RATIONAL taxation is one of the biggest problems facing the American people today, with the ever increasing demand for services and security creating serious competition for additional sources of revenue. The problem is intensifies by the effect upon the taxpayer. Tax evasion is increasing; and criticism is universal, with the average citizen taking the view that the tax structure is a rickshackel affair, toward which he has no feeling of loyalty or pride.

Four years ago, in February, 1933, the First General Assembly called by the American Legislators' Association devoted its three-day meeting to a consideration of the conflicts in taxation. The gravity of the problem was appreciated by all of the delegates, with the result that they directed the president of the Assembly to appoint an Interstate Commission on Conflicting Taxation, whose membership should consist of ten representatives and seven senators. This commission was directed to investigate the problem of conflicting taxation and to report its findings and recommendations to the next General Assembly in 1935. The president accordingly designated the members of the commission (see membership list at end of chapter) and they in turn employed a research staff.

Work of the Commission

The research work of the commission was carried on at the administrative offices of the American Legislators' Association during 1934-1935, first under Professor Clarence Heer, of the University of North Carolina, and later under Professor James W. Martin, of the University of Kentucky. At the Second General Assembly held in Washington, D. C., in February, 1935, the commission rendered a comprehensive, scholarly report of its two years' work, and in September, 1935, The Progress Report of the Interstate Commission on Conflicting Taxation was published. This report contained the results of the extensive research studies carried on by the commission, together with their recommendations for both a short and a long range program.

The commission convened again at the time of the Third General Assembly held in Washington, D. C., in January, 1937, and Senator Seabury C. Mastick, Chairman, formerly a member of the New York Assembly, reported to the Assembly. For the benefit of the delegates not familiar with the work, he reviewed in his report the activities of the commission during the four years of existence. The Report follows in part:

Report for the Commission

The Commission on Conflicting Taxation endeavored to segregate certain tax fields
to the state governments on the one hand and to the federal government on the other. It proposed that since the federal tax on gasoline was originally levied only as a temporary expedient on account of the emergency, that the federal government relinquish this source of revenue for the exclusive use of the states. The commission reiterates this recommendation and is hopeful that the federal government will give consideration to this relinquishment. In this instance the states were first in the field of gasoline taxation, and it would seem natural that they should be given the preeminent right to this form of revenue.

It was also recommended that Congress should leave the electrical energy taxes to the states for their exclusive use. Here again the federal government had only recently entered a field which had been previously utilized by the states. This recommendation is again submitted for the consideration of Congress.

In return for retirement from the gasoline and electrical energy field, the commission suggested that the federal government be allocated the tobacco taxes and the volume taxes or so called gallonage taxes on liquor. The commission still holds to this opinion.

However, during the past two years no substantial change has been made in any of these respects from either the state or federal point of view. Some of the states have levied volume or gallonage taxes on liquor, and some have levied tobacco taxes which hitherto had not levied such taxes. There is still a wide field for segregation.

In the universal scramble for revenue on the part of all levels of government—federal, state, and local—the element of cooperation has almost been lost sight of, at any rate in the practical application of revenue laws. The subject of cooperation has been held in mind only to the extent that some endeavor has been made to distribute the tax burden more evenly, but the need for revenue in the respective levels of government has been so great, and the emergency has been so pressing, that taxes have been levied in the various fields with little or no regard paid by one level of government to the other.

**Allocation of Taxes**

This might well be illustrated by the effect of the federal gift tax. This tax is three-fourths of the estate tax, and has resulted in the transfer of a large amount of property and the consequent reduction in the estates to be finally administered under the estate tax. It is obvious that the larger the aggregate estate, the larger the estate tax and the larger the share of the state governments in those states which have progressive rates of taxation. Now, if the federal government encourages the transfer of property under the gift tax, and the state gets no share whatever of the gift tax, then the estate or inheritance tax coming to the states will be very much lessened. In the case of the state of New York for example, it has been estimated that this ultimate decrease will amount to about 50 per cent of the expected revenue under the present existing law. In this instance the federal government apparently overlooked the fact that the states would be penalized in the operation of the gift law.

Aside from the consideration of the problem of separation of sources of revenue, there have been other problems brought to the attention of the commission, all of which have been given some consideration. Where the federal government and the state both levy taxes on the same subject matter, the question arises whether the federal government, to avoid duplication, should share the tax on some basis of allocation with the states, or, on the other hand, should perhaps permit the states to collect the tax, or a portion thereof, and receive a credit for it from the federal government, as is done by the "crediting device" under the present estate tax. Here there is the difficulty of determining a basis of allocation. If neither of these plans should turn out to be practical, should there be a further consideration of direct federal aid to the states for particular functions of government?

All of these subjects require statistical information, which has not been available.

There has been suggested by the Commission on Conflicting Taxation that in personal income taxes the federal government leave to the states the relatively small incomes, say those under $10,000, and that the federal government collect the tax on the larger incomes, giving back to the states a share of their collection from these larger incomes. Such an arrangement would have several very valuable results, in that it would
decrease duplication of returns by nearly 50 per cent, and consequently would decrease to the same extent the labor of the federal government in examining returns. By the use of the sharing device in the larger incomes the total return to the states could be adjusted to about the same as it is at present. It is obvious that no one solution of tax conflicts is possible. Some sources of revenues may be separated, but separation of revenues is not a complete solution to the problem, since this plan would not yield a sufficient amount either to the states or to the federal government. The problem must be solved by a combination of various plans.

The Tax Revision Council

Establishment of the Council

One of the interesting facts brought out early in the investigation work of the commission was the complete lack of any regularly established procedure by which state officials could confer with federal officials while working out their lines of attack upon the tax problem. The commission members strongly urged that machinery be set up for continuous contact between federal and state policy-forming officials for the joint solution of their tax difficulties. The Second General Assembly, recognizing this need, provided that such an agency be set up in the form of the Tax Revision Council which, through its membership, would provide the means for official conference among the three levels of government. Seven officials representative of the federal government, seven of the state governments, and seven of the local units of government should compose the membership. (The list appears at the end of this chapter.) This new agency was directed, first, to study the problem of multiple taxation by competing units of government, and, second, to determine the functions which can be performed best by the federal government and those which more properly fall to the states and their subdivisions.

In referring to the need for a Tax Revision Council, the commission included the following sections in their Progress Report:

Need for a Council

Tax conflicts arise largely from the fact that the federal government and the states have constitutionally coordinated taxing jurisdiction in all important fields except property taxation and customs duties.

In the early history of the United States the important sources of tax revenues were property and poll taxes, tariffs, and a few selective sales taxes. With rare exceptions, the excise taxes were imposed only by the federal government and, in consequence, interfered but little with local tax plans. With the increase in governmental activity during the past thirty years, both the federal government and the states have found it necessary to expand the scope of their tax systems. Death taxes, income taxes, and selective excises are now imposed by both commonwealth and central governments.

In the meantime, states have been subdivided into counties and sometimes into towns or townships. Cities, school districts, drainage districts, and other taxing jurisdictions have been superimposed on these, often in such a way as to provide so many layers of taxing jurisdictions that an individual taxpayer must contribute to several levels of government. These local governments have assumed large importance and have developed semi-independent taxing programs which, in many cases, overlap the state tax plans and sometimes both the state and the federal tax plans.

In certain states, some effort has been made to alleviate the difficulties growing out of overlapping local government jurisdictions. Some attention has been given to working out tax plans which avoid discriminatory practices, although they involve duplication of levies. In keeping with this activity, the Interstate Commission on Con-
CONFLICTING TAXATION

Conflicting Taxation gave attention to preparing specific plans whereby the federal government and the states can avoid conflicting tax levies by separation of revenue sources, by utilization of federal credits for state taxes, and—perhaps by federal administration of certain taxes, the proceeds of which would be distributed to the states, either directly or as grants-in-aid. However, all these plans contemplate dealing with the situation piece-meal, and each of them looks toward amelioration of immediate difficulties rather than toward a complete solution of the problems. It must also be recognized that, even though immediate steps were taken to solve conflicting tax problems, one could not expect them to remain solved. Governmental institutions are developing at such a rapid pace that new problems of taxation, continually are arising.

Permanent Means of Study Essential

Therefore, no matter what legislative changes may be adopted to reduce the evils of conflicting taxation, it will be essential to maintain machinery for dealing continuously with the problems of this sort which evolve from the operation of our plan of government.

It has become commonplace among students of government that agreement on controversial public questions is reached almost invariably, if at all, through personal conference. This is particularly true in the field of taxation, especially in the matter of developing a spirit of interstate and federal-state comity; for in this field an attitude of give-and-take must characterize any successful procedure. This point of view is in keeping with the following expression of President Roosevelt in his letter of February 18, 1935, to the executive director of the Interstate Assembly:

"It is apparent, I think, to all students of government that there is urgent need for better machinery of cooperation between federal, state, and local governments in many fields. Both the Congress and the executive departments of the national government are constantly confronted with problems whose solution requires coordinated effort on the part of the states and the federal government. Two notable instances are the coordination of law enforcement and the interrelation of fields of taxation. This latter question has long seemed to me one of prime importance. Only recently I directed the Secretary of the Treasury to undertake a study of sources of taxation, with particular reference to the matter of conflicting or overlapping of federal, state, and local taxation. When this study is complete it should furnish the basis for discussion of the problems involved with representatives of the states."

Plan for Tax Revision Council

It had seemed to the Interstate Commission on Conflicting Taxation that there were two practical plans for organizing the investigation. One contemplated the establishment of an unofficial commission, such as that set up for the Inquiry on Public Service Personnel. This commission was composed of eminent men representative of business, education, public administration, and scholarship in the field of government. The other plan contemplated the establishment of a commission officially representative of the interested parties. In the case of conflicting taxation, which requires official legislative and administrative action, the second type of commission is to be preferred. Therefore, the Interstate Commission on Conflicting Taxation recommended to the Interstate Assembly that a semi-permanent commission be composed of seven persons representative of the congressional and federal administration viewpoints; that the states, through the Interstate Assembly, authorize appointment of seven persons representative of state legislative and administrative viewpoints; and that the United States Conference of Mayors, the American Municipal Association, and the Municipal Finance Officers' Association each appoint one person representative of city viewpoints in public finance, and that the chairman appoint three public officials representative of county, rural school district, and other local government viewpoints. It was contem-
plated that this Tax Revision Council would have the benefit of assistance from the existing staff of the Joint Committee on Internal Revenue Taxation, from the staff of the Treasury Inquiry on Public Finance, from the Interstate Commission on Conflicting Taxation, and from such other specialists as might be made available.

The selection of personnel representatives of these various units of government is in keeping with the principle that the parties which have an interest at stake shall be represented in the body established to deal with controversial issues. The individuals chosen to represent each level of government must include men who are in key positions to exercise leadership in the financial affairs of government, and who are willing to give generously of their time to the task.

**Council to Study Re-allocation of Governmental Functions**

In addition to problems of taxation strictly defined, it was anticipated that the council would investigate continuously the re-allocation of public functions among the various levels of government. The work of the Interstate Commission on Conflicting Taxation has already been severely limited by lack of comprehensive information regarding the distribution of governmental activities among federal, state, and local agencies. More than once it has even been suggested that the commission's own efforts be directed to the investigation of these problems. Thus it is apparent that progress toward the solution of tax problems affecting the different levels of government depends largely on working out a sound policy regarding the proper allocation of various governmental activities among units of government.

The Interstate Commission on Conflicting Taxation recognized that this study of the distribution of governmental functions may, and doubtless should, require a separate staff from that concerned with the technical problems of taxation. On the other hand it saw no reasons why the proposed Tax Revision Council should not conduct both studies simultaneously under appropriate direction. In this way basic information and recommendations might be secured as rapidly as possible.

**Organization of the Tax Revision Council**

In the light of discussion with federal officials it seemed preferable to the members of the Interstate Commission on Conflicting Taxation to have eight federal representatives, three from the Treasury, two from each house of Congress, and one from the staff of the Joint Committee on Internal Revenue Taxation. To maintain the symmetry contemplated in the Interstate Assembly resolution, the total number of members of the council was therefore increased to twenty-four, eight for each level of government. (See list of members at end of chapter.)

The first meeting of the Tax Revision Council was held in the Ways and Means Committee Hearing Room in the New House Office Building in Washington, D.C., on June 6 and 7, 1935. Assurances of complete cooperation from the Senate Finance Committee were offered by Senator W. H. King, who recalled that he had proposed a tax revision council as early as 1921. A similarly cordial message from the House Committee on Ways and Means was presented by Representatives Robert Doughton and Fred M. Vinson. Mr. Vinson urged promptness of attack.

In addressing the first meeting of the council, Secretary Morgenthau expressed the view that the basic problem was justice to the taxpayer. Uneconomic tax levies affect the very foundations of government and the great task is to restore equilibrium to the tax structures. It is not a matter of the efficient tax gatherer; if so, the problem of this democratic government would be no different from that of any ancient tyrant who tried to get as much as he could with the least expense.

The first step, according to Secretary Morgenthau, is to make a careful survey of the total tax structure to determine how the burden of our governmental expense is now distributed. Next, we should note what practicable changes in the combined tax structure of the country would produce a more equitable distribution of the total burden. In the third place, we should concentrate upon a few important and workable means of eliminating conflicts in a manner consistent with our analysis of what con-
CONFLICTING TAXATION

constitutes a fundamentally desirable tax structure. Finally, having arrived at a few important possibilities which we know to be fundamentally sound, we can then attempt to put them into effect.

In conclusion, Mr. Morgenthau strongly urged that the technical details of tax-gathering, and even the essential matter of supporting the government, be considered secondary in importance, and that first consideration be given to the vital question of justice to the taxpayer. That course simplifies the task and leads directly to the goal which we strive to reach.

In May, 1936, the Tax Revision Council again convened in the Ways and Means Committee Room at Washington, D. C. The four working committees made their reports, and the future policies of the council were discussed at length. (The minutes of this meeting are contained in the Book of Proceedings.)

Financing

Senator Mastick, in his report to the Third General Assembly, stressed the fact that both the Commission on Conflicting Taxation and the Tax Revision Council are met by the same problem which the federal, state, and local governments face; that is to say, the question of revenue. What work has been done in the last eighteen months on the problem of conflicting or multiple taxation has been undertaken by the research organization of certain state tax commissions, and the research organization of the Congress and the Treasury. These, however, have not been coordinated. It is necessary, for the accomplishment of the plans of both these commissions, that funds be provided for such study and coordination, and that it be done in such a way that the work of the commission receives official consideration when presented both to Congress and to this Assembly.

The Interstate Commission on Conflicting Taxation therefore offered the following resolution, which was unanimously passed by the Assembly:

"RESOLVED, That the Third General Assembly hereby requests the Committee on Appropriations of the House of Representatives of the United States to insert an item for $25,000 in the Deficiency Appropriation Bill in order to match a similar appropriation from the Council of State Governments for the purpose of financing the Advisory Committees and the technical staff of the Tax Revision Council, which have been jointly established by the federal government and the Council of State Governments. To the end that the proper financing of the Tax Revision Council may be consummated at the earliest time, the chairman and secretary of the Tax Revision Council, together with a committee appointed by the chairman, are hereby directed to confer with the proper Congressional officials, with the Secretary of the Treasury, and, if it seems advisable and feasible, with the President of the United States."

The federal government has not yet participated financially in the carrying forward of this work. Funds of the Council of State Governments, to the amount of $25,000, have been assigned to the tax investigation and revision work, but no great amount of progress has been made in the work, since the states have taken the position that the effectiveness of the Tax Revision Council lies in the wholehearted support and participation of those governments which it represents. Accordingly, until the federal government shall bear its share of carrying forward this work, the Tax Revision Council will remain relatively inactive. The Interstate Commission on Conflicting Taxation will be organized and will function, as do the other interstate commissions established by the states in the Council of State Governments.

The Interstate Commission on Conflicting Taxation and The Tax Revision Council

The Tax Revision Council is the logical outgrowth of the Interstate Commission on Conflicting Taxation, but the commission in no way loses its identity through the establishment of the council. The Tax Revision Council is a coordinating body for the three levels of government in their attack upon the problems of functions to be performed by the various levels of government. Through this agency it was anticipated that sustained investigation of multiple taxation might be facilitated among federal, state, and local governments.

The Interstate Commission on Conflicting
Taxation will continue to conduct its investigations and meetings in behalf of the states, and if the time should come when the states feel that they are obliged to make themselves effective by a "state originated program," they may, if they so desire, direct the Interstate Commission on Conflicting Taxation to carry forth their objectives. It is contemplated that as each state establishes a Commission on Interstate Cooperation, it will name one member to the Interstate Commission on Conflicting Taxation, so that it will be a commission of forty-eight instead of the original seventeen members, as first organized. The eight state men on the Tax Revision Council are representative of the Interstate Commission on Conflicting Taxation. To carry the pattern still farther: the man who is named to the Interstate Commission on Conflicting Taxation from his state might be the chairman of his state tax-revision council, where he could bring together the best thought of his people on specific problems, and very possibly, from time to time, pass on to them valuable suggestions as to techniques and sources employed by the commission or the council.

The Program

In taking a long range view of the situation the commission urged in its progress report that the states, in circumventing this problem, first improve their own position. It made the following rudimentary suggestions:

1. Better Statistics. In developing a long term program for dealing with federal-state and interstate tax difficulties, the several states can immediately lay the foundation for progress. A first necessity is the development in each state of more adequate financial statistics of state and local governments. At the present time only about one-fourth of the states make any pretense of collecting all of the statistics of state and local taxation, and even in these states the statistics are in some cases meager and unsatisfactory. Each state should certainly know the total amount of tax revenues of various classes which it raises by state or local action. It should know, also, the facts respecting the distribution of its state and local expenditures and those regarding public debt. In addition, it is desirable that the states assemble more complete information regarding functional activities. Incidentally, this recommendation to the states contemplates more generous cooperation with the statistical agencies of the federal government, particularly with the Bureau of the Census.

2. Comprehensive Tax Study. In the second place, many of the states need to conduct comprehensive investigations of their own state and local tax problems. A valuable incidental result will be the development of information needed by the Tax Revision Council. More than half of the commonwealths, however, have not conducted thorough studies of their tax situations. These states, it is believed, should in the near future provide for official investigations looking toward improvement in the local tax situation and, incidentally, provide data necessary for any thoroughly going interstate investigation.

3. Public Understanding of Fiscal Affairs. Partly as an outcome of these two suggestions and partly as a result of current governmental activity, each state should conduct continuously a campaign of public education regarding state and local taxation. The educational program along this line not only should contemplate popularizing information as to tax problems, but it should also supply the public with full information on governmental expenditures and the administration of public debt.

4. Congressional Enabling and Consenting Act. A fourth recommended course of action looking toward a long range policy of dealing intelligently with conflicting taxation would be the enactment by Congress of a general enabling and consenting act respecting interstate tax compacts. A still more fortunate arrangement would be the passage of an enabling and consenting act applicable to all compacts negotiated under the auspices of the Council of State Governments. Probably, the development of treaty relationships between the states will be essential in the long run in dealing with conflicting taxation.

Work of the Council

The Hon. Robert L. Doughton, Chairman of the House Ways and Means Committee, as Chairman of the Tax Revision Council, has taken an active interest in the promotion of the council. This has been particularly
fortunate for the council in view of his wide experience and high distinction in the field of taxation. In addressing the Third General Assembly, Mr. Doughton commended the American Legislators' Association and the Council of State Governments “for their valuable spadework in the tax field. No other group has done so much to focus the spotlight of public attention upon the complexities of the tax maze. No one else has done half so much toward educating the public in general, and governmental officers in particular.” As a result, “avenues of approach to, and methods of solution of, the whole duplicate taxation field have been discussed and considered. In simply maneuvering ourselves into position to grapple more effectively with this problem, the battle is partially won.”

In the survey which the Council of State Governments is conducting of the more important legislation passed by the state legislatures during the year 1937, it appears that contrary to the advice of recognized authorities in the tax field, the number of states imposing income taxes has risen from twenty-eight in 1935 to thirty-two in 1937; those imposing cigarette and tobacco taxes from fifteen to twenty; and those imposing chain store taxes from fifteen to twenty-three. Moreover, the federal government has continued its gasoline tax, numerous states have added liquor gallonage taxes, and several have added or increased sales taxes. Obviously, no progress has been made in reducing conflicting taxation, and the mad scramble for more and more revenue goes on.

Press Comments

Washington, D. C., Star: “The first concerted movement by a large number of state governments to deal with multiple taxation took place in February, 1933, when thirty-two states formed the Interstate Commission on Conflicting Taxation. The report of the research staff of the commission, made public in 1935, after a two-year study, constitutes the most exhaustive survey of conflicting taxation ever conducted.”

St. Louis, Mo., Post Dispatch: “Conflicting and overlapping taxation is an old problem which grows more complicated, more difficult, and more acute with the years. It has now become so acute in this country that it must be faced squarely. The fact that we are facing it gives rise to the hope that we shall soon be taking important steps to solve it.”

New York World-Telegram: “Besides the federal and state governments, no less than 175,000 counties, cities, school districts, and other local units are imposing and collecting taxes in these United States.”

This means conflict between the scores of thousands of taxing jurisdictions, and confronts the people with a choice between justice and efficiency in taxation on the one hand and local self-government on the other. The choice doesn’t seem to us quite as harsh as that. Preservation of home rule doesn’t exact the price of endless, hopeless floundering in a tax muddle that gets steadily deeper and worse. Nor do we think the average citizen and taxpayer can be convinced he must pay that price.

“America has no tax system,” Franklin D. Roosevelt said when he was Governor of New York. He also said: “We have heard much in recent years about business in government, and yet I note that those who have been loudest in proclaiming that government should be conducted by business men have had neither the courage nor the intelligence to suggest that the whole taxing scheme of America be put on a business basis. The time has come when, driven by necessity, if for no other reason, America must face this task.”

That was five years ago.

Yet today, with taxes mounting, with record state budgets piling heavier loads on selected tax goats, with cities clamoring for more taxing power, with emergency taxes riveted into permanence, we are still in the committee stage of reports, re-statings of the tax problem, headshakings over difficulties. Everything is stationary but the taxes!

Will 1950 find a self-governing people staggering under worse multiplied tax burdens, still only listening to reports about it and wishing “somebody would do something”? Why should self-government be such a slow self-starter for urgently needed tax reform?
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  U. S. Treasury Department
Senator Pat Harrison
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Senator William H. King
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  Judge Edward L. Leahy
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  Senator Harold M. Groves

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  Henry Morgenthau
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