities: Considerations for the Long Run*, 43 TAXES 660 (1965).

85. FLA. CONST. art. XII, § 19.

86. FLA. CONST. art. IX, § 17.

87. Wholesale Fishing and Other Equipment Revenue Act, Fla. Laws 1963, ch. 63-527 (now FLA. STAT. §§ 212.50-58 (1965)).

88. *E.g.*, FLA. STAT. § 199.331 (1965) (part of intangible tax revenues earmarked for state and local employee's benefits).

89. U.S. CONST. art. I, § 10, cl. (1). The Florida Constitutional Revision Committee has decided to retain the constitutional earmarking of the gasoline tax and the sports equipment tax until the respective bonds are retired. Miami Herald, April 13, 1966, p. 19-A, col. 1.

90. Wileden, *Earmarking: Good or Bad?*, 33 STATE GOV'T 251 (1960).

91. *Ibid.*

92. *Ibid.*; Landers, *Constitutional Provisions on Taxation & Finance*, 33 STATE GOV'T 39, 42 (1960); SHULTZ & HARRISS, *AMERICAN PUBLIC FINANCE* 191-92 (8th ed. 1965) (except where mathematically related like payroll taxes and old-age benefits). Some would approve earmarking linked to costs or benefits, such as assigning gasoline taxes to highway expenditures. MAXWELL, *FINANCING STATE & LOCAL GOVERNMENTS* 221 (1965). For an interesting analysis of earmarking in terms of the laws of supply and demand, see Buchanan, *The Economics of Earmarked Taxes*, 71 J. POL. ECON. 457 (1963).

93. SLY, *TAX ASSETS & TAX POLICIES IN FLORIDA* 31 (1964).

issuing general obligation bonds of the state, which are prohibited to the legislature other than for repelling insurrection or invasion.⁹⁴ Such revenue bonds are an expensive substitute,⁹⁵ and the avoidance of, and ban on, general obligation bonds might well be ended⁹⁶ or reformed to a restraint worded in terms of state revenue.⁹⁷

III. LOCAL TAXATION

A. *The Basic State Attitude*

It is the responsibility of each state to assure proper financing of its local governments, for the state creates local governments as subdivisions of itself. Thus, the state must provide financial means, including areawide taxing powers, nonproperty tax authority, state grants and shared taxes. The state must furnish research and planning and must serve as a middleman between the federal and local levels to secure fiscal stability of its local governments.⁹⁸

Late last century, however, the development of state and local taxation went through a fairly definite cycle of "separation of state and local revenue,"⁹⁹ and the Florida constitution has been construed to require a rather strict allocation of state revenues to "state purposes" and local revenues to "local purposes."¹⁰⁰ There are exceptions for the death tax based on the wording of the constitutional provision¹⁰¹ and for the intangible tax because it has a distinct basis in the Constitution.¹⁰²

Pari-mutuel pool taxes may be allocated to the counties.¹⁰³ But the doctrine of separation of fiscal systems has permeated the local level as well, and such allocations may not be made for "municipal

94. FLA. CONST. art. IX, § 6.

95. See ACIR, 1966 STATE LEGISLATIVE PROGRAM 84 (1965) (local borrowing).

96. See *ibid.*

97. If there is any limitation, it is suggested that it include all state bonds except those of really self-supporting state businesses and that it relate to average state revenue. Landers, *Constitutional Provisions on Taxation & Finance*, 33 STATE GOV'T 39, 44 (1960).

98. BIRD, THE STATE IMPACT ON METROPOLITAN AREA FINANCE, in FINANCING METROPOLITAN GOVERNMENT 150 (1955). Dr. Bird has urged that states recognize "that state and local revenue comprise one revenue system because they must come from the same totality of resources" and that the system must meet "the totality of state-local revenue needs." *How High the Curbs?*, 52 NAT'L CIV. REV. 73, 78 (1963).

99. "[P]roperty taxes were left increasingly to local government and new sources of revenue were sought at the state level." SLY, TAX ASSETS & TAX POLICIES IN FLORIDA 13 (1964).

100. *Amos v. Matthews*, 99 Fla. 1, 126 So. 308 (1930) (state taxes not available to pay county bonds); cf. authorities cited note 104 *infra*. Compare *Carlton v. Matthews*, 103 Fla. 301, 137 So. 815 (1931) (state taxes available to buy county roads newly designated as state roads); *Florida v. Inter-American Center Authority*, 143 So.2d 1 (Fla. 1962) (state taxes available for localized state function).

101. FLA. CONST. art. IX, § 11.

102. FLA. CONST. art. IX, § 1; *State ex rel. Watson v. Lee*, 157 Fla. 62, 24 So.2d 798 (1946).

103. FLA. CONST. art. IX, § 15.

purposes" as opposed to "county purposes."¹⁰⁴ Such rules compound the general problem of meeting local needs from taxes of a sufficiently large area;¹⁰⁵ the Florida Constitution permits the division of counties for assessment administration,¹⁰⁶ but there is no authority to create inter-county assessment offices.¹⁰⁷ Such rules also highlight the burden on incorporated areas and on truly rural sections of paying county taxes for services to the unincorporated urban fringe areas.¹⁰⁸ The only general authority for counties to meet this problem is the power in the Dade County home rule amendment to set up special taxing districts,¹⁰⁹ but the better procedure is to encourage the use of subordinate service areas (higher county tax rates in the areas getting the extra service).¹¹⁰

Presumably, the reapportioned legislature will be more cognizant of local problems and of the responsibility of the state to solve them. It would not be amiss to reform Florida constitutional and statutory limitations accordingly. Current Florida aid to its cities consists almost entirely of shared cigarette taxes,¹¹¹ and aid to its counties is largely grants conditioned on use, particularly for education and roads.¹¹² The latter situation is one of the results of the earmarking discussed earlier; another result is apportionment among the counties by formulas that totally fail to take into account the disproportionate needs of urban areas.¹¹³

New York has led the way along a different path with unconditional

104. *Okaloosa County Water & Sewer Dist. v. Hilburn*, 160 So.2d 43 (Fla. 1964) (allocation for water and sewage in unincorporated area upheld); *Kirkland v. Phillips*, 106 So.2d 909 (Fla. 1958) (allocation for county port authority upheld); *City of Lynn Haven v. Bay County*, 47 So.2d 894 (Fla. 1950) (allocation to municipal hospital held invalid).

105. See Netzer, *Paying for Services*, 51 NAT'L CIV. REV. 195, 197-98 (1962).

106. FLA. CONST. art. VIII, § 7.

107. A Florida constitutional provision that municipalities should make their own assessments (in § five of article nine) was construed to mean that cities could not be forced to use county rolls. *Vassar v. Arnold*, 154 Fla. 757, 18 So.2d 906 (1944). After many single county amendments to article eight, a 1954 amendment finally empowered the legislature to require municipal use of county rolls. FLA. CONST. art. VIII, § 22 (but requiring municipal referendum).

108. Prentice, *The Great Urban Tax Tangle*, *Fortune*, March 1965, p. 106, at 195.

109. FLA. CONST. art. VIII, § 11, cl. (1)(e).

110. ACIR, 1966 STATE LEGISLATIVE PROGRAM 47-53 (1965).

111. FLORIDA COMPTROLLER, *FLORIDA TAXES & EXEMPTIONS*, 1965-1966, at 18.

112. *Id.* at 19.

113. *Pari-mutuel taxes must be apportioned to the counties "in equal amounts," FLA. CONST. art. IX, § 15.* The Florida Constitutional Revision Committee has found the equality requirement a difficult one to vary. *Miami Herald*, April 13, 1966, p. 19-A, col. 1.

Section 208.08 of the Florida Statutes summarizes the rather thorough earmarking of gasoline tax revenues. Almost all of the first four cents per gallon goes to the construction and maintenance of state roads. See FLA. STAT. §§ 208.09-10 (1965). Then two cents goes to the counties for road financing on a three-factor formula: area, population and pre-July 1, 1931 contributions to the state road system. FLA. CONST. art. IX, § 16, confirming Fla. Laws 1931, ch. 15659 (now FLA. STAT. § 208.11 (1965)). Apportionment of the seventh and last cent is the same, by legislative direction. FLA. STAT. § 208.44(3) (1965).

per capita grants to local governments, at increased rates to areas of denser population.¹¹⁴ "Only a state with a good tax system and good administration can make such grants,"¹¹⁵ but, looking forward to that day, the Florida legislature should be free to consider a balanced program of substantial aid to its local governments:

Where activities are to be stimulated, conditional grants and shared revenues may be expected to continue, particularly those supported by tradition and also by aggressive pressure groups. General purpose grants are needed in addition by most municipalities. It is believed that this need can best be met by differential per capita grants, freely given where the quality of government meets expected standards.¹¹⁶

B. *The Property Tax*

The obligation of the states to solve local fiscal problems applies with full force to the taxation of property:

Since the state creates local governments and determines their share of the governing role, it must see to it that they possess the financial resources required to match their responsibilities. The obligation of the state in this regard is inescapable because if the locally raised revenue is inadequate to finance the duties prescribed for local governments, the state must provide it.¹¹⁷

Florida law on property taxation violates this principle roundly, hindering both the imposition of a sound tax and its effective administration.

1. CLASSIFICATION

In connection with the Florida legislative power to authorize county and city taxes, it is required that "all property shall be taxed upon the principles established for State taxation."¹¹⁸ As mentioned earlier, one of those state principles is uniformity and equality.¹¹⁹ As in many states, this means that all property in a jurisdiction must be taxed the same, without classification.¹²⁰

With respect to *real* property, one group urges that improvements be assessed lower (the graded property tax) or not at all, to discourage land speculation and to encourage high-quality buildings.¹²¹ An opposing

114. See generally Conroy, *Municipal Sharing in State Revenues*, 35 MUNC. FIN. 60 (1962).

115. Chatters, *New Money for Cities*, 50 NAT'L CIV. REV. 298, 300 (1961).

116. Leland, *AN IDEAL THEORETICAL PLAN OF FINANCE FOR A METROPOLITAN AREA*, in *FINANCING METROPOLITAN GOVERNMENT* 233, 269-70 (1955).

117. ACIR, 1966 STATE LEGISLATIVE PROGRAM 4 (1965).

118. FLA. CONST. art. IX, § 5.

119. FLA. CONST. art. IX, § 1.

120. NEWHOUSE, *CONSTITUTIONAL UNIFORMITY & EQUALITY IN STATE TAXATION* 278-81 (1959).

121. Prentice, *The Great Urban Tax Tangle*, *Fortune*, Mar. 1965, p. 106, at 107, 188;

view would tax outlying unimproved land less than land actually developed,¹²² this is best done by the assessor considering restrictive agricultural zoning, rather than by having him rely on actual agricultural use.¹²³ Florida's "green belt" statutes, however, do depend on agricultural use.¹²⁴ This has been upheld by two four-to-three decisions of the Florida Supreme Court,¹²⁵ apparently as a method of valuation to which the taxpayer is entitled if he timely claims it.¹²⁶ The decisions are questionable¹²⁷ as well as close, and they certainly are an inadequate legal basis for local attempts to classify real property.¹²⁸

For example, an earlier legislative attempt to classify *personal* property and direct assessment of stock in trade at twenty-five percent of full value was held to violate the Florida Constitution.¹²⁹ The 1965 legislature has tried to avoid the decision by giving the assessors a number of "outs" in valuing inventory.¹³⁰ Indeed, the need to exclude non-business personal property, such as household items, from property taxation for administrative reasons is generally conceded¹³¹ and some would tax only real property.¹³² Another experiment that might fail because of the uniformity and equality clause is a "free port" law exempting goods temporarily stored in Florida for shipment out of state.¹³³

Intangible property is subject to rather unusual treatment under the Florida Constitution. It is classified, in that the legislature "may provide for special rate or rates" of tax thereon.¹³⁴ Also, intangible

Williams, *Pittsburgh's Pioneering in Scientific Taxation*, 21 AM. J. ECON. & SOC. 37, 209 (1962) and related articles; 22 AM. J. ECON. & SOC. 149, 251 (1963); see Netzer, *Paying for Services*, 51 NAT'L CIV. REV. 195, 197-98 (1962). *Contra*, Hagman, *The Single Tax & Land-Use Planning: Henry George Updated*, 12 U.C.L.A.L. REV. 762 (1965).

122. Hagman, *Open Space Planning & Property Taxation—Some Suggestions*, 1964 WIS. L. REV. 628.

123. *Id.* at 644-45.

124. See generally Wershow, *Ad Valorem Assessments in Florida—Whither Now?*, 18 U. FLA. L. REV. 9 (1965).

125. *Lanier v. Overstreet*, 175 So.2d 521 (Fla. 1965); *Tyson v. Lanier*, 156 So.2d 833 (Fla. 1963).

126. See *Stiles v. Brown*, 182 So.2d 612 (Fla. 1966).

127. Note, *The Florida Constitution & Legislative Classification for Tax Assessment Purposes*, 17 U. FLA. L. REV. 609 (1965).

128. Authority to classify might enable the legislature, if it so desired, to exclude any aesthetic values, such as were taxed in *Joseph E. Seagram & Son, Inc. v. Tax Comm'n*, 14 N.Y.2d 314, 200 N.E.2d 447, 251 N.Y.S.2d 460 (1964), noted, 29 ALBANY L. REV. 158 (1965); more likely, that is really a problem of defining value.

129. *Franks v. Davis*, 145 So.2d 228 (Fla. 1962).

130. FLA. STAT. § 192.05 (1965).

131. Lynn, *Model Property Tax Report*, 1964 NAT'L TAX A. PROC. 157, 170; BIRD, *THE GENERAL PROPERTY TAX* 68 (1960); Prentice, *The Great Urban Tax Tangle*, Fortune, Mar. 1965, p. 106, at 196. In fact, the personal property tax has become a tax on *business* personal property to a large degree. Schaffer, *Personal Property Taxation Today*, 32 MUNIC. FIN. 138 (1960).

132. Nichols, *The Problem of Equity in Property Taxation*, 37 MUNIC. FIN. 96, 99 (1964).

133. The suggestion is discussed in SLY & FRANK, *BUSINESS TAXES IN FLORIDA* 55 (1964).

134. FLA. CONST. art. IX, § 1.

property is the one type that the state government can tax.¹³⁵ If the state repeals its tax, it is quite possible that intangible property must then be taxed at the same rate as tangible property.¹³⁶ In light of the overwhelming criticism of intangible taxes, both for unenforceability and for being a second layer of tax on much property,¹³⁷ such a risk is an unfortunate limitation.

Classification has long been considered an important reform.¹³⁸ By now, attention has shifted to establishing the classes and rates.¹³⁹ Where uniformity and equality requirements prevent classification, they must be relaxed.¹⁴⁰

2. EXEMPTIONS

Related to classification is the question of exemption. Florida's constitution authorizes the legislature to exempt property of municipal, educational, literary, scientific, religious and charitable purposes.¹⁴¹ The policy questions raised by such exemptions, similar to certain federal exemptions from income tax,¹⁴² are too manifold and controversial to be explored in this study.¹⁴³ Suffice it to say that the legislature seems to have some discretion in defining these exemptions.¹⁴⁴

However, the Florida homestead exemption of the first five thousand dollars of assessed value is only subject to legislative regulation regarding "the manner of establishing the right."¹⁴⁵ A survey of 1957 figures showed that about thirty-five percent of the gross assessed value of property in Florida was exempt as homestead, the highest percentage in the nation.¹⁴⁶ Because of a low ratio of assessed value to market value, the survey concluded that the average homestead exemption in Florida

135. FLA. CONST. art. IX, § 2.

136. See NEWHOUSE, *op. cit. supra* note 120, at 279-81.

137. Lynn, *supra* note 131, at 169; Bird, *op. cit. supra* note 131. But see Blackburn, *Intangible Taxes: A Neglected Revenue Source for States*, 18 NAT'L TAX J. 214 (1965).

138. SELIGMAN, *ESSAYS IN TAXATION* ch. XX (10th ed. rev. 1925).

139. See Lynn, *supra* note 131, at 167-78.

140. 1 ACIR, *THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX* 34-35 (1963).

141. FLA. CONST. art. IX, § 1.

142. INT. REV. CODE OF 1954, § 501(c)(3).

143. See generally, e.g., Barnett, *The Struggle to Curtail Abuses by Private Foundations; New Legislation Likely*, 23 J. TAXATION 300 (1965); Haines v. St. Petersburg Methodist Home, Inc., 173 So.2d 176 (Fla. 2d Dist. 1965).

144. See Daytona Beach Racing & Recreational Facilities Dist. v. Paul, 179 So.2d 349, 355 (Fla. 1965); Coppock v. Blount, 145 So.2d 279, 282 (Fla. 3d Dist. 1962) (dictum); cf. Miller v. Doss, 46 So.2d 888 (Fla. 1950). But cf. FLA. CONST. art. XVI, § 16 (corporate property).

145. FLA. CONST. art. X, § 7. The substantive language has produced a fair amount of litigation. See generally Crosby & Miller, *Homestead Exemption, A Legal Chameleon in Florida*: V, 2 U. FLA. L. REV. 346 (1949).

146. BIRD, *THE GENERAL PROPERTY TAX* 21 (1960).

was actually excluding approximately 12,200 dollars of value from taxation.¹⁴⁷

Higher assessment ratios, discussed below, have probably mitigated these situations to some degree,¹⁴⁸ but even at full value assessments there is a concession to residential property at the expense of business property.¹⁴⁹ This exemption simply removes too much property from taxation and should not be mandatory. Some suggested compromises are limiting it to senior citizens, leaving it to local option, and the 1964 amendment permitting Sarasota County, with respect to school taxes, to assess the first 2,000 dollars of value and exempt the next 5,000 dollars.¹⁵⁰

Other mandatory exemptions include 500 dollars of assessed value for each widow and each disabled person¹⁵¹ and 500 dollars in value of household goods and personal effects for each head of a family.¹⁵² The former, though no doubt motivated by admirable compassion, is certainly an obsolete and inadequate method of giving welfare assistance not based on need. The exemption of personal property for the head of a family should be superfluous, since those type of personal property should not be taxed, as discussed earlier.

A significant exemption from local property taxes arises from the constitutional provision that the license tax on motor vehicles be in lieu of all property taxes.¹⁵³ It is said that urban motorists are pampered by light local taxation compared with the "multibillion cost of local streets."¹⁵⁴ Another point is the need to discourage the use of motor vehicles in congested urban areas and thereby to encourage the use of public mass transportation.¹⁵⁵ Notwithstanding the propaganda of the automobile lobby, there should be more freedom for local governments to experiment in this area.

147. *Id.* at 43-44.

148. But exempt homestead values increase too. *Miami Herald*, March 31, 1966, p. 12-B, col. 1.

149. SLY & FRANK, *BUSINESS TAXES IN FLORIDA* 55-56 (1964). Businessmen are more concerned with the real property tax than any other Florida tax. *Id.* at 35-36.

150. *Id.* at 56.

151. FLA. CONST. art. IX, § 9.

152. FLA. CONST. art. IX, § 11. By legislation, this is now an exemption of 1000 dollars. FLA. STAT. § 192.201 (1965).

153. FLA. CONST. art. IX, § 13.

154. Prentice, *The Great Urban Tax Tangle*, *Fortune*, Mar. 1965, p. 106, at 196; *accord*, Chatters, *New Money for Cities*, 50 NAT'L CIV. REV. 298, 300 (1961). At a state level, for the year ended June 30, 1965, Florida collected about 245 million dollars in gasoline and auto license taxes; about 267 millions were spent on highway operations and about 47 millions of the gasoline tax were remitted to the counties, or a total outgo of approximately 314 million dollars. FLORIDA COMPTROLLER, *FLORIDA TAXES & EXEMPTIONS*, 1965-1966, at 18.

155. Walker, *What is a Fair Tax Source for Local Governments?*, 32 MUNIC. FIN. 69, 73-74 (1959). It is likely that taxes will be needed to support cheap public mass transportation, too. See Brooks, *Lindsay, Quill, & the Transit Strike*, *Commentary*, March 1966, p. 50, at 57.

3. RATE LIMITATIONS

Exemptions as well as low assessment ratios put pressures on millage limits. Fortunately, of the major general rate limits on property taxes in Florida, only the one affecting school boards is constitutional;¹⁵⁶ those for counties¹⁵⁷ and cities¹⁵⁸ are statutory. At least in theory, they should all be repealed.¹⁵⁹ They encourage the creation of special districts, lead to excessive borrowing, require many special laws, impair budgeting, promote litigation and sometimes give the assessors control of the budget.¹⁶⁰ At a minimum, such limits should not be constitutional or apply to home rule areas, should be based on market rather than assessed values, should not be in terms of specific functions and should permit relief by referendum after approval by state authorities.¹⁶¹ Perhaps pressures on the property tax can also be relieved somewhat by its efficient administration and by non-property taxes;¹⁶² these are the next subjects.

4. ASSESSMENT ADMINISTRATION

In Florida, reform of property assessment in the last few years has been largely the work of the courts.¹⁶³ Substantial gains in assessment ratios and aggregate rolls have resulted,¹⁶⁴ but certain major steps seem difficult or impossible under present Florida law.

To begin with, there is the urgent need for *professionalization* of property assessment;¹⁶⁵ election of assessors stands squarely in the way.¹⁶⁶ Election of county tax assessors is mandatory under the Florida

156. FLA. CONST. art. XII, § 10.

157. FLA. STAT. § 193.32 (1965); see FLA. STAT. § 150.08 (1965) (library tax). *But see* FLA. CONST. art. XII, § 8 (county school tax).

158. FLA. STAT. § 167.44 (1965). This is the general law; many cities are chartered under special laws.

159. ACIR, 1966 STATE LEGISLATIVE PROGRAM 84-93 (1965).

160. ACIR, STATE CONSTITUTIONAL & STATUTORY RESTRICTIONS ON LOCAL TAXING POWERS 4 (1962); Magill, *Can We Afford Present Local Debt & Tax Rate Limitations?*, 37 MUNIC. FIN. 70, 72 (1964); Bird, *How High the Curbs?*, 52 NAT'L CIV. REV. 72, 77-78 (1963).

161. ACIR, *op. cit. supra* note 160, at 6-9.

162. See Walker, *The Significance of Governmental Patterns in Evaluating Tax & Debt Limits*, Tax Policy, Aug.-Sept., 1964, p. 5, at 7.

163. See generally Wershow, *Ad Valorem Assessments in Florida—Whither Now?*, 18 U. FLA. L. REV. 9 (1965). Progress in procedural law as well as in substantive law is involved in the reform movement. *E.g.*, *Townsend v. Gray*, 181 So.2d 612 (Fla. 1st Dist. 1966) (declaratory relief permitted).

There may be a federal constitutional basis for individual relief. *Schooley v. Sunset Realty Corp.*, 185 So.2d 1 (Fla. 2d Dist. 1966) (allowing reduction of prior year's assessment). *But see* *Dade County v. Salter*, No. 34,035, Fla. Sup. Ct., May 11, 1966, *quashing* 170 So.2d 57 (3d Dist. 1965) (reaching opposite result without mention of federal constitution).

164. See Miami Herald, March 31, 1966, p. 12-B, col. 1; *Tax Rolls Leap \$5.7 Billion—Court Decisions Up Assessments*.

165. Lynn, *Model Tax Report*, 1964 NAT'L TAX A. PROC. 157, 164-65.

166. BIRD, THE GENERAL PROPERTY TAX 68-69 (1960).

Constitution,¹⁶⁷ except under the Dade County home rule amendment.¹⁶⁸ Since the legislature can prescribe the "powers, duties and compensation"¹⁶⁹ of county assessors, some additional duties can be placed on county assessors,¹⁷⁰ but an assessor can delegate ministerial work to professionals only provided he alone exercises the official discretion involved in assessment.¹⁷¹

There is an urgent need for greater *state participation* in local property assessment.¹⁷² Opinion as to how much more runs the gamut,¹⁷³ with some feeling that complete state administration is necessary.¹⁷⁴ Constitutional duties of the Florida Comptroller are to "examine, audit, adjust and settle the accounts of all officers of the State and perform such other duties as may be prescribed by law";¹⁷⁵ thus he may be given limited supervisory authority over municipal financial affairs.¹⁷⁶ Developments in the administration of Florida local property taxes during the last decade show a marked tendency to rely on supervision by the Comptroller, but without adequate budget for him to do the job right.¹⁷⁷

This tendency, combined with the constitutional direction that the legislature "shall prescribe such regulations as shall secure a just valuation of all property,"¹⁷⁸ recently clashed with the constitutional status of the county tax assessor in a suit decided in the Leon County Circuit Court.¹⁷⁹ In an impressive summary of the relevant Florida law, the opinion reaches these conclusions: duties of a county assessor cannot be abolished or transferred so as to deprive the citizens of their right to elect him; legislative authority is limited to checks and balances against abuses of power by county assessors; no state executive officer can change county assessment ratios; and the statutory authority¹⁸⁰ for the Comptroller to bring suit to compel a county assessor to perform his duties must be based on gross disregard of those duties, the final determination always being judicial.

167. FLA. CONST. art. VIII, § 6.

168. FLA. CONST. art. VIII, § 11, cl. (1)(f); *State ex rel. Glynn v. McNayr*, 133 So.2d 312 (Fla. 1961).

169. FLA. CONST. art. VIII, § 6.

170. *Stoudenmire v. West Volusia Hosp. Authority*, 113 So.2d 225 (Fla. 1959).

171. *Peters v. Hansen*, 157 So.2d 103 (Fla. 2d Dist. 1963).

172. ACIR, 1966 STATE LEGISLATIVE PROGRAM 6-25 (1965); MAXWELL, FINANCING STATE & LOCAL GOVERNMENTS 154-56. (1965).

173. Lynn, *Model Property Tax Report*, 1964 NAT'L TAX A. PROC. 157, 166.

174. James, *School Aid Apportionment: State Action Needed on the Property Tax*, 33 STATE GOV'T 256 (1960).

175. FLA. CONST. art. IV, § 23.

176. *Coen v. Lee*, 116 Fla. 215, 156 So. 747 (1934).

177. 2 ACIR, THE ROLE OF THE STATES IN STRENGTHENING THE PROPERTY TAX 29-32 (1963).

178. FLA. CONST. art. IX, § 1.

179. *Butscher v. Burns*, Chancery No. 20788, Mar. 2, 1966, Declaratory Decree recorded in Official Records Book 214, pp. 66-74, Leon County, Florida public records.

180. FLA. STAT. § 196.16 (1965).

Based on the foregoing rules, the court imposed the following duties on the Comptroller: to assist and advise county assessors; to do such research and study as he finds necessary to form an opinion concerning county assessment ratios;¹⁸¹ to refuse to approve county assessment recapitulations and rolls (with varying statutory effect) if he finds "intentional, arbitrary and systematic" undervaluation; to bring a mandamus action if he finds a "substantial" degree of undervaluation; to recommend to the governor removing the county assessor if he finds the violation is "willful" and he considers this the only means to secure compliance; to recognize that assessments are matters of opinion and not to substitute his own for honest and reasonable opinions of local assessors.

As if that were not enough, the Comptroller appealed to the Florida Supreme Court urging that he has no right to reassess properties already assessed by a county tax assessor.¹⁸² Although the decree of the lower court was affirmed,¹⁸³ one cannot help but conclude that effective state participation in local property tax assessments may be seriously hamstrung by the constitutional elective status of county tax assessors. Such status should be abolished and the legislature given unlimited authority to determine the extent of state participation.

A state *tax court* is strongly recommended to afford taxpayers a convenient and inexpensive way to secure expert review of disputed assessments.¹⁸⁴ Circuit courts in Florida have long had "exclusive original jurisdiction . . . in all cases involving the legality of any tax, assessment or toll,"¹⁸⁵ so that a constitutional amendment would be necessary.¹⁸⁶

Yet, with all of the recommended changes in assessment administration, perfect uniformity is not feasible.¹⁸⁷ Contemporary uses of real property alone are becoming overly sophisticated, and defy sensible assessment.¹⁸⁸ This, and more fundamental reasons, compel a study of alternative local taxes.

181. The determination must be that of the Comptroller, but he may consider and give such weight as he deems appropriate to the findings of the Railroad Assessment Board under FLA. STAT. § 195.01(6). *Butscher v. Burns*, *supra* note 179.

182. Brief of Appellants, pp. 27-35, *Burns v. Butscher*, 187 So.2d 594 (Fla. 1966).

183. *Burns v. Butscher*, *supra* note 182.

184. ACIR, 1966 STATE LEGISLATIVE PROGRAM 33-42 (1965); Lynn, *Model Property Tax Report*, 1964 NAT'L TAX A. PROC. 157, 186; Kray, *California Tax Court: An Approach to Progressive Tax Administration*, 37 So. CAL. L. REV. 485 (1964).

185. FLA. CONST. art. V, § 6, cl. (3). This is the 1956 judiciary amendment, but the quoted language dates back to 1885. FLA. CONST. art. V, § 11 (1885).

186. Perhaps the Florida judiciary, having led the reform of assessment procedures in the state, would afford a more gracious treatment to such a proposed amendment than has been given in California. See Kray, *supra* note 184, at 519-20.

187. BIRD, *THE GENERAL PROPERTY TAX* 28-29 (1960).

188. E.g., FLA. STAT. ch. 711 (1965) (condominiums); Thomas, *Financing on "Air Rights"*—A Case History, A.B.A. Tax Sect. Bull. Jan. 1965, p. 90, at 96.

C. *Nonproperty Taxes*

One of the fiercest dilemmas facing local governments is the property tax: it is both a bad tax and an essential one. It is a bad tax because gross property, especially real property, is not (and possibly never was) a good measure of income or even net wealth.¹⁸⁹ Property taxes do not relate to the benefits received from modern expensive public functions like education¹⁹⁰ and do not adequately reach the non-residents who nowadays so often work and play in urban areas.¹⁹¹ Property values react slowly to economic changes¹⁹² and assessments cannot keep up even at that pace,¹⁹³ all in addition to the imperfectability of assessment administration discussed earlier.

Yet the property tax is a necessary tax for local governments and they must rely on it heavily.¹⁹⁴ For every government that is to be significant must have its own fiscal power,¹⁹⁵ and no alternative local levies have inspired resounding confidence yet. In fact, some students of taxation indicate that major alternative taxes should be available only at the state level,¹⁹⁶ although other authority would approve local non-property levies if they supplement similar state taxes or are at least administered by the state.¹⁹⁷ However, it seems that experimentation with local nonproperty taxes is essential simply because property taxes are going to be inadequate at any reasonable rates;¹⁹⁸ if they cannot be replaced, they must at least be supplemented.

For nearly a century, it has been the law in the United States that local governments have only those taxing powers specifically granted;¹⁹⁹ therefore, it is up to the Florida legislature to act. Its power seems clear: the constitutional permission to "authorize the several counties and incorporated cities or towns in the State to assess and impose taxes"²⁰⁰

189. SELIGMAN, *ESSAYS IN TAXATION*, ch. II, at 61-62 (10th ed. 1925); Clark, *Municipal Nonproperty Revenues*, Tax Policy, Aug.-Sept. 1964, p. 9, at 10 (over 75 per cent of personal income from nonproperty sources).

190. Cartwright, *The Washington Tax Structure as Viewed by the Consumer*, 39 WASH. L. REV. 1000, 1007 (1965); VIEG ET AL., *CALIFORNIA LOCAL FINANCE* 189 (1960).

191. BUEHLER, *REVENUE IMPROVEMENTS UNDER PRESENT LAWS & GOVERNMENT STRUCTURE*, in *FINANCING METROPOLITAN GOVERNMENT* 200, 207-08 (1955).

192. *Ibid.*

193. Cartwright, *supra* note 190; VIEG ET AL., *op. cit. supra* note 190, at 160. Compare Fleming, *Procedures that Assessors Use in Keeping Property Valuations Up-to-Date*, 25 J. TAXATION 58 (1966).

194. MAXWELL, *FINANCING STATE & LOCAL GOVERNMENTS* 154-56 (1965); ACIR, *STATE CONSTITUTIONAL & STATUTORY RESTRICTIONS ON LOCAL TAXING POWERS* 53-59 (1962).

195. Quotation in text accompanying note 1 *supra*.

196. BUEHLER, *supra* note 191, at 211-14; see VIEG ET AL., *op. cit. supra* note 190, at 210-12, 215.

197. ACIR, *op. cit. supra* note 194, at 14-15.

198. American City, July 1963, p. 7; BUEHLER, *supra* note 191, at 207-08.

199. ACIR, *op. cit. supra* note 194, at 81.

200. FLA. CONST. art. IX, § 5.

is construed to allow the legislature to authorize a particular tax for a particular local government, or for some or all local governments.²⁰¹

Florida local governments have made relatively extensive use of nonproperty taxes, mainly licenses and selective excise taxes.²⁰² Their use of the shared cigarette tax is limited,²⁰³ and they cannot tax alcohol or gasoline sales.²⁰⁴ In light of comments discussed earlier in connection with the exemption of motor vehicles from property taxes, an attempt to use local gasoline taxes may be in order. More important would be experiments in the use of major local nonproperty taxes.

1. SALES TAX

Of the major local nonproperty taxes, the one most used is the sales tax. New York City has led the way since 1934 and now leads with a four percent rate, but it is an unusual case.²⁰⁵ A 1935 three percent tax in Daytona Beach led to a retailers' boycott and was repealed after one week with a refund of collections; the same year Miami enacted a sales tax but repealed it before the effective date.²⁰⁶ There were still only a handful of local sales taxes in the United States in 1945, but by the end of 1964 sales taxation was used by 2,133 cities, 194 counties and two school districts; it was a minor source of total local tax revenue but very important for the local governments employing it.²⁰⁷

Successful administration depends on central administration by the state²⁰⁸ unless a large and isolated urban area is involved.²⁰⁹ Of the 2,329 local sales taxes at the end of 1964, 2,148 were collected by the states.²¹⁰ California made a major change in 1955 by enacting a centrally collected tax much more attractive to its cities than the then existing independently administered taxes; the cities changed over.²¹¹ Proposed federal rules on taxing interstate sales would drastically limit local taxation of such sales unless collected by the state.²¹²

As of the beginning of 1963, twelve states and the District of Columbia harbored local sales taxes, but of these only three states did

201. *Wilson v. Hillsborough County Aviation Authority*, 138 So.2d 65 (Fla. 1962).

202. BIRD, *THE GENERAL PROPERTY TAX* 11 (1960).

203. FLA. STAT. § 210.03(1) (1965).

204. FLA. STAT. §§ 561.50 and 208.44(13) (1965).

205. *American City*, *supra* note 198.

206. Spec. Subcomm., 3 *State Taxation of Interstate Commerce*, H.R. REP. NO. 565, 89th Cong., 1st Sess. 842 (1965).

207. *Id.* at 846-51.

208. See generally DUE, *STATE SALES TAX ADMINISTRATION*, ch. XI (1963).

209. Chatters, *New Money for Cities*, 50 NAT'L CIV. REV. 298, 301 (1961).

210. Spec. Subcomm., *op. cit. supra* note 206, at 871.

211. *Id.* at 865-66.

212. Spec. Subcomm., 4 *State Taxation of Interstate Commerce*, H.R. REP. NO. 952, 89th Cong., 1st Sess. 1187 (1965), incorporated in H.R. 11798, 89th Cong., 1st Sess. (1965).

not have state sales taxes;²¹³ obviously Florida fits the pattern of a local tax supplemental to the state tax. Perhaps the most significant choice is between making the local tax mandatory, as in Illinois, or letting each local government decide, as in California;²¹⁴ if the option in the latter case is not illusory because of compelling revenue needs, it may mark the distinction between additional local fiscal power and just another pre-apportioned state tax.

2. INCOME TAX

As indicated earlier, any income tax in Florida would require a constitutional amendment. It may well be that a flat low-rate income tax on wages and business profits is feasible, productive and equitable for an urban area and reaches its "contact population."²¹⁵ It is also possible to reach all other income of residents²¹⁶ but this creates double taxation when other communities retaliate.²¹⁷

Personal local income taxation in modern form originated in Philadelphia in 1938 under permission granted by Pennsylvania in 1932.²¹⁸ Its use spread to other local governments, particularly in Pennsylvania and Ohio, but in 1953 over half of all local income taxes in the country were collected by Philadelphia.²¹⁹ The tax on wages must be enforced by withholding; the tax on business profits is self-assessed and much is evaded, but wages constitute the larger part of the base and the evasion of taxes on business profits is not crucial.²²⁰

Toledo adopted a corporate income tax in 1946 and other Ohio cities, as well as St. Louis and Louisville, followed suit.²²¹ The revenues produced are probably a very small part of total local income taxes.²²² However, they produce a greater compliance problem proportionately because of evasion by a large number of corporations with minimum contacts.²²³

In 1953, income taxes produced only about two percent of total municipal taxes.²²⁴ However, in cities where used they were major

213. DUE, *op. cit. supra* note 208, 235.

214. Cf. *id.* at 243-44. Preferably, the taxing jurisdiction should include the whole market area so as not to penalize stores in the jurisdiction. Walker, *What is a Fair Tax Source for Local Governments?*, 32 MUNC. FIN. 69, 72 (1959).

215. *Id.* at 70-72.

216. SIGAFOOS, *THE MUNICIPAL INCOME TAX: ITS HISTORY & PROBLEMS* 19-20 (1955).

217. *Id.* at 27-31.

218. Spec. Subcomm., 1 *State Taxation of Interstate Commerce*, H.R. REP. No. 1430, 88th Cong., 2d Sess. 445-46 (1964).

219. SIGAFOOS, *op. cit. supra* note 216, at 69.

220. *Id.* at 81-83.

221. Spec. Subcomm., *op. cit. supra* note 218, at 446-47.

222. *Id.* at 447-49.

223. *Id.* at 467-70.

224. SIGAFOOS, *op. cit. supra* note 216, at 69.

sources of revenue.²²⁵ There is evidence that they enabled some of those cities to hold the line on property taxes.²²⁶ A recent study predicts increased reliance on income taxation by local governments.²²⁷

3. GROSS RECEIPTS TAX

A study of California local finance urged greater use of local business license taxes measured by gross receipts, in order to add revenue to regulation.²²⁸ As a practical matter, gross receipts taxes were a very small part of total local tax revenues in 1963 and almost two-thirds of the total local gross receipts taxes were collected by New York City.²²⁹ Cities using such taxation varied widely in the reliance placed upon it; its importance is expected to decline because of strong resistance to any but very low rates.²³⁰

Only very low rates are suitable because the tax seems inequitable, falling uniformly on businesses with much different profit margins.²³¹ Further, gross receipts taxation penalizes those businesses where competition largely prevents shifting the burden of the tax; newer and smaller businesses appear less able to pay the tax and larger businesses are encouraged to integrate vertically to avoid the tax.²³² Differential rates can reflect the varying profit margins of different business groups and can be structured to avoid pyramiding or the incentive to integrate, but such adjustments destroy the main virtue of the tax, its simplicity.²³³

Overall, perhaps a balance of taxes is needed, depending on the characteristics of the particular local community.²³⁴ There is some conflict about whether or not the program should include various lesser nonproperty taxes,²³⁵ but it seems agreed that size of the levying jurisdiction is very important.²³⁶ Therefore, the legislature should begin deliberate planned experimentation with tax regions comprising more

225. *Ibid.*; Spec. Subcomm., *op. cit. supra* note 218, at 447-50.

226. SIGAFOOS, *op. cit. supra* note 216, at 87-91.

227. Spec. Subcomm., *op. cit. supra* note 218, at 450.

228. VIEG ET AL., CALIFORNIA LOCAL FINANCE 204-09 (1960); *accord*, Chatters, *New Money for Cities*, 50 NAT'L CIV. REV. 298, 300, 303 (1961).

229. Spec. Subcomm., 3 *State Taxation of Interstate Commerce*, H.R. REP. No. 565, 89th Cong. 1st Sess. 1071 (1965).

230. *Id.* at 1071-73.

231. Walker, *supra* note 214; see Legler & Papke, *Optimizing State Business Taxation: An Application of Differential Impact Analysis*, 18 NAT'L TAX J. 240 (1965).

232. Spec. Subcomm. *op. cit. supra* note 229, at 1020-22.

233. *Id.* at 1022-23.

234. See Fary, *Tailoring Revenue Sources to the Community*, 34 MUNIC. FIN. 39 (1961).

235. Compare ACIR, STATE CONSTITUTIONAL & STATUTORY RESTRICTIONS ON LOCAL TAXING POWERS 14 (1962) (limitation to the few most productive), *with* Chatters, *New Money for Cities*, 50 NAT'L CIV. REV. 298 (1961) (taxes on amusements and admissions, transient hotel rooms, public utility franchises, motor vehicles and fuel).

236. ACIR, 1966 STATE LEGISLATIVE PROGRAM 45-46 (1965); Netzer, *Paying for Services*, 51 NAT'L CIV. REV. 195, 197-98 (1962); Walker, *supra* note 214, at 74-75.

than one local government as well as with the imposition of substantial nonproperty taxes at the local level.

IV. CONCLUSION

Most of the steps recommended by this study have been suggested before,²³⁷ though perhaps more briefly and with less insistence. It is to be expected that the statutory changes, at least those affecting local taxation, have a fair chance of accomplishment in a legislature dominated by urban senators and representatives. But will the legislators have the courage to propose, and the citizens the wisdom to approve, the many modifications of the Florida Constitution that are required?

There will be unnecessary grief in the future of the state if the chains of habit, ignorance and fear now encased in the taxation provisions of the constitution are permitted to prevent the legislators from serving the people adequately. Let the citizens remember that constitutional fetters on the taxing powers of the elected legislators are an admission of a lack of belief in the system of representative democracy.²³⁸ Let both the legislators and the citizens consider these quintessential conclusions of distinguished experts in public finance:

Thoughtful men may differ on exactly what kind of provisions belong in written constitutions and what should be left to statutes and judicial interpretation. But the preponderance of opinion would agree that a constitution is *no* place to embody details about the kind of tax structure to be developed—nor the rates to be imposed nor the uses of particular funds. Conditions change so much that the best arrangement at one time can be utterly obsolete a generation later. Changes in economic structure, the level of prices, the taxes imposed by the federal government or neighboring states, the administrative capacity of states, the role of local government, and the use of tax funds are some of the developments which have already made well-meant decisions of our fathers—and the successes of narrow pressure groups—needless burdens today.²³⁹

237. *E.g.*, SLY, *TAX ASSETS & TAX POLICIES IN FLORIDA* 31 (1964).

238. Landers, *Constitutional Provisions on Taxation & Finance*, 33 *STATE GOV'T* 39 (1960).

239. SHULTZ & HARRISS, *AMERICAN PUBLIC FINANCE* 139 (8th. ed. 1965). On June 30, 1966, the Florida Constitutional Revision Commission unveiled its tentative complete draft. Some of the changes urged by this study are slated for adoption. Others, including crucial ones, fared worse. See generally *Miami Herald*, July 1, 1966, p. 1-A, col. 4 and p. 20-C, col. 1; July 3, 1966, p. 18-A, col. 2.