

THE GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH
for the
NEW JERSEY CONSTITUTIONAL CONVENTION

TAXATION --- THE TAX CLAUSE

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TAXATION

ARTICLE IV, LEGISLATIVE, SECTION 7, PARAGRAPH 12
(The Tax Clause)

I. PRESENT CONSTITUTIONAL PROVISION AND AMENDMENTS
HERETOFORE PROPOSED.

Constitution of 1844.
Revision of 1875.
Revision Commission of 1941.
Governor Walter E. Edge Draft of 1944.
Joint Legislative Committee Draft of 1944.

II. JUDICIAL INTERPRETATIONS OF THE TAX CLAUSE.

Power to tax is inherent in Legislature.
Classifications for purposes of taxation.
Classifications for purposes of exemption.
Taxation of privileges, franchises, trades,
etc.
State vs. Federal Relief in case of
discrimination.

III. THERE ARE NUMEROUS STATUTES BASED ON CLASSIFICATION
FOR PURPOSES OF TAXATION AND EXEMPTION FROM
TAXATION.

Classifications for purposes of taxation.
Classifications for purposes of exemption.

IV. PROPOSALS RELATING TO TAXATION BEFORE THE CONSTITUTIONAL CONVENTION OF 1844, AND REVISION COMMISSIONS AND COMMITTEES SINCE THAT DATE.

Convention of 1844.
Revision Commission of 1873.
Revision Commission of 1941.
Joint Legislative Committee of 1942.
Joint Legislative Committee of 1944.
Constitutional Revision Campaign of 1944.
Joint Legislative Committee of 1945.

V. COMMENTS ON THE TAX CLAUSE BY TAX INQUISITION COMMISSIONS AND COMMITTEES.

VI. TAX PROVISIONS OF OTHER STATE CONSTITUTIONS.

The Model State Constitution.
Delaware Constitution.
New York Constitution.
Pennsylvania Constitution.
Classification provisions.
Exemption provisions.
Veterans' exemptions.
Income tax provisions.
Equalization provisions.
Industrial exemptions.

VII. SUMMARY.

T A X A T I O N

ARTICLE IV, LEGISLATIVE, SECTION 7, PARAGRAPH 12.

(The Tax Clause)

I

PRESENT CONSTITUTIONAL PROVISION AND
AMENDMENTS HERETOFORE PROPOSED.

CONSTITUTION
OF 1844.

The Constitution of 1844 did not contain a tax clause. Although the subject was debated before the Convention of that year, all attempts to write a tax clause into the Constitution were defeated.⁽¹⁾ The only references in that Constitution to taxes are to be found in Art. 1, Par. 3, providing against tithes, taxes, or other rates for building or repairing churches or for the maintenance of ministers, and in Art. IV, Sec. 6. Par. 1, requiring that all revenue measures originate in the House of Assembly. For the next 30 years, therefore, the State Government functioned without any constitutional provision -- as it had done for the previous 70 years since the first Constitution of 1776 was also silent on the subject of taxation.

(1) Proceedings, New Jersey Constitutional Convention, 1844, pp. 343, 366, 396, 554, 570-572.

REVISION OF 1875.

At a special election on September 7, 1875, the people ratified, inter alia, a new paragraph 12 to Sec. VII of Legislative Art. IV, reading as follows.⁽²⁾

"12. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value."

This provision has prevailed without change to the present time. So that 18 words, two commas and a period have, from a constitutional point of view, been the only limitation on the assessment and collection of revenues in this State for the past 70 years.

REVISION COMMISSION
OF 1941.⁽³⁾

The report of this Commission which contained a draft of a proposed revised Constitution,⁽⁴⁾ recommended no change in the tax clause other than that it be moved from Legislative Art. IV, to a new Art. VII, Finance, as Par. 6.

GOVERNOR EDGE
DRAFT OF 1944.⁽⁵⁾

Governor Walter E. Edge, on January 24, 1944, submitted to the Legislature a draft of a revised Constitution, under Art. VII, Finance, Par. 4, of which

(2) P. L. 1876, pp. 433, 436. Black, Taxation in N. J., (4th ed.), 9.

(3) Commission on Revision of the New Jersey Constitution, (Hendrickson, Chairman), created by J. R. 2, Nov. 18, 1941, P. L. 1941, p. 1084; continued by J. R. 1, Jan. 24, 1942, P. L. 1942, p. 735.

(4) 1942 Senate Journal 672, 712.

(5) "Prepared by members of the Legislature acting in an unofficial capacity" during the latter part of 1943 (1944 Assembly Minutes 56).

the following change in the tax clause was proposed: (6)

"4. Property shall be assessed for taxes under general laws, and by uniform rules, according to fixed standards of value."

JOINT LEGISLATIVE
COMMITTEE DRAFT OF
1944. (7)

A draft of a proposed revised Constitution was submitted by this Committee on February 25, 1944 to the Legislature (8) and agreed upon by both houses. (9) The tax clause as set forth in that draft, being the same as submitted to and rejected by the people at the general election on November 7, 1944, appeared under Art. VII, Finance, Par. 4, in the following language: (10)

"4. Property shall be assessed for taxes under general laws, and by uniform rules, according to standards of value as may be provided by law but not in excess of true value; but exemption from taxation may be granted by law to persons who have been, are, shall be or shall have been in active service in any branch of the military or naval forces of the United States in time of war."

(Note: There was also a Joint Legislative Committee of 1945 to consider proposed amendments to the Constitution. This Committee did not submit a draft of a Revised Constitution. However, a proposal to add an exemption clause was contained in its report which is quoted under the appropriate subheading of Part IV, infra.)

(6) 1944 Assembly Minutes 86.

(7) Created by S. C. R. 1, adopted Jan. 11, 1944 (Eastwood, Chairman), "to formulate a draft of a proposed Revised Constitution for the State of New Jersey" (1944 Assembly Minutes 41).

(8) 1944 Assembly Minutes 270; 1944 Senate Journal, 242.

(9) S. C. R. 9 (1944 Assembly Minutes 330, 358; 1944 Senate Journal 302, 330).

(10) P. L. 1944, c. 92, pp. 195, 226.

II

JUDICIAL INTERPRETATIONS OF THE TAX CLAUSE.POWER TO TAX IS
INHERENT IN
LEGISLATURE.

All taxes are state taxes even though levied for county or municipal purposes.⁽¹¹⁾

The power of taxation is an essential, inherent attribute of sovereignty. It is unlimited in scope except as it may be restrained by constitutional edict or irrepealable legislative contract. The self-executing⁽¹²⁾ tax clause of the present Constitution is, therefore, a limitation upon and not a grant of that power.⁽¹³⁾

CLASSIFICATIONS
FOR PURPOSES OF
TAXATION.

In the absence of specific constitutional inhibition, the Legislature, in the exercise of the sovereign power of taxation, is free to select subjects of taxation.⁽¹⁴⁾

Even under the present Constitution, class taxation is valid so long as there is compliance with the classification rule that all reasonably within the class are

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- (11) Jersey City vs. Martin,* 126 N. J. L. 353,360; State Board of Assessors vs. Central R. Co.,* 48 N. J. L. 146, 280.
 (12) It requires no legislation to put it into operation. Trustees of Public Schools vs. City of Trenton,* 30 N. J. Eq. 667,676.
 (13) State Board of Assessors vs. Central R. Co.,* supra, 277; Township of Bernards vs. Allen,* 61 N. J. L. 228, 236; Standard Underground Cable Co. vs. Attorney General,* 46 N. J. Eq. 270, 273; Jersey City vs. Martin,* supra, 360.
 (14) Singer Sewing Machine Co. vs. Unemployment Compensation Commission, 128 N. J. L. 611, 619, aff'd,* 130 N. J. L. 173.

* Indicates Court of Errors and Appeals decision.

included; that uniformity prevails throughout the whole class; and that the property is taxed at true value.(15)

But classification must be of property, according to its characteristics, or the use to which it is put,(16) and not according to the status of the owner,(17) or the mere incidence of location of the property.(18)

Consistent with the right of classification is the Legislature's power to prescribe different rates of tax for different classes of property, provided, always, that there is rate uniformity within each class.(19)

Because real and personal property, in legal contemplation, belong to different classes, a tax law may constitutionally affect one without affecting the other.(20)

So it is, as more fully pointed out later, that the Legislature has established innumerable classifications of property for special tax treatment, which, with few exceptions, have been upheld by the courts.

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- (15) State Board of Assessors vs. Central R. Co.,* supra, 279; Mechanics National Bank vs. Baker, 65 N. J. L. 113, 117, aff'd,* 65 N. J. L. 549; Salem and Pennsgrove Traction Co. vs. State Board, etc., 97 N.J. L. 386, 387, 388, aff'd,* 98 N. J. L. 570; Chancellor vs. Elizabeth, 65 N. J. L. 479, 481, aff'd,* 66 N. J. L. 687; Koch vs. Essex County Board of Taxation, 97 N. J. L. 61, 64, 65; Braunstein vs. Jersey City,* 98 N. J. L. 478; Black, Taxation in New Jersey, (4th ed.) 22.
- (16) Camden vs. Camden County Board of Taxation, 121 N. J. L. 262, 264, aff'd,* 122 N. J. L. 381; State Board of Assessors vs. Central R. Co.,* supra, 313; Mechanics National Bank vs. Baker, supra, 117; Central R. Co. vs. State Board of Assessors,* 75 N. J. L. 771, 786; State vs. Mercer County Board of Taxation, 118 N. J. L. 408, 410.
- (17) Tippett vs. McGrath, 70 N. J. L. 110, 112, 113, aff'd,* 71 N. J. L. 338.
- (18) Essex County Park Commission vs. West Orange,* 77 N. J. L. 575, 577.
- (19) State Board of Assessors vs. Central R. Co.,* supra, 279; Jersey City vs. State Board of Tax Appeals, 133 N. J. L. 202, 204, Modified (on another point),* 134 N. J. L. 239.
- (20) Chancellor vs. Elizabeth, supra, 481.

CLASSIFICATIONS
FOR PURPOSES OF
EXEMPTION.

Since the tax clause does not require that all property shall be assessed for taxes,⁽²¹⁾ the Legislature may classify property for purposes of exemption from taxation,⁽²²⁾ subject, always, of course, to strict observance of the classification rule. Elimination of a single member of a natural class will invalidate the statute.⁽²³⁾

Legislative attempts to create special or limited classifications of persons and property have been consistently ruled out under the tax clause. Thus, an attempted special exemption of \$500 for exempt firemen,⁽²⁴⁾ and an attempted exemption of improvements on real property, within a period of five years, have been voided on the ground of improper classification.⁽²⁵⁾ Even a pressing emergency has been held insufficient to warrant special classification for tax purposes,⁽²⁶⁾ although exemption, by classification, has been upheld for purposes of industrial encouragement, as well as for the more common charitable, religious and educational uses.⁽²⁷⁾ Of the numerous statutes granting exemptions from tax few have been set aside.

(21) State Board of Assessors vs. Central R. Co.,* supra, 279, 290, 320; Tippett vs. McGrath, supra, 112.

(22) State Board of Assessors vs. Central R. Co.,* supra, 279; Camden vs. Camden County Board of Taxation, supra, 264; Tippett vs. McGrath, supra, 112; Schwartz vs. Essex County Board of Taxation, 129 N. J. L. 129, 133, aff'd,* 130 N. J. L. 177.

(23) Essex County Park Commission vs. West Orange,* supra, 577.

(24) Tippett vs. McGrath, supra.

(25) Koch vs. Essex County Board of Taxation, supra; Braunstein vs. Jersey City,* supra.

(26) Koch vs. Essex County Board of Taxation, supra, 65, 66.

(27) Schwartz vs. Essex County Board of Taxation, supra, 134; Burlington Distilling Co. vs. State Board of Assessors, 86 N. J. L. 92, aff'd,* 87 N. J. L. 315.

TAXATION OF PRIVI-
LEGES, FRANCHISES,
TRADES, ETC.

Because the tax clause is limited in its application to property taxes, the Legislature is free to levy indirect taxes such as excise or franchise taxes on the privilege of transacting business;⁽²⁸⁾ inheritance and estate taxes on the right to receive and transfer property by descent, will, gift, etc.;⁽²⁹⁾ unemployment compensation taxes on wages;⁽³⁰⁾ and license taxes on business, trades, etc.⁽³¹⁾

STATE VS. FEDERAL
RELIEF IN CASE OF
DISCRIMINATION.

Where ad valorem taxes are involved the Constitution requires that property shall be assessed at true value. Because of this, our courts have ruled that an assessment at true value cannot be reduced merely on a showing that other property in the same taxing district has been assessed at less than true value. The remedy in such cases has been held to be by application to the county board of taxation to increase those assessments which are below true value.⁽³²⁾

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- (28) Standard Underground Cable Co. vs. Attorney General,* supra, 273; Salem and Pennsgrove Traction Co. vs. State Board, etc. supra, 388; North Jersey Street Ry. Co. vs. Jersey City, 73 N. J. L. 481, 483, aff'd,* 74 N. J. L. 761; Jersey City vs. Martin,* supra, 359; Jersey Central Power and Light Co. vs. Asbury Park, 128 N. J. L. 141, 145, aff'd,* 129 N. J. L. 253.
- (29) Renwick vs. Martin, 126 N. J. Eq. 564, 573; Howell vs. Edwards, 88 N. J. L. 134, aff'd,* 89 N. J. L. 713; Eastwood vs. Russell,* 81 N. J. L. 672, 677.
- (30) Raines vs. U. C. C., 129 N. J. L. 28, 30, aff'd,* 129 N. J. L. 387, cert. den., 319 U. S. 757; Singer Sewing Machine Co. vs. U. C. C., supra.
- (31) Johnson vs. Asbury Park, 58 N. J. L. 604, 608, aff'd,* 60 N. J. L. 427.
- (32) Royal Mfg. Co. vs. Board of Equalization of Taxes,* 78 N. J. L. 337, aff'g, 76 N. J. L. 402.

The federal courts have held, however, that the casting of such an onerous duty upon a taxpayer who has been discriminated against does not satisfy the requirements of the equal protection clause of the Federal Constitution and that he is, therefore, entitled to have his valuation placed on a parity with others in the taxing district.⁽³³⁾

III

THERE ARE NUMEROUS STATUTES BASED ON CLASSIFICATION FOR PURPOSES OF TAXATION AND EXEMPTION FROM TAXATION.

CLASSIFICATIONS FOR PURPOSES OF TAXATION.

The statutes of this State are replete with classified tax laws. The Legislature has always presumed the presence of the power to classify property for the purpose of more equitably distributing the tax burden. In addition to property taxed locally under general laws, by uniform rules and at true value, the Legislature has created many classifications of property, according to use, for separate consideration.⁽³⁴⁾ And then there are several

(33) Hackensack Water Co. vs. Oradell, 17 Fed. Supp. 39. See also: Hillsborough Township vs. Cromwell, 326 U. S. 620; Sioux City Bridge Co. vs. Dakota County, 260 U. S. 441.

(34) Bank stock (R. S., R. S. Cum. Supp., or N.J.S.A. 54:9; P. L. 1946, c. 146); corporations (54:10A; P. L. 1945, c. 162); financial business (54:10B; P. L. 1946, c. 174); certain utilities (54:13); various types of insurance business (54:16; 54:18; 54:18A; P. L. 1945, c. 132); railroads (54:29A; P. L. 1941, c. 291); public utilities-excise (54:31-15.16); public utilities-gross receipts (54:31-45).

indirect tax statutes, not deemed to be of a property-tax character, which levy excise taxes on the transfer or sale of property.⁽³⁵⁾

CLASSIFICATIONS
FOR PURPOSES OF
EXEMPTION.

Also, always assumed to be within the legislative prerogative, is the power to classify property according to its characteristics or use for purposes of exemption from taxation. There is an extensive body of the tax law devoted to the elimination of property from general taxation.

Numerous items of personal property are either partially or wholly exempted from ad valorem taxes.⁽³⁶⁾ Property in political ownership and for public use has always been excluded.⁽³⁷⁾ And property of educational, religious, charitable and benevolent organizations has likewise always been accorded tax exemptions;⁽³⁸⁾

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- (35) E. g.: inheritance taxes (54:33); estate taxes (54:38); motor fuels taxes (54:39); alcoholic beverage taxes (54:41)
- (36) U. S. securities (54:4-3); state, county and local securities (54:4-3.1); household goods to extent of \$100 (54:4-3.16); personal property out of state (54:4-3.2); corporate stock exempt by contract (54:4-3.8); intangible personal property (P. L. 1945, c. 163); mortgages (54:4-3.14 and 54:4-33); personal property in storage (54:4-3.20); metals in transit (54:4-3.19); building and loan investments (54:4-3.22); cash on hand and on deposit (54:4-3.23); growing crops, trees, shrubs, etc. (54:4-3.28); veterans' loans held by savings banks (54:4-3.29).
- (37) U. S., state, county and local (54:4-3.3); Morris Canal and Banking Co. (54:4-3.3); military use (54:4-3.5); various port, bridge, sewerage and transit authorities (32:1; 32:3; 32:13A; 48:21; 54:4-3.4; 58:15).
- (38) Benevolent societies (54:4-3.7); educational, religious, hospital and charitable organizations (54:4-3.6); fire patrols and salvage corps (54:4-3.13); organizations for the relief of victims of pestilence, famine, fire, flood, etc. (54:4-3.27).

as well as cemeteries and graveyards (R. S. 54:4-3.9), and fraternal organizations.⁽³⁹⁾ Also taken out of the ad valorem tax category is property otherwise taxed,⁽⁴⁰⁾ rights accruing under public pension funds (18:13; 43:10; 43:13; 43:14) and old age assistance payments (47:7-35).

There are, of course, many others,⁽⁴¹⁾ but the foregoing will sufficiently demonstrate the extent to which the Legislature has exercised its power of classification for exemption purposes.

As previously observed, statutes granting exemptions have been invalidated only where the classification was found to be defective because it did not include all reasonably within the class, or where the classification was based merely on the incidence of location of the property or solely on its ownership.⁽⁴²⁾

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- (39) Exempt firemen's associations (54:4-3.10); organizations for aid of crippled soldiers (54:4-3.15); YMCA, YWCA, YMHA, YWHA (54:4-3.24); veterans' organizations (54:4-3.25); Lodges (54:4-3.26).
- (40) E. g.: Stock of corporations the property of which is otherwise taxed (54:4-3.8); railroad property and franchises (54:4-3.11); bank stock (54:4-3.17); motor vehicles (54:4-3.21).
- (41) For a more detailed list of exemptions, see Appendix A, 1945 Report of Commission on Taxation of Intangible Personal Property, 89, et seq., and the Report of the State Tax Commissioner, filed with the Legislature in 1938 pursuant to J. R. 3, P. L. 1938, p. 1001.
- (42) Supra 5, 6.

IV

PROPOSALS RELATING TO TAXATION BEFORE THE CONSTITUTIONAL
CONVENTION OF 1844, AND REVISION COMMISSIONS
AND COMMITTEES SINCE THAT DATE.

CONVENTION OF 1844.

While the subject of taxation was debated at some length in that Convention, nevertheless, a tax clause did not emerge. There was a proposal to add two paragraphs to the Constitution in the following tenor:⁽⁴³⁾

"All property hereafter shall be taxed according to its value, that value to be ascertained in such manner as the Legislature shall direct, so that the same shall be equal and uniform throughout the state.

"No one species of property for which a tax may be collected, shall be taxed higher than any other species of property of the same value."

This brought forth substantially the same arguments as appeared a hundred years later when the tax clause was under consideration in 1942 and 1944. Real estate, it was said, bore an "unjust and unequal" burden of the tax, while personal estate escaped (343, 344). The fairness of taxing personal property was quite generally conceded but deemed impractical since "the effort to do it had given great dissatisfaction in this state." The whole matter, it was urged, "could safely be left to the Legislature."
(344)

(43) Proceedings, New Jersey Constitutional Convention, 1844, p. 343.

Another delegate thought the proposal to tax all property very objectionable. "We shall have to tax all property — household furniture and luxuries, watches and spectacles, everything. * * * it would not be just to tax all property alike." If the Legislature "choose to try experiments and tax bonds and mortgages," there was no objection, but "we ought not tie up the hands of the Legislature by a Constitutional provision." (397)

Then followed a proposal that, instead of a rigid requirement that all property be taxed, the provision be modified so as to leave to the Legislature what property should be taxed; but, if taxed, it should be "rated equal." This, it was answered, would destroy the benefit of the whole section. Still another delegate said "he was afraid to adopt the plan of New York, to put a man upon his oath as to what he is worth. But if a plan can be devised, to discover honestly and justly all a man's visible and other property, so as to carry out fairly the abstract principle" — that all property be uniformly taxed — "he should be entirely satisfied; but otherwise, I think [sic] it had better be left to the Legislature." (398, 399)

In an attempt to reconcile these divergent views a third proposal was made (571):

"Every taxable inhabitant in this state shall hereafter be taxed according to the value of his property, whether real or personal, to be ascertained in such manner as the Legislature shall direct; provided nevertheless, the Legislature shall have power to tax special privileges, in such manner as they may from time to time direct."

Again it was argued that the Legislature should not be compelled, by constitutional fiat, to tax all property. "It would drive

domestic capital from the state." "If the Legislature saw that good would arise by exempting manufacturers from taxation, should they not have the power of doing so?" Finally it was urged, if a section on taxation was to be incorporated in the constitution, that it be sufficiently broad to give the Legislature power "to tax salaries, professions and trades." So amended, the whole provision was defeated on final vote (571, 572), and the effort to write a tax clause into the 1844 Constitution was abandoned.

REVISION COMMISSION
OF 1873.(44)

The report of the 1873 Commission proposed to the Legislature the following amendment, to appear as a new paragraph

(16) in Art. IV, Legislative, Sec. 7:(45)

"16. Property shall be assessed for taxes under general laws, and by uniform rules, according to its true value in money. No property of any kind, protected by law, except that owned by the United States, the state, counties, townships, cities, towns or boroughs, shall be exempt by law from its full share of all state, county, township and city taxes and assessments, except burying grounds and cemeteries not held by stock companies. No law shall be enacted or contract entered into by which the exercise of the power of taxation shall be restricted, impaired or impeded. The legislature may provide by law for taking away from any person or persons, natural or artificial now possessing or entitled to the same, any right of exemption from taxation which cannot be revoked without compensation, and for paying to such person or persons a just compensation for the right so taken away."

(44) Created by J. R., April 4, 1873, to suggest and propose amendments to the State Constitution for submission to and consideration by the next Legislature (1873 Assembly Minutes 1426, 1431).

(45) 1874 Senate Journal 54.

After Senate and Assembly action, only the first sentence, exclusive of "in money," was accepted.⁽⁴⁶⁾ All attempts to limit the legislative power to grant exemptions were unsuccessful. The abbreviated sentence was submitted to and adopted by the people at a special election on September 7, 1875, becoming Par. 12, of Art. IV, Legislative, Sec. VII, which is the tax clause as it stands today.⁽⁴⁷⁾

REVISION COMMISSION
OF 1941.⁽⁴⁸⁾

The report of the 1941 Commission⁽⁴⁹⁾ recommended that the tax clause, without change, be incorporated in the draft of the revised Constitution, under Art. VII, Finance, Par. 6. There is no record of the proceedings before that Commission, so that discussion on the question of taxation is not available, but in a letter written after the report was filed, the chairman of the Commission had this to say:⁽⁵⁰⁾

" * * * to my best recollection, the Commission on Constitution Revision, after long and serious deliberation upon various and sundry tax provisions which might be written into a constitution, concluded that the less said about taxes in any Constitution, the better. In fact I oftentimes feel that the whole subject should be left open to the Legislature so that New Jersey will be in a position to meet the post-war era and the difficult new order which is ahead, without jeopardy to the more essential processes of free government."

(46) 1874 Senate Journal 365-367, 785.

(47) P. L. 1876, p. 433.

(48) Created by J. R. 2, Nov. 18, 1941 (P. L. 1941, p. 1084).

(49) 1942 Senate Journal 672, 712.

(50) Proceedings before the 1942 Joint Legislative Committee on Revision of the Constitution, 479.

JOINT LEGISLATIVE
COMMITTEE OF 1942.(51)

Before the 1942 Joint Legislative Committee, it was vigorously urged⁽⁵²⁾ that the old tax clause was archaic and inadequate and should not, therefore, be carried verbatim into a modern constitution as proposed by the Revision Commission of 1941; that real property, although probably representing less than 30% of the total property wealth of the State, is bearing a disproportionate share (approximately 80%) of the tax burden; that equalization of assessments is wholly lacking; that billions of dollars of personal property are escaping taxation; that outright exemptions and partial exemptions granted through so-called "in-lieu of" tax policies, have shifted the burden of property taxes to real property owners; that failure to deduct mortgages in valuing real property is unfair; that "tax lightning"⁽⁵³⁾ is injurious to the social economy of the State; that classification of property for tax purposes, which presently exists, should be given "formalized status" in the Constitution; that the transfer of a large percentage of privately held real estate to institutional ownership is working undue

(51) Constituted under S. C. R. 19, adopted June 15, 1942, to ascertain the sentiment of the people as to constitutional changes (1942 Senate Journal 755).

(52) By John F. O'Brien, speaking as a tax official, real estate broker and on behalf of the New Jersey Association of Real Estate Boards (Proceedings before the Joint Legislative Committee of 1942, pp. 424-430).

(53) The unpredictable practice of municipalities swooping down upon large holdings of intangible personalty owned by corporations, estates and occasionally individuals, with assessments at existing local rates (See Message of Governor Charles Edison to Legislature, October 26, 1942, proposing a mill-tax on intangibles — 1942 Assembly Minutes 952 — and Hillsborough vs. Cromwell, 326 U. S. 620.)

hardship; and, finally, that the present tax clause "should be radically changed or completely deleted from the new Constitution."

To remedy these evils it was proposed that the tax clause provide for the classification of all property, with legislative power to establish varying rates of tax for the different classes so as to permit solution of the tangible and intangible personal property tax problem and put a stop to the growing evil of "tax compromises"⁽⁵⁴⁾ on intangibles; prescribe limitations on the legislative power to grant exemptions; and define the line of demarcation between state and local tax jurisdiction.⁽⁵⁵⁾

Although it assembled much material, the Committee did not prepare a draft of a revised Constitution. The majority report recommended that all attempts at constitutional revision await the termination of World War II. A minority report urged submission of the question of a revised Constitution to the people.

JOINT LEGISLATIVE
COMMITTEE OF 1944.⁽⁵⁶⁾

This Committee used as a basis for discussion Governor Walter E. Edge's draft of a revised Constitution in which the phrase "according to fixed standards of value" was substituted for the words "true value."

(54) The practice in certain municipalities of agreeing upon an intangible tax base, less than actual value, which when subjected to tax at the local rate would produce a tax equal to 3 mills on the dollar of true value. (See Report of Commission on Taxation of Intangible Personal Property, 1945, pp. 9-15).

(55) Proceedings before Joint Legislative Committee - 1942, pp. 429-430.

(56) Created by S. C. R. 1, Jan. 11, 1944, "to formulate a draft of a proposed Revised Constitution for the State of New Jersey" (1944 Senate Journal 32).

The first charge levelled against this change was that the safeguards set up by the "true value" phrase of the present Constitution for the taxation of railroad property would be destroyed, since the Legislature could create a new method of valuation, using such criteria as "stock and bond" values, capitalization of earnings, gross earnings, or some other formula in lieu of the long-established policy of physical valuation at true value, thereby permitting the roads to gain from the Legislature the very preferences which, it was alleged, they had been unsuccessful in obtaining since the adoption of the tax clause in 1875. Aided by proposed Art. III, Sec. 6, Par. 8, sub-paragraph 3, (prohibiting private, special or local laws "relating to taxation or exemption therefrom"), it was further charged that the Legislature could even exempt from taxation all property used for railroad purposes.⁽⁵⁷⁾

The next witness approved elimination of "true value", but thought that the substituted phrase, "fixed standards of value," would lead to confusion and much litigation. The word "fixed" might be construed to mean fixed to the time of the adoption of the revision.

To overcome this possibility and also to incorporate a provision limiting the power of the Legislature to grant tax

(57) Walter J. Tierney "representing all of the municipalities comprising the County of Hudson." Transcript of Hearings before Legislative Section of Joint Legislative Committee, Feb. 3, 1944, pp. L-4, 17-21 (mimeo.).

exemptions, it was proposed that the tax clause be worded as follows:(58)

"Property shall be assessed for taxes under general laws, and by uniform rules, according to classifications and standards of value to be established by the Legislature.

"In creating such classifications, and establishing the standards of value for each, the Legislature will give due consideration to the type of property, its earning capacity, the public services it receives, and its relationship to the welfare and stability of the State and its sub-divisions.

"Assessments where based on an ad valorem basis shall never exceed the full value of the property assessed.

"Exemptions from taxation may be granted only by the affirmative vote of two-thirds of the membership of each house of the Legislature."

Covering the same principles was the following suggestion of another speaker:(59)

"Property shall be assessed for taxes under general laws, and by uniform rules, according to classification and standards of value to be established by the Legislature. Ad valorem assessments shall not exceed true value.

"Laws establishing classification and standards of value for the purpose of taxation, or providing for exemption from taxation shall require for passage an affirmative vote of two-thirds of the members elected to each of the two houses of the Legislature."

(58) John F. O'Brien, representing the New Jersey Association of Real Estate Boards, (Ibid., Feb. 3, 1944, pp. L-4, 22 and 23; also Feb. 9, 1944, p. L-1, 4).

(59) James J. Smith, Executive Secretary, New Jersey State League of Municipalities (Ibid., Feb. 9, 1944, p. L-1, 7).

Next came a proposal on behalf of veterans for a new Art. IX as follows: (60)

"Veterans.

"1. Notwithstanding anything in this Constitution contained the Legislature shall have the power to grant preferences, privileges and exemptions to persons serving or who shall have served in the armed forces of the United States of America in time of war as may be defined by it."

This addition was urged upon the Committee because of the alleged possibility that several existing laws granting special privileges and exemptions to veterans might be unconstitutional under the case of Tippett vs. McGrath, 70 N. J. Law 110, affirmed,* 71 N. J. Law 388. (61)

The last speaker, believing that the "fixed standards" clause was too indefinite and would result in years of litigation, urged that the "true value" provision be retained, since everything that could be done under the former could be done under the latter, and the latter had a very definite advantage in that its meaning had become crystalized by years of litigation. (62)

The tax clause finally emerged from this Committee as Par. 4, Art. VII, Finance, in this language: (63)

"Property shall be assessed for taxes under general laws, and by uniform rules, according to standards of value as may be provided by law but not in excess of true value; but exemption from taxation may be granted by law to

(60) Thomas E. Duffy, American Legion, Department of New Jersey (Ibid., Feb. 9, 1944, pp. L-1, 8-15).

(61) Ibid., Feb. 9, 1944, p. L-1, 14.

(62) J. H. Thayer Martin, Counsel, Newark Chamber of Commerce and former State Tax Commissioner of the State of New Jersey (Ibid., Feb. 15, 1944, pp. L-1, 16-17).

(63) 1944 Assembly Minutes 270, 358.

persons who have been, are, shall be or shall have been in active service in any branch of the military or naval forces of the United States in time of war."

It will be observed that the Committee did not, as suggested, set up a separate article on veterans' preferences. Instead, it added to the tax clause a permissive exemption provision for veterans. This action subsequently raised complications, not because of the exemption, as such, but because of the place where the Committee decided to insert it.

CONSTITUTIONAL
REVISION CAMPAIGN
OF 1944.

During the 1944 campaign on the Revision issue there were charges and rebuttals on the question of the power of the Legislature to grant exemption to religious, educational and charitable organizations and the rights of the Legislature respecting railroad taxation under the proposed tax clause.⁽⁶⁴⁾

The opponents of the revision, apparently on the premise that the singling out of veterans for exemption under the tax clause and the provision of Art. III, Sec. 6, Par. 8, prohibiting the passage of private laws relating to taxation and exemption therefrom, charged that the existing power of the Legislature to grant exemptions to religion and charity would be destroyed. The designation of one (the veterans), they apparently reasoned, would exclude all others (religion, education, charity): expressio unius est exclusio alterius.

(64) Trenton Evening Times, Nov. 5, 1944, p. 2; Nov. 2, p. 8; Oct. 29, p. 6; Oct. 27, p. 1; Oct. 24, p. 8; Sunday Call, Newark, Nov. 5, pp. 1 and 19.

Proponents of the revision⁽⁶⁵⁾ answered that the specific provision in the tax clause for veterans was simply to overcome the implications of Tippett vs. McGrath, supra; that the exemption was based on the personal status of the owner of property and therefore in no way affected the existing power of the Legislature to classify property according to its use for purposes of exemption; that the expressio unius est exclusio alterius rule was not applicable in constitutional interpretations; that since the amended tax clause did not require that all property should be taxed, the Legislature was unrestrained, as theretofore, in its power to exempt property in charitable, religious and benevolent use; and that limitations or restrictions on the law-making power of the Legislature will never be raised by implication.

There is some support for the proposition that

" * * where the constitution grants to the legislature authority to exempt from taxation particular persons * * * a prohibition against any other or further exemptions is implied * * * "

61 Corpus Juris, par. 390, p. 389.

" * * * where the constitution enumerates the exemptions, it is generally held that statutes exempting property not enumerated are void * * * "

61 Corpus Juris, par. 391, p. 390.

Still another compilation states the rule this way:

"The Legislative power to grant tax exemptions may be restricted by constitutional provisions expressly denying the power in this respect, or by the enumeration in the Constitution of specific subjects of tax exemptions. * * *

(65) Memoranda of Attorney General, October 11, 1944, October 25, 1944; Memoranda, Arthur J. Edwards, March 25, 1944, October 24, 1944; copies of which are on file in the State Library, Trenton.

"As a general rule, when the state constitution enumerates certain permissible subjects of exemptions from taxation, the legislature is without power to lighten the burden of taxation on property not within any of the classes enumerated; such enumeration of the kinds of property that may be exempted is construed by implication to preclude the legislature from exempting any other kind of taxable property.
* * * "

51 Am. Juris. Secs. 501, 503, pp. 507, 509.

The claim that the amendment of the tax clause was instigated by and was especially favorable to the railroads of this State does not find support in the records. It unequivocally appears that the changes in the tax clause were sponsored by the New Jersey Association of Real Estate Boards and the New Jersey State League of Municipalities.⁽⁶⁶⁾

JOINT LEGISLATIVE
COMMITTEE OF 1945.

The 1945 Joint Legislative Committee, created by Senate Concurrent Resolution No. 15, of 1945, in a report filed with the Legislature on May 21, 1945, (1945 Assembly Minutes 887; 1945 Senate Journal 901) proposed the addition of a new paragraph to Sec. VII of Article IV of the present Constitution to be known as Paragraph No. 13, reading as follows:

"13. Exemption from taxation may be granted by general laws as to real or personal property used exclusively for religious, educational or charitable purposes, as has been or shall be defined by law, and owned by any corporation or association organized, as prescribed by law, and conducted exclusively for one or more of such purposes and not operated for profit; and

(66) Supra, pp. 15, 18; Memorandum, Arthur J. Edwards, Sept. 23, 1944; copy on file in the State Library, Trenton; "Useful Reflections on the Constitution Election," Walter J. Bilder, 67 N. J. Law Journal, 397, et seq.

exemption from taxation may be granted by law to persons while serving honorably, and persons who have served or shall have served honorably, in active service in any branch of the military or naval forces of the United States in time of war; but nothing in this paragraph shall be deemed to make invalid any exemption from taxation heretofore granted by law in conformity with this Constitution or to limit or restrict the power of the Legislature to grant exemption from taxation in conformity with this Constitution."

No further action was taken on the report of this Committee.

V

COMMENTS ON THE TAX CLAUSE BY TAX INQUISITION COMMISSIONS AND COMMITTEES.

There have been numerous reports over the years⁽⁶⁷⁾ by legislative commissions and committees dealing with the subject of taxation in New Jersey. Minute analysis of all of these would serve no useful purpose here. It is sufficient to say, in a general way, that for the most part they relate to equalization problems in the tax structure, and, more specifically, to point out that there has been no tendency to blame the

(67) A few of the more recent: 1919 Commission to Investigate Tax Laws (Jess); 1929 Commission to Investigate County and Municipal Taxation and Expenditures (Martin); 1933 Committees on Taxation of the Senate and House (Reeves); 1934 Committee on Taxation of Railroad and Canal Property (Stout); 1939 Committee on Tax Law Revision (Stout); 1941 Governor's Committee on Railroad Taxation; 1941 Joint Committee to study Railroad Tax Problems; 1942 Joint Committee to study operation of 1941 Railroad Tax Law; 1945 Commission on Taxation of Intangible Personal Property; 1946-7 Commission on State Tax Policy.

tax clause of the Constitution for the inequitable distribution of the tax burden. To the contrary, most of these reports have proceeded to recommend various solutions of the equalization problem without even mentioning the tax clause. Power in the Legislature to levy taxes and to classify property for purposes of taxation and exemption has apparently been quite generally assumed by these investigating bodies. Where the subject has been discussed the conclusions have been uniform. By way of illustration, attention is directed to the reports of two of these commissions.

The first is the report of the 1919 Commission to Investigate Tax Laws (Jess), wherein the following appears (4, 5):

"The power of the Legislature to devise ways and means of raising revenue for the support of government is co-extensive with the sovereignty of the State, subject only to such limitations as the Constitution may impose. * * *

* * *

"The power of the Legislature to classify property for taxation and impose taxes of a special kind, for example, franchise taxes, has been established by judicial decisions. The earliest legislative attempt at classification and the application of a special rate to a portion of the class resulted in the Railroad Tax Acts, which were sustained by the highest judicial authority and are still in successful operation. The most recent example of classification is furnished by the act which segregates bank stock for taxation and applies a flat rate to the value of the shares.

"It will thus be seen that our adherence to the general property tax as the chief means of raising the revenue needed for local government is due, not to necessity, but to choice or inertia. * * "

The second is the very extensive report of the 1929 Commission to Investigate County and Municipal Taxation and

Expenditures (Martin), which contains the following comments (Report #6, pp. 61, 62, 63):

"This provision [the tax clause] is clearly more liberal and more flexible than somewhat similar constitutional references to property taxation in other states. It does not say that all property shall be assessed * * *. It does not forbid or limit exemptions or the substitution of some other kind of tax. It does not forbid classification of property. Fortunately, New Jersey has established an intelligent and sensible judicial construction, which has not read these or other ridiculous meanings and instructions into the basic constitutional provision, a fate which has befallen some other states with a less enlightened judiciary. * * *

"(p.62) * * There is complete legislative discretion as to whether any class of property shall be taxable or exempt, and if taxable, as to the method of taxation to be applied to it. * * *

" * * There is no necessity for any serious inequality in the distribution of tax burdens to go long uncorrected, so far as the constitution is concerned. * * *

"(p.63) These qualities are neither given nor withheld by the constitution. The people of New Jersey may make their tax system what they will." (emphasis not supplied)

There have been several recommendations in the past few years to classify tangible and intangible personal property in an endeavor to shift some of the burden of ad valorem taxes from realty to personalty.

The 1939 Commission on Tax Law Revision (Part 1, p. 7) recommended to the Legislature that household furniture, personal belongings and farm equipment be exempted; that intangibles of individuals, not used in business, exceeding \$10,000 be taxed at the rate of one mill of its value; that intangibles used in industry and business other than in retail business, be wholly

exempted and in lieu thereof a tax at the rate of one mill be assessed on the capital and surplus; that business tangibles be taxed at a fixed rate of \$20 per \$1000 on true value; that tangibles and intangibles of retail businesses be exempted and in lieu thereof a 3% tax be imposed on gross receipts; and that a "use tax" of 3% be imposed on out-of-state purchases to protect local merchants.

This was followed by the recommendation of Governor Charles Edison,⁽⁶⁸⁾ as set forth in a statement and draft of a bill submitted to the Legislature in Special Session on October 26, 1942, that the taxation of intangibles be removed from local jurisdiction and that all such property be taxed by the State at a fixed rate of three and one-half mills per dollar of valuation in excess of an exemption of \$500.

In 1945 the Commission on Taxation of Intangible Personal Property, page XIV, urged that intangibles be entirely exempt from local taxation and that there be imposed a corporate business tax in lieu of all other state, county and local taxation on intangibles. These recommendations have been enacted into law by the Legislature (P. L. 1945, c. 163; P. L. 1945, c. 162), so that intangibles are no longer subject to local taxation.

The Commission on State Tax Policy, second report - 1947, now recommends that tangibles be classified so that machinery and equipment used in industry will be taxed at one-half of the local tax rate on true value, but not in excess

(68) 1942 Assembly Minutes 952.

of the previous year's average state rate, and that business inventories and stock in trade be excluded from local taxation and in lieu thereof there be a "general business excise tax" at the rate of two mills on the value of goods produced in New Jersey, in the case of manufacturers, and on gross business in the case of all other enterprises.

Classifications and varying rates of tax have been the essence of all of these recommendations, but it has never been seriously urged that the tax clause of the present Constitution stands in the way of granting tax relief by such means, except in the yet unexplored field of intangible taxation based on minute classifications for equality and administrative reasons.(69)

VI

TAX PROVISIONS OF OTHER STATE CONSTITUTIONS.

Rigid principles controlling taxation, it has been quite generally found, cannot successfully be incorporated into a state constitution. Even the ever-present desire to achieve equality of taxation has never been attained solely by constitutional edict. True, legislative power to classify is the first essential in the struggle for uniformity, but that is an integral part of its inherent control over the whole subject

(69) First Report, Commission on State Tax Policy - 1946.

of taxation. It need not be conferred by the constitution, although it oftentimes is circumscribed, specifically or impliedly, by constitutional limitations.

Taxation has been said to be an immensely practical problem. Being in a continuous state of flux it must be dealt with currently, necessitating broad power in the law-making body to cope with ever-changing conditions. Professor S. E. Leland, in his article on the classified property tax, published in the Tax Policy League's symposium, Property Taxes, p. 115, (1940) says that

" * * * no one will approve of all of the classification measures which have been adopted, but the history of classification does demonstrate that legislatures will act with reasonable wisdom when given broad constitutional powers relative to taxation. And, if property is to be taxed, the legislature should possess the right to classify property. The prudence of wide-open constitutional provisions concerning taxation has been repeatedly demonstrated."

To the same end are the following cautionary remarks of the chairman of the New York State Constitutional Convention Committee, 1938:(70)

"Perhaps the most valuable service which this compilation can perform is to warn delegates, and the public as well, against the inclusion of certain types of detailed provisions in the basic law. This volume discloses that such clauses almost invariably require amendment and reamendment. Still further detailed provisions are often added until what should be a fundamental law becomes a welter of conflicting and overlapping provisions. The experience of those states which have suffered most from this tendency indicates that, unless the practise is checked, the distinction between a constitution and statute law may be altogether broken down."

(70) N. Y. State Const. Conv. Committee, 1938, Report, Vol. III, p. V.

Professor Harley L. Lutz, of Princeton University, said many years ago that⁽⁷¹⁾

" * * * the taxation provisions and references in our state constitutions have become too numerous, too complicated and too rigid for the best results and * * * the efforts of those concerned with sound and equitable taxation should be expended in the direction of simplifying, and even of eliminating altogether the existing constitutional verbiage on this subject. * * * the greater the detail with which the constitution outlines a tax system * * * the more imperative becomes the necessity of adopting further amendments in order to accomplish any departure from the established order. * * * I conclude that from the standpoint of sound taxation, that constitution is best which says least about taxation."

Because taxation is highly localized, constitutional provisions on the subject differ widely. In many instances the provisions are peculiar to the individual state, and in other instances, violating the brevity rule, they more nearly approach legislation than fundamental law. Several cover pages of minutely detailed regulations on the assessment, collection and distribution of taxes. For these reasons no attempt will be made to deal with the tax provisions of each constitution. A few concise tax clauses will be quoted and the others briefly summarized to bring out the fundamental principles which most commonly appear in the organic law.

It might be observed that there are still a few states without specific tax clauses in their constitutions.⁽⁷²⁾

(71) Proceedings of the Twenty-First Conference (1928), National Tax Association, pp. 6-9. For a more thorough collection of material on this subject see The Univ. of Tenn. Record, Vol. XII, No. 2, pp. 57, et seq.

(72) Connecticut, Iowa, Rhode Island, Vermont.

THE MODEL STATE
CONSTITUTION.

The Model State Constitution⁽⁷³⁾ deals completely with taxation in these twelve words:

"Sec. 700. The power of taxation shall never be surrendered, suspended, or contracted away."

Although appearing as a part of the tax article of many state constitutions,⁽⁷⁴⁾ this clause seems not to have been adopted, to the exclusion of all other provisions, by any state.

DELAWARE
CONSTITUTION.

Delaware, in concise form, writes two of the major fundamentals (viz., classification and exemptions) into

its constitution in these words (Art. VIII):

"Sec. 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, but the General Assembly may by general laws exempt from taxation such property as in the opinion of the General Assembly will best promote the public welfare."

NEW YORK
CONSTITUTION.

Art. XVI, Taxation, as adopted by Constitutional Convention and approved by the people of New York

in 1938, contains the following provisions:

"Sec. 1. The power of taxation shall never be surrendered, suspended or contracted away, except as to securities issued for public purposes

(73) As prepared by the Committee on State Government of the National Municipal League, 4th ed., 1941, Partial Rev. 1946, Art. VII, Finance, Sec. 700.

(74) Ariz., IX; La., X; Minn., IX; Mo. X; N. Y., XVI; N. C., V; Okla., X; Wash., Amendment 14; Wyo. XV.

pursuant to law. Any laws which delegate the taxing power shall specify the types of taxes which may be imposed thereunder and provide for their review.

"Exemptions from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real or personal property used exclusively for religious, educational or charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operating for profit."

Section 2 provides for the equalization of assessments. Section 3 precludes the ad valorem taxation of intangibles. And Section 5 subjects to taxation

" * * * all salaries, wages and other compensation, except pensions, paid to officers and employees of the state and its subdivisions and agencies * * * "

PENNSYLVANIA
CONSTITUTION.

The Pennsylvania Constitution, under Art. IX, Taxation and Finance, contains, inter alia, the following

provisions relating to taxation:

"Sec. 1. All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws; but the General Assembly may, by general laws, exempt from taxation public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, institutions of purely public charity, and real and personal property owned, occupied, and used by any branch, post, or camp of honorably discharged soldiers, sailors and marines. (As amended November 6, 1923.)

* * *

"Sec. 2. All laws exempting property from taxation, other than the property above enumerated, shall be void."

CLASSIFICATION
PROVISIONS.

About half of the state constitutions specifically provide for classification. Common to many, with slight variations, is the phrase:⁽⁷⁵⁾

"All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

Some substitute the word "property" for "subjects", in the foregoing clause.⁽⁷⁶⁾ Others go into more detail, e. g.,:

Georgia, Art. VII, Par. III (as amended, 1945):

" * * * Classes of subjects for taxation of property shall consist of tangible property and one or more classes of intangible personal property including money. The general assembly shall have the power to classify property including money for taxation, and to adopt different rates and different methods for different classes of such property."

Missouri, Art. X, Sec. 4 (as amended, 1945):

"All taxable property shall be classified for tax purposes as follows: Class 1, real property; Class 2, tangible personal property; Class 3, intangible personal property. The general assembly, by general law, may provide for further classification within classes 2 and 3, based solely on the nature and characteristics of the property, and not on the nature, residence or business of the owner, or the amount owned. * * * "

(75) Ariz., IX; Colo., X; Del., VIII; Idaho, VII; Ky., Sec. 171, as amend.; La., X; Minn., IX; Mo., X; Mont., XII; N. C., V; N. Dak., Sec. 176; Pa., IX; Va., Sec. 168; Wash., Amendment 14; Ga., VII.

(76) Ariz., IX; N. C., V; N. Dak., Sec. 176; Wash., Amendment 14.

To the common phrase first above quoted Oklahoma adds the following (Art. X, Sec. 22):

"Nothing in this Constitution shall be held or construed to prevent the classification of property for purposes of taxation; and the valuation of different classes by different means and methods."

EXEMPTION
PROVISIONS.

Approximately two-thirds of the states have self-executing or permissive exemption provisions. Delaware leaves the subject of exemptions entirely in the hands of the legislature under the following clause (Art. VIII, Sec. 1):

" * * * the General Assembly may by general laws exempt from taxation such property as in the opinion of the General Assembly will best promote the public welfare."

And a few have substantially the same provision in conjunction with a brief clause exempting one, or more, or all of the following: public property, charity, religion and education.⁽⁷⁷⁾ Of course, there are several which have no provision on the subject.⁽⁷⁸⁾

But a majority of the states have constitutional provisions which specifically exempt public property and enumerate, often in great detail, those religious, charitable, educational, etc., organizations which shall be free of the burden of taxation. The variations in these provisions are so wide as to make it impracticable to discuss each one.

Many states also provide exemptions, some with limitations on the extent, for the head of a family, veterans, widows,

(77) Idaho, VII; N. Y., XVI; Wash., Amendment 14; Wyo., XV.

(78) Conn.; Ia.; Me.; Md.; Mass.; Miss.; N. H.; R. I.; Vt.

orphans, et als., and for the exclusion of a limited amount of household goods, farming implements, personal effects, etc. (79)

And then there are several which preclude exemptions beyond those specifically enumerated in the Constitution. (80)

VETERANS'
EXEMPTIONS.

At least four state constitutions carry detailed provisions on exemptions for veterans, their widows, and others.

Arizona, by an amendment in 1946, provides under Art. IX, Sec. 2 that

" * * * There shall be further exempt from taxation the property of widows, honorably discharged soldiers, sailors, United States marines, members of revenue marine service, nurse corps, or of the components of auxiliaries of any thereof, residents of this state, not exceeding the amount of two thousand dollars, where the total assessment of such widow and such other persons named therein does not exceed \$5000; provided, that no such exemption shall be made for such persons other than widows unless they shall have served at least sixty days in the military or naval service of the United States during time of war, and shall have been residents of this state prior to September 1, 1945. * * * "

California treats the subject in even greater detail. The provision in its entirety is too extensive to quote fully here. By Art. XIII, Sec. 14, as amended in 1944, it is provided in substance that property to the amount of \$1000 of every

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- (79) Ariz., IX; Cal., XIII; Colo., X; Fla., IX; Ga., VII; Kans., XI; Ky., Sec. 170; La., X; Mich., X; Neb., VIII; N. Mex., VIII; N. C., V; Okla., X; S. Dak., XI; Tenn., II; Utah, XIII; Wash., Amendment 14; W. Va., X.
(80) Ark., XVI; Colo. X.; Ky., Sec. 170; Mo., X; Neb., VIII; Pa., IX; S. Dak., XI; Utah, XIII.

resident veteran, his widow, widowed mother and pensioned fathers and mothers and property of the veteran's wife to that amount, if the veteran does not possess property of a value sufficient to take up the credit, is exempted from taxation; provided, however, that such exemption shall not apply to any person owning property of the value of \$5,000 or more, or where the wife of such veteran owns property of that value.

The New Mexico Constitution provides (Art. VIII, Sec. 5) that:

"Sec. 5. The legislature may exempt from taxation. * * * property of every honorably discharged soldier, sailor, marine and army nurse, and the widow of every such soldier, sailor, or marine, who served in the armed forces of the United States at any time during the period in which the United States was regularly and officially engaged in any war, in the sum of two thousand dollars. * * * "

Art. XIII, Sec. 2, of the Utah Constitution, as amended in 1946, contains this provision for disabled veterans, their widows and orphans:

"Sec. 2. * * * Property not to exceed \$3,000 in value, owned by disabled persons who served in any war in the military service of the United States or of the State of Utah and by the unmarried widows and minor orphans of such persons may be exempted as the legislature may provide."

INCOME TAX PROVISIONS.

Whether a valid income tax law can be enacted under a tax clause like the one presently in the New Jersey Constitution appears to be a debatable issue. The general rule is, of course, that the Legislature, under its inherent tax powers, may impose such a tax in the absence of

constitutional prohibition or restriction. But the question still remains whether a "true value" or "uniformity" clause constitutes a restriction on the power to levy such a tax. In the final analysis the issue turns on the narrow point as to whether "income" is or is not "property" within the constitutional meaning of that word. There is a conflict of authority on the question (11 A. L. R. 313; 25 A. L. R. 578; 70 A. L. R. 468; 97 A. L. R. 1488). While the weight of the decisions is said to lean toward the view that "income" is not "property" and therefore the taxation of income is not controlled by constitutional limitations respecting property taxes, nevertheless, there is authority for the contrary proposition that a graduated and progressive income tax law, with exemptions, cannot be enacted where there is a uniformity clause in the constitution (61 C. J. pars. 2306, 2307, pp. 1559, 1561; In re Opinion of the Justices, In re Taxation, 220 Mass. 613, 108 N. E. 570; Bachrach vs. Nelson, 349 Ill. 579, 182 N. E. 909.). Doubts on this score have been resolved in many jurisdictions by specific constitutional provision.

Twenty-one state constitutions specifically authorize the imposition of taxes on income.⁽⁸¹⁾ Three of these (Ohio, South Dakota and Texas) do not, however, have laws imposing income taxes. Thirty-one states levy such taxes and 17,

(81) Ala., Amendment XXV; Ariz., IX; Cal., XIII; Colo., X; Kans., XI; Ky., Sec. 174; La., X; Mass., XLIV; Mo., X; Mont., XII; N. C., V; Ohio, XII; Okla., X; S. C., X; S. Dak., XI; Tenn., Art. II, Sec. 28; Tex., VIII; Utah, XIII; Va., Sec. 170; W. Va., X; Wis., VIII.

including New Jersey, do not. Only Florida has a constitutional provision specifically prohibiting the assessment of a state income tax.

Most of the income tax clauses provide, in substance, that the tax may be "graduated and proportional" (Colorado) or "graduated and progressive" (Wisconsin, Kansas) and that "reasonable exemptions" may be provided (Wisconsin). Others, contrary to the brevity rule, fix the maximum rates of tax to be imposed and specify the minimum exemptions to be allowed (e. g., Alabama; Utah; North Carolina).

Arizona's Constitution simply says that (Art. IX, Sec.12):

"The law-making power shall have authority
to provide for the levy and collection of
* * * graduated income taxes * * * "

The following are also brief and to the point:

Louisiana, Art. X, Sec. 1:

"Equal and uniform taxes may be levied upon net incomes, and such taxes may be graduated according to the amount of the net income. Public officials shall not be exempted. Reasonable exemptions may be allowed."

South Dakota, Art. XI, Sec. 2:

" * * * The legislature is empowered to impose taxes upon incomes and occupations, and taxes upon incomes may be graduated and progressive and reasonable exemptions may be provided."

Kansas, Art. II, Sec. 2:

"2. The state shall have power to levy and collect taxes on incomes from whatever source derived, which taxes may be graduated and progressive."

Still others treat the subject from the negative point of view, as in

Kentucky, Sec. 174:

" * * * Nothing in this Constitution shall be construed to prevent the General Assembly from providing for taxation based on income * * * "

Missouri, Art. X, Sec. 4:

" * * * Nothing in this section shall prevent the taxing of * * * incomes * * * ."

Alabama (amend. XXV) and Montana (Art. XII, Sec. 1a) provide that if income taxes are imposed they shall be in reduction of property taxes.

To overcome the claims of some public officials that their remuneration is protected by the Constitution against reduction during their terms of office, Alabama, Louisiana, New York and Virginia specifically subject their compensation to the state income tax law.⁽⁸²⁾ The reason and the rule are briefly stated in the Virginia Constitution (Sec. 183a) as follows:

"The provisions of this Constitution forbidding the diminution of the salary or compensation of a judge or other officer during his term of office shall not be construed to exempt such salary or compensation from State income tax thereon."

EQUALIZATION
PROVISIONS.

Several state constitutions provide machinery for the equalization of taxes.⁽⁸³⁾

(82) See also "Problems Relating to Taxation and Finance," N. Y. State Const. Conv. Comm., 1938 Report, Vol. X, p. 466.

(83) Ariz., IX; Colo., X; Cal., XIII; Idaho, VII; Mich., Sec. 8; Mo., X; N. Y., Art. XVI; Okla., X; Tex., VIII; Utah, XIII; Wyo., XV.

INDUSTRIAL
EXEMPTIONS.

As an inducement to industry to locate in the state, several constitutions provide exemptions from taxes for limited periods.⁽⁸⁴⁾ For a thorough treatment of this subject, which, incidentally, labels this practice as a "violation of the first principles of a sound tax program," see Tax Exemptions, a symposium published by the Tax Policy League in 1939, p. 39; also J. P. Jensen's Property Taxation in the United States, pp. 156, et seq. (1931).

VII

SUMMARY

It is quite apparent from what has been previously set forth that there are many ways of treating the problem of taxation in a constitution. There is that school of thought which believes that the less said about taxation the better. There are, it will be remembered, still a few state constitutions which are completely silent as to taxes, leaving the whole subject in the hands of the legislature. Another group feels that the wide-open tax clause is best. The framers of the "Model State Constitution" deem it sufficient simply to preclude the legislature

(84) Ark., Amendments 12 and 27; Fla., IX; Ky., Sec. 170; La., X; Miss., Sec. 192; S. C., VIII; Va., XIII.

from bargaining away the power of taxation. And still another group is satisfied with a provision for classification, leaving everything else to the discretion of the law-making body. It is necessary, of course, for those charged with the duty of writing a constitution to choose which of these courses is to be followed, having due regard for the special problems at hand.

In this State the principal demands to date have been for: (1) a specific classification clause; (2) a limitation provision on the power of the Legislature to grant exemptions; and (3) a veterans' exemption provision. The following provisions — some paraphrased — gathered from other state constitutions, have been used elsewhere in an attempt to solve these and other related tax problems:

GENERAL TAX CLAUSE

"The power of taxation shall never be surrendered, suspended or contracted away, except as to securities issued for public purposes pursuant to law."

CLASSIFICATION CLAUSE

"All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

"Different classes of subjects may be valued by different methods and taxed at different rates."

INCOME TAX CLAUSE

"The Legislature may, by general laws, provide for a tax upon incomes from whatever source derived, which tax may be graduated and progressive and reasonable exemptions may be allowed.

"All salaries, wages and other compensation, except pensions, paid to officers and employees of the state and its subdivisions, and agencies shall be subject to taxation."

GENERAL EXEMPTION CLAUSE

"Exemptions from taxation may be granted by general laws."

CLAUSE EXEMPTING PUBLIC PROPERTY AND PROPERTY
IN RELIGIOUS, ETC., USE

"Property of the public, used for public purposes, and property used exclusively for religious, educational, charitable and burial purposes, as defined by law, and not held or used for profit, shall be exempt."

VETERANS' EXEMPTION CLAUSE

"Exemption from taxation may be granted, by general laws, to persons while serving honorably, and who have served or shall have served honorably, in active service in any branch of the military or naval forces of the United States in time of war."

Insertion of a separate article on veterans' preferences, privileges and exemptions, as has heretofore been suggested in their behalf, would render the last clause unnecessary.

The foregoing, not intended to be exhaustive, are simply references to a few of the provisions which commonly appear in the organic law.

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