Listing of Legislative Records in Oregon State Archives pertaining to:
1969 HJR 3 relating to: Authority of Legislature to adopt existing federal income tax laws and without further action adopt amendments thereto.

HOUSE TAXATION COMMITTEE MINUTES:

March 3: p. 2-3
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March 5: p. 2-3
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March 7: p. 4
Also on tape: 39

May 5: p. 2-3
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May 6: p. 2
Also on tape: 76

Attached Exhibits:
1. EXH A of 3/3: State Tax Commission Memorandum of 8/19/1968. 10 pages.
2. EXH B of 3/3: State Tax Commission Memorandum of 2/8/1967. 3 pages.
3. EXH of 3/5: League of Women Voters of Oregon Statement on HJR 3. 1 page.
4. EXH of 5/6: House Amendments to HJR 3. 1 page.

SENATE TAXATION COMMITTEE MINUTES:

May 15: p. 1
Audio tape number not listed in minutes.

No Exhibits

Minutes: 9
Exhibits: 15
Total pages: 24

Compiled December 28, 2010 by: Austin Schulz, Reference Archivist

Should expand legislation to include interest. In 1963 legislation which was passed deducts the interest for cooperatives. The development Mr. Hornecker was representing was neither cooperative nor condiminium, but owners of land with a common area. Rep. Rogers questioned life estate and who would pay. Deduction would not be available to those on option to buy. Mr. Hornecker replied to Rep. Boe's question that there should be little difference in revenue. Summed up by saying they could be called a cooperative (which they're not) which is available to them now under legislation; want to call themselves what they are, and they aren't in effect a corporation. There is no limitation in bill saying limited to non-profit organization. Rep. Mann asked if there was a choice between the corporation or individuals taking the deduction, and Mr. Hornecker felt that the deduction should be available to individual actually paying. Instead of corporation paying, would like to have individual get credit for what they pay to corporation to pay these taxes.

Mr. George Annala reported on the Tax Study Committee's general view point on HJR 3 and HB 1026. HJR 3 makes it possible to adopt the federal income tax law which can't be done constitutionally at the present time. HB 1026 proposes to change current tax rates from a range of 3-9-1/2% to a range of 4-10%. This should be given complete study. Out of 719,000 returns, on the adjusted basis the change in rate would produce a tax difference of $437,000. Would basically make no change in average person's return. There would be some administrative simplication. Will not be beneficial to all, but to some. With the more complicated type of return, would be a benefit both for taxpayer and work of accountant. It was questioned if 1026 would permit use of tables? He felt it should be examined to see if this could be done; an amendment might be needed to accomplish this. Twenty-one states have some form of using federal taxable income as starting point. HB 1026 recognizes the constitutional question and adopts internal revenue code of 1964 as of 12/31/68. With adoption of HJR 3 would automatically pick up any changes in federal tax code under Oregon tax structure. Intent of both bills is to adopt federal code. The tables are different in the two bills because the federal tax deduction represents close to $50 million. If HJR 3 is defeated, could still pass HB 1026. The HJR allows any future change to IRS as well. In HJR 3 on page 2, line 15, after "to or" there should be inserted "measured by income, may define the income on, in respect to or". In HB 1026, line probably should be amended to read "2/3 of 1%" instead of "1/2" in paragraph 3.

Rep. Hart interrupted the proceedings to announce that after April 1 Bob Newberry will no longer be associated with the committee as consultant. However, Mike Emmons will take his place at that time, and he was introduced to the committee. Mr. Emmons is an attorney and also will soon be a CPA. (Rep. Rogers left at 8:50).

The discussion was continued with Mr. Carlisle Roberts stating that all changes in the internal revenue code automatically

become effective on same date as federal. Federal code could be adopted under the provisions of HJR 3 and in future sessions go back to a separate state code without further constitutional amendment. Rep. Hart announced that there was a memo from the State Tax Commission dated August 19, 1968 on the pros and cons of adopting a federal taxable income base for Oregon personal income taxation which will be provided for the members (Exhibit A) and Mr. Roberts also stated that there is a memo dated Feb. 8, 1967 relative to the constitutionality of option provision (Exhibit B). Rep. Bradley questioned that if it was discovered that HJR didn't accomplish legislative intent, would this negate the vote of the people. Mr. Roberts felt that the court would rule that the act didn't carry out legislative intent.

Dr. Willard Aldrich, President of the Multnomah School of the Bible spoke next in favor of HB 1026 regarding the housing exclusion from gross income for ministers. At the present, those ministers serving on faculties of seminaries are not allowed to deduct their housing allowance, as pastors of local churches do. Their school has 12 ordained ministers on the faculty who have been receiving the ministers' rental allowance as exclusion from gross income both under federal and Oregon laws. In 1961 the housing exclusion was removed. Denials were based on interpreting law in line with federal law. They learned that the Tax Commission had changed interpretation of the law, limiting exclusion to a pastor of a local church. Felt this was arbitrary interpretation. They were over-ruled by 2 decisions in small claims court. The current interpretation discriminates against ordained ministers in areas other than local churches. This bill would end this discrimination. There was discussion among the members as to exemptions that are already given to ministers and whether their salaries were adequate.

Mr. Henry S. Blauer, Chairman of the Taxation Committee for the Oregon Society of Certified Public Accountants also spoke in support of the bill. (Rep. Martin excused at 9:30). They are in favor of re-defining taxable income for Oregon purposes and borrowing from federal code to accomplish simplification, both for administrative reasons and taxpayers. Rep. Skelton thought perhaps there should be a complete reform of our own tax structure rather than to accept the mistakes in the federal. Mr. Blauer felt that if legislature felt strongly about inequities of any aspect of federal code, they should introduce modifying legislation.

The meeting was adjourned at 9:40 a.m.

Respectfully submitted,

Muriel McBee

Exhibits A, B

Tape #34

First Draft

A

STATE TAX COMMISSION

MEMORANDUM

August 19, 1968

TO: Commissioner Charles H. Mack, Chairman, State Tax Commission, Room 412

FROM: Carlisle B. Roberts, Chief Counsel, Law Section, Room 403

RE: The Pro and Con of Adoption of a Federal Taxable Income Base for Oregon Personal Income Taxation (LS 5604)

The Governor's office has asked for a discussion, pro and con (without recommendation) on the subject of the adoption of the federal personal income tax law for Oregon personal income tax purposes. It is expected that this matter will be placed before the 1969 Legislative Assembly by one or more proponents, stimulated by the testimony of the Oregon Association of Certified Public Accountants and by the tax committee of the Oregon State Bar. It is anticipated that something along the format of House Bill 1209 (1967 Regular Session) and House Bill 1801 (1967 Special Session) will be used. The over-all aim would be to provide for the filing by an Oregon personal income taxpayer of a copy of his federal income tax return, supplemented by an Oregon "cover sheet" or form which would require the least possible number of adjustments from the federal return.

Edward Branchfield, Esquire, Administrative Assistant to the Governor, has suggested that this memorandum point out, at the inception, that the various states have used several different points of departure upon the adoption of the federal form, but these are loosely grouped, or undifferentiated in the lay mind as "using a percentage of the federal", "using the federal tax base", or words of similar import which fail to recognize the vital distinctions which must be taken into account by the legislator and the administrator. Consequently, it is appropriate to say that both the federal personal income tax and the Oregon personal income tax laws will follow the same basic "formula": During the taxable year, the monetary receipts and values in lieu of money received by the taxpayer are subject to certain statutory exclusions, the balance of which must be reported as "gross income". From this sum are deducted statutory allowances for the ordinary and necessary expenses of doing business and other statutory items which lead to the result denominated as "adjusted gross income". From adjusted gross income statutory deductions are allowed for specific personal costs (e.g., certain medical expenses) and the misnamed "personal exemption" and deductions for dependents, or a standard deduction, leading to taxable net income. The rates of tax are imposed upon the taxable net income and against the result of this calculation there may be offset statutory "tax credits". The federal law could be followed to any particular step in the formula, the state law taking over completely thereafter.

At the present time, it is believed that 20 states can be classified as being "federally based" but their laws fall into three different categories, as follows:

I. Alaska began with a percentage of the federal income tax, abandoned it in 1963, and apparently has returned to it. It presently taxes at the rate of 16 percent of the federal tax. It is unique in using this method and has had some disagreeable history, inasmuch as it almost requires a special session of the legislature to make adjustments each time the federal government changes its rates. (It is common for the lay person to talk about "a percentage of the federal tax" as the easy solution, seeking simplicity, but experience shows that this is the poorest method of those available).

II. Sixteen states take off at the point of the determination of federal adjusted gross income, with necessary adjustments (e.g., the addition of state and local bond interest) and then provide for their own personal deductions and exemptions and rates. This method is followed with individual variances by Colorado, Hawaii, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Montana, Nebraska, New Jersey (upon election by the taxpayer), New York, Vermont, West Virginia and Wisconsin.

III. The method which is now beginning to come into prominence is the use of federal taxable income, with necessary adjustments. This means that the determination of personal exemptions and deductions will follow the federal law, leaving only the rates and the allowable credits to be determined by the state (and with those adjustments as to federal and state bond interest and allocation for nonresidents which must be observed for constitutional reasons or through comity). This is the method followed by Idaho, New Mexico and North Dakota and was the basis for the bills introduced into the Oregon legislature in 1967. This appears to be the most logical method if the simplicity sought for is to be obtained in the fullest measure.

The arguments generally given for adoption of a federal base are:

1. Tax returns would be simplified and the keeping of separate records supporting the state return would be eliminated, thus reducing taxpayer compliance cost.

2. Full advantage could be taken of federal administrative and court interpretations, rulings and decisions by the taxpayer and by the state administration.

3. Administrative costs would be reduced as a result of federal auditing and enforcement.

While these allegations do not include all the considerations to be taken into account in a proper study of a massive change of law, they are significant and will be given our first attention.

I. Simplification of the Making of Returns and Keeping Records By the Individual Taxpayer

Pro

1. Start with the basic premise that practically all taxpayers must file federal personal income tax returns and they are also required to file Oregon personal income tax returns, and there is practically no possibility of Oregon being in a position to change the federal Internal Revenue Code. While it is true that Oregon's basic personal income tax law is substantially derived from the language of the federal statutes (especially since the complete adoption of the federal capital gains provisions in 1967, retroactive to July 1, 1965) there are still a great many variances between the state's and the federal law. See Exhibit A, attached to this memorandum. While the State Tax Commission does not send out billings for less than $5, any one of these variances may give rise to additional tax in excess of that amount and, undoubtedly, there are thousands of billings which are a direct result of such variations. The massive similarity between the state and the federal law undoubtedly leads many taxpayers to assume that the two Codes are alike in all respects as they affect the individual making the return. To align the two completely would substantially remove disputes as to what is income, the amount of deductions, the types of exemptions available, the tax treatment of particular transactions, etc. All of this would make for simplicity.

2. The federal Internal Revenue Code and the official regulations are far more complete and comprehensive than the less sophisticated Oregon Personal Income Tax Act. Consequently, some taxpayers become involved in transactions as to which questions are raised by the state but for which the federal law provides clear guidelines. From time to time, after a period of vexation, the state will be prompted to adopt such federal provision. For example, see ORS 314.155 - 314.170, adopted in 1965, based upon IRC § 1038. Other relief measures, forced upon the federal government by a multiplicity of cases, have not come into the Oregon law because of the few number of cases in which the issues have been raised, but simplicity (ease of handling the case) would have been achieved if the federal law had been incorporated into the state law. For example, see IRC § 1312, secs. 1311 - 1315, secs. 381 - 382.

Letters received from tax administrators in the states of Colorado, Idaho and New York, addressed to a representative of the Oregon Society of Certified Public Accountants, indicate that they are generally pleased with the law, based upon the federal statutes, constantly updated.

Con

One can only be impressed when a great state like New York adopts the federal personal income tax law with as little variation as possible and finds the system satisfactory. However, before the legislature abdicates the exercise of its discretion over the state's most important revenue measure, the following points should be considered:

1. The federal Internal Revenue Code is a horrendous patchwork of very great complexity, filled with inequities. Every new administration hears well grounded proposals for reform but entrenched interests make reform impossible. See Hellerstein: Taxes, Loopholes & Morals (New York: McGraw - Hill, 1963); Eisenstein, The Ideologies of Taxation (New York: Ronald Press 1961); Stern, The Great Treasury Raid ( ). Such a law should be adopted only for reasons of great expediency.

2. If principal aim is to obtain simplicity for the personal income taxpayer, it is important to stress that relatively few taxpayers would be affected. There is no doubt that the effort and cost of complying with the tax law (a most legitimate goal) would probably be gained by a narrow band of taxpayers. Based on the last Biennial Report of the State Tax Commission, it would appear that only 15 percent of the taxpayers filing returns had income in excess of $10,000. The wage earner's return in Oregon is, today, virtually identical with the federal return as to the elements to be considered and is deemed to be of the utmost simplicity. Most of the errors are mathematical (which would not be affected by adopting the federal laws). Nearly 70 percent of the returns under $10,000 use the short form return requiring no more complicated procedure for tax determination than would be involved in applying a given percentage figure to the federal tax amount. One must almost inevitably conclude that the greatest benefit of the proposed law would be received by the tax advisor to the substantial taxpayer. (This is a legitimate object; the weight which it deserves can be debated.)

3. No matter how much we may aim for simplicity, it is doubtful that the nonresident will be relieved of any degree of present burden. Nonresidents can be taxed only on their income derived from sources within this state. They are generally allowed deductions related to income derived from the state and perhaps a portion of personal deductions not related to Oregon. This means that some rather detailed provisions in the state law relating to nonresidents are unavoidable. The data must be obtained which are necessary for allocation of income to this state and an apportionment of the federal income tax deduction (if this deduction should be the subject of such special interest by the legislature that it will be continued). [On the other hand, a nonresident may be aided by the change in law, inasmuch as the provisions of the federal income tax law are better known than those peculiar to Oregon.] In the provisions for adoption of a federal tax base in the 1967 legislative sessions, the proposed Acts required a special income tax return form for the nonresident.

4. The problem of "decreasing uniformity" must be given careful study. The whole aim in adopting what many have considered a grossly inequitable law is to achieve simplicity through uniformity. Total uniformity cannot be attained because of the difference between state and federal jurisdiction, rules of comity and constitutional prohibition. Among the minimum adjustments to be studied are:

(a) Exclusion of income which the United States can tax but the state cannot; viz., interest on federal securities.

(b) Inclusion of income which the state can tax but the United States either cannot tax or has not chosen to tax; viz., interest on securities of other states and their subdivisions.

(c) Disallowance of expenses of earning income in the first category above and allowance of expenses of earning income in the second category.

(d) Disallowance of deduction for state income tax (although this can be recouped by adjusting the rates. The same is true of the federal income tax deduction, if it seems preferable to allow such a deduction rather than trying to educate the taxpayers as to the significance thereof in relation to the whole income tax formula.)

(e) Determination of the tax on nonresidents.

(f) Allowance of deductions or credits for taxes paid to other states or countries.

But these special considerations are the smaller part of the problem. The real problem grows out of the fact that the Congress is in session almost continuously, whereas the state legislature at present meets only once in two years. Alteration of the federal income tax by Congressional action and through regulations and rulings is a continuous process. Whatever the situation in other states, a number of careful studies over the last several years in Oregon have all concluded (on the basis of our Oregon Constitution and recent Supreme Court decisions) that the Oregon legislature, by its own act, can adopt the present Internal Revenue Code by reference but cannot adopt future amendments in a present act without grave danger of constitutional attack. There can be no argument that the taxpaying public, assured that the Oregon law is now the same as the federal, will not distinguish between the Oregon law at the time of its adoption and those changes which have been made in the interim. Income tax returns will be filled with gross errors, innocently made.

The best solution to this problem for Oregon purposes would be to follow the example of New York and Kansas, adopting a constitutional provision which would enable the legislature to retain freedom that empowers it to adopt the federal law in futuro. Section 22, Article III, New York Constitution, reads:

> "Notwithstanding the foregoing or any other provision of this Constitution, the legislature, in any law imposing a tax or taxes on, in respect to or measured by income, may define the income on, in respect to or by which such tax or taxes are imposed or measured, by reference to any provision of the law of the United States as the same may be or become effective at any time, or from time to time, and may prescribe exceptions or modifications to any such provision."

5. We cannot overlook the fact that, although it is technically possible,

through Constitutional amendments and legislative enactments, to obtain a workable conformity to the federal personal income tax law, there remains a question as to whether the members of the Legislative Assembly forever and continuously would adhere to as rigid conformity as is possible. To some degree, "simplicity" is lost with every variation. It predicted that the tendency will be to inject new variations at every session.

This conclusion is based on experience. There have been quite a number of examples where some legislative mentor proposed to adopt in toto some section or sections of the federal law but, before the amendment was finally approved, variations crept in to meet the demands of some potential opponents. See, for example, ORS 316.345 (extraordinary medical expenses) and ORS 317.298 (disallowance of ORS 317.255 and 317.260 deductions in certain cases). Both of these sections are taken bodily from the federal law but subtly changed in a significant way on the basis of state considerations of what constitutes "equity".

There are a number of areas where legislators will be subject to great pressure to maintain variations, any or all of which will tend to dilute the effort to achieve "simplicity" through uniformity. For example: Must withholding be imposed upon the Armed Forces? Must the Armed Forces' active duty pay exclusion of $3,000 be eliminated? Must the pensions of retired governmental employes under the retirement system be subjected to state tax? Must the value of livestock be accrued upon the death of the taxpayer - owner? Must Oregon bond interest be subjected to tax? Must a ceiling be placed upon the medical expense deduction of persons under 65 years of age? Should the special, locally important provisions in the withholding tax sections relating to fire fighters and agricultural workers be changed? Should several hundred Oregon taxpayers be given a windfall in the way of 27-1/2 percent oil depletion after recovering their basis?

6. If simplicity is the objective, the Oregon personal income tax law could be made much more simple by reform which would start with the principle that the law was strictly a revenue measure, not to be used to stimulate economic enterprise or to achieve social reform. A measure could be framed that could be realistic in protecting the person producing on a marginal income and it could eliminate a great many "gimmicks" by eliminating or greatly constricting the progressive rates.

II. Full Utilization of Federal Decisions and Rulings.

Pro

This argument would seem to speak for itself. If we adopt the federal income tax law for personal income tax returns in toto, the outpouring of federal administrative and court interpretations, rulings and decisions relating to such law would be available to the taxpayer and to the state tax administration. The tax studies generated by the

problems of 200 million people would be available rather than the output generated by the needs of 2 million. This would certainly seem to be very useful.

Con

1. Since so much of the Oregon personal income tax law is based upon federal law, Oregon administrators and tax practitioners are already taking full advantage of federal administrative and court interpretations, rulings and decisions. With the advent of the Oregon Tax Court, the amount of Oregon interpretation at the judicial level is steadily increasing, but both the Oregon Tax Court and the Oregon Supreme Court regularly apply federal decisions in proper circumstances. See Ruth Realty Co. v. State Tax Commission, 222 Or. 290, where, at page 294, the court said:

> "Before proceeding further, we observe that both parties depend solely on federal decisions interpreting sections of the U. S. Internal Revenue Code in support of their respective positions here. The propriety, and to a great measure the necessity, for so doing is made evident by the historical evolution of Oregon's Corporation Excise Tax Code and particularly by the close identity in pattern between Oregon Laws 1939, supra, and the sections of the federal code to which we later make reference. It appears over the years to have been the legislative intent in this state to simplify demands on taxpayers by bringing our income and excise tax laws in substantial conformity with corresponding provisions of the federal law when such could be accomplished without sacrifice to legislative independence and yet retain certain distinct and different features from the federal code. This tendency to harmonize appears particularly true in the area where the laws involve methods of accounting relating to similar transactions subject to tax by both state and federal authority. And we entertain no doubt that decisions of federal courts touching upon matters in tax areas common to the laws of each government are accorded a serious and persuasive consideration by the state legislature in order to attain such a harmony of construction for the benefit of the taxpayer when it can be done without sacrifice to the overall tax objectives of the state."

2. However, the utilization of federal administrative and court interpretations, rulings and decisions is not an unmixed blessing. The federal Internal Revenue Code, as everyone will agree, is very complex. This is the set of laws which evoked, from Judge Learned Hand, the famous and oft-quoted confession:

> ". . . In my own case, the words of such an act as the Income Tax . . . will dance before my eyes in a meaningless procession; cross reference to cross reference, exception upon exception --couched in abstract terms that offer no handle to seize hold of -- leave in my mind only a confused sense of some vital importance, but successfully con-

cealed purport, which it is my duty to extract, but which is within my power, if at all, only after the most inordinate expenditure of time." (57 Yale L. J. 167, 169 [1947])

The federal income tax law is subject to the interpretation of its administrators (expressed in regulations and rulings), and to judicial interpretation by sixteen federal tax court judges, the Court of Claims, hundreds of federal district court judges, scores of circuit court judges, and the United States Supreme Court. In many instances, the circuits of the country are in conflict and the Commissioner of Internal Revenue refuses to acquiesce with one or another, forcing the issue to the Supreme Court. (The Court of Appeals for the Ninth Circuit, which includes Oregon, is a "maverick" on tax decisions, being often at variance with the rest of the United States.)

In fact, when following the federal law is an issue, the question often turns on "which federal law?" Indeed, in the Ruth Realty Co., case, quoted above, the State Tax Commission argued that the section (taken from the federal law) does not allow the capitalization of property taxes and other carrying charges, relying heavily upon a decision of the federal court of appeals, interpreting the similar federal code, and the taxpayer relied with equal confidence upon other decisions of the federal tax court. We will never be able to avoid this paradox.

III. Administrative Costs Would Be Reduced as a Result of Federal Auditing and Enforcement

This particular argument, which again seems to speak for itself, has no validity whatever, as anyone who will take the time to examine into the matter will shortly discover.

It must be remembered that the federal government, with all its vast resources and machinery, is faced with a problem of administration which is comparable to that of Oregon, but on a greatly enlarged scale. It is administering the most complex tax law in existence, in a democracy, subject to the problems of staffing and time limitations upon audits provided by the statute. In consequence, the federal administrators expect only to audit from three to five percent of the individual income tax returns. From this small but selective audit, the government reaps a harvest of additional revenue which more than pays for the task (but would be necessary in any event, for police purposes).

Oregon audits only about two to three percent (or, including reciprocal federal audits, about five percent) of the returns. It has a close working relationship with the Oregon district of the Federal Internal Revenue, to avoid a duplication of auditing and for an exchange of work.

Studies have proved that if the audit coverage could be increased by either or both agencies, the results would be very profitable. To cut either agency, in reliance upon the work of the other, would be an absurdity, since both agencies are doing too little for the best administration.

When Alaska adopted the federal income tax law, using a percentage of the federal tax, it expected to be able to rely heavily upon federal auditing and administration, and Mr. R. D. Stevenson, a long-time commissioner of the Alaska Department of Taxation, has told me that the federal authorities were eager to be of assistance to Alaska. However, in practice, it was found that the federal agency did not have the staff or time to be of the assistance that was expected. Federal personnel were working right up against the statute of limitations and their results were available too late for Alaska's purposes. Effective territorial administration of the Alaskan Act had to be developed despite the close working relationship with Washington - Alaska District of Internal Revenue.

Incidentally, Mr. Stevenson pointed out:

> ". . . It should be noted that when the Internal Revenue Code is used as a basis for the tax, a considerable number of audit cases will develop where an Internal Revenue Code ruling is involved, and the taxpayer may point out that the Internal Revenue Bureau did not audit his return or make any changes and that therefore the point in issue must have been correct as reported on the taxpayer's federal return and that the Territory has no right to make changes."

This argument is often made to the Oregon authorities, too, since Oregon relies heavily upon the exchange of information and utilizes Revenue Agent's Reports fully. The argument is not tenable, but does add to taxpayer vexation.

Alaska has followed Oregon in its experience and developed a complementary audit program, utilizing the federal work as fully as possible (received on a basis of reciprocity) but pushing ahead with its own audit program.

However, it is undeniable that with greater accord between the state law and the Internal Revenue Code, interpretation of Revenue Agent's Reports will be reduced accordingly.

Some Final Questions

In making the radical change of adopting the federal income tax law to the largest extent possible, study should be made of the shift of the tax burden which is inevitable because of inherent differences between the two acts, and determination made whether or not such shift can or should be obviated.

Another question to be considered is, if adoption of the personal income tax law on a federal basis is highly useful, why should not the principle be extended to the corporation excise tax law as well? As in the case of the personal income tax law, the corporation excise tax law in Oregon is largely based upon federal developments, but there are many differences which we would expect to be subject to the same criticisms

as are used in connection with the personal income tax law.

Conclusion

There is no doubt that a state personal income tax law based in the highest degree upon adoption of the federal Internal Revenue Code can be successfully administered. This is proved by the experience of other states. A great deal of study, involving personal contact with administrators at all levels in the states utilizing the system, would be justified before determining that this is the answer in obtaining the simplest, most equitable personal income tax.

CBR:br

B

S T A T E T A X C O M M I S S I O N

MEMORANDUM

February 8, 1967

TO: Carlisle B. Roberts, Chief Counsel, Room 403

FROM: Carl N. Byers, Attorney

RE: Constitutionality of Option Provision Contained in Legislative Draft of ORS Chapter 316 (LS 2121)

You have requested me to examine and determine the constitutionality of the legislative draft provision of ORS chapter 316 which gives the taxpayer the option of being taxed under the federal income tax law as of 1966 or under the income tax law in effect for the taxpayer's taxable year. This provision is patterned after a provision contained in the income tax laws for the State of Vermont in effect for the years 1963 and 1964.

The purpose of this memorandum is to confirm my prior opinion that such a delegation would be unconstitutional. In an earlier memorandum I concluded that, although the United States Supreme Court and federal courts are inclined not to strike down tax laws on the basis of implied constitutional restrictions, all authority pertaining to the Oregon Constitution dictated the conclusion that a provision delegating prospective legislative power would be unconstitutional. The crux of the problem then is whether this is such a delegation.

Although the proposed provision is copied from the Vermont law, that fact provides no comfort in view of our constitutional provisions. As indicated by the editor's note in the Vermont tax service, Vermont has no constitutional provision prohibiting such a delegation and thus it was assumed to be valid. Oregon has Art. I, § 21, to deal with.

Perhaps the earliest Oregon case on this subject is State v. Briggs, 45 Or. 366, 370, 77 Pac. 750 (1904), which quotes Justice Agnew from Locke's Appeal, 72 Pa. 491 (13 Am. Rep. 716) which said:

> "'Then the true distinction, I conceive, is this: The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. . . .'"

Two subsequent cases which followed this view are Fouts v. Hood River, 46 Or. 492, 81 Pac. 370 (1905), and Van Winkle v. Fred Meyer, Inc., 151 Or. 455, 49 P.(2d) 1140 (1935).

In Marr v. Fisher et al., 182 Or. 383, 187 P.(2d) 996 (1947), the Supreme Court upheld the constitutionality of an income tax law which was enacted by the legislature to take effect only if a Sales Tax Act, concurrently enacted by the legislature, was rejected by the people at a general election. The court there affirmed the interpretation of Art. I, § 21, that the legislature cannot confer its law-making power on another authority. However, the test which the court applied was not whether the legislature could let the people decide what law they wanted, but rather whether the legislature had exercised the discretion and judgment it should as a law-making body.

> "We think the decision hinges on the question as to whether chapter 539 was complete in and of itself when it was passed by the legislature and approved by the Governor . . . . If the Act was complete in the sense that the legislative assembly had exercised its discretion and judgment as to the expediency or inexpediency of the income tax exemption provisions--and we think it did--it had the power to determine the conditions on which such Act should go into operation. . . ." Page 389.

The leading case in Oregon law today on this subject is Hillman v. North Wasco Co. PUD, 213 Or. 264, 323 P.(2d) 664 (1958). There the legislature had enacted a statute adopting the National Electrical Code as approved by the American Standards Association, including any prospective changes or amendments, as the standards which must be met by persons installing power lines and electrical equipment in Oregon. After noting that Art. III, § 1, separates the powers of government, Art. IV, § 1, vests the legislative authority in the Assembly subject only to the initiative and referendum powers, and that Art. I, § 21, prohibits laws which depend on authority other than as provided in the Constitution, the court stated:

> ". . . There is no difference in principle between an act which grants to an indefinite group the unrestricted power to determine without rule or guide what the law shall be and when it shall be effective and the delegation of a like power to a private agency over which no department of our government has any control."

In the subsequent case of Seale et al. v. McKennon, 215 Or. 562, 336 P.(2d) 340 (1959), the court upheld legislation which authorized the Oregon State Department of Agriculture to adopt rules and regulations of the U.S. Department of Agriculture. However, it did so by construing the statute as adopting only the existing laws and regulations and granting to the agency authority to adopt future standards as in the judgment of the Department would reasonably tend to effectuate the legislative purpose.

The conclusion to be drawn from all of this is that Art. I, § 21, of the Constitution was intended to require the legislature to pass on or exercise its judgment and discretion with regard to all laws affecting the citizens of Oregon, other than those originated by the initiative.

> "The evil in view in adopting this provision of the Constitution, was the incorporating into acts of the legislature by reference to other statutes, of clauses and provisions of which the legislators might be ignorant and which affecting public or private interests in a manner and to an extent not disclosed upon the face of the act, a bill might become a law, which would not receive the sanction of the legislature if fully understood." Darweger v. Staats, 267 N.Y. 290, 196 N.E. 61 (1935).

Since it is as repugnant to Art. I, § 21, of the Constitution to permit the individual taxpayer the option of selecting the federal laws by which he is taxed as it is to adopt the federal law prospectively, it is my conclusion that this proposed provision is unconstitutional.

CNB:vf
Encl. Memo 11-2-65 (LS 9418)(CNB)

family income. Rep. Groener asked Mrs. Gordon if she would have any objection to deleting the reference to amounts paid for Christian Science treatment. She said no, but their feelings should be considered, that this is their form of medical treatment. She didn't feel federal code was adequate.

Mr. John Gustafson, Asst. Commissioner of the Bureau of Labor and also representing Model Cities Planning Board, told of a study made by the Bureau about 2 years ago, and one recommendation coming from this was a better system of income tax deduction for employed women with dependents. He referred to a copy of an editorial from The Oregonian (Exhibit 1 on file) and quoted statistics which were brought out in the report. The average number of children supported was shown to be two; 86% of the women had children 15 years or under. About 1/5 of the gross earnings are paid out for baby sitting. Forty-two percent of the women earned between $3,000-$4,800. The Bureau of Labor believes single parent should be able to deduct child care expenses with no regard for income and that there should be liberalization for husband and wife to both work to meet the $6,000 level.

Rep. Mann asked if there were any figures as to whether wives are working because of divorce, or because of unemployable husbands. Mrs. Nancy Doughton, also of the Bureau of Labor, replied that 14% support husbands, 7% of these were because of illness; 75% were divorced. (Rep. Rogers arrived). Rep. Skelton would suggest an amendment to take care of the problem of joint returns; also one to give other deductions to working mothers. He felt federal was not enough.

Mrs. Janet Baumhover spoke in favor of the bill. She is a member of the Governor's Committee on Status of Women.

Mr. James O. Manley, President of Local 9201, Communications Workers of American (Exhibit #2), represents an organization in which 65% of their members are women. They were particularly interested in Section 3, line 16 of HB 1073 which refers to taxpayer adjusted gross income. They would like to have the adjusted gross income be at least $4,000. Besides child care there is sometimes transportation cost, additional clothing, etc. Many of these mothers are too proud to go on welfare, though they would be ahead financially. There is a need for more bonafide child care centers.

Rep. Johnson asked for the impact of exemption of interest on HB 1306. These figures will be provided at Friday's meeting.

HB 1052 - Mrs. Frank Anderson, League of Women Voters, read from a prepared statement (Exhibit 3) in support of HB 1052 and HJR 3, but did not favor conformity with federal law in assuming "loopholes" which would make state income tax regressive.

Mr. Fred Hoefke of the State Tax Commission spoke on HB 1052. Based on last year's returns, $660 million was deducted on state income returns as federal tax deduction. Of this amount, 78.5% of returns were $10,000 or under; that group deducts 276 million dollars or gains tax advantage of roughly $14 million. The remaining 21.5% saves $36 million by deducting federal tax. Governor asked Tax Commission to prepare graduated rates to drop the rate from the present 3 to 9-1/2% to 1-7%. This would result in first 66% of returns having reduction in tax under HB 1052. So if reduced at lower lever, will be increased at higher leve, but basically HB 1052 picks up the same amount with rate of 1-7% as present tax structure does. Rep. Skelton asked if HB 1052 should make income tax more progressive. The Tax Commission maintains that the man in the higher bracket is better able to pay more. Present income tax rate is progressive rate and this change makes it more so.

Tape 37

On HB 1026, Mr. Hoefke gave some of the advantages of the bill:

(1) it would eliminate tax returns problems, by taking one figure which was from federal return

(2) it would assist general fund by doing away with helping taxpayers (would receive $1.5 million in addition)

(3) there would be 2 types of simple forms - this would permit S.T.C. to determine accuracy of return, also to co-ordinate audit activities

(4) would eliminate large part of Tax Commission office audits.

Disadvantages:

(1) increases rate from 3-9% to 4-10%

(2) lowers taxing base of state. At present time have $5 billion worth of income coming into state. Base would be decreased (if federal taxable balance followed) to 2.7 billion. Allows federal surtax which is not deductible at this time; takes care of federal and state employees, and of military. Military and federal employees would be in a little better position under HB 1026, reason being on military HB 1025 allows $3000 and in addition takes federal deduction for Viet Nam. Federal employee would continue having $2400, could have minimum standard deductions, could make $5400 annually without paying any tax

(3) would restrict legislative changes in future.

The present state taxable balance base is roughly $3.6 billion. Rep. Mann questioned the confidentiality of returns if both federal and state work on them. Mr. Hoefke explained that the state and federal governments have an agreement to exchange information. The chart furnished by the S.T.C. shwoing the major reasons for rate increases in HB 1026 was referred to (Exhibit 4).

League of Women Voters of Oregon

Statement on HJR 3 and HB 1052
before the
House Taxation Committee
March 5, 1969

I am Mrs. Frank W. Anderson, legislative chairman for the League of Women Voters of Oregon. As you are already aware, the League of Women Voters favors the income tax as the most equitable means of providing state revenue. However, our members do believe that some improvements in our state income tax laws are needed. Among these are closer conformity of the state income tax laws with the federal law and elimination of the federal tax deduction.

League members support the principle of having the state income tax law conform with the federal law, with some modifications on the state level, believing it to save time, effort and expense for both the state government and the individual taxpayer. However, the League's stand is based on principle not on detail and as such does not favor conformity with federal law to the point of assuming tax loopholes or rates which would make our state income tax regressive. This fact, we hope, the committee would consider in implementing HJR 3 under the clause "modifications on the state level". We therefore support HJR 3.

In past testimony the League of Women Voters has supported elimination of the federal deduction as a means of raising additional revenue, and of transferring funds that now go to the federal government to the state government. HB 1052, by including a reduction in the tax rates, would not accomplish this, but it should make the state income tax more progressive, bringing it more in line with the ability to pay principle which the League has long advocated. We urge your favorable consideration of HB 1052.

Thank you.

Rep. Bradley then moved that HB 1026 be sent to the floor with a Do Pass as amended recommendation; motion carried, with Rep. Mann voting "no". Rep. Hart will carry.

HJR 3 - this resolution if adopted by the people would automatically adopt by statute changes in federal code at any time. An existing federal statute can be enacted as law of Oregon, but can't adopt one that will be enacted in the future. Question is when it becomes effective for Oregon. Rep. Mann moved that HJR 3 be tabled, motion passed with Reps. Groener, Macpherson, Mann, Markham, Rogers and Hart voting in favor; Reps. Bradley and Johnson voting "no".

Meeting adjourned at 10:00 a.m.

Respectfully submitted,

Muriel McBee

Muriel McBee, Clerk

Tape #39

Chairman Hart asked for unanimous consent from the committee to amend Page 2, Line 27 by inserting "beginning" after "years". There was no objection and it was so ordered.

Rep. Martin moved HB 1876 to the floor with a "do pass as amended" recommendation and the motion carried unanimously.

SB 344

The Chairman explained this bill would allow cities under 300,000 to levy fees for offstreet parking from the businesses which would benefit from the parking. Medford can do this by charter provision. Mr. Don Jones commented from the audience that he understood Klamath Falls was especially interested in this legislation.

Mr. Dick Breyman, Portland attorney, advised he had drafted the original amendments, but the 300,000 provision was added later and he was not sure of the purpose.

HB 1809

Mr. Carlisle Roberts, explained this developed because veterans who reach the age of '65 under Oregon statutes, must depend on the Veterans Administration for a certificate of disability. Veterans were coming in who couldn't produce the certificate because the VA has a new policy in the last year and a half that considers them 100% disabled automatically after age 65. Most of their problems are with veterans who have been able to get along until they reach about 70 years of age and for the first time needs help, but he can't get a rating certificate because he is over 65.

Rep. Boe asked if disability is limited to service incurred and Mr. Roberts answered -- any kind of disability. The VA will only certify if they meet the means test.

Rep. Macpherson moved to adopt the proposed amendments and the motion carried unanimously with (Reps. Mann, Martin, Rogers and Skelton absent). Discussion among the members indicated they would add the proposed amendments to the present bill instead of substituting.

HJR 3

The Chairman referred to this measure, which was currently on the table, and is a constitutional amendment to allow the State of Oregon to adopt future changes in the federal code automatically and would be a companion feature to HB 1026. Mr. Emmons explained this measure will permit Oregon to adopt federal

law on a continuing basis. Each year the taxpayer can use the federal return and know it is correct. One way is to set it up so all provisions are adopted automatically. There are two sets of amendments -- one will require either a positive or negative act of Legislature. In one the Legislature must review the changes in the Federal code each regular session and take a positive action. The other amendment would require the Legislature to review, but unless it takes positive action everything will continue. Rep. Johnson asked if it would be necessary to then pass a resolution indicating they had reviewed but had not taken action, because he could see a problem of being able to actually agree on getting anything out of committee. Mr. Emmons commented on the possibility of a constitutional problem of delegation of power by a state to a federal agency.

Rep. Groener moved to take HJR 3 from the table and the motion carried with Rep. Boe voting "no." (Reps. Mann, Martin, Rogers and Skelton absent).

The Chairman asked the committee to be prepared to consider HJR 3 with proposed amendments at the next meeting.

The meeting was adjourned at 9:15 a.m.

Respectfully submitted,

Kathryn DeCoss, Clerk

Tape #75

another reference to "rate" - (amendment attached). Rep. Mann's motion passed unanimously; he then moved to adopt amendments dated 5-1 with references to page 2 line 17, and page 3 line 3 deleted. Section 2 ORS 307.260 would be inserted after line 28 on page 2. These amendments were adopted, with Rep. Skelton voting "no". This conforms to SB 27. Rep. Mann moved 1809 to the floor with a Do Pass as Amended recommendation, which passed with all voting in favor except Rep. Skelton who voted "no". Rep. Mann will carry. (Rep. Martin left the meeting.)

HB 1851 - There was further discussion on what is classified as personal effects, and what should be on tax rolls. Rep. Rogers thought things should be listed in order to get a law that's explicit, and he moved HB 1851 to the floor with a Do Pass recommendation. Rep. Johnson said he felt the test was whether the items brought any income, and that maybe "personal effects" should be "personal property" - do we mean that a hobby is not taxable, then say so without listing every item. On Rep. Rogers' motion, it failed, with Reps. Boe, Bradley, Rogers, Skelton & Hart voting in the affirmative, Reps. Johnson, Macpherson, Mann & Markham "no". Rep. Mann then moved to table HB 1851 - this failed also with Reps. Bradley, Johnson, Macpherson & Mann voting "aye"; Reps. Boe, Markham, Rogers, Skelton & Hart voting "no".

HJR 3 - Carlisle Roberts of the Tax Commission had proposed amendments (attached) providing that laws imposing an income tax shall be reviewed at regular session, or may be reviewed at special sessions. Rep. Johnson moved adoption of the amendments dated 5/6. The motion passed unanimously, with Reps. Boe, Mann & Markham absent at time of vote. Rep. Johnson then moved HJR 3 to the floor with a Do Pass as Amended recommendation. Rep. Rogers questioned what would happen if federal law is drastically changed and Mr. Roberts replied that by approving HJR 3 people would be approving any law which adopts federal changes as they are made. There would be nothing to prevent people from saying they don't like a particular provision - they could start initiative. Rep. Rogers asked if there were any way that the federal government could nullify our allowance of federal deduction, for instance, which would be automatically adopted by the state without the people having any say. Mr. Roberts didn't see how federal could impose sovereignty on state. He summarized by saying that any act that the legislature enacts in connection with proposed HJR 3 would be subject to referendum. Legislature can still control. On Rep. Johnson's motion, HJR 3 passed out of committee with Reps. Bradley, Johnson, Macpherson, Mann & Markham & Hart voting "aye", Rep. Rogers "no".

The meeting adjourned at 9:20 a.m.

Respectfully submitted,

Muriel McBee

Muriel McBee, Clerk

Tape #76
Exhibits

HOUSE AMENDMENTS TO HOUSE JOINT RESOLUTION 3

On page 2 of the printed resolution, line 15, after the first "or", insert "measured by income, may define the income on, in respect to or".

On page 2, line 18, after the period, insert "At each regular session the Legislative Assembly shall, and at any special session may, provide for a review of the Oregon laws imposing a tax upon or measured by income, but no such laws shall be amended or repealed except by a legislative act."

On page 2, line 22, after "state," insert ", if chapter ____, Oregon Laws 1969 (Enrolled House Bill 1026) is then in effect".

SENATE COMMITTEE ON TAXATION

May 15, 1969 1:00 p.m. 315 State Capitol

Members Present: Senator Harry Boivin, Chairman
Senator Victor Atiyeh, Vice Chairman
Senator Robert Elfstrom
Senator Al Flegel
Senator Donald Husband

Witnesses: Senator Dement
Eddie Ahrens, Oregon Farm Bureau
Ira Jones, State Tax Commission
Carlisle Roberts, State Tax Commission
Doug Heider, Associated Oregon Industries and Oregon Retail Council
John Hay, U. S. National Bank of Oregon
R. R. Bullivant, First National Bank of Oregon
Dave Barrows, Oregon Savings and Loan League

The meeting was called to order by the Chairman, Senator Boivin.

HB 1448

Senator Dement appeared in favor of this bill which would make it mandatory for assessors to use a county board of review in figuring farm use values and these values would be based on comparable sales figures "or income-approach factors."

Senator Elfstrom presented amendments that would raise the number of people sitting on the board of review from three to seven. The figure of three was a result of the House amendments. Senator Flegel moved the adoption of the amendments.

Mr. Eddie Ahrens, Oregon Farm Bureau, also spoke in favor of the bill.

No action was taken.

HJR 3

Mr. Annala explained that this resolution would allow the Legislature to adopt future provisions of the Internal Revenue Code if HB 1026 passes.

Senator Atiyeh moved that the measure be reported out BE ADOPTED. The motion carried and Senator Boivin will lead the floor discussion

HB 1451

Mr. Ira Jones, State Tax Commission, explained that this measure would permit tax collectors in all counties to distribute taxes on a percentage basis, rather than just counties over 80,000.

Amendments will be prepared to take care of a conflict with HB 1482.

Senator Atiyeh moved that this bill be reported out DO PASS AS AMENDED. The motion carried and Senator Atiyeh will lead the floor discussion.