

STATE OF NEW JERSEY

REPORT

OF THE

Commission on Taxation of Intangible Personal Property



TRENTON, NEW JERSEY

1945

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STATE OF NEW JERSEY

REPORT

OF THE

N.J.
" Commission on Taxation of
Intangible Personal Property

Appointed Pursuant to J. R. No. 4
(March 29, 1944)



Submitted to the Governor and to the
Legislature, March 26, 1945

TRENTON, NEW JERSEY

STATE OF NEW JERSEY

JOINT RESOLUTION No. 4

[*Laws* (1944)]

A JOINT RESOLUTION creating a commission to investigate the question of the valuation and taxation of intangible personal property and related tax subjects, and to prepare and recommend legislation in connection therewith.

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey*:

1. There is hereby created a commission to investigate the question of the valuation and taxation of intangible personal property and related tax subjects.

2. The commission shall consist of five members to be named by the Governor, one of whom shall be a member of the State Senate and one a member of the House of Assembly, who are hereby empowered to undertake and complete the investigation authorized by this joint resolution.

3. The Governor shall designate one of the members to be chairman, and the Department of Law shall render such legal services as may be necessary. The commission may employ a secretary and such technical and clerical assistants as may be necessary. It may sit during the recess of the Legislature or after any adjournment thereof.

4. The commission may hold hearings in any part of the State and is empowered by its subpoena to compel the attendance of witnesses and the production of books, papers and records, and upon the completion of its said hearings shall embody its findings and recommendations in a report, with proposed legislation thereon, to the present or a succeeding session of the Legislature.

5. This joint resolution shall take effect immediately.

Approved March 29, 1944.

STATE OF NEW JERSEY
COMMISSION ON TAXATION OF INTANGIBLE
PERSONAL PROPERTY

[J. R. No. 4 (MARCH 29, 1944)]

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THE COMMISSION ACKNOWLEDGES THE VALUABLE ASSISTANCE OF—

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Homer C. Zink, Commissioner of Taxation and Finance; *Frank E. Walsh*, Director of the Division of Taxation; *William Kingsley*, Supervisor, Corporation Tax Bureau, and *Samuel A. Halpern*, Supervising Auditor, Corporation Tax Bureau, for their generous cooperation and most competent technical services;

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Of numerous corporations that placed their fiscal records at the disposal of the *Commission* and of 6,000 corporations that filed returns with the Commissioner of Taxation and Finance, upon which the tax recommendations of this report are based.

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REPORT ON THE TAXATION OF INTANGIBLE PERSONAL PROPERTY IN NEW JERSEY

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LETTER OF TRANSMITTAL

NEW JERSEY STATE COMMISSION ON TAXATION OF INTANGIBLE PERSONAL PROPERTY

20 NASSAU ST. PRINCETON, NEW JERSEY

March 26, 1945.

To the Governor and Members of the Legislature:

The *Commission on the Taxation of Intangible Personal Property* transmits, herewith, its report to the Governor and the Legislature as authorized and directed under S. R. No. 4 (March 29, 1944).

This report represents the fifth attempt within the past six years to obtain a solution to the problem of intangible personal property taxation in New Jersey. The *Commission* is under no illusions in regard to its work. Many of its conclusions are based upon the testimony of witnesses, material provided by both private and public agencies, and the experience and knowledge of its own members. In addition, the most thorough information on New Jersey corporate finance yet available has been provided by 4,614 domestic corporations and 1,065 foreign corporations for the use of the *Commission*, through the generous cooperation of the Director of the State Division of Taxation and the personnel of the Corporation Tax Bureau. But even with this background, reliable data is meager.

The meetings and public hearings of the *Commission* have produced a large variety of viewpoints and proposals—many of them beyond compromise. In determining its policy, the *Commission* has given the most careful consideration to each of them; but it has of necessity been guided by three practical considerations: to represent a reasonable level of agreement which will resolve the many varying viewpoints pertaining to the problem; to submit recommendations that could be defended as sound public policy in these unsteady times; and to fulfill, as far as possible, the purposes contemplated by the Legislature when the *Commission* was established.

These purposes were indicated in the resolution creating the *Commission* and in various announcements by the Governor—particularly his special message to the Legislature of March 27, 1944. While the language of the resolution is broad enough to permit wide study and investigation of the tax structure of the State, emphasis by both the Legislature and the Governor has been placed on the question of intangible personalty, and the *Commission* has accordingly given its first attention to this problem.

Even with this limitation, however, the field is very large, and it is impossible to consider it effectively in a summary manner. Tangible business personalty is inextricably interwoven with the taxation of intangibles; intangibles held by individuals present a problem in themselves; farm and household personalty is subject to the same erratic treatment as intangible personalty. These problems, while commented upon in the report, have been subordinated to corporate intangibles which the *Commission* has understood to be its first concern.

The *Commission's* purpose, therefore, has been two-fold: to remove the threat of what is commonly called "tax lightning" from intangible personal property; and to provide a sound base through which a substantial amount of this property, now legally taxable but untaxed, can be reached for tax purposes. The *Commission* wishes to make it plain that under the terms of its resolution, it is not charged with revenue-raising duties. It is not, therefore, engaged in financing public services or in providing funds for any specific purpose whatsoever. Any funds that may accrue to the State as a result of its studies would be purely incidental to adjustments removing inequities and inequalities from the State tax structure.

The *Commission* would respectfully suggest that while its recommendations will seem modest to some, they will be regarded as extreme and even revolutionary by others. It must be remembered that no industrial State has done so little in the past fifty years to bring its tax structure into line with its social, economic and political development as has New Jersey. Were the proposals of the *Commission* to receive favorable action by the Legislature, it would be the *first* State-wide tax adjustment affecting business generally since the enactment of the capital stock tax in 1884; it would be the *first* step toward modernizing a tax structure that developed under a simple agrarian economy and remains substantially unchanged today; it would be the *first* attempt to give long-term guidance to a tax policy which might in the next decade

develop a program which more nearly fits the activities and responsibilities of a great industrial State.

The *Commission* is well aware that half a century of tax lethargy precedes this report. A series of special commissions and advisory agencies have struggled with this field of taxation, and a formidable shelf of recommendations has been at the disposal of succeeding Legislatures for many years. The *Commission* wishes it could repeat with assurance the message of Daniel Haines, Governor of New Jersey, delivered to the Senate and General Assembly just a hundred years ago, on January 15, 1845, when he said:

“I have no hesitation, therefore, in recommending that no money be raised by taxation for the current year; and I confidently hope that in future we will be wholly relieved from any such burden.”

At that time Governor Haines estimated State ordinary expenses for the ensuing year (1846) of \$55,336.43 and an estimated surplus of \$20,846.70. He relied heavily for his revenue upon taxes on the capital stock and transit volume of railroads, highways and canals. Were it not for the magnitude of current transactions, there is little in the present State or local tax structure that would seem strange to him today—except the hazards, uncertainties and inequities as among taxpayers.

Respectfully submitted,

COMMISSION ON TAXATION OF 1 TANGIBLE
PERSONAL PROPERTY,

JOHN F. SLY, *Chairman*,
JACOB S. GLICKENHAUS,
NORMAN F. S. RUSSELL,
W. PAUL STILLMAN,
DAVID VAN ALSTYNE, JR.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The *Commission* unanimously recommends:

FIRST: That the present methods of taxing intangible personal property be abandoned.

SECOND: That intangible personal property be exempted entirely from local taxation, except for the present special taxes relating to banks, insurance companies and public utilities.

THIRD: That the Legislature provide a corporation business tax, in lieu of all other State, county or local taxation measured by intangible personal property used in business, and in place of the present capital stock tax;

FOURTH: That such corporation business tax shall require that every domestic or foreign corporation subject to the taxing jurisdiction of New Jersey (except some at present exempt and others specially taxed) shall pay an annual franchise tax for the privilege of having or exercising its corporate franchise in this State or for the privilege of doing business, employing capital or maintaining an office in this State;

FIFTH: That such franchise tax shall be paid annually by each taxpayer, and shall be measured by the greater of the following:

ALTERNATIVE 1 (Basic measure): that portion of its entire net worth as may be allocable to New Jersey according to the average ratio of tangible property, gross receipts, and wages and salaries, respectively, in the State, to such items everywhere; or

ALTERNATIVE 2 (Minimum measure): that proportion of its entire net worth as its total assets, tangible and intangible, in this State are to its assets, tangible and intangible, everywhere.

RATES UNDER ALTERNATIVES 1 or 2: 8/10 of a mill upon the 1st \$100 million of allocated net worth; 4/10 of a mill upon the 2nd \$100 million; 3/10 of a mill upon the 3rd \$100 million; and 2/10 of a mill upon all amounts of allocated net worth in excess of \$300 million.

ALTERNATIVE 3 (Minimum tax): But not less than \$25.00 in the case of domestic corporations and \$50.00 in the case of foreign corporations.

SIXTH: That out of an approximate \$6 million to \$7 million estimated annual yield from the proposed CORPORATION BUSINESS TAX, beginning in 1946, \$4 million shall be used for the purpose of reducing the State school tax on local property; and the remainder shall be paid into the State General Fund to assure replacement of revenues lost through the proposed repeal of the State capital stock tax.

SEVENTH: That a permanent legislative Commission on State Tax Policy be established to report annually to the Legislature on necessary and timely adjustments in the State and local tax structure.

SUMMARY OF REPORT

PART I

Factual Background Concerning the Taxation of Intangible Personal Property

Under the tax laws of New Jersey, personal property is broadly of three kinds:

Tangible personal property used in business—inventories, machinery, livestock, equipment, raw materials, goods in process, finished products, *etc.*

Tangible personal property not used in business—household goods, wearing apparel, jewelry, furnishings, boats, pleasure cars, aircraft, *etc.*

Intangible personal property—stocks, bonds, notes, mortgages, credits, cash, bank deposits, good will, franchises, patents, copyrights, *etc.*

Personal property (not exempt, excluded or excepted) has for many years been subject to valuation by the local assessor and to taxation at local rates. This method has been criticized as inequitable, erratic and in many cases confiscatory; and public reports—extending over a period of more than sixty years—have made recommendations looking towards removing these conditions from the tax structure of the State.

More recently, however, public attention has been directed particularly to the taxation of intangible personal property. Tax “bargaining” and tax avoidance in this field have become so serious as to cause large tax dislocations in major jurisdictions and to create apprehension and uncertainty among taxpayers of the State (p. 1).¹

* * *

For many years the statutory provisions for the taxation of intangible personal property have been a dead letter. While valuation by the local assessor and taxation at local rates have been the law since 1851, no substantial effort (until recently) has been made to reach this property, and business moved into New Jersey with full assurance that the law was not enforced.

¹ Page references in parentheses refer to the full text of the *Report* which follows.

The difficulties were these:

The application of a local rate to the full value of intangible personalty (whether market value, par value or book value) would have been confiscatory (pp. 2-4).

The law has been subject to a multitude of exemptions, exclusions and exceptions which have reduced a potential property tax base by probably 75 per cent and introduced the most extreme confusion and uncertainty into its provisions (pp. 4-6).

The result is that this great base of intangible personal property—probably three or four times the value of all real estate and improvements—has been reduced for property tax purposes to substantially the following types of intangibles:

- (1) Notes and accounts receivable;
- (2) Capital stock issued by corporations of other States where a tax is not paid on the corporation's property in another State;
- (3) Bonds, notes and debentures, not secured by mortgages on New Jersey property—except obligations of the Federal Government and of specified New Jersey State and local agencies;
- (4) Cash and deposits held in out-of-State banks.

All of these are taxable, less certain debts owing to New Jersey creditors.

From an estimated base approaching \$21 billions, only some 3.2 billions remain taxable at local rates (pp. 5-6).

Aside from the fact that the intangible tax law itself is archaic and unsound; and has fallen into a mass of inconsistencies which make a reasonable application impossible, there are practical reasons why it is unworkable. Local assessors have neither the facilities nor the knowledge to assess intangible personal property. As in the case of all impossible tax requirements, it is natural for taxing authorities to ignore or compromise rather than to confiscate. Active competition among assessment districts for the domicile of corporations owning large blocks of intangibles, results in unwillingness to enforce the law; and the comparative ease with which intangibles can be moved, hidden, off-set or reconverted, raise problems of administration difficult, if not impossible, to solve (p. 6).

* * *

For many years—almost from the enactment of the intangible property tax provisions in 1851—these questions have been studied and reported upon by public officers and commissions, but little has happened to relieve the difficulties. Instead of a sound and consistent remedy to an indefensible tax structure, exclusions, exemptions and exceptions of intangible personalty became the policy; and the years saw a potential property tax base of many billions of dollars slowly whittled away, while almost the entire burden of public support at the local level became fixed on the owners of real estate.

It is not too much to assume that this haphazard treatment of intangible personal property has been the root of tax lethargy in New Jersey. Failure to face it squarely has kept a great industrial State on a tax base suitable only to a simple agrarian economy (pp. 6-9).

This condition might have continued indefinitely, had not the now well-known practice of "tax-lightning" developed in the middle 'thirties. This was the summary assessment of intangible personalty (particularly of companies having only a statutory office in New Jersey) through agreement between the taxpayer and the local finance officer.

The practice caused the greatest apprehension among business interests of the State. While taxpayers, in many cases, could not demonstrate that they were over-assessed, neither could they disclaim all liability. They faced the possibility of an exorbitant and even confiscatory tax levy legally applicable under the law, or a compromise settlement at the direction of the local finance officer—a "settlement" that had no legally binding effect whatsoever (pp. 9-12).

The result was a device known as "colonization"—companies subject to "tax lightning" took steps to relocate in another jurisdiction within the State.

It was necessary that this jurisdiction have qualifications which promised certain protective factors. *First*, governmental expenditures must be low; *second*, there must be reason to believe that they would remain low, at least in the immediate future; *third*, the ratio of the normal assessments of the jurisdiction, to the assessments added by the colonizing company, must permit a substantial reduction in the tax rate when the new assessments were added to the normal assessment base.

Hunterdon county seemed to fit these conditions, and the Borough of Flemington offered a convenient situs. The results were as follows:

One hundred and seventy corporations—a large number of which were holding companies—established a corporate situs in Flemington.

These corporations represent resources of close to \$8,000,000,000, and have increased the ratables of Flemington to the extent of \$265,000,000—an increase of 9,665 per cent over the ratables that existed before the colonization began.

The tax rate of Flemington has accordingly fallen from \$3.91 in 1937 to 28 cents in 1943, and increased again to 43 cents in 1944. Because of the constant addition of companies to the Flemington situs, and the accompanying increase in ratables, each company has experienced an additional reduction in the dollar volume of its taxes amounting in some cases to more than 60 per cent.

Increased apportionments of State school taxes and county taxes as well as increased taxation for local purposes, has caused Flemington's share of total property taxes levied in Hunterdon county to increase from 10 per cent in 1937 (before colonization) to 61 per cent in 1944. During this same period, however, net valuations taxable in Flemington increased from 10 per cent to 91 per cent of the Hunterdon County total.

It must be remembered that the large holding companies who colonized in Flemington and elsewhere, were merely protecting the property of their stockholders. There was moreover, no legal reason why they should not move to Flemington—or anywhere else in the State; and no legal reason why Flemington—or any other municipality—should not receive them (pp. 13-16).

* * *

The *Commission* has made an effort to determine the extent to which intangibles are taxed in New Jersey at the present time. This is a difficult matter. Neither the laws require, nor does practice provide, assessment records that distinguish between tangible and intangible personalty. It is doubtful if any municipality in the State (with the exception of Flemington) could produce a complete record which would be accepted as legal evidence of intangible tax assessments or collections.

The *Commission* has concluded that the total yield probably does not exceed \$3 million. At all events, the sum is small compared with the potential base, and there can be no doubt of the inequitable and haphazard practices that mar the tax. It is the *Commission's* judgment that an accurate estimate of intangible tax yields in New Jersey is impossible because of lack of data (pp. 16-20).

* * *

PART II

Present and Current Programs to Improve the Taxation of Intangible Personal Property

Five major groups have each studied and reported on the question: the Committee on Cost of Government of the State Chamber of Commerce (1938-1939); the State Tax Law Revision Commission (1939-1940); the Newark Chamber of Commerce (1939-1941); Governor Edison's Committee on the Taxation of Intangibles (1942); and the Princeton Surveys (various times) (pp. 22-23).

While their plans have varied greatly in detail, they have shown, on the whole, common elements:

(1) A preference for the classification of intangible personalty and for taxation on *ad valorem* values at established mill rates;

(2) A desire to remove the assessment of intangibles from the local assessor and to place such assessment in the hands of a State agency;

(3) A reluctance to disturb the present methods of taxing the personal property of banks, insurance companies and public utilities;

(4) A desire to use the proceeds of the tax to reduce the general property tax;

(5) A stern effort to avoid an "income tax" or even an income factor in a tax formula; and,

(6) A tendency to leave the taxation of tangible personalty as at present.

None of these plans were successful in bringing about a single change in the tax laws of the State. Only one (the report of Governor Edison's Committee) was introduced into the Legislature in bill form; and this bill received a summary and adverse committee report. It is not a propitious record upon which to present new recommendations, and the *Commission* has inquired into the failure of these previous efforts. The reasons for failure seem, in brief, to have been these conditions, or a combination of them:

(1) There was lack of general agreement as to the precise recommendations to be made;

(2) The proposals were too extreme both as to the extent of the tax base and as to the amount of money to be raised;

(3) Estimates of yield and effect were too indefinite to permit confidence in either the revenue or incidence of the proposals.

There were doubtless other reasons—political and prudential—but such reasons accompany any effort in large-scale legislation, particularly proposals to raise or to spend public money. The *Commission* is, however, convinced that any proposal to remedy the intangible personal property tax situation in New Jersey is doomed to failure *unless*:

(1) The attempt represents a reasonable level of agreement which will resolve the many varying viewpoints pertaining to the problem;

(2) A reasonable restraint is recognized that avoids the easy hazard of going too far too fast—especially in these unsteady times; and,

(3) A factual base, sufficient to permit a sound determination of rates, yields and effect, is available to the Legislature (pp. 23-25).

* * *

Many methods for modifying the present personal property tax law have been proposed to the *Commission*. Although dissatisfaction with the present methods is common to all of them, there are those who believe that the assessment of intangibles by the local assessor and taxation at local rates is in principle neither as unsound nor as unjust as is commonly believed, and that its real difficulty lies in its administration. The argument runs like this: If the present law were fully enforced, billions of dollars in ratables—both tangible and intangible—would be added to the tax rolls of the State. Assuming that the cost of government remained substantially the same, this would result in a marked lowering of the tax rate for all taxpayers—indeed, the State as a whole would tend to benefit in much the same way as the taxpayers of Flemington have benefited from corporate “colonization.”

The *Commission*, for practical reasons, stated in the text (pp. 25-26) concludes that it is unable to accept this proposal, and

RECOMMENDS THAT THE PRESENT METHODS OF TAXING INTANGIBLE PERSONAL PROPERTY BE ABANDONED.

* * *

The following proposals (all based upon the repeal of the present statutory provisions for taxation of intangibles) have been urged upon the *Commission*:

PROPOSAL 1 made to the *Commission*: That a classified *ad valorem* property tax at an established low mill rate be applied to intangible personal property.

For reasons stated in the text (pp. 26-36) the *Commission*

RECOMMENDS THAT NO CLASSIFIED *ad valorem* PROPERTY TAX ON INTANGIBLE PERSONAL PROPERTY BE ADOPTED.

* * *

PROPOSAL 2 made to the *Commission*: That intangible personal property be exempted from taxation.

The *Commission* for reasons stated in the text (pp. 37-43) concludes:

THAT INTANGIBLE PERSONAL PROPERTY BE EXEMPTED ENTIRELY FROM TAXATION UNDER A PROPERTY TAX, PROVIDED THAT THE PRESENT TAXABLE BASE NOW THREATENED BY "TAX LIGHTNING" BE MADE TO BEAR ITS FAIR SHARE OF THE COST OF GOVERNMENT IN SOME OTHER WAY.

* * *

PROPOSAL 3 made to the *Commission*: That an increase in New Jersey's present capital stock tax be provided in lieu of a tax on intangibles.

For reasons stated in the text (pp. 43-57) the *Commission* concludes:

THAT AN INCREASE IN THE PRESENT CAPITAL STOCK TAX (WITHOUT SUBSTANTIAL AMENDMENT OF THE PRESENT TAX BASE) WOULD NOT BE AN ADEQUATE SUBSTITUTE FOR A TAX ON INTANGIBLES.

* * *

PART III

Conclusions and Recommendations of the Commission

In considering a substitute tax for the *ad valorem* tax on corporate intangibles, the *Commission* has been guided by certain purposes (p. 58):

- (1) To remove, entirely, the threat of "tax lightning."
- (2) To establish a simple and defensible tax on corporate business *in lieu* of an *ad valorem* tax on intangible personalty and the present capital stock tax.
- (3) To provide a yield sufficient to justify the abandonment of the present authorized tax on corporate intangibles.
- (4) To provide a tax base that would tend to direct State tax policy away from a general property base; and, in doing this,
- (5) To have due regard for the tremendous tax burdens of the present day and for the competitive conditions that exist between New Jersey and its neighboring States.

THE COMMISSION RECOMMENDS A CORPORATION BUSINESS TAX MEASURED BY NET WORTH IN LIEU OF A TAX ON CORPORATE-HELD INTANGIBLE PERSONAL PROPERTY AND IN PLACE OF THE PRESENT CAPITAL STOCK TAX. The proposed purpose, base, allocation factors and rates are as follows: (pp. 62-65)

Purpose: To provide that—

Every domestic and foreign corporation subject to the taxing jurisdiction of New Jersey (except some at present exempt or others specially taxed), shall pay an annual franchise tax for the privilege of exercising its corporate franchise in this State or for the privilege of doing business, employing capital or maintaining an office in this State.

The annual franchise tax shall be *in lieu* of all other State, county or local taxation upon or measured by intangible personal property used in business by corporations liable to taxation under this proposal. The present capital stock tax would be repealed.

Method:

Base and Rates: The franchise tax to be annually paid by each taxpayer shall be measured by the *greater* of the following:

ALTERNATIVE 1 (Basic Measure): That portion of its entire net worth as may be allocable to New Jersey according to the tangible property—gross receipts—wages formula below, *or*

ALTERNATIVE 2 (Minimum Measure): That proportion of its entire net worth as its assets, tangible and intangible, in the State are to its assets everywhere.

RATES UNDER ALTERNATIVES 1 or 2: 8/10 of a mill upon the 1st \$100 million of allocated net worth; 4/10 of a mill upon the 2nd \$100 million; 3/10 of a mill upon the 3rd \$100 million; and 2/10 of a mill upon all amounts of allocated net worth in excess of \$300 million.

ALTERNATIVE 3 (Minimum Tax): \$25.00 in the case of domestic corporations or \$50.00 in the case of foreign corporations.

Allocation: (pp. 63, 76-79)

The proposed allocation formula under *Alternative 1* is intended to permit the tax to reflect the extent to which each corporation engages in business activities *within* New Jersey. The allocation factor for each corporation is determined as the average of these three ratios:

- (1) Tangible property in New Jersey to tangible property everywhere;
- (2) Gross receipts attributable to New Jersey to gross receipts everywhere;
- (3) Wages and other compensation paid in New Jersey to such items everywhere.

Alternative 2 provides an allocation formula which is intended principally to retain a substantial tax base in the case of domestic holding companies or other corporations which may have relatively little or no business activity in this State, but hold proportionately large amounts of intangibles now taxed or taxable. This alternative measure is justifiable since these corporations benefit most directly from the proposed repeal of *ad valorem* taxation of intangible personal property.

TABLE XVII
PROPOSED CORPORATION BUSINESS TAX
ESTIMATED YIELD¹

(In Millions of Dollars)

A. *Yield of proposed tax:*

Domestic corporations (Table XIX)	\$4.5
Foreign corporations (Table XXI)	2.0
Total gross yield	<hr/> \$6.5

B. *Present corporation franchise tax (to be repealed):*

Domestic corporations (Table IX)	\$1.2
Foreign corporations (Table IX) .....	.4
Total franchise tax repealed	<hr/> \$1.6

C. *Estimated net yield of proposed tax (A—B):*

Domestic corporations	\$3.3
Foreign corporations	1.6
Total net yield	<hr/> \$4.9

¹ It is extremely difficult to estimate the yield of a tax with no experience upon which to base these estimates. The above estimates are based upon conservative conclusions. The *Commission* believes the tax will yield the amounts shown. They may be exceeded.

The *Commission* realizes the limitations of the above proposal, but it wishes to emphasize this point: The ownership of corporate property is only a remote measure of corporate ability to pay taxes. So long, therefore, as property is the base of the tax, so long will there be inequalities in its application. It is not possible to tax business activity with satisfactory fairness without giving consideration to its earnings. The *Commission* has been assured on every hand that this is politically impossible, and the members, themselves, are well aware of the public resistance to anything that resembles an income tax or even an income factor in a tax formula. For this reason, any reference to earnings in the formula has been carefully avoided, and the property tradition maintained as the basis of the tax. Because net worth reflects net corporate ownership, it more nearly reflects an equitable business tax base than do property holdings. The tax is for the most part so small, however, that the inequalities are not serious in dollar volume.

The proposal is vastly superior in equity to the present capital stock tax and to the chaos of the present *ad valorem* tax on intangibles. It is recommended as the best practical solution of the problem referred to the *Commission*. New Jersey is a great industrial State but its densely populated areas are still attempting to finance their municipal services as if they were agrarian communities. Their real wealth lies in business activity *not* in real estate; and the *Commission's* proposal suggests the establishment of a modest activity base.

* * *

There are three related problems upon which the *Commission* feels it should report:

First: Adjustments in municipalities affected by the repeal of the intangible personal property tax. (pp. 80-84)

The *Commission* proposes two adjustments to ease the transition of Flemington and Hunterdon County to a normal tax base:

First: To provide by law that the net valuation for the apportionment of school taxes in Hunterdon County be made for the current year (instead of the prior year) in which the loss of intangible ratables is first effective.

Second: To provide that adjustments be made in the first two quarterly tax payments to reflect the current levy rather than the levy of the prior year.

Aside from these proposals, the *Commission* has no further recommendation to make pertaining to the adjustment of the Flemington situation.

* * *

Second: Distribution of the yield. (pp. 84-85)

The *Commission* has frequently emphasized that it is not a revenue-raising commission, nor is it in any sense a spending commission. It was appointed by the Legislature to adjust inequalities in the tax structure—particularly as these were exemplified in the treatment of intangible personal property.

Nevertheless, the *Commission* has been constantly aware of both the demand and the need for the relief of real estate from an excessive burden of taxation. Recent developments have emphasized the hazards and uncertainties involved in changing the prop-

erty tax base of even one large taxpayer in a single municipality, and the *Commission* believes that until tax pressures are removed from real estate, there can be neither tax security for the local property owner nor fiscal adequacy for our municipal services. It therefor proposes that a beginning be made at once to relieve property owners from an excessive and unfair burden of taxation. To this end, therefore, the *Commission* recommends as follows:

That out of an approximate \$6 million to \$7 million estimate annual yield from the proposed *Corporation Business Tax*, beginning in 1946, \$4 million shall be applied to reduction of the State School Tax upon local property. The remainder shall be paid into the State General Fund to assure replacement revenues lost through the proposed repeal of the State Capital Stock Tax.

* * *

Third: The establishment of a Permanent Legislative Commission on State Tax Policies. (pp. 85-87)

The *Commission* strongly recommends that a Permanent Legislative Commission on State Tax Policies be established by the Legislature to report to the Legislature at each session on necessary and appropriate adjustments in the tax structure. Because of the federal statute which prohibits state taxation of national bank shares at a rate exceeding that on other "moneyed capital" in the hands of individuals, one such adjustment may be required in the state bank stock tax as a result of the *Commission's* proposal to exempt intangibles of individuals. Only through the careful and deliberate planning of such a *Commission* over a period of years can this and the many other problems in New Jersey taxation be solved.

* * *

REPORT ON THE TAXATION OF INTANGIBLE PERSONAL PROPERTY IN NEW JERSEY

PART I

Factual Background Concerning the Taxation of Intangible Personal Property

Under the tax laws of New Jersey, personal property is broadly of three kinds:

Tangible personal property used in business—inventories, machinery, livestock, equipment, raw materials, goods in process, finished products, etc.

Tangible personal property not used in business—household goods, wearing apparel, jewelry, furnishings, boats, pleasure cars, aircraft, etc.

Intangible personal property—stocks, bonds, notes, mortgages, credits, cash, bank deposits, good will, franchises, patents, copyrights, etc.

Personal property (not exempt, excluded or excepted) has for many years been subject to valuation by the local assessor and to taxation at local rates. This method has been criticized as inequitable, erratic and in many cases confiscatory; and public reports—extending over a period of more than sixty years—have made recommendations looking towards removing these conditions from the tax structure of the State.

More recently, however, public attention has been directed to the taxation of intangible personal property. Tax bargaining and tax avoidance in this field have become so serious as to cause large tax dislocations in major jurisdictions and to create apprehension and uncertainty among the business interests of the State.

The *Commission* finds that the facts are substantially as follows:

For many years the statutory provisions for the taxation of intangible personal property have been a dead letter. While valuation by the local assessor and taxation at local rates has been the law since 1851, no substantial effort (until recently) has been made to reach this property, and business moved into New Jersey with full assurance that the law was not enforced.

The reasons why the law was not enforced were plain to everyone. In the first place, the application of a local rate to the full value of intangible personalty (whether market value, par value or book value) would have been confiscatory. An examination of

recent bond listings indicates that most corporate issues outstanding carry coupons ranging from 2.5 per cent to 4.5 per cent of their par value. Only rarely does the yield reach 5 per cent. To apply the average State rate—\$4.74 for each \$100 valuation in 1944—to the par value of such a security, would reduce the yield to almost nothing, and to apply local rates in excess of \$5 of which there are 206 in the State (1944), would result in a capital levy. Bonds, moreover, have not been selling at par. They have, rather, been commanding premiums sufficient to reduce their actual yields to about 2.5 per cent for the best grade and to about 5.5 per cent for the poorer grades. If true value is interpreted to mean “market value,” the application of New Jersey’s tax laws would result in losses equal to or exceeding as much as twice the income yield.

A similar condition exists with respect to corporate stocks. A careful study by the *National Industrial Conference Board* shows net corporate earnings as a per cent of capital invested each year over a period 1925 to 1940 as follows:

TABLE I
AVERAGE RATE OF RETURN ON CAPITAL INVESTED IN CORPORATE
MANUFACTURING (1925-1940)

Year	†Net Earnings as Per Cent of Capital Invested	Average New Jersey Prop- erty Tax Rate*	Year	†Net Earnings as Per Cent of Capital Invested	Average New Jersey Prop- erty Tax Rate*
1925.....	\$5.74	\$3.73	1934.....	\$1.59	\$3.97
1926.....	5.54	3.62	1935.....	3.38	4.00
1927.....	4.54	3.76	1936.....	5.69	4.15
1928.....	5.84	3.88	1937.....	5.24	4.22
1929.....	6.43	3.93	1938.....	1.59	4.55
1930.....	1.33	4.06	1939.....	5.12	4.62
1931.....	—1.77	4.08	1940.....	6.93	4.72
1932.....	—3.79	4.05			
1933.....	—0.01	3.76	Average..	\$3.38	\$4.07

* Average tax rate inserted.

† *Invested Capital* is defined as total assets less investments; and *net earnings*, as net income after taxes less income from security investments.

Source: National Industrial Conference Board, *Economic Almanac For 1943-1944* (New York, 1943), p. 259.

While it is true that these are average figures and are therefore a composite of firms operating at net losses as well as those with substantial earnings; it is nevertheless clear that if manufacturing corporations paid out their entire net earnings as dividends, their stockholders and creditors could not pool their resources and pay taxes every year from earnings at present New Jersey rates.¹

¹ It is, of course, true that if intangible assessments were substantially increased, present New Jersey rates would tend to be reduced. See the discussion on pages 25-26 of this report.

While the average property tax rate in New Jersey has increased by 27 per cent during the past twenty years, the rate of income yield from intangible personal property (investments) has decreased. As shown in Table II, the average yield from two hundred domestic corporation stocks in 1944 was almost identical with the average tax rate in that year. The yield from preferred stocks and from bonds of domestic corporations was very much below the average tax rate. Faced with these realities, investors (corporate or individual) who reside in New Jersey, can keep their capital intact only by evading or avoiding taxation of their holdings at full legal rates. They accomplish this by neglecting to declare their holdings and by limiting their investments to tax-exempt securities.

TABLE II
AVERAGE NEW JERSEY PROPERTY TAX RATES AND INCOME YIELDS
FROM INTANGIBLES (1925-1944)

Year	Average Tax Rate in N. J.	Average Yields from		Corporate Bonds Average	Bonds (Moody's)	
		200 Common Stocks (Moody's)	15 Preferred Stocks ² (Standard and Poor's)		Aaa	Baa
1925.....	\$3.73	...	\$5.90	\$5.47	\$4.88	\$6.27
1926.....	3.62	...	5.78	5.21	4.73	5.87
1927.....	3.76	...	5.51	4.97	4.57	5.48
1928.....	3.88	...	5.12	4.94	4.55	5.48
1929.....	3.93	\$3.5 ¹	5.12	5.21	4.73	5.90
1930.....	4.06	4.6	4.95	5.09	4.55	5.90
1931.....	4.08	6.2	5.04	5.81	4.58	7.62
1932.....	4.05	7.4	6.13	6.87	5.01	9.30
1933.....	3.76	4.4	5.75	5.89	4.49	7.76
1934.....	3.97	4.1	5.29	4.96	4.00	6.32
1935.....	4.00	4.1	4.63	4.46	3.60	5.75
1936.....	4.15	3.5	4.33	3.87	3.24	4.77
1937.....	4.22	4.8	4.45	3.94	3.26	5.03
1938.....	4.54	4.4	4.34	4.19	3.19	5.80
1939.....	4.62	4.2	4.17	3.77	3.01	4.96
1940.....	4.72	5.3	4.14	3.55	2.84	4.75
1941.....	4.82	6.2	4.08	3.34	2.77	4.33
1942.....	4.72	6.6	4.31	3.34	2.83	4.28
1943.....	4.68	4.8	4.06	3.16	2.73	3.91
1944.....	4.74	4.7 ³	4.04 ³	3.06 ³	2.73 ³	3.63 ³

¹ Based upon 7 months (June-December).

² Based upon 20 stocks for years 1925-1928.

³ Based upon 10 months (January-October).

Not only is the present intangible tax archaic and unsound in its basic provisions, but it has been subject to a multitude of exemptions, exclusions and exceptions which have reduced its potential property tax base by probably 75 per cent and introduced the most extreme confusion and uncertainty into its provisions. A "partial list" of statutory exemptions is appended to this report (Appendix A); and while it is an impressive example of the erratic and piecemeal treatment of a large tax base, there are, perhaps, only four exempt classifications that make a substantial difference in the total base. These are:

- (1) Government securities—Federal, State and local;
- (2) Money on deposit in New Jersey banks;
- (3) Mortgages secured by New Jersey real estate;
- (4) Shares of stock of all corporations—all stocks of domestic corporations, and stocks of foreign corporations, the property of which is taxed in another State; and,
- (5) Intangibles exempt because held and administered exclusively for charitable, benevolent, religious or hospital purposes in this State.

In addition, large blocks of intangibles have been excluded from the tax base and taxed, at least in part, in other ways. These are:

Intangibles held by financial institutions, insurance companies, public utilities and railroads.

The result is that this great base of intangible personal property in New Jersey—probably three or four times the value of all real estate and improvements—has been reduced for property tax purposes to substantially the following types of intangibles:

- (1) Notes and accounts receivable;
- (2) Capital stock issued by corporations of other States where a tax is not paid on the corporation's property in the other State;
- (3) Bonds, notes and debentures, not secured by mortgages on New Jersey property—except obligations of the Federal Government and of specified New Jersey State and local agencies;
- (4) Cash and deposits held in out-of-State banks.

All of these are taxable, less certain debts owing to New Jersey creditors.

An effort was made in 1939 by the Princeton Surveys of Princeton University to obtain an inventory of intangible personal property in New Jersey. This was a large and difficult undertaking, and the margin of error in the estimates may well exceed 25 per cent plus or minus. The attitude of those most closely connected with the project emphasized, however, the conservative side, and the following table (based on 1935 figures) indicates, in the opinion of the *Commission*, estimates which are substantial enough to give broad guidance to a program. It will be observed from Table III that from an estimated base approaching \$21 billions, only some \$3.2 billion remains taxable at local rates. The effect of the war economy on the total has not been estimated. Considering, however, that, in making the estimates, every doubt was resolved on the conservative side, and that the present emergency has emphasized rising market values, the \$3.2 billion figure can safely be considered as low.

* * *

Aside from the fact that the intangible tax law itself is archaic and unsound, and has fallen into a mass of inconsistencies which make a reasonable application impossible, there are practical reasons why it is unworkable. Local assessors have neither the facilities nor the knowledge to assess intangible personal property. As in the case of all impossible tax requirements, it is natural for taxing authorities to ignore or compromise rather than to confiscate. Active competition among assessment districts for the domicile of corporations owning large blocks of intangibles, results in unwillingness to enforce the law; and the comparative ease with which intangibles can be moved, hidden, offset or reconverted raise problems of administration difficult, if not impossible, to solve.

These are old problems to New Jersey. Intangibles were originally brought within the general property tax by a supplement to the general tax act of 1846, enacted as a supplement of March 14, 1851. This act is notable for providing deductions for debt from all property valuations within prescribed limits or as between certain parties, as well as for the exemption of corporate intangibles to the extent that capital stock was taxed in the hands of the stockholders.

In 1867, however, a State commission was complaining about the debt exemptions. "The frequent changes," it said, "since made in the law as to how and when deductions ought to be made, suffi-

TABLE III

ESTIMATED VALUE OF INTANGIBLE PERSONAL PROPERTY IN NEW JERSEY (1935)
AND ITS STATUS AS TO TAX LIABILITY (1938)

(Millions of Dollars)

<i>Classification</i>	<i>Corporate</i>	<i>Other</i>	<i>Total</i>
<i>Taxable at Local Rates:</i>			
Accounts receivable less accounts payable ¹ to N. J. creditors	384	184	568
Investments other than capital stocks	636	1,552	2,188
Miscellaneous assets	318	137	455
TOTAL	1,338	1,873	3,211
<i>Taxed through "in lieu" Taxes:</i>			
Capital stocks of all N. J. corporations	1,663	1,463	3,126
Investments (other than stocks) accounts re- ceivable less payables to N. J. creditors, etc., belonging to financial institutions, utilities, etc.	2,388	....	2,388
TOTAL	4,051	1,463	5,514
<i>Exempt or offset:</i>			
Government securities (Federal, state, and local)	1,271	2,288	3,559
All money and deposits	897	1,697	2,594
Capital stocks of foreign corporations ²	1,663	1,464	3,127
Mortgages on N. J. property, and securities equal to debts and liabilities of insurance companies	2,854	....	2,854
Accounts receivable equal to $\frac{1}{4}$ of accounts payable	248	44	292
TOTAL	6,933	5,493	12,426
GRAND TOTAL, all intangibles	12,322	8,829	21,151

¹ Assumed to be $\frac{1}{4}$ of all payables.² It is probable that some capital stock of foreign corporations is taxable in New Jersey.

ciently evince that, so long as allowed to any extent, the law must be a constant subject of dispute and change, occasioning the evils not only of an erroneous system, but the perhaps greater evils of an unsettled and changeable one."¹ In addition, the commission pointed out, deductions for debt made the tax base one of net worth rather than general property, as the amendment of 1851 contemplated—in other words, a citizen is taxed, said the commissioners, “not upon the property he holds, but on the sum he is worth.”

Almost twenty-five years later, another State commission still considered the subject of deduction of debts as “the most embarrassing subject before the commission,” and once again the recommendation was made that debts should not be deducted at all.² This practice, indeed, seemed to become a fact in several counties. It was later reported that “in the counties of Atlantic, Camden, Cape May, Hudson, and Passaic, there are no deductions for debts allowed by the assessors. In other counties these debts, which are deducted from the debtor’s assessment and assessed to the creditor, are usually classed as personal property,”³ The result was that under the act of 1876 (*Gen. Stat.*, p. 2109, para. 37; P. L. (1876), p. 150), known as the *Five Counties Act*, there were no deductions allowed for real estate mortgages in Hudson, Essex, Union, Bergen and Passaic; and the cities of Trenton, Camden and New Brunswick.

Even in 1879, however, the taxation of intangibles was offering more general difficulties. A special tax commission of that year recorded the basic troubles as follows:

The difficulty we are considering undoubtedly arises largely from the fact that our machinery for assessing taxes was devised for a condition of things wholly different from that to which it has now to be applied. With the advancement of industrial development in recent times, there have sprung into existence vast masses of wealth, organized and managed under new conditions and entering closely into the very structure of our social system, which, for the most part, were unknown at the beginning of the present century. At that time wealth chiefly consisted of material things, simple in form, readily open to observation and assessable without great risk of error. . . . But while things to be assessed have so vastly multiplied in form and variety, the means provided for assessing them remain substantially what they were in the middle of the last century. In other words, our system of assessment, when originally created, was intended to reach only tangible and

¹ Commission to Revise the Tax Laws of New Jersey, *Report* (Trenton, January 28, 1868), pp. 11, 14.

² Commission on Taxation, *Preliminary Report* (Trenton, 1891), pp. 16, 17.

³ State Board of Taxation, *Tenth Annual Report* (Trenton, 1900), p. 16.

visible things; and this system, notwithstanding the immense industrial and social changes that have intervened, remains nearly the same as when first established.¹

Nor was the commission of 1879 content with a statement of the problem. It made a shrewd classification of the various methods of treatment. The report reads:

The question of how to reach the vast amounts of personal property which . . . escape taxation, and on what principle it may most wisely be dealt with, is one of the most difficult in the whole range of an exceedingly difficult and complicated subject . . . bonds, stocks, credits, and other forms of incorporeal personal property which, in the aggregate, represent enormous values, easily elude assessment, so that frequently the person who is most able to pay a tax is most able to escape it. There are four ways of dealing with this class of property . . . : 1st. Exempt it altogether. 2nd. Empower the local assessors to ascertain its entire amount by vigorous and relentless inquisitorial process. 3rd. Expect assessors (as under the present law) to accomplish the same and with inadequate means. 4th. Relieve local assessors entirely, or so far as possible, from the responsibility of seeking such property, and provide for reaching it by the machinery of the State Government.²

But nothing came from the report of the tax commission of 1879. In this respect, at least, a precedent was established that has marked the issuance of a dozen subsequent studies and analyses. Instead of a sound and consistent remedy to an indefensible tax structure, exclusions, exemptions and exceptions of intangible personalty became the policy; and the years saw a potential property tax base of many billions of dollars slowly whittled away, while almost the entire burden of public support at the local level became fixed on the owners of real estate.

It is not too much to assume that this haphazard treatment of intangible personal property has been the root of tax lethargy in New Jersey. Failure to face it squarely has kept a great industrial State on a tax base suitable only to a simple agrarian economy.

And still today intangible property taxation is based upon a system "intended to reach only tangible and visible things"; and he "who is most able to pay a tax is most able to escape it." In 1877 personal property was 22.8 per cent of all ratables. In 1896 it was 16.6 per cent. By 1915, personal property had fallen to 11.3 per cent of all ratables, and has varied only one or two per cent from

¹ N. J. Senate, *Report of the Special Tax Commission of the State of New Jersey*, Sen. Doc. 38 (February 18, 1880), p. 14.

² *Ibid.*, pp. 10-11.

that level over the past thirty years. From 1879 to 1940, real property valuations increased from \$427 million to \$4.6 billion—an increase of eleven-fold. But during the same period, taxable personal property valuation increased from \$130 million to \$685 million—an increase of about five-fold—and this in spite of a corporate growth that finds few parallels in the American economy. This is the record of exemptions, exclusions and exceptions.

Even so, there was still little hazard in the situation prior to 1938. Exempt property, excluded property, or excepted property offered no special dangers to the taxpayer. Gross inequities were ignored because the tax payments involved were in themselves small; real property and improvements absorbed the slowly mounting costs of municipal government; and both corporate and individual holders of intangibles felt no uneasiness in the presence of a law so archaic and confused as to have long ago become a statutory relic.

These conditions might have continued indefinitely—to the slow detriment of the State, but without acute embarrassment to business or government—had not several of the State's larger municipalities attempted suddenly and without warning to bring the long-neglected intangible tax base to life. At this point, the now well-known practice of "tax lightning" was born. It seems to have worked like this:

A municipality moved to assess the intangible personal property of its taxpayers (mostly New Jersey corporations with registered offices within the municipality) on the bases of omitted assessments for the two prior years. The procedure was for the proper municipal official to file a complaint with the County Tax Board alleging that certain specific property of the taxpayer was not assessed. Each complaint recited a sum of money (arrived at from a perusal of balance sheets without consideration of exemptions, deductions or taxable value) which, it was stated, represented the value of the omitted ratables.

Copies of the complaints were subsequently served on each taxpayer; and prior to formal hearings thereon, the taxpayers conferred with the municipal authorities. In these conferences, an agreement was reached as to the actual amount of ratables—that is, the true value for tax purposes after deducting all exemptions and offsets. A stipulation was then drawn and agreed to that the amount of ratables to be proved before the county board was to be one-sixteenth or 6 per cent of the true value so determined.

Thereafter, the County Tax Board, sitting as an assessor, called each case, and had before it only the stipulation as to the value of the ratables representing only one-sixteenth of the actual ratables. There being no other evidence, the board determined the omitted ratables in each case at the amount set forth in the stipulation and certified them to the collector as "omitted assessments" for the two prior years.

This practice was described to the *Commission* at its public hearing in the Assembly Chamber in Trenton on November 29, by Mr. Leo Rosenblum, President, Hudson County Board of Taxation:

"In the City of Jersey City—certainly you must be aware of the fact—in 1938 or the early part of 1939 there was a written agreement made to assess intangibles at three mills. Naturally the law never provided for that. That was an arbitrary and willful violation of the law; yet it was done for the assigned reason that the practicalities of the situation required it. Corporations were going to leave the city, and it would be better to get three mills from the corporation than nothing at all. As recently as 1942, the tax books of the city of Jersey City, to a limited degree, had a breakdown of tangibles and intangibles. It is not broken down by title, nothing to indicate what it is, but I know eight or ten pages of one Jersey City book in one corporate district contains the names of what I think are only domestic corporations maintaining corporate situs in Jersey City. I think it is about the best indication I can get of what intangibles were assessed as intangibles only, in Jersey City in that year.

"The final plan of the City was to have all the corporate taxpayers pay at the full rate, but to reduce the assessment itself from the true value to the equivalent of three mills, so the amount on the books is only a fraction of what the true value would be. Then on that basis the taxpayer received a bill on the local property tax rate, and at that reduced figure in 1942 we had one group of corporations in the Jersey City assessment books assessed at \$23 million some odd hundred thousand dollars, in round figures, which provided a tax at the present rate of \$1,400,000, approximately, actually paid. Unfortunately, you can't determine what other intangibles exist in the city definitely because of the practice to assess in one lump sum, including whatever tangibles or intangibles may be required to be assessed by law."¹

This practice caused the greatest apprehension among the business interests of the State. While taxpayers, in many cases, could not demonstrate that they were over-assessed, neither could they disclaim all liability. They faced the possibility of an exorbitant

¹ State Commission on Taxation of Intangible Personal Property, *Public Hearings* (November 29-30, 1944), Assembly Chamber, Trenton, N. J., pp. 33-34. Hereafter cited *Public Hearings*.

and even confiscatory tax levy legally applicable under the law, or a compromise settlement at the direction of the local finance officer—a “settlement” that had no legally binding effect whatsoever. The table on the following page (Table IV) shows what the potential effect of “tax lightning” in 1938 (the first year in which it attracted attention) might have been—an increase in the taxes of five representative taxpayers from 26 per cent to 864 per cent. This would amount to forced liquidation.

The New Jersey State Chamber of Commerce issued a warning press release on the subject:¹

“During the past two weeks [fall of 1938] there have developed evidences of a reckless disposition to increase personal property assessments in various New Jersey municipalities. The increase against various corporations in Jersey City, Paterson, Camden and Newark have amounted to hundreds of millions of dollars.

“This situation has in it all the elements of disaster for New Jersey’s future as an industrial State. . . .

“ . . . The State Chamber of Commerce has been deluged with complaints from those affected. . . .

“It does not take an economist to see that if municipal governments in this State permit their eagerness for new sources of revenue to lead them into excesses of this sort, a very serious and alarming situation will be created in this State. The good work already done in bringing new industry into this State will be nullified.”

There was little a taxpayer could do to avoid this practice. Such protective devices that were open to him were either expensive, inconvenient or embarrassing. Frequently they were all of these. There was no protection against the first year’s assessment and levy, nor against omitted assessments for the two prior years. The sudden and summary application of a law which had been regarded as a dead letter for about a hundred years, gave neither time nor opportunity for adjustments. Even if there had been time and opportunity, the alternatives were few. Taxable intangibles could, to a certain extent, be converted into tax-exempt securities. They could be reduced for taxable purposes by the creation of intangible offsets legally exempt under the law. Certain types of companies and industries could leave for out-of-State jurisdictions more favorable to their interests; and foreign corporations could avoid residence in the State. Any of these devices was bad for business and, more important still, a constant and increasing detriment to the economic development of the State.

¹ Press Release by Robert T. Bowman, President (Newark, December 1, 1938).

TABLE IV
FIVE REPRESENTATIVE TAXPAYERS IN NEW JERSEY
PRESENT AND POTENTIAL PROPERTY TAX (1938)

<i>Classification</i>	<i>Value</i>	<i>Present Tax (1938)</i>	<i>Potential Tax (1938) Amount</i>	<i>Per Cent Increase</i>
1. Individual of Moderate Means (Princeton):				
Real Property	\$20,000	\$501	\$668	33
Tangible Personalty	4,000 }		134 }	
Intangible Personalty	13,000 ¹ }	100	200 }	234
Totals	\$37,000	\$601	\$1,002	67
¹ Contains \$3,000 Federal bonds, \$1,000 cash and \$3,000 cash value of life insurance which have been deducted for purposes of tax computations.				
2. Service Corporation Operating Without Profit (Newark):				
Real Property	0	0	0	0
Tangible Personalty	\$4,190 }		193 }	
Intangible Personalty ²	546,231 ¹ }	\$2,305	22,109 }	867
Totals	\$550,421	\$2,305	\$22,302	867
¹ Includes \$12,231 cash and \$54,413 investments taxed by other States. These have been deducted for purposes of tax computations.				
3. Manufacturing Corporation Operating at a Moderate Profit (Newark):				
Real Property	\$894,735	\$27,660	\$41,247	49
Tangible Personalty	864,141 }		39,837 }	
Intangible Personalty ²	1,169,377 ¹ }	18,440	31,290 }	285
Totals	\$2,928,253	\$46,100	\$112,364	144
¹ Contains \$267,798 cash and \$222,847 capital stock in New Jersey corporations which have been deducted for purposes of tax computations.				
4. Manufacturing Corporation Operating at a Loss (Lawrence Township):				
Real Property	\$80,000	\$2,184	\$2,656	22
Tangible Personalty	91,906 }		3,051 }	
Intangible Personalty ²	21,482 ¹ }	2,656	415 }	31
Totals	\$193,388	\$4,480	\$6,122	26
¹ Includes \$4,239 cash and \$4,747 prepaid items which have been deducted for purposes of tax computation.				
5. Successful Manufacturing Corporation (Jersey City):				
Real Property	\$1,230,578	\$57,578	\$58,452	2
Tangible Personalty	5,456,560 }		259,187 }	
Intangible Personalty ²	18,080,137 ¹ }	6,928	162,485 }	5,986
Totals	\$24,767,275	\$64,506	\$480,124	644
¹ Includes \$590,534 cash, \$253 Government securities and other investments \$14,068,610 which have been deducted for purposes of tax computations.				
² Net after allowable deductions for accounts payable to New Jersey creditors.				

The result was a device simpler than any of these. While it did not avoid the first payment, it did prevent a second, and gave at least a temporary protection. This device was known as "colonization" and worked like this:

A company that was subject to "tax lightning" took steps to relocate its statutory office in another jurisdiction within the State. It was necessary that this jurisdiction have qualifications which promised certain protective factors. *First*, governmental expenditures must be low; *second*, there must be reason to believe that they would remain low, at least in the immediate future; *third*, the ratio of the normal assessments of the jurisdiction to the assessments added by the colonizing company, must permit a substantial reduction in the tax rate when the new assessments were added to the normal assessment base.

Hunterdon County seemed to fit these conditions, and the Borough of Flemington offered a convenient situs. In 1937, the total net valuation taxable in Flemington was less than \$3 million and the total in all of Hunterdon County was only \$28 million. General property taxes for all purposes amounted to only \$107 thousand in Flemington and only \$1 million in the entire county.

Because Hunterdon County was largely rural and was not likely to expand its population and service requirements, it appeared that one or more large holding companies could meet the entire county and municipal tax requirements and still pay a moderate tax bill. While substantially increased ratables would cause a corresponding increase in the amount of State school tax apportioned to the county and to Flemington Borough, this contingency did not alter the calculations. Considered in this manner, the case for moving to Flemington was so strong that it could even contemplate significant increases in county and local budgets and still be impressive.

The result was as anticipated—there was a marked migration of corporations (all of them chartered by this State) from the city of Jersey City to the Borough of Flemington; and, in brief, this is what happened over the six-year period, 1938 to 1944.

One hundred and seventy corporations—a large number of which were holding companies—established a corporate situs in Flemington.

These corporations represent resources of close to \$8 billion and have increased the ratables of Flemington to the extent of \$265 millions—an increase of 9665 per cent over the ratables that existed before the colonization began.

The tax rate of Flemington has accordingly fallen from \$3.91 in 1937 to 28 cents in 1943, and increased again to 43 cents in 1944.

Because of the constant addition of companies to the Flemington situs and the accompanying increase in ratables, each company has experienced an additional reduction in the dollar volume of its taxes amounting in some cases to more than 60 per cent.

Increased apportionments of State school taxes and county taxes, as well as increased taxation for local purposes has caused Flemington's share of total property taxes levied in Hunterdon County to increase from 10 per cent in 1937 (before colonization) to 61 per cent in 1944. During this same period, however, net valuations taxable in Flemington increased from 10 per cent to 91 per cent of the Hunterdon County total.

The accompanying table (Table V) shows progressively the results of the Flemington experience.¹ The *Commission* is not called upon to determine the responsibility for this condition. It must be remembered that the large domestic companies which colonized in Flemington and elsewhere were protecting the property of their stockholders. There was, moreover, no legal reason why they should not move to Flemington—or anywhere else in the State—and no legal reason why Flemington—or any other municipality—should not receive them. Since establishing a situs in Flemington, their property has been assessed at its full book value and taxed at the full local rate. Flemington is perhaps the only New Jersey municipality in which the letter of the intangible tax law is applied. Jay J. Kisz, Assessor of the Borough of Flemington, has written the *Commission*: "I have endeavored to assess all of

¹ As shown in Table V, developments in Flemington Borough and Hunterdon County subsequent to 1937 have been about as anticipated. Net valuations taxable in the Borough have increased each year until they amounted to \$268,000,000 in 1944, or 9,688 per cent more than in 1937. Although the total county tax increased only 25 per cent, the Flemington portion of it increased from \$18,000 (or 9 per cent) in 1937 to \$244,000 (or 91 per cent) in 1944. State school taxes apportioned to Hunterdon County increased 763 per cent from \$90,000 in 1937 to \$686,000 in 1944 and those apportioned to Flemington increased 7,980 per cent from \$8,000 in 1937 to \$621,000 in 1944.

Between 1937 and the end of 1944, total property tax levies for all purposes in Hunterdon County increased by \$828,000 (or 80 per cent). But during this same period, the total in Flemington Borough increased by \$1,026,000 (or 10,495 per cent). While taxes for local purposes in Flemington had increased by 590 per cent, the Flemington tax rate had declined from \$3.91 for each \$100 valuation in 1937 to \$.42 for each \$100 valuation in 1944 (after having reached an all-time low of \$.28 in 1943).

From the standpoint of the colonizing corporations, the significant point is this: Even if all of the taxes in Flemington were to be levied against only a few of the corporations located there, it would still constitute a light burden relative to what they could be charged legally in other parts of the State.

TABLE V
NET VALUATIONS TAXABLE, TAX RATES AND APPORTIONMENT OF PROPERTY TAXES IN
FLEMINGTON BOROUGH AND HUNTERDON COUNTY (1937-1944)
(Thousands of Dollars)

Year	Net Valuation Taxable	Tax Rate per \$100 val.	Total Property Taxes	Apportionment of Taxes ¹					
				State School	Soldiers' Bonus	County	Local School	Library	
A. Borough of Flemington									
1937.....	2,742	3.91	107.0	7.7	.5	18.5	48.1	31.4	.7
1938.....	47,696	.67	320.7	58.8	4.0	160.2	47.8	49.9	0
1939.....	52,013	.81	417.3	141.7	10.9	175.4	46.3	43.0	0
1940.....	52,296	.81	423.5	150.3	11.4	174.6	41.3	45.9	0
1941.....	56,450	.74	417.3	155.0	0	169.7	42.0	50.7	0
1942.....	57,122	.74	421.4	163.6	0	169.5	36.2	52.1	0
1943.....	208,935	.28	582.0	215.4	0	206.3	45.0	115.3	0
1944.....	268,367	.43	1,133.4	621.5	0	244.3	50.9	216.7	0
B. Hunterdon County									
1937.....	28,061	.66 ²	1,036.8	89.8	6.2	215.9	349.9	367.4	7.5
1938.....	73,183	.34	1,072.2	90.2	6.1	245.8	362.8	361.6	5.8
1939.....	77,862	.34	1,257.9	212.1	16.2	262.5	409.5	350.5	7.0
1940.....	78,566	.33	1,214.2	225.7	17.1	262.1	395.1	307.0	7.2
1941.....	82,993	.30	1,168.9	227.7	0	249.3	361.4	323.2	7.2
1942.....	83,832	.30	1,188.2	240.6	0	249.1	392.9	298.2	7.4
1943.....	236,204	.10	1,269.8	243.7	0	233.4	420.5	364.7	7.5
1944.....	295,855	.09	1,865.2	685.6	0	269.5	441.6	460.9	7.6
C. Borough of Flemington as Per Cent of Hunterdon County									
1937.....	9.8	0	10.3	8.6	8.6	8.6	13.8	8.6	9.3
1938.....	65.2	0	29.9	65.2	65.2	65.2	13.2	13.8	0
1939.....	66.8	0	33.2	66.8	66.8	66.8	11.3	12.3	0
1940.....	66.6	0	34.9	66.6	66.6	66.6	10.5	14.9	0
1941.....	68.0	0	35.7	68.1	0	68.1	11.6	15.7	0
1942.....	68.1	0	35.5	68.0	0	68.0	9.2	17.5	0
1943.....	88.5	0	45.8	88.4	0	88.4	10.7	31.6	0
1944.....	90.7	0	60.8	90.7	0	90.7	11.5	47.0	0

¹ Numbers rounded to nearest \$100.

² County tax rate only.

them on the same basis and, so far as I know, all are satisfied that their assessments have been fair, legal and honest." This practice is substantiated by taxpayers with whom the *Commission* has conferred. There is no evidence of "bargaining." Indeed, when "colonization" first started in Flemington, local officials seem to have taken little or no interest in the matter. The fault lies neither with the companies nor with the municipality, but rather in a lethargy that has permitted the tax laws and administration of New Jersey to fall into a morass of inequities which as Governor Edge so forcefully stated in his recent message to the Legislature has lead to:

"... a condition that permits large blocks of personal property to escape supporting its fair share of the cost of government; or even worse, a condition that reduces our tax laws to a barter-and-sale agreement between taxpayer and public official."

* * *

The *Commission* has made an effort to determine the extent to which intangibles are taxed in New Jersey at the present time. This is a difficult matter. Neither the laws require, nor does practice provide, assessment records that distinguish between tangible and intangible personalty. It is doubtful if any municipality in the State (with the exception of Flemington) could produce a complete record which would be accepted as legal evidence of intangible tax assessments or collections.

The *Commission* made a State-wide effort to secure this information from the assessors themselves. A questionnaire with an accompanying letter (Appendix B) was sent to each assessing authority—565 in all—and 243 were returned to the *Commission*. Of the 243 replies, only 14 indicated that they assess intangibles at all. Eight reported assessments against business intangibles only. Two reported individual assessments only, and four stated that they assess *both* business and individual holdings of intangibles.

All municipalities in which intangibles are assessed did not show the number and amount of these assessments separately from the assessment of tangible personalty. To the extent, however, that such breakdowns were provided, the assessments of intangibles are shown in Table VI (for business) and in Table VII (for individuals). The amount of taxes levied in 1939 and 1944 against business and individual holdings of intangibles in the fourteen municipalities reporting such taxes has been estimated by multiplying re-

TABLE VI
BUSINESS INTANGIBLE PERSONALTY ASSESSED
(1939 and 1944)

Municipality and County	Number of Assessments		Net Intangible Property Valuations Taxable		1939 Intangible Taxes Delinquent 12/31/43
	1939	1944	1939	1944	
Camden—Camden .	7	3	\$2,050,000	\$240,000	..
Bloomfield—Essex*	..***	..*
Elizabeth—Union ..	..	..	101,500	59,000	..
Flemington—Hunt- erdon ¹	2	139	42,290,000	264,437,610	0
Franklin—Sussex ..	0	1	0	350,000	0
Hamburg—Sussex ..	..	..	.....	360,000	..
Maplewood—Essex .	..*	..***	..*
New Brunswick— Middlesex .....	..	2	.....	128,500	0
Oldmans—Salem ..	4	4	43,000	43,000	..
Pohatcong—Warren.	..	1	.....	85,000	..
Rahway—Union ...	..	..	31,000 ²	31,000 ²	..
Rockleigh—Bergen .	3	20	4,400	8,351,150	0
Totals	16	170	\$44,519,900	\$274,085,200 ³	..

* Notes: Municipality reported intangibles combined with tangibles.

¹ Flemington reported intangibles combined with tangibles but amounts shown represent assessments against statutory offices only. In addition, 71 assessments with valuations totaling \$89,700 in 1939 and 86 assessments with valuations totaling \$1,076,871 in 1944 were reported for corporations operating business in Flemington. A part of these assessments are probably also against intangibles.

² Rahway did not indicate whether these assessments were against business or individuals.

³ This does not include \$9,000,000 in Newark reported in a letter to the Commission by Mayor Murphy (*Hearings*, p. 105) nor intangible personalty assessments against insurance companies, or banks subject to the bank stock tax.

ported assessed valuations (Tables VI and VII) by the local tax rates. The results of this calculation are shown in Table VIII—for business, \$438 thousand in 1939 and \$1,172 thousand in 1944—and for individuals, \$6 thousand in 1939 and \$7 thousand in 1944.

This is plainly an unsatisfactory estimate. Newark, Jersey City and Trenton did not reply to the questionnaire. Many of the questionnaires indicated that the assessor did not know what an intangible was, and his inability to separate tangibles from intangibles made many of the estimates useless. The survey, nevertheless, was not without its value. *Intangible personal property is not assessed and taxed as such (except in a few isolated cases) throughout the length and breadth of New Jersey.* The total yield probably does not exceed \$3 million. At all events, the sum is small compared with the potential base, and there can be no doubt of the inequitable and haphazard practices that mar the tax. It is the Commission's

TABLE VII

INDIVIDUAL INTANGIBLE PERSONALTY ASSESSED
(1939 and 1944)

Municipality and County	Number of Assessments		Net Intangible Property Valuations Taxable		1939 Intan- gible Taxes Delinquent 12/31/43
	1939	1944	1939	1944	
Bloomfield—Essex*	..***	..*
Flemington—Hunt- erdon*	..***	..*
Frankford—Sussex*	..***	..*
Maplewood—Essex*	..***	..*
Oldmans—Salem ..	18	19	\$55,540	\$55,872	..
(a) Farm intan- gibles ¹	185	219	98,650	112,560	..
Surf City—Ocean ..	242	330	10,550	15,375	0
Totals	445	568	\$164,740	\$183,807	..

* Municipality reported intangibles combined with tangibles.

¹ Oldmans Township reported a large number of farm intangible personalty assessments shown separately. These may be business or individual assessments.

judgment that an accurate estimate of intangible tax yields in New Jersey is impossible because of lack of data.¹

The *Commission* does not wish to unduly labor a point which is common knowledge throughout the State; namely, that the present intangible property tax law, both in its substantive provisions and in its administration, is indefensible—a detriment to the economic development of the State and a travesty on equitable treatment as among taxpayers. Those who testified at the public hearings of the *Commission* were—with one or two exceptions—unanimous in condemnation of both the law and the practice. Among the strongest indictments were:

*Vincent J. Murphy, Mayor of the City of Newark:*² The present administration of the assessment of intangibles by the various municipalities has resulted in a hopeless confusion. Opportunity for corruption is a stark reality. "Tax Lightning" is a recurrent blight. Unfair competition among municipalities is constantly going on, with brisk bidding by municipal officials for the "favor" of offering a nominal residence to corporate entities.

*New Jersey Association of Real Estate Boards:*³ To attempt to assess intangible property at full value and at local rates prevailing in New Jersey, is not only impractical, it is ridiculous; and New Jersey would long ago have joined the other forty-two States which have abandoned the practice, if the Legislatures over the years had met the whole tax problem existing in this

¹ See statement of Horace K. Corbin, *Chairman*, Personal Property Tax Committee, New Jersey State Chamber of Commerce, *Public Hearings*, pp. 10, 14.

² *Public Hearings*, p. 104.

³ *Ibid.*, p. 76.

TABLE VIII
INTANGIBLES TAX LEVIED BY FOURTEEN MUNICIPALITIES¹
(1939 and 1944)

Municipality and County	Tax Rates— Per Cent		Intangibles Tax Levied			
	1939	1944	1939	Business 1944	1939	Individual 1944
1. Camden—Camden	4.30	4.84	\$88,150	\$11,616	....	....
2. Bloomfield—Essex	3.74	4.21****
3. Elizabeth—Union	4.31	4.40	4,375	2,596	0	0
4. Flemington—Hunterdon	0.81	.42	342,549	1,110,638**
5. Frankford Sussex	3.55	2.57	0	0**
6. Franklin—Sussex	3.72	4.52	0	15,820	0	0
7. Hamburg—Sussex	5.70	3.90	.....	14,040	0	0
8. Maplewood—Essex	3.69	4.10****
9. New Brunswick—Middlesex	4.96	5.02	.....	6,451	0	0
10. Oldmans—Salem	3.10	3.66	1,333	1,574	\$1,722	\$2,045
(a) Farm intangibles .....			.....	.....	3,058	4,120
11. Pohatcong—Warren	3.52	3.31	.....	2,814	0	0
12. Rahway—Union	4.56	4.44	1,414	1,376	0	0
13. Rockleigh—Bergen	1.96	1.14	86	5,203	0	0
14. Surf City—Ocean	7.63	6.78	0	0	805	1,042
Totals as Shown .....	...	...	\$437,907	\$1,172,128 ²	\$5,585	\$7,207

¹ Computed by multiplying assessed valuations (Tables VI and VII) by tax rates.

² This does not include such yield as Newark may have realized from the assessed valuations mentioned in Mayor Murphy's letter to the Commission (*Hearings*, p. 105).

* Municipalities reported intangibles combined with tangibles.

State more courageously and more intelligently, and also, I might add, if the business interests of the State had been more cooperative in helping them meet the problem.

*The State Bankers Association:*¹ The intolerable conditions which exist in the State of New Jersey demand a revision of the present tax laws; in fact, they make it imperative. ACCORDINGLY, IT IS RECOMMENDED THAT THE PERSONAL PROPERTY TAX ON INTANGIBLES IN THE STATE OF NEW JERSEY BE REPEALED ENTIRELY AND WITH DUE DISPATCH.

*Leo Rosenblum, President, Hudson County Board of Taxation:*² We all know now that the greater part of intangible property has escaped taxation entirely in New Jersey because of the excessive rate effective under the present statute—I mean the local property rate. Faced with the terrifying prospect of being taxed at full local rates, taxpayers go to extremes in their efforts to conceal intangibles from the reach of the assessors. That is an established fact, and I think it cannot be questioned in the face of the record.

*The New Jersey State Chamber of Commerce:*³ The law has been enforced arbitrarily, discriminately, and capriciously in a few taxing districts, but intangibles as such have not been assessed for taxation at all in the vast majority of the municipalities.

The inequities in the enforcement of the intangible personal property tax law have worked to the economic disadvantage of the State. Many corporations have left New Jersey. Many other corporations have moved from one city to another within the State, in order to avoid imminent intangible taxation. Nearly 150 corporations have already migrated from Jersey City and Newark to Flemington, in Hunterdon County, and now rest uneasily in that tax haven. Numerous other corporations have moved to other localities for the same reason. . . .

The taxation of intangibles at true value at general property rates is a demonstrated failure not only in New Jersey but elsewhere. It should be abandoned both in law and in fact.

*Association of Municipal Assessors:*⁴ It is the hope of the assessors of the State that the New Jersey State Commission on Taxation of Intangible Personal Property may be the means of creating legislation toward procuring the necessary data to assess intangible personalty on a fair and equitable approach to value. Since the growth of our State from small farming communities to suburban and urban cities and the transfer of wealth from farm husbandry to stocks and bonds and other intangible assets, a growing problem has been developed for the assessor.

Taxation of intangibles creates an impasse, which the assessor has attempted to remove without satisfactory results because of the lethargy of the public, the Legislature and the assessors themselves.

*The Chamber of Commerce of the City of Newark:*⁵ The greatest threat in New Jersey to maximum opportunity for employment is the danger of tax

¹ *Public Hearings*, p. 144.

² *Ibid.*, p. 24.

³ *Ibid.*, p. 107.

⁴ *Ibid.*, p. 164.

⁵ *Ibid.*, p. 156.

lightning. Newark has seen this danger vividly illustrated. When the tax lightning first struck here, many industries simply walked out. Some left the city, some left the State, some just moved their principal offices. When the tax lightning again threatened in Jersey City, a similar result followed. News of New Jersey's tax lightning spread throughout the country and since then it has been difficult to get any industries to take a chance in New Jersey, and particularly in its two large cities.

Frederick S. Kellogg, General Counsel, Manufacturers Association of New Jersey.¹ Finally I say this—that something ought to be done about this intangible personal property tax. The present situation is practically impossible and it is simply confiscation.

Having so plainly established a need, both from its own studies and the testimony of competent witnesses, the *Commission* was faced with the far more difficult problem: *What shall be done about it?*

* * *

¹ *Public Hearings*, p. 66.

PART II

Recent and Current Proposals to Improve the Taxation of Intangible Personal Property

Although, as has been indicated, the taxation of intangible personalty has, from time to time, been before the State for the past fifty years, it has been almost constantly before the State since 1939.

Five major groups have each studied and reported on the question: the Committee on Cost of Government of the State Chamber of Commerce (1938-1939); the State Tax Law Revision Commission (1939-1940); the Newark Chamber of Commerce (1939-1941); Governor Edison's Committee on the Taxation of Intangibles (1942); and the Princeton Surveys (various times).

These studies have repeatedly developed the defects of the present law and procedure; namely:

(1) Provisions for the assessment of intangibles by local assessors and taxation at local rates are both erratic and confiscatory.

(2) The result has been "tax lightning"—the sudden application of long-neglected tax laws, applied by the assessor at whatever rate the "traffic would bear";

(3) The "colonization" of statutory business offices in "favorable" tax jurisdictions.

(4) Active competition among taxing districts for the domicile of intangible tax ratables;

(5) The escape—through underassessment or no assessment—of millions of intangible ratables from lawful taxation; and

(6) The constant presence of a threat to legitimate business; gross inequalities among taxpayers; and erratic losses and gains in ratables among certain municipalities.

The studies of recent years have been directed toward specific proposals for modifying present statutory provisions for taxing both tangible and intangible personal property. The Cost of Government Committee of the *State Chamber of Commerce* (1938-1939) gave extensive consideration to two plans known as Plan A and Plan B. These plans followed the Ohio practice and proposed

the taxation of productive investments at 6 per cent on income or 4 mills *ad valorem*; non-productive investments at 2 mills *ad valorem*; credits at 3 mills; and deposits at 2 mills. Plans A and B differed only in the distribution of the proceeds.

The *New Jersey Tax Law Revision Commission* (1939-1940) proposed the exemption of all intangibles held by individuals up to \$10,000 and taxation of the excess at 1 mill *ad valorem*; tangible personal property used in business (non-retail) to be taxed by the State Tax Commissioner at 2 per cent of its valuation instead of at local rates, and no other tangibles to be taxed; a tax of 3 per cent on retail sales in lieu of any tax on personal property held by retail merchants; a 0.1 per cent capital and surplus tax on other business organizations in lieu of a tax on intangibles; a change in the gross receipts tax of public utilities from the average State rate to 5 per cent; and the taxation of the personal property of insurance companies at 5 per cent instead of at the local rate.

The *Newark Chamber of Commerce* (1939-1941) proposed "a securities excise tax" of 4 mills upon the capitalized value of productive investments held by individuals or corporations; a "business excise" of 4 mills on credits used in doing business in New Jersey; and added certain types of securities now exempt—New Jersey corporate stock and New Jersey mortgages—to the tax rolls.

The proposals of *Governor Edison's Committee* (1942) recommended the extension of the intangible law to practically all intangibles held by New Jersey corporations or residents. Except for continuing certain "in lieu" provisions for taxing intangibles held by utilities, banks, insurance companies and others; all intangible property would be taxed at the rate of 3.5 mills on the dollar of assessed valuation, after deductions for debts owed to New Jersey creditors and taxable to them.

* * *

While these plans have varied greatly in detail, they have shown, on the whole, common elements:

(1) A preference for the classification of intangible personality and for taxation on *ad valorem* values at established mill rates;

(2) A desire to remove the assessment of intangibles from the local assessor and to place such assessment in the hands of a State agency;

(3) A reluctance to disturb the present methods of taxing the personal property of banks, insurance companies and public utilities;

(4) A desire to use the proceeds of the tax to reduce the general property tax;

(5) A stern effort to avoid an "income tax" or even an income factor in a tax formula¹; and,

(6) A tendency to leave the taxation of tangible personalty as at present.

None of these plans were successful in bringing about a single change in the tax laws of the State. Only one (the report of Governor Edison's Committee) was introduced into the Legislature in bill form; and this bill received a summary and adverse committee report. It is not a propitious record upon which to present new recommendations, and the *Commission* has inquired into the failure of these previous efforts. The reasons for failure seem, in brief, to have been these conditions, or a combination of them:

(1) There was lack of general agreement as to the precise recommendations to be made;

(2) The proposals were too extreme both as to the extent of the tax base and as to the amount of money to be raised;

(3) Estimates of yield and effect were too indefinite to permit confidence in either the revenue or incidence of the proposals.

There were doubtless other reasons—political and prudential—but such reasons accompany any effort in large-scale legislation, particularly proposals to raise or to spend public money. The *Commission* is, however, convinced that any proposal to remedy the intangible personal property tax situation in New Jersey is doomed to failure *unless*:

(1) The attempt represents a reasonable level of agreement which will resolve the many varying viewpoints pertaining to the problem;

(2) A reasonable restraint is recognized that avoids the easy hazard of going too far too fast—especially in these unsteady times; and

¹ Proposals have been advanced for a tax on the capitalized earnings of securities, but they have been reluctantly considered.

(3) A factual base, sufficient to permit a sound determination of rates, yields and effect, is available to the Legislature.

* * *

Many methods for modifying the present personal property tax law have been proposed to the *Commission*. Although dissatisfaction with the present methods is common to all of them, there are those who believe that the assessment of intangibles by the local assessor and taxation at local rates is in principle neither as unsound nor as unjust as it commonly believed, and that its real difficulty lies in its administration. The argument runs like this: If the present law were fully enforced, billions of dollars in ratables—both tangible and intangible—would be added to the tax rolls of the State. Assuming that the cost of government remained substantially the same, this would result in a marked lowering of the tax rate for all taxpayers—indeed, the State as a whole would tend to benefit in much the same way as the taxpayers of Flemington have benefited from corporate “colonization.”¹

The *Commission*, for practical reasons, is unable to accept this proposal. While in theory such a result might ultimately be anticipated, the prospect of bringing such fluid and mobile property even near to complete assessment seems most unlikely even under vigorous enforcement procedures. Even if such a result were possible, it would doubtless take several years to accomplish, and in the meantime high rates (although progressively lower than at present) would either destroy intangible values or drive such property from the State. Tax colonization within the State would not be retarded so long as the tax rate in each municipality could be forced downward by an artificial abundance of ratables.

It seems clear, moreover, that no such results could be contemplated unless local assessment was abandoned and State-wide assessment instituted. While this might conceivably be practical for both tangible and intangible property, the experience of other States is not encouraging so far as obtaining complete coverage is concerned. Whenever property is of a character to be easily moved, hidden or reconverted, *ad valorem* taxation is difficult and at times impossible. The *Commission*, in addition, is unwilling to freeze another large property tax into the State tax structure of New Jersey. It is of the opinion that a beginning should be made toward the relief of property as such and that further *ad valorem* taxation should be avoided.

¹ *Public Hearings*, pp. 158-161.

The recommendation of the Commission on Taxation of 1891 is still significant:¹

“That in the opinion of the Commission it is either necessary to abandon altogether the attempt to tax invisible personal property or to resort to some more competent measure to obtain a proper listing and valuation of it than exists at present.”

THE COMMISSION RECOMMENDS THAT THE PRESENT METHOD OF TAXING INTANGIBLE PERSONAL PROPERTY BE ABANDONED.

* * *

Having decided to recommend the abandonment of the present method of taxing intangibles, the next question that confronted the *Commission* was an alternative procedure for treating this type of property. The following proposals (all based upon the repeal of the present intangibles tax law) have been urged upon the *Commission*:

- (1) That a classified *ad valorem* tax at an established low mill rate be applied to intangible personalty;
- (2) That intangible personal property be exempted from taxation;
- (3) That an increase in New Jersey's present capital stock tax be provided in lieu of a tax on intangibles.

PROPOSAL 1 made to the *Commission*: That a classified *ad valorem* tax at an established low mill rate be applied to intangible personal property.

This proposal has received substantial support before the *Commission*. It has been the basis for most of the previous studies and recommendations of recent years, and was the principal objective of the new tax provision in the proposed Revised Constitution defeated at the polls last November. It was the basis for the studies made by the State Chamber of Commerce in 1938-1939, and the Newark Chamber of Commerce in 1929-1941, and remained the basis for the proposals of Governor Edison's Committee on the Taxation of Intangibles in 1942.

¹ *Preliminary Report* (Trenton, 1891), *op. cit.*, p. 17.

Typical of the support and the proposals for a classified property tax on intangibles is the statement of Leo Rosenblum, President, Hudson County Board of Taxation at the public hearings of the *Commission*:¹

"As I said before, corporations haven't any objection to the intangible tax, not from my observation; their only objection is to the excessive rate. If the rate is reasonable, they are perfectly willing to pay, but they are unwilling to pay at the local tax rate, which runs as high as \$6.16 a hundred in Jersey City.

"On this basis, an *ad valorem* intangible tax is recommended as follows: All intangibles to be assessed at true value by the State Tax Commissioner, naturally taking the control of the assessment machinery away from the local assessor completely, placing it in the hands of a State officer, preferably the State Tax Commissioner, and I would suggest the following rates:

Cash (including all bank deposits)—1 mill.

Mortgages and securities—2 mills.

Accounts and notes receivable and other credits (no deductions for debt)—3 mills, which would be the ceiling.

"I placed accounts and notes receivable at a higher rate than mortgages and other securities. It is not exactly arbitrary. I feel the corporate taxpayers have become accustomed to, and accept the principle of, paying intangible taxes on accounts receivable. They haven't become accustomed to paying it on all forms of security. I mean by that you must do away with, eliminate, exemptions on New Jersey stocks, stocks of corporations wherein taxes have been paid in other States. It creates a hardship on assessing practice, it is unnecessary, it serves no purpose, and it certainly works no hardship upon the owner of a New Jersey corporate share of stock as distinguished from the owner of a corporate share of stock in any other State. That is the schedule I suggest generally to cover all forms of intangibles under State law."

The table on the following page (Table IX) prepared by the Governmental Research Institute of St. Louis, shows, briefly, the status of intangible personal property taxation in the United States.² It will be noted:

That only six States maintain the present New Jersey practice—and of them, New Jersey is the *only* predominately industrial State.

¹ *Public Hearings*, p. 26.

² *The Taxation of Intangibles in Missouri and Other States* (St. Louis, June, 1944), Table 2, p. 8.

TABLE IX

PRINCIPAL TYPES OF INTANGIBLES SUBJECT TO TAXATION BY STATES, CLASSIFIED ACCORDING TO THE DOMINANT METHOD OF TAXATION USED
JANUARY 1, 1944*

(In body of table "X" signifies that intangibles are subject to an annual tax; "R" that they are subject to a non-recurring registration tax; and "O" that they are not taxed.)

Intangibles Owned by Resident Individuals

State	Money	Bank Deposits	Corporation Stocks		Corporation Bonds		State and Municipal Bonds		Mortgages		Accounts Receivable	Are Corporations Taxed on Their Intangibles in Same Manner as Individuals?	Does Personal Income Tax Also Reach Intangibles?
			Domestic	Foreign	Domestic	Foreign	Issued in State Levying Tax	Other States	Domestic	Foreign			
GENERAL PROPERTY TAX													
Arkansas	X	X	O	X	O	X	X	X	X	X	X	No	Yes
Maine	X	X	O	X	X	X	O	X	O	X	X	Yes	No
Missouri	X	X	O	O	X	X	X	X	X	X	X	Yes	Yes
New Jersey	O	O	O	O	O	X	O	X	O	X	X	Yes	No
New Mexico	X	X	O	X	X	X	O	X	X	X	X	Yes	Yes
Texas	X	X	O	X	X	X	X	X	X	X	X	Yes	No
FLAT-RATE ANNUAL TAX ON CAPITAL VALUE													
Connecticut	O	O	O	O	X	X	O	X	O	X	X ²	No	No
Florida	X	X	X	X	X	X	O	X	R	X	X	Yes	No
Georgia	X	X	O	X	X	X	O	X	X	X	X ²	Yes	Yes
Indiana	O	X	O	X	X	X	O	X	X	X	O	Yes	Yes
Iowa	X	X	O	X	X	X	O	X	X	X	X	Yes	Yes
Kansas	X	X	O	X	X	X	O	X	R	X	X	Yes	Yes
Kentucky	X	X	O	X	X	X	O	X	X	X	X	Yes	Yes
Nebraska	X	X	O	X	O	X	O	O	O	X	X	Yes	No
North Carolina	X	X	O	X	X	X	O	X	X	X	X	Yes	Yes
Oklahoma	X	X	O	X	X	X	O	X	R	X	X	Yes	Yes
Pennsylvania	O	O	O	O	X	X	X ¹	X	X	X	O	No	No
Rhode Island	X	X	O	O	O	O	O	X	X	X	X	No	No

South Dakota	X	X	O	X	X	X	O	X	X	X	X	Yes	No
Virginia	X	X	O	O	X	X	O	X	X	X	X	No	Yes

VARIABLE-RATE ANNUAL TAX ON CAPITAL VALUE

Illinois	X	X	O	X	X	X	X	X	X	X	X	No	No
Louisiana	O	O	O	O	X	X	O	X	O	X	O	Yes	Yes
Montana	X	X	O	X	O	X	O	X	O	X	X	Yes	Yes
West Virginia	X	X	O	O	X	X	O	X	X	X	X	Yes	No

FLAT-RATE NON-RECURRING TAX ON CAPITAL VALUE

Alabama	O	O	O	R	O	R	O	R	R	O	O	Yes	Yes
South Carolina	O	O	R	R	R	R	O	R	R	R	O	Yes	Yes

FLAT-RATE ANNUAL TAX ON INCOME

Colorado	O	X ⁴	X	X	X	X	X	X	X	X	X	No	Yes
Maryland	O	X ⁴	X	X	X	X	O	X	X	X	O	No	No
Massachusetts	O	O	X	X	X	X	O	X	O	X	O	No	No
Michigan ³	X	X	X	X	X	X	O	X	X	X	X	Yes	No
New Hampshire	O	O	X	X	X	X	X	X	X	X	X	No	No
Ohio ³	X	X	X	X	X	X	X	X	X	X	X	Yes	No
Oregon	O	X ⁴	X	X	X	X	X	X	X	X	X	Yes	No
Tennessee	X ²	X ²	X	X	X	X	O	X	R	O	X	Yes	No
Vermont	O	O	X	X	X	X	O	X	X	X	X	No	No

TOTAL OR SUBSTANTIAL EXEMPTION

Arizona, California, Delaware, Idaho, Minnesota,⁵ Mississippi, Nevada, New York, North Dakota, Utah, Washington, Wisconsin, Wyoming.

¹ State bonds are exempt, but local government bonds are taxable.

² Taxed on an ad valorem basis at the same rate as real estate.

³ Non-income-producing intangibles are subject to a low-rate ad valorem tax.

⁴ It should be noted that the tax applies only to interest-bearing deposits.

⁵ The low-rate annual tax on the fair cash value of most intangibles has been suspended for the years 1943 and 1944.

* Sources of data: *Tax Systems*, The Research Foundation, Commerce Clearing House, Chicago, 9th edition, 1942; *Taxation of Intangibles*, Business Study No. 97, Bureau of Business and Social Research and School of Commerce, Accounts, and Finance, University of Denver, September, 1940; and first-hand information obtained through visits to the States of Connecticut, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Nebraska, Ohio, Oklahoma, Pennsylvania, Rhode Island, Virginia, and West Virginia.

That 22 States have either a flat annual tax on the income of intangibles or exempt them entirely as a tax base to reach them in other ways—this group includes States of leading industrial significance, such as Massachusetts, Maryland, Michigan, Ohio, California, Delaware, Minnesota, New York and Wisconsin.

That 20 States continue to tax intangibles at either flat or variable rates on their capital value—this is on the principle of the classified property tax under consideration as Proposal 1 made to the *Commission*.

The *Commission* has given careful consideration to this proposal. It is supported in one form or another by the Association of Municipal Assessors, the New Jersey Association of Real Estate Boards, and the New Jersey League of Municipalities. It is opposed by the State Chamber of Commerce, the New Jersey Bankers Association, and by the New Jersey Manufacturers Association.

The State Chamber of Commerce presents its case against a classified *ad valorem* tax on intangibles as follows:¹

The methods adopted by the various States for the taxation of intangibles create a competitive situation. New Jersey is an important section of an area which is highly developed industrially and economically. Therefore, its tax system is in competition with those of other States which exempt intangibles entirely or levy low assessments or fix low rates, often with lax administration of the law.

Low assessments or low fixed rates are not stable. Laws providing for assessment at some proportion of value or prescribing low millage rates are always subject to amendment under political pressures. This leads to unstable rates and to apprehension on the part of taxpayers.

The elements of a successful system:

Only a few States have been successful in administering a tax on intangibles. To be successful, the law must have sharp teeth and it must be capably administered and strictly enforced.

The tax must be state assessed and state collected. Annual returns are necessary. Intensive audit is essential. This involves the creation of a large new bureaucracy.

The assessment must be at some proportion of actual value or the rate must be low and fixed or both of these features must be utilized.

Some or all of the following administrative and enforcement aids must be available:

Access to Federal income tax returns; collection at the source; filing annually by each corporation doing business in the State of a list of stockholders residing in the State; prevention of temporary shifts from

¹ *Public Hearings*, pp. 109-110.

a taxable class to a tax-exempt class; a clear definition of business situs; a requirement that taxes upon evidences of debt be paid before legal action can be taken by creditors to collect; a requirement that probate courts supply taxing authorities with information concerning intangibles held by estates.

The experience of other States shows clearly that only an intangible tax so designed and administered and enforced with such ruthless stringency can be successful. Even then, it appears that only those States which are economically and geographically self-sufficient can successfully apply such a tax without impairing their industrial or business development. Ohio, which has a State-administered intangibles tax law, has a Federal Reserve bank at Cleveland, which is the financial, trading, transportation and industrial hub of a large geographical area comprising all of Ohio and parts of several contiguous States. Cleveland is 320 miles from Chicago, the nearest Federal Reserve city outside Ohio.

Missouri, which is considering the adoption of the Ohio system of taxing intangibles, is also an economically self-sufficient State, with Federal Reserve banks at St. Louis and at Kansas City. These two cities are the financial, trading, transportation and industrial centers of an area comprising not only the whole of Missouri, but also a large section of the Mississippi and Missouri River Valleys.

Ohio and Missouri have no commuter populations.

New Jersey is neither economically nor geographically self-sufficient. Northern New Jersey is part of the New York metropolitan area. Thousands of its people earn their livelihoods in New York; its financial institutions are members of the New York Federal Reserve Bank; the headquarters of many of its industries are in New York City. Southern New Jersey is, in the same respects, part of the Philadelphia metropolitan area. New Jersey is the transportation corridor between Philadelphia and New York, both as to rail and motor transport, and shipping. Its close proximity to, and economic dependency upon Philadelphia and New York would make it extremely difficult if not impossible to impose and collect an intangibles tax like Ohio's with any assurance that the most of the property thus taxed would remain permanently within this State.

The adoption of such a law by New Jersey would place it in an unfavorable competitive position with neighboring States. All intangible property which could do so would find refuge elsewhere. Therefore, it is the part of wisdom for New Jersey to abandon the taxation of intangibles.

* * *

It is customary in New Jersey to look first to New York when considering problems of inter-State taxes. New York does not levy an *ad valorem* tax upon personal property of any kind—tangible

or intangible. It does, however, levy a franchise tax (with appropriate inter-State allocations) upon foreign and domestic business corporations, as follows:

(A) The greater of four alternatives:

(1) Six per cent of entire net income excluding all income and gains from subsidiary capital (as defined in (B) below) and one-half of all dividends from other corporate stock (allocated to New York); *or*

(2) 1.8 per cent of an amount equal to the entire net income (or loss) plus compensation paid to officers and certain stockholders less \$5,000 (allocated to New York); *or*

(3) 1 mill per dollar on the fair market value of all assets (allocated to New York) other than "subsidiary capital" which is defined in (B), less certain current liabilities; *or*

(4) \$25—minimum tax;

(B) *Plus* mill rates on the average fair market value of corporate stock and obligations of subsidiaries upon which no interest deduction has been claimed for the purpose of any New York tax (called subsidiary capital) as follows:

On amounts up to \$50 million— $\frac{1}{2}$ mill;

\$50 million to \$100 million— $\frac{1}{4}$ mill;

Over \$100 million— $\frac{1}{8}$ mill.

So far as these provisions relate to intangible personal property, the New York tax on corporations, in general terms, is essentially a fractional millage rate property tax on the value of investments in subsidiaries, and either a 3 per cent income tax or a 1 mill property tax upon holdings of non-subsidiary corporate stock. Interest, net gains and all other earnings, except dividends, from non-subsidiary investments is taxable at the full rate of 6 per cent, or, under the alternative minimum at one mill upon the fair market value of the assets. Real estate companies are specially taxed at lower rates. All other business corporations are all taxed under the single uniform plan, with distinctions by type of asset, a simple and practical way of giving all corporations the advantages formerly accorded only to holding companies.

Effective in 1946, the New York income tax rate on corporations will become $4\frac{1}{2}$ per cent instead of 6 per cent as at present. This means that New Jersey's tax position as compared to New York will be favorable so long as its tax measured by personal property

is generally equivalent to a tax at $4\frac{1}{2}$ per cent or less upon the net income yield or at 1 mill or less upon the fair market value. Any direct comparison would be impractical except for a specific company in a given tax year, because of the alternative bases and exceptions in the New York law.

Pennsylvania taxes upon business vary greatly as between corporate and unincorporated business units. A county personal property tax is payable by *residents*, at the rate of 4 mills on the true value of practically all intangible personalty, including mortgages. During the period 1937 to 1943 a State levy of four mills on the same base was added, but was not renewed for 1944. A State "corporate loans tax" of 4 mills, upon the face value of all evidences of corporate indebtedness owned by residents, is in effect part of the county personal property tax, but it is collected at the source (to the extent that interest is paid) by all licensed corporations, which act as agents of the State in applying withholding requirements. Intangibles upon which the corporate loans tax is withheld or paid are not subject to the general county personal property tax.

For the purposes of these personal property taxes, "*residents*" include corporations, *but* "corporations liable to tax on their shares or the capital stock or franchise tax for State purposes" or which are "relieved from the payment" of these taxes (namely, manufacturing corporations) are exempt from any further tax on intangibles owned by them in their own right (not in fiduciary capacity) and their obligations are in turn exempt in the hands of the holders.

Pennsylvania also levies a "capital stock tax" on domestic corporations and a franchise tax on foreign corporations. Both are measured by the going value of capital stock, but the domestic corporation tax has been construed to be a property tax, whereas the foreign corporation levy is a franchise tax.¹ Because of the fundamental legal distinctions between these two types of taxes, two different allocation formulas are required. Both taxes are assessed at 5 mills upon the allocated value of the capital stock determined through the use of book value, earnings value and market values. In practice book value is usually accepted.

In addition, Pennsylvania imposes a corporate net income tax upon domestic and foreign corporations. Until 1943, the base of the tax was "Adjusted Net Income" as shown in Item 37 of the Federal Form 1120, less all dividends received and included in

¹ *Commonwealth v. Sunbury Converting Works*, 286 Pa. 545, 134 Atl. 438 (1926).

gross income on the Federal return, and less Federal income and excess profits taxes. The rate was then 7 per cent. Beginning in 1943, the rate is reduced to 4 per cent but the base is now before Federal declared value excess profits tax, income and war excess profits taxes. The 1943 amendments also require deduction of post-war refunds from Federal taxes previously allowed as a deduction from income taxable by the State.

Allocation of taxable income is accomplished by applying the "Massachusetts formula" (average of tangible property, payrolls and gross receipts in Pennsylvania). Unincorporated business is not subject to either the State franchise or income taxes but the City of Philadelphia imposes an income tax on individuals and unincorporated business. Pennsylvania formerly levied a tax, originally imposed in 1899, called the mercantile license tax, which was measured by gross receipts (1 mill on business volume of retailers; one-half mill on business volume of wholesalers). This tax has been repealed, effective January 1, 1944.

Examination of these tax requirements in Pennsylvania indicates New Jersey's tax position as compared with Pennsylvania will be favorable so long as its tax upon intangible personal property does not exceed 4 mills, with respect to unincorporated business, or the sum of a 4 per cent income tax plus 5 mills upon the taxpayer's net equity in its property, with respect to corporations generally. While Pennsylvania does not tax stocks of Pennsylvania corporations as property, and has restored the former manufacturing exemption from the small capital stock and franchise taxes, it does tax income in both instances.

Similar comparisons show that New Jersey would not exceed *Connecticut* tax requirements by taxing intangibles held by corporations in an amount equivalent to 2 per cent or less upon their income yield or as an alternative minimum, 1 mill or less on their value. To continue its favorable position as compared with *Massachusetts*, New Jersey could adopt a tax equivalent to 2.8 per cent or less on the income yield of intangibles; and to about 5 mills or less on the taxpayers equity in his intangibles. Corporations in *Delaware* pay a low rate capital stock tax based upon shares outstanding (similar to the present New Jersey capital stock tax) and no other tax on intangibles, but individuals in Delaware are taxed at 1 to 3 per cent on their income.

Corporations and individuals can rarely subject their intangibles to taxation in a State without also becoming subject to other taxing provisions in that State. For this reason, comparisons based only

upon the relative taxation of intangibles are not realistic. For example it is more significant to an individual contemplating removal from New Jersey to Delaware that all of his net income will be taxed at 1 to 3 per cent, than that his intangibles will be transferred from a property to an income tax base. The final determination of relative tax advantage as among States must depend upon the individual taxpayer and the character and form of his taxable property or income.

* * *

The *Commission* has arrived at the following conclusions concerning a classified *ad valorem* property tax on intangibles in New Jersey:

New Jersey already relies too heavily upon property taxes—it has the highest per capita property tax of any industrial State, and the second highest among all the States.

The administrative difficulties are so formidable as to make its successful administration highly doubtful, especially in a heavily industrialized “bridge” State like New Jersey.

A property tax cannot, because of constitutional obstacles, be made to reach the going value of intangibles of foreign corporations, with an effect equal to that upon domestic corporations, and as such bears much more heavily upon the latter.

As a great industrial State having no general activity tax payable by business, New Jersey should look to activity rather than property to supply the measure of replacement of the present intangible property base.

Any plan for a classified low-mill rate must presuppose its application to intangibles generally, including those now taxable but not taxed as well as those not now taxable but not constitutionally beyond the State’s power of taxation; but the present intangible personalty tax base is so inextricably related to existing deductions, exceptions and exemptions, that it would be extremely difficult, if not impossible, to reach a practical level of agreement upon any such proposal.

The uniformity requirements of the State Constitution—which apply only to property taxes—would not permit any difference of treatment as between large and small holders of intangible personalty nor as between corporate and unincorporated business, although such distinctions may be useful and desirable.

There is at least considerable doubt as to whether a property tax on intangibles could make a fully effective distinction as between business and residence in New Jersey, particularly as to members of a partnership. But such a distinction may be useful and necessary if the State is not to undertake to revamp its entire tax structure at a single stroke.

From the viewpoint of comparative tax burdens, the predominant trend of the States throughout the United States has been to abandon entirely the taxation of intangible personalty as property.

A classified *ad valorem* tax based upon the principles advocated received summary and adverse consideration from the 1942 Legislature.¹

FOR THESE REASONS, THE COMMISSION RECOMMENDS THAT NO CLASSIFIED AD VALOREM PROPERTY TAX ON INTANGIBLE PERSONAL PROPERTY BE ADOPTED.²

* * *

¹ The Joint Legislative Committee reported adversely on the grounds that the proposed bill would impose "new and additional taxes" and that the "objections" could not be overcome by amendments. *Report* (typed, January 12, 1943). The public hearings held by the Committee, December 13, 1942 (108 pages, typed), developed extensive controversy over exemptions and exclusions.

² A proposal was placed before the *Commission* by Charles A. Rooney, Corporation Counsel of Jersey City, that was similar to the above plan, but differed in this respect—possibly a 3 mill tax on intangible personalty with an exemption of \$50,000, *the property to be assessed by the local assessor and the tax collected "in the same manner as the other taxes [property] are collected"* (*Public Hearings*, pp. 57-59). While some of the reasons for the rejection of the State-assessed, State-collected plan apply to a locally-assessed, locally-collected plan, there is this additional difficulty: In the opinion of the *Commission*, the local assessment of intangible personalty would offer the same opportunities for "colonization" that marks the present system. An established "ceiling" rate would reduce the likelihood of excessive levies, but so long as local assessment was permitted, "bargaining" among municipalities would remain profitable. The *Commission* wishes to remove, entirely, the opportunity for unequal treatment among the holders of intangibles. This cannot be done unless a State system is adopted.

PROPOSAL 2 made to the *Commission*: That intangible personal property be exempted from taxation.

The complete exemption of intangibles from taxation was opposed by many interested groups and individuals, among whom was John F. O'Brien, who presented the case as follows:¹

I listened very attentively yesterday to the statements of the Bankers Association and the State Chamber of Commerce. . . . I have here an editorial from last night's issue of the *Trenton Times* endorsing this proposal for outright exemption. It is apparent that strong pressure is to be made to have your *Commission* recommend such exemption. That being so, in justice to the owners of real and tangible personal property, including home owners, we ask that your *Commission* make a thorough study of the two main reasons advanced for such exemption before any such legislation is decided upon. It may well be that with such information, the real estate interests may be convinced that such exemption is to the best interests of the State. The two main reasons advanced seem to be these:

(1) Seventy-five per cent of all intangibles in New Jersey are now exempt and therefore the remaining 25 per cent should also be exempt.

(2) The taxation of intangibles, even at a low millage rate, would drive industry from the State and prevent new industry from coming in. That New Jersey is in competition with New York and Pennsylvania, and New Jersey must be made inviting to industry and business. . . .

As to the *first*, before deciding to exempt the remaining 25 per cent, the public is entitled to know if the exemption of the 75 per cent is justified. One of the main reasons for the extremely high property tax rates in this State, the bulk of which falls on real estate, is the amount of personal property exempted from taxation. This proposal to increase the total should rest on a better basis than the face of existing exemptions.

As to the *second*, the public is entitled to know just how the taxation of business and industry in New Jersey compares with that existing in New York and Pennsylvania and other States. They are also entitled to know just how much revenue is derived from business and industry in New Jersey. It must be remembered that New Jersey, from a geographical standpoint, offers many advantages to industry and business without making tax exemption or undue tax favoritism the inducement to locate here.

* * *

¹ *Public Hearings*, pp. 78-79.

“Double taxation” is a major consideration with those who argue for the complete exemption of corporate intangibles. This problem is a very old one and takes numerous forms. It arises as between the Federal Government and the State when both jurisdictions tax the same base—as in income, gasoline, inheritance and estate taxes. It is seen again as between the State and its local subdivisions when a State and a city within its borders both levy sales, gross receipts or franchise taxes. It is perhaps most oppressive when State, county, municipality, school district and special district each levy against the same piece of real property with little or no co-ordination among them. And it is felt among different taxpayers when a tax is levied on corporate income; and when the same income is distributed as dividends, is then taxed again in the hands of the stockholders.

It is plain, however, that taxes can be collected, ultimately, from only two sources—capital or income. The only way to completely avoid multiple taxation is to tax only a *single* base through a *single* jurisdiction. Double taxation is inherent in any governmental structure that accepts the principle of multiple jurisdictions, and is equally inherent in a tax policy that accepts different types of levies for different public purposes. An income tax may be levied on corporate income for revenue purposes; a franchise tax may be required for the privilege of doing business within the State; an excess-profits tax may be imposed to reduce artificial profit advantages arising from a national emergency; and a capital-gains tax may be used to reduce gains arising from circumstances outside the operations of the company. But all of these are paid from either capital or income, and as such they represent double or multiple taxation.

The fault, nevertheless, lies not in double taxation, *but in the excessive burden which double, or even multiple taxation imposes on a given tax base.* So far as the *Commission* is able to determine, few industrial States require so little taxes from business *for State purposes*, as New Jersey. The accompanying table (Table X) indicates what would happen to six large New Jersey corporations if these corporations were to move to New York, or Massachusetts. Their tax (exclusive of property taxes) would be increased anywhere from 26 per cent to 93 per cent. In New Jersey, State taxes on business activity are either specialized (as in the case of insurance companies, public utilities, railroads and banks) or almost non-existent under the capital stock tax. It can safely be said that, so far as the taxation of intangibles is concerned, double taxation

TABLE X

COMPARISON BETWEEN TAXES PAID BY NEW JERSEY CORPORATIONS AND INCOME
AND EXCISE TAXES WHICH THEY WOULD PAY IF LOCATED IN
NEW YORK OR MASSACHUSETTS (1944)

(Property taxes in New York and Massachusetts, excluded)

<i>State and Tax</i>	<i>A Corp.</i>	<i>B Corp.</i>	<i>C Corp.</i>	<i>D Corp.</i>	<i>E Corp.</i>	<i>F Corp.</i>
<i>A. Tax Payable in Thousands of Dollars</i>						
1. New Jersey:						
Real Property	\$8	\$21	\$25	\$3	\$47	\$0
Personal Property	19	27	13	7	27	2
Corporation Franchise..	0	0	4	0	0	5
Total	\$27	\$48	\$42	\$10	\$74	\$7
2. New York:						
Income (Franchise)....	\$93	\$187	\$24	\$175	\$40	¹
3. Massachusetts:						
Income and Excise	\$52	\$103	\$58	\$102	\$32	\$12
<i>B. Ratio of New Jersey to Selected States (in Per Cent)</i>						
All New Jersey Taxes as Per Cent of New York						
Income tax	29	26	175	6	185	¹
All New Jersey Taxes as Per Cent of Massachu- setts Income and Excise						
Tax	52	47	72	10	231	58
New Jersey Personal Prop- erty and Franchise Tax as Per Cent of New York						
Income Tax	20	14	71	4	68	¹
New Jersey Personal Prop- erty and Franchise Tax as Per Cent of Massachu- setts Income and Excise						
Tax	37	26	29	7	84	58

¹ Information not available.

has not become excessive. In fact, New Jersey has gone so far in the opposite direction as to exempt shares of stock of nationally famous corporations, with property located in every State, merely upon a showing that the corporation pays a tax on its property in its own State (*R. S.* 54:4-3.2).

Unless intangibles are to be tax exempt on other grounds, the *Commission* sees no reason why the present exemptions of three-fourths the base should determine the exemption of the remain-

ing one-fourth; unless, as Mr. Russell Watson (speaking for the State Chamber of Commerce) pointed out: "There were good reasons for the exemption of the \$6 or \$7 billion and the same reasons applied to the remaining \$3 billion." To determine the "reasons" would be a very large undertaking. Mr. Watson himself emphasized some of the difficulties:¹

"Less than one-fourth of all intangibles are taxable.

"The distinction between taxable and exempt intangibles is arbitrary, capricious and unjust.

"Why should a \$500 investment in General Motors stock be subject to an *ad valorem* tax and an equal investment in Standard Oil Company stock be exempt?

"Why should a bond secured by a mortgage on real or personal property be exempt and a general debenture unsecured bond be taxable?

"Why should an account receivable or a promissory note be taxable, but exempt if it be secured by a chattel mortgage?

"These questions admit of no logical answers. They demonstrate the inequities, unsoundness and unjustness of the present law. They bring into clear relief the futility of any attempt to administer or enforce it.

"It is impossible to build a sound structure for the taxation of intangibles upon any such false and insecure foundation.

"If the question be asked, 'Why should not the three billions more or less of taxable intangibles now outstanding be taxed as other kinds of property are taxed?' the answer is, 'For the same reason that the other six or seven billions of exempt intangibles are not taxed.'

"All of which leads irresistibly to the conclusion that the taxation of intangibles is so confused, illogical, inequitable and unsound that, in effect, three-fourths of it have already been abolished and, for the same reasons, the remaining fourth should likewise be abolished."

Whether or not the present law has caused a substantial number of industries to leave the State is difficult to determine. The *Commission* has had many statements and reports to this effect, and even lists of corporations purporting to have moved from New Jersey because of tax hazards. The real motives that impel a corporation to move are hard to discover, and probably many factors other than taxation enter into the decision. It is not as easy for corporations—even those with statutory offices only—to move, as is sometimes implied. The fact, however, that about 170 of the State's largest corporations (including many holding companies) sought tax situs in Flemington at what is at present a 4.3 mill rate on their intangibles, and did not leave the State, would seem to throw some doubt on the large out-of-State exodus that is frequently recited.

¹ *Public Hearings*, p. 91.

In many States in which taxes on business are far greater than in New Jersey, extensive studies have shown that business rarely leaves or refrains from entering those States, for reasons which are solely attributable to State and local taxation.¹ The problem in New Jersey is not a problem of excessive business taxes. It is a problem of grossly unequal and uncertain taxes. The inequity and uncertainty exists with respect to personal property—both tangible and intangible—and there has been considerable confusion as to the incidence and relative importance of these unsound tax policies.

Foreign corporations—those corporations operating under charters granted by other States—have nothing to fear from “tax lightning” in the assessment of their intangible personal property, even where their corporate business is actually controlled and managed from a principal office located in New Jersey. While the State of New Jersey and its local political subdivisions (under the law as established by the United States Supreme Court), might constitutionally tax all intangibles of a foreign corporation which are actually managed and controlled in New Jersey,² the existing statutes of this State make no attempt or pretense at the exercise of any such broad taxing power. Under present statutes, only such intangibles of a foreign corporation as are “usually employed” in doing business in New Jersey may be locally assessed for taxation.³ Few if any of the local assessors appreciate the scope and meaning

¹ Commission on Interstate Co-Operation Concerning the Migration of Industrial Establishments from Massachusetts *Preliminary Report to the General Court* (House No. 2045, January, 1939), page 21: “We have been somewhat surprised to be informed that taxation is rarely the most potent reason for industrial migration; in fact, that it rarely appears to be an important consideration.” This view is reaffirmed in the same Commission’s *Final Report* (House No. 2495, June, 1939), pp. 30-33.

Metropolitan Life Insurance Company, Policyholders Service Bureau, *Industrial Development in the United States and Canada, 1926 and 1927* (New York: 1928), p. 5: “It is significant that bonuses, free taxes, free land or free factory buildings—which inducements at one time were frequently offered, and still are from time to time—did not appear among the three reasons most frequently advanced for the selection of the location of a plant.” In this study, “taxes” actually ranked twelfth among sixteen reasons for industrial locations for the United States as a whole. “Markets” are advanced most frequently as the reason for location of plants.

G. A. Steiner, *The Tax System and Industrial Development* (Univ. of Illinois, 1938), finds “taxes” as an important “location determinant” in only two of 30 major industries (women’s clothing and cotton goods) and even in those industries only 13 out of 56 companies gave taxes such consideration.

Claude W. Stimson, “The Stimulation of Industry Through Tax Exemption,” *Tax Magazine*, May, 1933, pp. 169 *et seq.* and June, 1933, pp. 221 *et seq.*, concludes that there is little if any evidence that subsidies through tax exemption had a material influence on industrial growth.

² *Wheeling Steel Corp. v. Fox*, 298 U. S. 193, 56 Sup. Ct. 773 (1936); *Curry v. McCannless*, 307 U. S. 357, 59 Sup. Ct. 900 (1939); *State Tax Commission of Utah v. Aldrich*, 316 U. S. 174, 62 Sup. Ct. 1998 (1942).

³ R. S. 54:4-19 provides: “All corporations regularly doing business in this State and not being corporations thereof shall be assessed and taxed for and in respect of the business so done by them, and all such companies other than insurance companies, shall be assessed for the amount of capital usually employed in this State in the doing of such business, and not otherwise taxed as real property or tangible personal property by virtue of this chapter. The assessment shall be made in the taxing district where the business is most usually carried on and transacted.”

of this legal requirement, and so far as the *Commission* has been able to ascertain, assessors everywhere throughout the State solve the problem of interpretation by not attempting to tax intangible personal property held by corporations of other States.¹

This leaves foreign corporations subject at worst only to "tax lightning" on their tangible personal property, such as machinery and equipment, inventory and raw materials. The testimony before the *Commission* has, for the most part, overlooked this important distinction, and only the Chamber of Commerce of the City of Newark emphasized the significance of "tax lightning" with respect to tangible personalty. The *Commission* is impressed with the logic of this position, and is of the opinion that the time is not far off when it will be necessary to stabilize the taxation of tangible personal property as well as intangible personal property. The subject of tangible personalty is considered more fully in another part of this report. At this point, it is sufficient to emphasize that the tax situation in New Jersey presents no substantial hazard of "tax lightning" on intangible personalty for any *foreign* corporations that may wish to locate employment-giving enterprise in this State.

There can be no denying that the hazard of "tax lightning"—with respect to intangible personalty—may have been a real deterrent to the adoption of New Jersey charters by new corporations, particularly corporations likely to hold large amounts of stocks, bonds, or other intangibles in the normal course of business; and this hazard has been a major threat to the security of hundreds of such corporations that are now located here. Because of this threat, New Jersey has developed the indiscriminate reputation, whether justifiable or not, of being hazardous in a tax sense to all types of business, and to foreign as well as domestic corporations. Mr. McDouall, representing the State Bankers Association, told the *Commission*:

I want to make one observation while I am here. We bankers know, and this isn't just hearsay, we bankers know of industries that are now ready and willing to locate in New Jersey but they say to us, "Not until such time as you put your taxing act in shape so that we will no longer be fearful of tax lightning." They say to us in New Jersey today, "No business can possibly know what its tax bill is at the beginning of the year because we cannot tell when some assessor may

¹ Occasional instances of assessment of foreign corporations on a business situs theory may be found, but these do not include manufacturing enterprise with principal executive offices out of the State [*Household Finance Corporation v. State Board of Tax Appeals*, 119 N. J. L. 230, 196 Atl. 219 (1937) and 126 N. J. L. 399, 19 Atl. (2d) 816 (1941); *City of Newark v. International Business Machines Corporation*, 21 N. J. Misc. 237, 32 Atl. (2d) 838 (1943)].

decide that he wants to hit us for a substantial assessment on intangibles." If we are to bring these new industries here, which mean pay rolls, and increased property values . . . we must know now if we are to get them here to enjoy this post-war prosperity. These international and national organizations are ready to come here if we can give them the necessary assurance that we are going to have tax sanity in this State as applied to industrial organizations.¹

In view of these facts, the *Commission* concludes:

THAT INTANGIBLE PERSONAL PROPERTY BE EXEMPTED ENTIRELY FROM TAXATION UNDER A PROPERTY TAX, PROVIDED THAT THE PRESENT TAXABLE BASE NOW THREATENED BY "TAX LIGHTNING" BE MADE TO BEAR ITS FAIR SHARE OF THE COST OF GOVERNMENT IN SOME OTHER WAY.

* * *

PROPOSAL 3 made to the *Commission*: *That an increase in New Jersey's present capital stock tax be provided in lieu of a tax on intangibles.*

This was the proposal of the New Jersey State Chamber of Commerce and of the New Jersey Bankers Association, both of whom filed extensive reports with the *Commission*.²

The position of the State Chamber was as follows:

- (1) That the present personal property tax on intangibles be repealed; and
- (2) That the present corporation franchise [capital stock] tax be doubled.

The position of the State Bankers Association (as recommended by its technical advisors) was as follows:

- (1) That the present personal property tax on intangibles be repealed;
- (2) That the present corporation franchise [capital stock] tax be doubled or trebled *for one year only*, at the end of which time, or following the necessary study and investigation,
- (3) A net worth tax with an appropriate allocation factor to define that portion of the business properly chargeable to New Jersey would be substituted for the present capital stock tax.

¹ *Public Hearings*, pp. 4-5.

² See *Public Hearings*, Appendix, p. 111 (State Chamber of Commerce); pp. 148-150 (State Bankers Association).

The *Commission* has agreed that the present tax on intangible personal property be repealed, and it has given the most careful consideration to the capital stock tax proposals. It finds as follows:

The present corporate franchise tax was enacted in 1884 and imposed a yearly tax of 1 mill on the capital stock of "miscellaneous" corporations.¹ The tax was not intended to measure business activity, nor was it imposed as a tax upon the privilege of doing business within the State. It was purely a charge for the corporate charter—that is for the right to exist in corporate form, and as such would apply only to domestic corporations.²

At the time the capital stock tax was enacted, taxation of net worth of corporations, as part of the local property tax, was already well established. The Tax Act of 1866 (Section 15) provided that "all corporations in this State," with certain stated exceptions, "shall be assessed and taxed at the full amount of their capital stock paid in and accumulated surplus."³ There was, therefore, no occasion to question the desirability of issued capital as a measure of the charge for the privilege of being a corporation. At that time also no business corporation could hold the stock of another corporation, so that the huge capitalization of holding companies which came into vogue in the late 90's did not have to be considered.

In 1889, New Jersey was the first State to authorize corporations solely for the purpose of holding the shares of another corporation, and of managing such shares. The revival of trade at the end of the century, and the desire for a new form of corporate combination, lead to the immediate use of the new type of New Jersey corporation with no operating duties whatsoever, known as the holding corporation. For a period of roughly 20 years, the holding company device assumed great prominence, and, although other States soon offered the same advantages, New Jersey, because it was first in the field, attracted the charters of most of the well-known holding companies of the day.⁴ The yield of the corporate franchise tax, therefore, became very substantial as compared with the needs of the State. Little has been done, however, to review its operation despite the gradual erosion of net worth as part of the local property tax base during the intervening years.

¹ *Laws* (1884), Ch. 159.

² *Standard Under-Ground Cable Co. vs. Atty. Gen.*, 46 N. J. Eq. 273, 19 Atl. 733 (1890); *Lumberville Delaware Bridge Co. vs. St. Bd. of Assessors*, 55 N. J. L. 529, 26 Atl. 711 (1893).

³ The application of this provision is illustrated in *State, Trenton Iron Co., pros. vs. Yard*, 42 N. J. L. 357 (1880).

⁴ Ripley, Wm. Z., *Trusts, Pools and Corporations* (Rev. ed., 1916), pp. xix et seq.

Except for the adoption of a graduated rate, and the belated adoption of a franchise tax for the business done in New Jersey by foreign corporations, the capital stock tax remains today essentially the same as it was in 1884. The tax is still measured by nominal or par value of issued capital stock, or, more recently, by the number of shares of no-par value stock issued and outstanding.

The present law provides the following rates:¹

DOMESTIC AND FOREIGN CORPORATIONS

1. *Nominal or par value capital stock issued:*

- a. Up to and including \$3,000,000—\$.001 (1 mill) on the amount issued and outstanding.
- b. \$3,000,001-\$5,000,000—\$.0005 (1/2 mill).
- c. In excess of \$5,000,000—\$.50 per million (1/20 mill).

2. *Number of no-par value shares of capital stock issued:*

- | | | |
|--------------------------------------|-------|-----------|
| a. Up to and including 20,000 shares | \$.03 | per share |
| b. 20,001-30,000 shares | .02 | per share |
| c. 30,001-40,000 shares | .01 | per share |
| d. 40,001-50,000 shares | .005 | per share |
| e. In excess of 50,000 shares | .0025 | per share |

All domestic corporations which employ at least 50 per cent of their capital stock in manufacturing, mining, horticulture and agriculture within New Jersey are still exempt from the franchise tax. Such corporations employing less than 50 per cent of their capital stock within the State are permitted to deduct the local assessed valuation of real and personal property from the value of their capital stock taxable.

The tax is still a charge for "being" and has no relation to "doing" or to economic value. For example, the largest single tax paid at present under the law is \$44,383. As a charge for the corporate privilege, the tax is not affected by changes in capital values, business activity or income.

¹ *Revised Statutes*, 54:13-6.

Since 1937,¹ foreign corporations have also been required to pay a capital stock tax "measured by . . . that proportion of the total capital stock issued and outstanding . . . as the gross income from the business done in this State . . . to the total gross income from its entire business." In its simplest terms the formula is expressed as follows:

$$\frac{\text{New Jersey Gross Income}}{\text{Total Gross Income}} \times \text{Issued Capital Stock} = \frac{\text{Capital Stock Taxable}}{\text{in New Jersey}}$$

The foreign corporation tax is thus a charge for the privilege of doing business without reference to the value of the privilege.² These corporations are permitted to allocate the aggregate par value or the number of no-par shares to New Jersey for tax purposes, according to the ratio between gross receipts from business done in New Jersey and total gross receipts, presumably on the theory that the State's jurisdiction to tax could extend no further. Domestic corporations doing a multi-State business are not permitted to make a similar allocation, for the reason that there never has been any doubt as to the taxing authority of the charter State to impose this form of tax.

The foreign corporation franchise tax is thus a hybrid of the activity taxes imposed in other States and the domestic franchise tax. It differs from the domestic corporation tax only in that the allocation factor leaves nothing to tax unless the privilege to do business in New Jersey is exercised; whereas domestic corporations pay the annual charge for the charter regardless of whether or not they exercise the privilege. In passing it is well to note that "gross receipts from doing business in New Jersey" has been construed by the courts to mean only receipts from sales to customers located in New Jersey.³ A foreign corporation could thus engage in very large business operations in this State and yet pay less franchise tax than many small business corporations now pay.

These fundamental characteristics of domestic and foreign corporate franchise taxes show how ill suited they are as a substitute for the present tax on intangible personal property values. Any multiple, of the present capital stock taxes can serve only to emphasize the present corporate tax distortions, with a haphazard transfer of the present intangible tax burden to other taxpayers.

¹ *Revised Statutes*, 54:32A-8.

² *Revised Statutes*, 54:32A-10. The minimum annual tax payable by foreign corporations is \$25 as compared with the \$5 minimum payable by domestic corporations.

³ *Wright Aeronautical Corp. v. Martin*, 19 N. J. Misc. 325, 19 Atl. (2d) 338. This opinion refers to "intra-State sales" but on its facts the decision is limited to allocation to New Jersey of receipts from sales with in-State destination.

The nature of the present capital stock tax is also conducive to tax avoidance by appropriate "splitting" of capital accounts as between capital stock and surplus. Such "splitting" will have a profound effect upon the franchise liability, even though it may be entirely unintentional on the part of the taxpayer. Peculiarities in the methods by which the New Jersey franchise tax is computed result, moreover, in vastly different tax liabilities, even among similar corporations. By shifting from par value to no-par-value capital stock, or by reducing the number of shares outstanding, corporations can and do reduce their franchise tax liability in New Jersey. Partly as a result of such shifts, the franchise tax on domestic corporations has declined by 39 per cent from \$2,034,375 in 1932 to \$1,240,529 in 1943. In the same way, the franchise tax on foreign corporations has declined by 20 per cent from \$477,415 in 1941 (when the tax was 4 years old) to \$385,238 in 1943.

For example: Five domestic corporations may be engaged in exactly the same business and operate in exactly the same way. While each of them may be so capitalized as to show a total net worth of \$1,000,000, the amount of franchise (capital stock) tax payable to New Jersey will vary greatly with the form in which the net worth is held; for example:

Corporation	Capital Stock				Surplus	New Jersey Franchise Tax
	Par Value No. of Shares	Book Value	No Par Value No. of Shares	Book Value		
A	0	0	1,000	\$1,000,000	0	\$30
B	1,000	\$1,000,000	0	0	0	1,000
C	1,000	100,000	0	0	\$900,000	100
D	0	0	100	1,000,000	¹	5 ²
E	0	0	100,000	1,000,000	¹	1,075

¹ Division as between book value of no-par value stock and surplus does not affect amount of tax.

² Minimum tax.

It is evident from the above illustration that the franchise tax today instead of being equitably distributed among the above five taxpayers on the basis of the relative importance of the franchise, is, instead, dependent upon the decision (entirely out of the control of the State) of each corporation as to the form of its capitalization. Every lawyer today knows that, regardless of the actual net worth of the company, he can minimize its franchise tax liability by the simple device of issuing not over 166 shares of capital stock without par value. This method of tax minimization is especially feasible where a corporation is closely held.

This is not to imply that the revision of the taxpayer's capital stock structure is undertaken solely or even primarily to reduce the franchise tax—in most cases, indeed, the tax is too small to warrant such attention. The fact, however, that a drastic tax reduction can be the incidental result of a mere change in form, tends to emphasize the instability and inequitableness of a base that gives unlimited latitude to some taxpayers to virtually fix their own tax. It permits serious impairment of State revenue through arbitrary changes of form, a condition which should be corrected rather than aggravated by doubling or tripling the tax.

There are other major weakness in the present capital stock tax:

The exemption of manufacturing, mining, horticultural and agricultural corporations from the tax is indefensible. The exemptions were in the original act of 1834, and were included to attract industries to the State. Such exemptions would have no effect whatsoever on an industrial location today. The tax would, indeed, be a negligible factor in financial planning.

Provision for the taxation of foreign corporations is discriminatory and unsound. This tax was not imposed until 1937. The intent was to tax the capital stock of a foreign corporation in the same proportion as the ratio between its business activity in New Jersey and its business activity elsewhere. Regardless of legal form, this tax discriminates in effect unfairly against domestic corporations, which are not permitted to allocate.

And finally, there is the question of yield. The revenue from the capital stock tax is growing less each year, due to the factors already discussed. The following table shows this progressive decrease, and not only offers little assurance of a *stable* base, but might even be considered as a *vanishing* base:

CAPITAL STOCK TAX: COLLECTIONS, 1932-1943
(In thousands of dollars)

Corporations	1932-36 ¹	1937	1938	1939	1940	1941	1942	1943	1944
Domestic....	1833	1614	1608	1536	2437 ²	1456	1328	1241	1304
Foreign.....	...	.8	336	402	452	477	403	385	410

¹ Average.

² Two years' collection.

Source: State Tax Department. *Thirteenth Annual Report* (1944).

As shown in Tables XI through XIII, 18 thousand (or 70 per cent) of the 26 thousand New Jersey (domestic) corporations which paid a franchise tax to the State during 1944 paid the \$5 minimum tax. Taxes paid by these corporations totaled \$92 thousand, or less than 8 per cent of the amount paid by all domestic corporations. Also, as shown in the Tables 2,751 (or 76 per cent) of the 3,628 foreign corporations which paid a franchise tax to the State during 1944 paid the \$25 minimum tax. These payments totaled \$69 thousand and represented about 20 per cent of franchise taxes paid by all foreign corporations during the year.

Of all corporation franchise taxpayers (both domestic and foreign), in New Jersey, 71 per cent paid the minimum tax in 1944 and accounted for 10 per cent of the tax paid. At the other extreme, 12 corporations (or 1/25 of 1 per cent) paid franchise taxes amounting to \$233 thousand (or 15 per cent) of the \$1,544 paid by all corporations. *Almost 60 per cent of all franchise taxes paid to the State during 1944 was paid by fewer than 1 per cent of the corporations. Eighty-seven per cent of all corporation taxpayers paid a tax of \$25 or less. Only 2 per cent of them paid a tax amounting to more than \$250 (see Table XII).*

The 1944 average property tax rate in New Jersey was \$4.743 for each \$100 of valuation taxable. At such a rate, a corporation owning taxable intangibles valued at \$528 would be subject to a tax of \$25. If the corporation owned intangibles valued at \$5,281, it would be subject to a tax of \$250. A provision by which corporations would pay double their present franchise tax in lieu of a tax upon their intangibles would thus be equivalent to assessing 81 per cent of them at \$528 or less at present average property tax rates. It would be equivalent to an assessment of more than \$5,281 or more on their intangibles for only 2 per cent of them. A payment of three times their present franchise tax would be equivalent to assessing 81 per cent of all corporations at \$1,056 or less. In the same way, this provision would be similar to an assessment of \$10,562 or more for only 2 per cent of them.

* * *

TABLE XI

DISTRIBUTION OF NEW JERSEY CORPORATIONS AND FRANCHISE
TAXES PAID, BY SIZE OF TAX (1944)¹

<i>Franchise Tax Size Group</i>	<i>All Corporations</i>		<i>Domestic Corporations</i>		<i>Foreign Corporations</i>	
	<i>Number</i>	<i>Amount of Tax</i>	<i>Number</i>	<i>Amount of Tax</i>	<i>Number</i>	<i>Amount of Tax</i>
(Minimum for						
\$5.00 Domestics)	18,368	\$91,840	18,368	\$91,840	....	.....
5.01- \$10	2,614	20,613	2,614	20,613	....	.....
10.01- 15	1,031	13,514	1,031	13,514	....	.....
15.01- 25	1,171	24,087	1,171	24,087	....	.....
(Minimum for						
25.00 Foreigns)	2,751	68,972	....	.....	2,751	\$68,972
25.01- 50	1,653	59,838	1,399	50,627	254	9,211
50.01- 100	1,013	75,397	808	60,298	205	15,099
100.01- 250	619	96,839	416	64,496	203	32,343
250.01- 500	236	84,360	155	55,881	81	28,479
500.01- 1,000	146	108,651	77	57,158	69	51,493
1,000.01- 5,000	193	408,000	133	293,273	60	114,727
5,000.01-10,000	37	258,806	32	229,869	5	28,937
10,000.01 and more	12	233,403	12	233,403	0	0
Totals	29,844	\$1,544,320	26,216	\$1,195,059	3,628	\$349,261

¹ Totals represent calendar year 1944 and differ from those shown elsewhere in this report based upon fiscal year reportings.

TABLE XII
PERCENTAGE DISTRIBUTION OF NEW JERSEY CORPORATIONS AND FRANCHISE
TAXES PAID, BY SIZE OF TAX (1944)

Franchise Tax Size Group	All Corporations		Domestic Corporations		Foreign Corporations	
	Number	Amount of Tax	Number	Amount of Tax	Number	Amount of Tax
(Minimum for						
\$5.00 Domestics)	61.5	5.9	70.1	7.7	...	...
5.01- \$10	8.8	1.3	10.0	1.7	...	...
10.01- 15	3.5	0.9	3.9	1.1	...	...
15.01- 25	3.9	1.6	4.5	2.0	...	...
(Minimum for						
25.00 Foreigns)	9.2	4.5	...	...	75.8	19.7
25.01- 50	5.5	3.9	5.3	4.2	7.0	2.6
50.01- 100	3.4	4.9	3.1	5.0	5.7	4.3
100.01- 250	2.1	6.3	1.6	5.4	5.6	9.3
250.01- 500	0.8	5.5	0.6	4.7	2.2	8.2
500.01- 1,000	0.5	7.0	0.3	4.8	1.9	14.7
1,000.01- 5,000	0.6	26.4	0.5	24.5	1.7	32.8
5,000.01-10,000	0.1	16.8	0.1	19.2	0.1	8.3
10,000.01 and more	¹	15.1	¹	19.5	0	0
Totals	100.0	100.0	100.0	100.0	100.0	100.0

Per cent rounded.

¹ Less than $\frac{1}{2}$ of 1 per cent.

TABLE XIII

DISTRIBUTION OF NEW JERSEY (DOMESTIC) CORPORATIONS EXEMPT FROM CORPORATION FRANCHISE TAX, BY SIZE OF POTENTIAL TAX (1944)¹

<i>Size of Potential Franchise Tax</i>	<i>Exempt Corporations Potential Tax</i>		<i>Percentage Distribution¹ Potential Tax</i>	
	<i>Number</i>		<i>Number</i>	
\$5 (minimum tax)	745	\$3,725	28.3	0.9
5.01- 10	220	1,732	8.3	0.4
10.01- 15	139	1,809	5.3	0.4
15.01- 25	233	4,913	8.8	1.2
25.01- 50	378	14,087	14.3	3.3
50.01- 100	342	26,622	13.0	6.3
100.01- 250	269	43,245	10.2	10.3
250.01- 500	132	47,238	5.0	11.2
500.01- 1,000	91	68,610	3.5	16.3
1,000.01- 5,000	84	184,638	3.2	43.8
5,000.01-10,000	4	25,136	0.2	6.0
10,000.01 and more	0	0	0	0
Totals	2,637	\$421,755	100.0	100.0

¹ Percentages rounded.

* * *

During 1944, 2,637 New Jersey corporations qualified for total exemption from the corporation franchise tax because they employed at least $\frac{1}{2}$ of their capital stock in mining, manufacturing, agriculture or horticulture within the State. As shown in Table XIII, these corporations would have been subject to an aggregate tax of \$422,000 at rates applied to other domestic corporations. However, because they were not subject to the tax, these corporations have had no tax incentive to adjust the number of their shares or their total par value downward. For this reason, the potential tax as computed is probably above that which they would pay if the exemptions were not in effect.

Comparison between Table XI and Table XIII indicates a much more uniform distribution of exempt corporations by tax size groups than prevails for taxable corporations. While 70 per cent of all taxable New Jersey (domestic) corporations paid the minimum tax (\$5) in 1944 only 28 per cent of exempt corporations show a potential minimum tax. Only 1.5 per cent of taxable New Jersey corporations paid a tax amounting to more than \$250, but 11.9 per cent of exempt corporations reported a potential tax of more than \$250.

Some of this discrepancy may be due to the type of corporations involved. Manufacturing concerns often have more capital than other types of corporations. However, all New Jersey manufacturing corporations not eligible for deduction are included in the tabulations of franchise taxes paid. These corporations are engaged in interstate operations and are generally larger than those that qualify for exemption by virtue of being almost wholly within the State. Fifty-one manufacturing corporation franchise taxpayers receive tax deductions totaling \$4 thousand as a result of allowable credits for the assessed valuation of their real and personal property. These corporations are, however, so few, and the amounts are so small, that they have little influence upon the validity of the comparison between taxable corporations and exempt corporations. Recognizing that it has some limitations, the *Commission* feels that the contrast between the two tabulations indicates the vulnerability of the present franchise tax to avoidance or reduction.

* * *

There is another phase to this question. The doubling or trebling of the franchise tax would have a most erratic effect on the Flemington corporations (Table XI). A sample group of 80 such corporations paid local personal property taxes totaling \$1,089,000 in 1944 upon their intangibles. These same 80 corporations were among the 175 corporations in the State which paid the largest amount of capital stock (franchise) tax in 1944. Total capital stock taxes paid by all of them together amounted to \$407 thousand, or 37 per cent of the amount they paid to Flemington on their personal property.

Based upon 1944, 80 of the largest Flemington corporations would receive tax reductions aggregating \$682 thousand by paying double their franchise tax *in lieu* of the present tax upon their intangibles. By paying three times their present franchise tax *in lieu* of their intangibles tax, these 80 corporations would receive tax reductions aggregating \$275 thousand. Because they are among the largest franchise taxpayers in the States, these 80 corporations are *not* representative of the many which pay only nominal amounts. This means that most of the 40,000 franchise taxpayers would pay a smaller amount of tax *in lieu* of the present actual or potential tax upon their intangibles.

Further comparison between capital stock taxes and local (property) taxes on intangibles paid by the 80 Flemington corporations indicates wide variations as among individual corporations. As

shown in Table XIV, 22 (or 27 per cent) of them pay more in franchise taxes than they now pay to Flemington on their intangibles. By paying double their franchise tax *in lieu* of their intangible tax, these 22 corporations would pay increased taxes amounting to \$48 thousand (or 16 per cent more than their intangibles tax bill in Flemington). For 11 of these corporations, the doubled franchise tax would increase their tax bill over the present intangibles tax paid to Flemington by \$37 thousand (or 280 per cent).

At the other extreme 33 of the 80 Flemington corporations now pay franchise taxes amounting to 40 per cent or less of their present tax on intangibles. For these 33 corporations, the payment of double their present franchise tax *in lieu* of their intangibles tax would result in tax reductions totaling \$668 thousand (or 78 per cent of their present intangibles tax). For 10 of these corporations the doubled franchise tax would decrease the present intangibles tax by \$295 thousand (or 84 per cent).

In the aggregate, 58 (or 73 per cent) of the 80 Flemington corporations would gain a total of \$730 thousand by paying an amount equal to their present franchise tax *in lieu* of their intangibles tax. The remaining 22 (or 27 per cent) would lose a total of \$48 thousand, reducing the net gain for all of them to \$682 thousand. Absence of any correlation between the amount of franchise tax paid and the value of intangible personal property causes the greater portion of these gains to accrue to those corporations holding the greatest amount of intangible property.

Similar calculations based upon a trebled franchise tax indicates that 37 (or 46 per cent) of the 80 Flemington corporations would gain a total of \$482 thousand by paying an amount equal to twice their present franchise tax *in lieu* of their intangibles tax. The remaining 43 (or 54 per cent) of the 80 corporations would lose a total of \$207 thousand, reducing the net gain for all of them to \$275 thousand. Ten corporations alone would gain a total of \$242 thousand, or 70 per cent of their present intangibles tax in Flemington. At the other extreme, 11 corporations alone would lose a total of \$88 thousand, or almost 7 times as much as they now pay on their intangibles in Flemington.

* * *

TABLE XIV

EFFECT OF DOUBLING AND TREBLING FRANCHISE TAX IN LIEU OF TAXATION OF INTANGIBLES
(80 *Flemington corporations* paying the largest amount of franchise tax in 1944)

Per Cent Franchise Tax of Local Intangible Tax	Number of Corporations	Amount of Franchise Tax	Amount of Local Intangible Tax	Double Franchise in Lieu of Intangible Tax Decrease	Franchise in Lieu of Intangible Tax Increase	Trebled Franchise in Lieu of Intangible Tax Decrease	Franchise in Lieu of Intangible Tax Increase
0-20	10	\$52,924	\$348,043	\$295,119	.....	\$242,194	.....
21-40	23	137,015	510,046	373,031	.....	236,016	.....
41-60	7	30,590	63,842	33,253	.....	3,489 ¹	\$826 ²
61-80	9	56,446	82,156	25,710	.....	.....	30,736
81-100	9	41,005	43,799	2,794	.....	.....	38,212
101-150	5	18,578	16,251	.....	\$2,328	.....	20,906
151-200	6	20,258	11,829	.....	8,429	.....	28,688
Over 200	11	50,492	13,285	.....	37,207	.....	87,699
Sub Totals	..	.....	.....	\$729,906	\$47,964	\$481,699	\$207,066
Totals	80	\$407,309	\$1,089,251	\$681,942	.....	\$274,633	.....

Numbers rounded to nearest dollar.

¹ Four corporations.

² Three corporations.

There is no question but that doubling or trebling the rate would have little significance, if the base of the tax were to remain unchanged. This condition was plainly recognized by Mr. McDouall, speaking for the State Bankers Association:¹

"If our suggestion is to be seriously considered, the doubling or trebling of the franchise tax would therefore bring into the State \$1,600,000 or \$3,200,000 additional. But let me make this crystal clear. . . . When we say increase the franchise tax for one year only, when we ask you to consider doubling or trebling the franchise tax, we have in mind only for one year because we are not unmindful that a doubling or trebling of the franchise tax, if it were to be continued as a definite part of our revenue-producing measures in this State, would not produce the \$1,600,000 or \$3,200,000 but the doubling or trebling would cause, we believe, many corporations to resort to other avenues and thereby reduce the total tax which the State would collect. We have, in our thinking . . . and with the advice of our experts, arrived at the conclusion that if you were to continue that method of taxation permanently, it would produce \$2,000,000 rather than \$3,200,000."

The facts outlined above were recognized even by those who advocated the use of the capital stock tax in lieu of the *ad valorem* taxation of intangibles. While to them, the practical aspects of the proposal outweighed the acknowledged defects of the tax, they were frank in admitting the many weaknesses of the law:

Mr. Russell Watson (speaking for the State Chamber of Commerce) told the Commission: "The present franchise tax is archaic—it bears unequally upon those who are subject to it."²

Mr. Thayer Martin (speaking for the Newark Chamber of Commerce) said: "The present franchise tax . . . bears so little relation to the question of the amount of personal property that it is proposed to place a substitute tax on, that I personally do not think that method or that type of substitute tax is the answer to the problem."³

The tax consultants of the State Bankers Association reported to the Commission: "It must be recognized that the present franchise tax law is inequitable. . . . Though the expedient of doubling or tripling the corporate franchise tax . . . may suffice temporarily, we believe it is essential that this tax levy be placed on a sound, equitable basis."⁴

¹ *Public Hearings*, pp. 3-4.

² *Ibid.*, p. 94.

³ *Ibid.*, p. 56.

⁴ *Ibid.*, p. 150.

While the *Commission* feels that a corporate franchise tax offers a workable and equitable manner for taxing corporations *in lieu* of a tax upon intangible personal property held by them, it also feels that *a new franchise base must be developed for this purpose*. It is therefore unwilling to recommend the perpetuation of a tax which, in both theory and practice, is an anachronism; and which, under modern conditions, is unsound.

A new base should reflect full corporate ownership, in whatever form it may exist.

The portion of corporate ownership properly allocable to New Jersey for tax purposes should be determined by a fair and adequate formula, applicable to both domestic and foreign corporations alike.

The yield must be such as to provide adequate coverage of intangible personal property now legally taxable but untaxed.

The *Commission* concludes, therefore, THAT AN INCREASE IN THE PRESENT CAPITAL STOCK TAX (WITHOUT SUBSTANTIAL AMENDMENT OF THE PRESENT TAX BASE) WOULD NOT BE AN ADEQUATE SUBSTITUTE FOR A TAX ON INTANGIBLES.

* * *

PART III

Conclusions and Recommendations of the Commission

In considering a substitute tax for the *ad valorem* tax on corporate intangibles, the *Commission* has been guided by certain purposes:

- (1) To remove, entirely, the threat of "tax lightning."
- (2) To establish a simple and defensible tax on corporate business *in lieu* of an *ad valorem* tax on intangible personalty and the present capital stock tax.
- (3) To provide a yield sufficient to justify the abandonment of the present authorized tax on corporate intangibles.
- (4) To provide a tax base that would tend to direct State tax policy away from a general property base; and, in doing this,
- (5) To have due regard for the tremendous tax burdens of the present day and for the competitive conditions that exist between New Jersey and its neighboring States.

In arriving at its conclusions, the *Commission* made a brief survey of the principal existing State and local taxes in New Jersey available for service expenditures (Table XV). In 1944, a year of great activity, the relative burden of such taxes on *capital* as opposed to *activity* was about as follows:

	<i>In Millions of Dollars</i>	<i>Per Cent of Total</i>
I. On capital ownership (business and individual) ..	\$269	74.3
II. On individual activity	\$44	12.2
III. On business activity	\$49	13.5
Totals	\$362	100.0

This analysis emphasizes an unusual condition; namely, considering the principal taxes for State and local purposes available for service requirements, business *activity*, constitutes only about \$49 million, or 13 per cent, and more than two-thirds of this 13 per cent is contributed by the insurance companies, public utilities and railroads. Probably no other large industrial State can approach this unbalance between taxes on capital and taxes on activity.

* * *

TABLE XV

PRINCIPAL STATE AND LOCAL TAXES IN NEW JERSEY
AVAILABLE FOR SERVICE EXPENDITURES

1934-1944

(Thousands of Dollars)

<i>Taxes</i> ¹		1934	1936	1938	1940	1942	1944
I. PROPERTY TAXES:							
(On Capital Ownership)							
M	Local Purpose	\$114,651	\$112,958	\$119,344	\$114,279	\$104,603	\$103,832
Sc	Local School	58,180	67,217	75,416	81,879	82,644	87,842
C	County Tax	40,417	39,618	43,791	45,242	47,606	48,439
S	State School	16,974	16,624	16,502	16,126	15,381	15,827
S	First Class R. R.	10,451	10,507	11,073	9,230	6,904	7,115
S	Second Class R. R. ³	(8,703)	(8,911)	(9,291)	(9,066)	5,298	5,533
S	Soldiers' Bonus	900	1,024	1,124	1,224	.....	.....
C	District Court	115	130	168	173	180	271
C	County Library	102	110	119	123	135	144
Totals		\$241,790	\$248,188	\$267,537	\$268,276	\$262,751	\$269,003
II. TAXES ON SALES AND PRIVILEGE:							
(On Individual Activity)							
S	Motor Fuels Tax ⁴	\$8,550	\$9,863	\$11,180	\$12,351	\$10,080	\$7,812
S	Alcoholic Beverage Tax ¹	2,757	7,073	8,735	9,329	11,020	10,163
S	Inheritance and Estate ¹	6,396	21,749	9,246	5,621	6,416	12,070
S	Motor Vehicle License Fees, etc.	11,182	12,648	14,007	15,678	15,775	13,802
Totals		\$28,885	\$51,333	\$43,168	\$42,979	\$43,291	\$43,847

III. TAXES ON BUSINESS AND PRIVILEGES:

(On Business Activity)

S	Railroad Franchise .....	.....	.....	.....	\$5,851	\$9,309
S	Motor Vehicle License Fees, etc.	\$4,008	\$4,456	\$4,723	\$5,152	5,444
S	Corporation Franchise (Domestic) ²	1,805	1,698	1,608	2,437	1,328
S	Corporation Franchise (Foreign) ² .....	.....	.....	337	452	403
S	Insurance (Domestic) ¹	1,928	1,981	1,742	1,717	1,798
S	Insurance (Foreign) ¹	1,761	2,584	2,725	2,680	3,194
S	Public Utilities Gross Receipts	4,853	5,159	5,904	6,418	7,200
C	Bank Stock	999	616	622	671	780
S	Motor Fuels Tax ⁴	8,549	9,863	11,180	12,351	10,079
S	Public Utilities Franchise	6,755	6,816	7,162	6,363	9,099
	Totals	\$30,658	\$33,173	\$36,009	\$38,241	\$45,196
	Grand Total	\$301,333	\$332,694	\$346,708	\$349,496	\$351,238
					\$361,893	

¹ Letters preceding each tax indicate the levying authority as follows: S (State), C (County), M (Municipality), Sc (School).

² For fiscal year ending June 30—all others for calendar year.

³ Prior to 1941, second-class railroad tax was included in general property tax and is shown separately only for purposes of comparison.

⁴ Motor fuels tax arbitrarily divided equally between individuals and business.

THE COMMISSION RECOMMENDS A CORPORATION BUSINESS TAX MEASURED BY NET WORTH IN LIEU OF A TAX ON CORPORATE-HELD INTANGIBLE PERSONAL PROPERTY AND IN PLACE OF THE PRESENT CAPITAL STOCK TAX. The proposed purpose, base allocation factors and rates are as follows:

PURPOSE: To provide that—

Every domestic and foreign corporation subject to the taxing jurisdiction of New Jersey (except some at present exempt or others specially taxed), shall pay an annual franchise tax for the privilege of having or exercising its corporate franchise in this State or for the privilege of doing business, employing capital or maintaining an office in this State.

The annual franchise tax shall be *in lieu* of all other State, county or local taxation upon or measured by intangible personal property used in business by corporations liable to taxation under this proposal. The present capital stock tax would be repealed.

METHOD:

Base and Rates: The franchise tax to be annually paid by each taxpayer shall be measured by the *greater* of the following:

ALTERNATIVE 1 (Basic Measure): That portion of its entire net worth as may be allocable to New Jersey under the tangible property—gross receipts—wages formula below; *or*

ALTERNATIVE 2 (Minimum Measure): That proportion of its entire net worth as its assets, tangible and intangible, in this State are to its total assets everywhere;

at the rate of 8/10 of a mill on the first \$100 million
4/10 of a mill on the second \$100 million
3/10 of a mill on the third \$100 million
2/10 of a mill on all in excess of \$300 million

ALTERNATIVE 3 (Minimum Tax): But not less than \$25.00 in the case of domestic corporations or \$50.00 in the case of foreign corporations.

[By net worth is meant the *average fair market value of a taxpayer's total assets minus his total liabilities*. This shall be determined by the actual value of the assets, earnings, and aggregate market value of a corporation's capital stock, *plus* the average amount of all indebtedness owing to holders of 10 per cent or more of the taxpayers' equity interest or to members of their families.

There are no exemptions provided in this base, but there is an allowance for stock held by parent corporations in their subsidiaries, designed to prevent double taxation. Any taxpayer that holds capital stock of a subsidiary during all or part of any one year may deduct from its net worth such proportion (not exceeding 50 per cent) of the average value of such holdings *less* the average amount of its net liabilities to such subsidiaries, as is equivalent to the subsidiary's allocation factor within the State, as determined under either Alternatives 1 or 2.

If, however, the subsidiary is subject to a franchise tax measured by gross receipts under any other law of this State (as are all public utilities) "such proportion" shall be determined as the equivalent of the ratio of the subsidiary's business within the State to its business everywhere, and the parent may deduct up to 75 per cent of the value of such holdings.

A subsidiary shall be defined as any corporation of which a taxpayer is a beneficial owner of at least 80 per cent of the total combined voting power of all classes of stock, and at least 80 per cent of all other classes of stock (except non-voting stock which is limited and preferred as to dividends). In principle, if the taxpayer could avail himself of a tax-free liquidation under the Internal Revenue Code, it would be allowed a half rate tax under this proposal.]

ALLOCATION:

The proposed allocation formula under Alternative 1 is intended to permit the tax to reflect the extent to which each corporation engages in business activities *within* New Jersey. The allocation factor for each corporation is determined as the average of these three ratios:

- (1) Tangible property in New Jersey to tangible property everywhere;
- (2) Gross receipts attributable to New Jersey to gross receipts everywhere;
- (3) Wages and other compensation paid in New Jersey to such items everywhere.

This formula is the so-called Massachusetts formula, which is now in use by the great majority of States for allocation of corporate income, as under the New York franchise tax; or for the allocation of corporate net worth, as in the allocation of the Pennsylvania foreign corporation franchise tax.

The proposed allocation of net worth under Alternative 2, according to the ratio of total assets in and out of the State, is intended primarily to place a floor under the tax base of domestic corporations which conduct no operations in this State, or whose principal assets are intangible personal property. These corpo-

rations benefit most directly from the proposal to repeal the *ad valorem* tax on intangible personal property. For this reason holdings of intangibles are given weight in the basis of allocation under Alternative 2, rather than the situs of business activity as in the formula under Alternative 1. These formulas are discussed more fully at pages 76-79.

TABLE XVI
PROPOSED CORPORATION BUSINESS TAX
APPLICATION TO FIVE CORPORATE SITUATIONS

CORPORATION A: A domestic or foreign corporation located entirely in New Jersey whose net worth shows:

Capital stock	\$100,000	
Paid-in surplus	60,000	
Earned surplus	40,000	
		\$200,000

would be taxed on its entire net worth. The corporation is located entirely in New Jersey. It would be taxed at 8/10 of a mill upon all of its net worth because its allocation factor is 100 per cent under both Alternative 1 and Alternative 2, and the resulting tax would exceed the \$25 minimum. The tax would, therefore, be:

$$\$200,000 \times .0008 = \$160.00$$

* * *

CORPORATION B: A domestic or foreign corporation with an allocation factor in New Jersey of 60 per cent under Alternative 1 and 50 per cent under Alternative 2, and whose net worth shows:

Capital stock	\$100,000	
Paid-in surplus	60,000	
Earned surplus	—40,000	
(deficit)		\$120,000

would be taxed under Alternative 1. This corporation has a negative earned surplus. Eight-tenths of a mill times the allocated net worth base under Alternative 1 is greater than 8/10 of a mill times the allocated net worth base under Alternative 2. Alternative 1, therefore, yields the greater tax, and the tax would be:

$$\$120,000 \times .6 \times .0008 = \$57.60$$

* * *

CORPORATION C: A domestic corporation with an allocation factor of 70 per cent in New Jersey whose net worth shows:

Capital stock	\$100,000	
Paid-in surplus	60,000	
Earned surplus	—200,000	
	<u> </u>	—\$40,000

would be taxed under Alternative 3. It has a negative net worth, and therefore no measurable tax base under either Alternatives 1 or 2. The tax, therefore, would be \$25.00.

* * *

CORPORATION D: A domestic corporation with an allocation factor of 60 per cent in New Jersey under either or both Alternatives 1 and 2 whose net worth shows:

Capital stock	\$30,000	
Earned surplus	10,000	
	<u> </u>	\$40,000

would pay the minimum tax of \$25 under Alternative 3. Eight-tenths mill times the allocated net worth is less than \$25.

[This condition will prevail for all domestic corporations with an allocated net worth of \$31,250 or less.]

* * *

CORPORATION E: A foreign corporation with an allocation factor of 60 per cent in New Jersey under either or both Alternatives 1 and 2 and whose net worth shows:

Capital stock	\$50,000	
Paid-in surplus	10,000	
Earned surplus	10,000	
	<u> </u>	\$70,000

would pay the minimum tax of \$50 under Alternative 3. Eight-tenths of a mill times the allocated net worth is less than \$50.

[This condition will prevail for all foreign corporations with an allocated net worth of \$62,500 or less.]

RATES AND ESTIMATED YIELD:

TABLE XVII

PROPOSED CORPORATION BUSINESS TAX ESTIMATED YIELD¹

(Millions of Dollars)

<i>A. Yield of proposed tax:</i>	
Domestic corporations (Table XIX)	\$4.5
Foreign corporations (Table XXI)	2.0
Total gross yield	\$6.5
<i>B. Present corporation franchise tax (to be repealed):</i>	
Domestic corporations (Table IX)	\$1.2
Foreign corporations (Table IX) .....	.4
Total franchise tax repealed	\$1.6
<i>C. Estimated net yield of proposed tax (A minus B):</i>	
Domestic corporations	\$3.3
Foreign corporations	1.6
Total net yield	\$4.9

¹ It is extremely difficult to estimate the yield of a tax with no experiences upon which to base these estimates. The above estimates are based upon conservative conclusions. The *Commission* believes the tax will yield the amounts shown.

Domestic Corporations:

A total of 4,614 informational returns from New Jersey corporations were tabulated. Under the proposal of the *Commission*, these 4,614 corporations would pay taxes aggregating about \$2 million.

As shown in Table XVIII, 13 large corporations account for \$942,000 or 50 per cent of the total tax indicated for all of the 4,614 corporations sampled. At the other extreme, also as shown in Table XVIII, 3,184, or 69 per cent of the sample, would be taxed at the minimum rate of \$25 and pay taxes amounting to \$79,600, or 4 per cent of the total.

Of the corporations contained in the sample, 709, or 15 per cent, either did not pay a corporation franchise tax to New Jersey in 1943 or did not report such tax in their informational return. This group is largely composed of manufacturers now exempt under the existing corporate franchise law and constitutes a 27 per cent coverage of such corporations (Table XIII).

TABLE XVIII

4,614 DOMESTIC (NEW JERSEY) CORPORATIONS

PROPOSED TAX AND PRESENT FRANCHISE TAX

(Thousands of Dollars)

<i>Classification and Tax Base</i>	<i>Number of Corporations</i>	<i>Amount of Proposed Tax</i>	<i>Amount of Present Franchise Tax</i>
13 large corporations ¹ (8/10 mills, etc.) ..	13	\$942	\$169
4,601 other corporations:			
Alternatives 1 and 2 (8/10 mills)	1,417	948	316
Alternative 3 (\$25)	3,184	80	35
Sub-Totals	4,601	\$1,028	\$351
Totals (4,614 corporations)	4,614	\$1,970	\$520

¹ Net worth exceeding \$100 million. Twelve of these companies would be taxed under Alternative 2. To avoid identification, they are not reported separately.

The remaining 3,905 corporations included within the sample reported 1943 corporation franchise payments totaling \$520,000. While these represent only 15 per cent of all franchise taxpayers, they account for 44 per cent of the amount of tax paid by all domestic corporations (Table XI). This condition indicates that the sample is disproportionately weighted with large corporation taxpayers, but this has been considered in the tax estimates.

Use of such a sample in estimating total revenues to be anticipated from the modified tax is limited by its failure to reflect an accurate cross section of all corporations. Adjustment for this deficiency is difficult, because there is no satisfactory standard. Recognizing the problems involved, however, the *Commission* feels reasonably confident that its recommendations will result in taxes payable by all New Jersey domestic corporations of about \$4.5 million (Table XIX).

TABLE XIX

ALL DOMESTIC (NEW JERSEY) CORPORATIONS

ESTIMATED YIELD UNDER PROPOSED TAX

(Millions of Dollars)

<i>Classification and Tax Base</i>	<i>Number of Corporations¹</i>	<i>Estimated Tax</i>
Large corporations ² (8/10 mills, etc.)	25	\$1.6
Other corporations:		
Alternatives 1 and 2 (8/10 mills)	8,875	2.4
Alternative 3 (\$25)	19,950	.5
Sub-Totals	28,825	\$2.9
Totals	28,850	\$4.5

¹ Based upon number of domestic corporations which paid New Jersey corporation franchise tax during 1944 (26,220) and those exempted under R. S. 54:13-7 (3,640). No account is taken of 8,415 corporations, delinquent under the franchise tax.

² Net worth exceeding \$100 million.

Foreign Corporations:

The *Commission* has tabulated 1,065 informational returns received from out-of-State corporations authorized to do business in New Jersey. Under this proposal, these foreign corporations would pay about one million dollars in taxes to New Jersey.

Of the returns received, 57 per cent indicated potential tax payments at the minimum rate provided (\$50). Four hundred fifty-three corporations in the sample would pay taxes totaling \$995 thousand at rates above the \$50 minimum. However, \$197 thousand, or 20 per cent, of this amount would be paid by only 2 corporations and 25 corporations would pay a total of \$530 thousand, or 53 per cent of the \$995 thousand.

As shown in Table XX, the corporations sampled account for \$196 thousand, or 56 per cent of the total amount collected during 1944 from all foreign corporations. Thus, with a coverage of less than 1/3 of all foreign corporation taxpayers, these results indicate that the sample, like that for domestic corporations, is strongly biased by an abundance of large taxpayers. In 1944, 76 per cent of all foreign corporation taxpayers paid the minimum tax.

TABLE XX

1,065 FOREIGN CORPORATIONS IN NEW JERSEY

PROPOSED TAX AND PRESENT FRANCHISE TAX

(Thousands of Dollars)

<i>Classification and Tax Base</i>	<i>Number of Corporations</i>	<i>Amount of Recommended Tax</i>	<i>Amount of Present Franchise Tax¹</i>
Alternatives 1 and 2 (8/10 mills)	453	\$995	\$170
Alternative 3 (\$50)	612	31	26
Totals	1,065	\$1,026	\$196

¹ Present Franchise Tax for 1,025 corporations only. Not reported by 7 taxpayers under Alternative 1 and by 31 under Alternative 2.

As a rough correction for the apparent unbalance in the foreign corporation sample, the yield from all corporations was based upon all of the returns except the 5 largest ones. The \$347 thousand anticipated from these 5 corporations was then added to the resulting estimate derived without them. In this way, their very great weight in the total was not compounded in the over-all estimate. In the light of past experience, it was also assumed that 70 per cent of all corporations would pay the minimum tax of \$50 instead of 57 per cent as shown by the sample. Upon this basis the *Commission* estimates that its recommendations will produce taxes payable by foreign corporations totaling about \$2 million (Table XXI).

TABLE XXI

ALL FOREIGN CORPORATIONS IN NEW JERSEY

ESTIMATED YIELD UNDER PROPOSED TAX

(Thousands of Dollars)

<i>Classification and Tax Base</i>	<i>Number of Corporations¹</i>	<i>Estimated Tax</i>
Alternatives 1 and 2 (8/10 mills)	1,090	\$1,874
Alternative 3 (\$50)	2,540	127
Totals	3,630	\$2,001

¹ Based upon the number of foreign corporations which paid a corporation franchise tax to New Jersey during 1944. No account was taken of 607 corporations, delinquent under the Franchise Tax.

As shown in Table XXI, the estimated tax payable by foreign corporations at 8/10 mill upon their net worth allocated to New Jersey amounts to \$1.9 million. This represents an average tax of \$1,719 based upon an average allocated net worth of \$2,148,750. All foreign corporations having \$62,500 or more of their net worth allocated to New Jersey are included within this over-all average. While there are many more small corporations than large ones, the *Commission* feels that its estimate is reasonable.

Examination of the returns received from foreign corporations shows that some of the nation's largest corporations are authorized to do business in New Jersey. Most of them, however, pay only a nominal franchise tax to New Jersey because of low allocation factors. An important reason for this is the lack of a clearly defined formula. In the past neither the Commissioner of Taxation or the corporation knew what was meant or expected in the way of allocation.

The assumptions leading to the *Commission's* estimates for domestic (New Jersey) corporations are these:

(1) The 13 large corporations shown in Table XVIII have a net worth in excess of \$100 million. Together they report a total net worth of \$2,711 million, or an average of \$209 million. They account for 14 per cent of all franchise taxes now paid to New Jersey by domestic corporations.

Comparison of these corporations with various corporate listings indicate that there are probably not another 13 corporations of equal size within New Jersey. As reported in Federal income tax returns, there were in 1940 only 403 corporations in the entire nation with total assets of more than \$100 million. There would be fewer with a net worth of such magnitude. Average net worth for these 403 of the nation's largest corporations is \$150 million. Upon the basis of these examinations, the total tax for all such corporations has been estimated at \$1.6 million.

(2) Some 1,187 corporations shown in Table XVIII would pay an average tax of about \$400 at 8/10 mills under Alternative 1; this means the average taxable (allocated) net worth is a little more than \$1 million. These 1,187 corporations represent 25 per cent of the total sample.

About 94 per cent of all corporations which filed balance sheets with their Federal income tax returns in 1940 reported total assets of (not net worth) under \$1 million, over one-half of them (54 per cent) reported total assets less than \$50 thousand. Property values have increased since 1940 and New Jersey is the domicile of many large corporations. While it seems reasonable that 26 per cent of all corporations should have a net worth of more than \$31 thousand (the point at which they would pay the minimum tax) allocated to the State, it is doubtful that they would have such net worth in amounts sufficient to average \$1 million.

This group includes many large manufacturing corporations with more than 50 per cent of their net worth allocated to New Jersey. While some of them may pay a greater tax under Alternative 2, most of them would be taxable under Alternative 1. For lack of precise information, a weight of $\frac{1}{2}$ has been assigned to the tax yield from this part of the sample, and an allowance of 10 per cent made for deductions from the base of stock in subsidiaries. As a result, the total tax for all such corporations has been estimated at \$1.3 million.

(3) The 230 corporations shown in Table XVIII are those included in the sample which had a net worth of more than \$31 thousand and an allocation factor under Alternative 1 of less than 50 per cent. They are taxable under the recommended program at 8/10 mills on their net worth allocated to New Jersey under the higher of Alternatives 1 or 2.

The average net worth for the 230 corporations sampled is \$5,425 thousand. Corporations included within this segment of the sample range in size from a net worth of \$62,500 to \$100 thousand. It contains only 86 corporations with net worth in excess of \$1 million and \$5,425 seems a high average unduly influenced by a few large corporations.

New Jersey is, moreover, the domicile of many national corporations of more than average size. In the absence of more adequate information, the average net worth for the sample has been adjusted to \$2 million. Assuming an average allocation factor of 50 per cent and allowing 10 per cent for deductions from the base of stock in subsidiaries the total tax for this group is estimated to be \$1.1 million.

In the course of its deliberations the *Commission* experimented with many possible combinations of tax rates and allocation factors. To expedite its analytical work, it confined some of these experiments to 110 corporations which accounted for about 72 per cent of the potential tax for the entire sample. Because some of these breakdowns are based upon the smaller group, the divisions as between Alternatives 1 and 2 may not be exact. However, the *Commission* feels that errors resulting from this procedure are not significant and do not materially affect the end results.

(4) The number of corporations which would pay the minimum tax (\$25) was estimated in direct proportion as they are represented in the sample, \$.5 million.

(5) The Sample upon which these estimates are based showed the following totals—

Net Worth:

- (1) The 4,614 domestic (New Jersey) corporations sampled reported net worth totaling \$4,605 million—an average of \$1 million; but
 - 682 reported no net worth or less than \$500;
 - 2,451 reported \$26 million, averaging \$11 thousand;
 - 307 reported \$13 million, averaging \$41 thousand;
 - 1,161 reported \$1,854 million, averaging \$1,597 thousand;
 - 13 reported \$2,713 million, averaging \$209 million.

- (2) The 1,065 foreign corporations sampled reported net worth totaling \$12,480 million—an average of \$12 million; but
57 reported no net worth or less than \$500;
131 reported \$2 million, averaging \$14 thousand;
858 reported \$6,178 million, averaging \$7 million;
19 reported \$6,301 million, averaging \$332 million.

Net Worth Allocated:

- (1) The 4,614 domestic (New Jersey) corporations reported net worth allocated to New Jersey by the formula for Alternative 1 totaling \$1,059 million.
- (2) The 1,065 foreign corporations reported net worth allocated to New Jersey by the formula for Alternative 1 totaling \$1,256 million.

Total Assets:

- (1) 4,538 of the 4,614 domestic (New Jersey) corporations sampled reported total assets valued at \$6,222 million. The remaining 76 corporations did not report the value of their assets.
- (2) 1,045 of the 1,065 foreign corporations sampled reported total assets valued at \$20,382 million.

Net Income:

- (1) 2,063, or 54 per cent of the 4,614 domestic (New Jersey) corporations sampled reported net incomes aggregating \$883 million.

Applying the proposed allocation formula used to determine taxable net worth, a total of \$374 million, or 42 per cent of this net income would be allocated to New Jersey by the three-way formula for Alternative 1. Taxed at 4½ per cent, as in New York, it would result in total taxes amounting to almost \$17 million.

- (2) 840, or 79 per cent of the foreign corporations sampled, reported net income totaling \$2,777 millions.

Applying the proposed allocation formula used to determine taxable net worth under Alternative 1, a total of \$278 million, or 10 per cent of this net income would be allocated to New Jersey. Taxed at 4½ per cent, as in New York, it would result in taxes amounting to about \$13 million.

As shown in Table XXII, the 4,614 domestic corporations sampled reported personal property taxes (tangible and intangible) totaling \$4 million. They also reported real property taxes totaling \$8 million. Together with \$520 thousand of franchise taxes, these taxes amount to a total of \$13 million paid to New Jersey and its municipalities by the 4,164 corporations.

TABLE XXII

4,614 NEW JERSEY CORPORATIONS SAMPLED

NEW JERSEY PROPERTY TAXES AND FRANCHISE TAXES AS PER CENT OF NET INCOME ALLOCATED TO NEW JERSEY

(Thousands of Dollars)

Size of Personal Property Tax	Number of Corpora- tions	Amount of Personal Property Tax	Amount of Franchise Tax	Amount of Real Property Tax	Total Taxes	Net Income Allocated to New Jersey	Total Taxes as % of Allo- cated Income
Not reported	478	.....		\$409	\$447	\$3,420	13.1
No tax	2,151	.....	106	2,347	2,453	78,321	3.1
\$5-\$104	944	\$37	33	514	584	53,762	1.1
\$105-\$254	351	58	13	624	695	93,500	.7
\$255-\$494	228	80	14	279	373	5,255	7.1
\$495-\$1,004	163	115	16	324	455	7,905	5.8
\$1,005-\$5,004	198	449	84	566	1,099	18,222	6.0
\$5,005-\$10,004	42	303	41	277	621	10,331	6.0
\$10,005-\$25,004	30	421	24	666	1,111	15,174	7.3
\$25,005 and more	29	2,634	151	2,327	5,112	88,514	5.8
Totals	4,614	\$4,097	\$520	\$8,333	\$12,950	\$374,404	3.5

Note: Based upon totals of all answers to questions. Because all corporations did not answer all questions, these results may not be entirely accurate.

Also as shown in Table XXII, the 4,164 New Jersey corporations sampled allocated net income to New Jersey totaling \$374 million. These reports indicate that the present New Jersey State and local taxes amount to the rough equivalent of a tax at 3.5 per cent upon net income allocated to the State. As compared with neighboring States where income taxes are levied at rates ranging from 2 to 6 per cent in addition to property taxes, New Jersey levies a low tax upon corporations having income.

* * *

BASE AND EFFECT:

Any tax program which is directed toward restoring equity to a tax environment in which inequities are the rule cannot have the same effect upon all taxpayers. The proposals of the *Commission* are such as to produce tax revenues equal to those now derived from the corporation franchise (capital stock) tax and a reasonable tax upon intangible personal property held by corporations. They also aim toward more equitable treatment of the taxpayer.

The present franchise and personal property tax is not equitably distributed among all corporation taxpayers in the State. This means that the effects of the *Commission's* recommendations will not be the same for all corporations. Some corporations have been paying a large share of taxes under the present practices and can expect a net tax reduction. Other corporations have not been paying their fair share of taxes under existing conditions and can expect a net increase in their tax bill.

The effect of the *Commission's* recommendation for an equitable redistribution of the tax burden among corporations can be shown by examination of some of the corporations sampled. All of the 4,614 domestic corporations sampled would pay a tax amounting to \$1,970,000 under the proposed program. Of these 4,614, however, 110 large corporations would pay \$1,425,000 or 72 per cent of the total. These same 110 corporations now pay corporation franchise taxes aggregating \$380,000 or 73 per cent of the amount paid by all of the 4,614 corporations sampled. They account for \$1,431,000, or 35 per cent, of the \$4,097,000 personal property taxes (tangible and intangible) reported by 1,985 of the 4,614 corporations. The other 2,629 corporations sampled either do not pay a personal property tax or they did not report it in their informational returns.

As shown in Table XXIII, the proposed tax for 29 of the 110 large corporations would amount to less than they now pay to the

TABLE XXIII

110 SELECTED LARGE CORPORATIONS
 PROPOSED TAX COMPARED WITH PRESENT FRANCHISE AND PERSONAL PROPERTY TAX
 (Thousands of Dollars)

Classification	Number of Cor- porations	Recom- mended Tax	Present Franchise and Personal Tax			Assuming All Present Personal Tax Assessed is Intangibles	
			Total	Franchise	Personal Property	Tax Decrease	Tax Increase
A. <i>Flemington Situs:</i>							
(1) Present Franchise Tax exceeds recommended tax	13	\$26	\$80	\$41	\$39	\$54	.....
(2) Present Franchise Tax and Personal Property Tax ex- ceeds recommended tax [not including (1) above]	24	435	798	115	683	363	.....
(3) Recommended Tax exceeds Present Franchise and Per- sonal Property Tax	15	607	244	105	139	.....	\$363
Sub-Totals	52	\$1,068	\$1,122	\$261	\$861	\$417	\$363
B. <i>Other Situs:</i>							
(1) Present Franchise Tax exceeds recommended tax	16	\$15	\$58	\$30	\$28	\$43	.....
(2) Present Franchise Tax and Personal Property Tax ex- ceeds recommended tax [not including (1) above]	22	141	565	30	535	424	.....
(3) Recommended Tax exceeds Present Franchise and Per- sonal Property Tax	20	202	67	60	7	.....	\$135
Sub-Totals	58	\$358	\$690	\$120	\$570	\$467	\$135
TOTALS	110	\$1,425	\$1,812	\$380	\$1,431	\$884	\$498
[Numbers rounded.]						\$386 (net decrease)	

State in franchise taxes. Assuming all of their personal property taxes to be levied against intangibles only, these 29 corporations would receive tax reductions totaling \$97,000. Also, assuming that all personal property taxes represent levies against intangibles only, another 46 of the 110 would receive net tax reductions amounting to \$787,000 and 35 of them would receive tax increases amounting to \$498,000. In the aggregate, all of the 110 corporations together would receive net tax reductions totaling \$386,000. These possible savings are over-stated to the extent that personal property taxes reported by the 110 corporations represent levies against their tangible personal property.

The assumption that all personal property taxes paid by the 110 corporations represent levies against their intangibles is not a satisfactory one. Even some of the corporations with Flemington situs pay personal property taxes in other New Jersey municipalities where they hold property. However, personal property taxes paid by corporations with Flemington situs reflect more nearly taxes against intangibles alone than do those paid by corporations with situs elsewhere in the State. For this reason, the comparisons in Table XXIII have been shown separately for corporations located in Flemington.

Table XXIII indicates that the tax program recommended by the *Commission* will result in taxes for 52 Flemington corporations about equal to what they are now paying in franchise and personal property taxes. Because the Flemington tax upon intangibles is generally thought to be a reasonable one, the *Commission* regards these results as favorable. They show that as measured by these 52 Flemington corporations, the program will result in a tax roughly equivalent to the present corporate franchise tax and a reasonable tax upon intangible personal property.

* * *

ALLOCATION FACTORS:

Under the allocation for Alternative 1, both foreign and domestic corporations would be taxed only on that portion of their entire net worth which is allocable to New Jersey according to the gross receipts-tangibles-payrolls method of allocation. This method, which uses the so-called Massachusetts formula, consists of determining, separately, the ratio of tangible property in the State to tangibles everywhere, of gross receipts in the State to gross receipts everywhere, and of payrolls in the State to payrolls everywhere, and averaging the three fractions so determined. The

resulting average fraction is the allocation factor for each company, which determines the proportion of its entire net worth to be included in the tax base.

[More specifically, it is proposed that these factors be defined as follows:

(A) The average value of the taxpayer's real and tangible personal property within the State during the period covered by its report divided by the average value of all the taxpayer's real and tangible personal property wherever situated during such period;

(B) The receipts of the taxpayer, computed on the cash or accrual basis according to the method of accounting used in the computation of its net income for Federal tax purposes, arising during such period from:

(1) sales of its tangible personal property located within the State at the time of the receipt of or appropriation to the orders,

(2) sales of any such property not located at the time of the receipt of or appropriation to the orders at any permanent or continuous place of business maintained by the taxpayer without the State, where the orders were received or accepted within the State,

(3) services performed within the State,

(4) rentals from property situated, and royalties from the use of patents or copyrights, within the State,

(5) all other business receipts earned within the State,

divided by the total amount of the taxpayer's receipts, similarly computed, arising during such periods from all sales of its tangible personal property, services, rentals, royalties and all other business receipts, whether within or without the State;

(C) The total wages, salaries and other personal service compensation, similarly computed, during such period of officers and employees within the State divided by the total wages, salaries and other personal service compensation, similarly computed, during such period of all the taxpayer's officers and employees within and without the State.]

While this formula is generally used throughout the country by the various states for allocating corporate income, there is considerable variation among the States as to the character of gross receipts attributable to each State. The problem is a very complex one, and has provoked wide differences of opinion among tax experts.¹

¹ See "Report of the Committee of the National Tax Association on Allocation of Income," in National Tax Association, *Proceedings of the Thirty-Second Conference, 1939 (1940)*, pp. 190-232; and William J. Shultz, "Sales Attribution in State Tax Allocation Formulas," 29 *Bull. Nat. Tax. Assoc.* 153-157 (February, 1944).

The principal problem in connection with allocation of gross receipts occurs in the specification of sales to be attributable to the taxing State. For the purpose of income taxes, as distinguished from the net worth tax which is proposed, the taxing State may reasonably claim a portion of the profit which is attributable to its marketing area or to sales organization operating within its boundaries. It may reasonably be assumed that there would be no profits were it not for activity in the State of distribution of the merchandise or of operation of the sales organization. Accordingly a number of States attribute gross receipts from sales to the State of the sales office, and some to the State of distribution of the merchandise.

The proposed net worth tax, however, is intended to reflect a measure of the employment of capital in New Jersey, and in no way taxes the sales themselves or the income resulting from sales. For this reason, the allocation formula should give appropriate weight to each of the factors which indicate the employment of capital here. The use of the place of production of merchandise, or of the appropriation to orders accordingly expresses the character of New Jersey as a predominantly producing State, much more reasonably than either the "sales-office" or "destination" methods of allocating gross receipts.

It is recognized that the proposed formula might on its face tend to encourage warehousing by some New Jersey manufacturers, but the proposed tax is so small that it is not anticipated that such warehousing could result in any net financial advantage.

From the viewpoint of ease of reporting, and uniformity, the proposed formula has the advantage of being identical with that recently adopted in New York.

The proposed Alternative 2 allocation, according to the ratio of assets in the State to total assets, will very infrequently give a higher allocation factor in-State than the three-way formula for the ordinary business corporation. It is intended primarily to provide an adequate replacement base in the case of corporations having relatively large holdings of intangible personal property, but insufficient activity in New Jersey to produce a reasonably substantial base under the tangible property-gross receipts-wages formula of Alternative 1. Such corporations are the most direct beneficiaries of the abandonment of taxation of intangibles upon an *ad valorem* basis, and for this reason justify the alternative formula. The total assets allocation under Alternative 2 will also

minimize the possibilities for tax avoidance under Alternative 1 in the case of domestic corporations.

Allocation according to total assets will require that all intangible personal property of domestic corporations be deemed to be within the State, but will give full out-of-State recognition to tangible property according to its physical location. This is not only just tax policy in light of New Jersey's intangibles tax history, but places the proposed formula beyond question under the Federal Constitution.¹ It is similar in effect to the allocation of "corporate excess" in Massachusetts; to the apportionment of capital stock of domestic corporations in Pennsylvania, and to the allocation of income used until recently under the New York franchise tax.

✓ In order to prevent unfair or even unconstitutional results in given cases, the rigidity of the allocation formulas is relieved by a provision authorizing the tax director to adjust the amount of allocable net worth upon the showing of an inequitable result under the formula. It is believed that such a provision is necessary under the decisions of the United States Supreme Court.²

* * *

The *Commission* realizes the limitation of the above proposal, but it wishes to emphasize this point: The ownership of corporate property is only a remote measure of corporate ability to pay taxes. So long, therefore, as property is the base of the tax, so long will there be inequalities in its application. It is not possible to tax business activity with satisfactory fairness without giving consideration to its earnings. The *Commission* has been assured on every hand that this is politically impossible, and the members, themselves, are well aware of the public resistance to anything that resembles an income tax or even an income factor in a tax formula. For this reason, any reference to earnings in the formula has been carefully avoided, and the property tradition maintained as the basis of the tax. 'Because net worth reflects net corporate ownership, it more nearly reflects an equitable property tax base than do property holdings. 'The tax is, for the most part, so small, however, that the inequalities are not serious in dollar volume. ✓

The proposal is vastly superior in equity to the present capital stock tax and to the chaos of the present *ad valorem* tax on

¹ *Newark Fire Insurance v. State Board of Tax Appeals*, 307 U. S. 313 (1939); *Cream of Wheat Co. v. Grand Forks County*, 253 U. S. 325, 40 Sup. Ct. 558 (1920).

² *Hans Rees' Sons, Inc., v. North Carolina, ex rel. Maxwell*, 283 U. S. 123, 51 Sup. Ct. 385 (1931).

intangibles. It is recommended as the best practical solution of the problem referred to the *Commission*. New Jersey is a great industrial State but its densely populated areas are still attempting to finance their municipal services as if they were agrarian communities. Their real wealth lies in business activity *not* in real estate; and the *Commission's* proposal suggests the establishment of a modest activity base.

The *Commission* feels assured that this proposal will fulfill its original purpose; namely, "to remove the threat of what is commonly called 'tax lightning' from intangible personal property; and to provide a sound base through which a substantial amount of this property, now legally taxable but untaxed, can be reached for tax purposes." If this proposal is adopted, intangible personal property will no longer be taxable in New Jersey, but corporate held intangibles of every kind will be brought into the tax base as a partial measure of net worth. The *Commission* would emphasize again the significance of this proposal in the broad background of the State:

"Were the proposals of the *Commission* to receive favorable action by the Legislature, it would be the *first* State-wide tax adjustment affecting business generally since the enactment of the capital stock tax in 1884; it would be the *first* step toward modernizing a tax structure that developed under a simple agrarian economy and remains substantially unchanged today; it would be the *first* attempt to give long-term guidance to a tax policy which might in the next decade develop a program which more nearly fits the activities and responsibilities of a great industrial State."¹

* * *

There are three related problems upon which the *Commission* feels it should report:

First: adjustments in municipalities affected by the repeal of the intangible personal property tax. With the elimination of the present property tax on intangible personal property, the borough of Flemington as well as all of Hunterdon county will face an extreme adjustment in its tax structure. Tax rates in some municipalities other than Flemington will (unless adjustments are made) increase more than three-fold, and in every case will be considerably higher than rates prior to 1937, when Flemington had no intangibles on its tax rolls.

¹ *Letter of Transmittal*, pp. xii-xiii, *supra*.

The underlying cause of these increases, *using 1945 for illustration*, is the State school tax. This is a State-levied tax of 2.9 mills on each dollar of assessed valuation, *based on the assessed valuation of the previous year*. The State-wide school levy for 1945 will be determined by multiplying the 1944 net valuations upon which State, county and State school taxes are apportioned by 2.9 mills—the statutory rate. This will require a levy of \$15,997,708 in 1945. Of this sum, Hunterdon county will be required to provide 5.36 per cent—the ratio that the net valuations of Hunterdon county bear to the total net ratables of the State. This amounts to \$858,646. The sum will be apportioned among the Hunterdon county municipalities, and a rate levied that will raise this amount. It will mean a rate increase from \$.2315 per hundred to \$.27945 per hundred—an increase of about 1200 per cent. This will result in passing a large part of the loss of the intangible ratables in Flemington to other municipalities throughout the county, on the basis of the revised (1945) net ratables.

The county tax—90.7 per cent of which is now borne by Flemington (see Table V, p. 15) will likewise be largely passed on to other municipalities in the county. It will, under the assumption of this estimate, increase from \$.09 cents per hundred to \$.877 per hundred—an increase of about 1000 per cent. This is not, perhaps, as serious as the State school tax levy because there can be a certain amount of flexibility in the county budget.

A study of the tax rates of Hunterdon county municipalities indicates that almost all were able to reduce their tax rates between 1937 to 1944, because of Flemington's assumption of a large part of State school and county taxes. Table XXIV shows this development and likewise the estimated effect on the tax rate of 1945—with net valuations for apportionment of the State school tax to the county as of the *previous year* (1944)—column 6; and with net valuations for the State school tax as of the *current year* (1945)—column 7—assuming the loss of intangible ratables.¹ In these estimates no allowance was made for changes which may occur in local school tax rates as a result of changes in the State school tax or for increased "Reserve for delinquent taxes" which will be necessary because of higher levies.

¹ These estimates are based on the following assumptions: the repeal of the present intangible personal property tax in 1944, and the consequent loss of intangible ratables; valuations for 1945 were assumed to be the same as for 1944, except in Flemington, where \$265 million were removed from the assessment rolls; the county tax levy was assumed to be the same for 1945 as for 1944. Hunterdon county's share of the State school tax was estimated at \$859,000 (without adjustment) for column 6, and \$93,000 (with adjustment for column 7) and all other levies were assumed to carry over from 1944 to 1945 without change, except in Flemington, where the 1942 local purpose levy was used.

TABLE XXIV

LOCAL TAX RATES—HUNTERDON COUNTY

(With corrections for adjustment of the State School Tax)

1937-1945¹

	1 1937	2 1941	3 1942	4 1943	5 1944	6 1945 ² Un- adjusted	7 1945 ³ Adjusted
Alexandria	\$4.09	\$2.86	\$2.84	\$2.48	\$2.84	\$6.18	\$3.68
Bethlehem	4.75	2.61	2.45	2.47	2.79	6.17	3.67
Bloomsbury	5.10	4.58	4.70	4.50	4.30	7.72	5.22
Califon	3.79	3.32	3.25	2.47	2.35	5.71	3.21
Clinton Town	2.75	2.70	2.54	2.45	2.59	5.96	3.46
Clinton Township ..	3.42	2.43	2.32	1.73	2.09	5.45	2.95
Delaware	3.21	3.20	3.46	2.63	2.63	5.95	3.45
East Amwell	3.68	2.91	3.28	2.71	3.02	6.36	3.86
Flemington	3.91	.74	.74	.28	.43	7.15	4.65
Franklin	4.11	2.59	2.96	2.51	2.80	6.18	3.68
Frenchtown	3.93	3.72	4.49	3.19	3.55	6.91	4.41
Glen Gardner	3.57	3.96	3.87	3.81	4.17	7.56	5.06
Hampton	4.37	4.56	4.01	3.71	4.32	7.79	5.29
High Bridge	4.01	3.36	3.44	3.22	3.62	7.01	4.51
Holland	1.76	.68	.79	.48	.56	3.92	1.42
Kingwood	3.08	2.56	2.57	1.67	1.97	5.32	2.82
Lambertville	4.19	4.09	3.64	4.82	4.81	8.22	5.72
Lebanon	3.62	2.34	2.55	2.30	2.59	5.98	3.48
Lebanon Township ..	4.21	2.85	3.07	3.20	3.32	6.67	4.17
Milford	2.77	1.82	2.05	1.64	1.64	4.99	2.49
Raritan	2.53	2.10	2.22	1.65	1.80	5.17	2.67
Readington	4.05	3.54	3.31	2.69	2.51	5.88	3.38
Stockton	3.43	2.77	2.86	2.96	2.72	6.09	3.59
Tewksbury	4.47	2.75	2.76	2.66	2.76	6.10	3.60
Union	3.65	2.65	2.30	1.83	1.91	5.29	2.79
West Amwell	3.63	2.37	1.97	2.00	2.16	5.51	3.01

¹ Assuming 1945 to be the first year since State Abstract of Ratables after the removal of the intangible personal property tax, and no changes in local school tax rates. These rates are slightly lower than the rates that actually would result, since no correction has been made for the need for larger reserves for uncollected taxes.

² Assuming no adjustment for State school tax levy.

³ Assuming State school tax levy is based on net valuation of current year (1945) rather than on the previous year (1944).

Should the recommendations of the *Commission* be adopted, the borough of Flemington will probably be in a more favorable position than the other municipalities of Hunterdon county. A study of the tax levies in Flemington borough from 1935 to 1944 (Table V, p. 15) indicates that Flemington has increased its local purpose levy from \$31,400 in 1937 to \$216,672 in 1944. In 1944, it is reported to the *Commission* that Flemington's operating budget totalled about \$85,000, leaving a reserve for "uncollected taxes" of about \$135,000. Although Flemington is currently collecting

99 per cent of its annual levy, much lower collections were "anticipated" for 1944. There can be no doubt but that very sizable surpluses are available. Indeed, Table V (p. 15) indicates that Flemington levied about four times as much in 1944 as its local purpose levy required.

All other municipalities in Hunterdon county have shown substantial savings in tax rates over the past few years. More money was refunded in State aid for schools in 1944 than was raised by the school districts themselves.¹ The *Commission* is informed that the schools of Hunterdon county were advised not to anticipate more in State aid in preparing their 1944 budgets than they received in 1943. This sum was \$219,000, indicating a surplus of about \$400,000 accumulated in 1944.

In 1945, the State school tax in Hunterdon county, as has been indicated, will be about \$858,647, of which \$772,782 (90 per cent) will be returned to the county for redistribution among the school districts. Allowing for the \$219,300 anticipated in the 1944 budgets (plus small amounts from other sources) there would probably be a surplus of about \$550,000 in 1945 or a total of some \$950,000 for the years (1944-1945) providing the surpluses are not used. These surpluses, if accumulated, would be sufficient to run the schools for two years *without* any local school levy. Assuming the removal of the intangible property tax base in 1945, these results indicate that it would certainly be possible for the Hunterdon county schools to avoid any increases in taxation during the transition period.

In spite of this favorable condition, it would require the closest cooperation among school boards and local governing bodies to place this surplus to the best advantages of the taxpayers. This type of cooperation would, under the circumstances, be difficult to achieve. It would require that the schools relinquish their surpluses to reduce taxes for other local purposes. *In lieu* of this, the *Commission* proposes two adjustments to ease the transition of Flemington and Hunterdon county to a normal tax base:

First: To provide by law that the net valuation for the apportionment of school taxes in Hunterdon county be made for the current year (instead of the prior year) in which the loss of intangible ratables is first effective.

¹ \$617,000 was returned to Hunterdon county from the State school tax and \$441,600 was raised by the local School districts.

The effect of this recommendation will be to reduce the State school tax base by \$264 million. This means the 1945 State school tax will be reduced by \$768,500 from \$15,997,800 to \$15,229,300. All of these reductions would occur in Hunterdon county where the tax would become \$90,100 instead of \$858,600. Ninety per cent, or \$691,700 of the decrease would be borne directly by Hunterdon county schools and 10 per cent, or \$76,800, would be borne by all schools in the State.

Second: To provide that adjustments be made in the first two quarterly tax payments to reflect the current levy rather than the levy of the prior year.

The effect of this recommendation will be to average the low quarterly payments on account of 1944 taxes and the higher quarterly payments on account of 1945 taxes. In this way, the transition is much more gradual.

Aside from these proposals, the *Commission* has no further recommendation to make pertaining to the adjustment of the Flemington situation.

Other municipalities in the State will be affected to a far lesser extent than Flemington. As has been indicated, precise figures are difficult to obtain. Tables VI and VII (pp. 17-18) indicate the best information that the *Commission* has been able to obtain indicating a possible loss in intangible ratables among 13 municipalities (excluding Flemington) of \$9,841,807. Newark, Jersey City and Trenton did not reply to the *Commission's* questionnaire. There is reason to believe that Newark is receiving some revenue from intangibles—probably not to exceed \$450,000. The current Jersey City situation is not known to the *Commission*, but there is evidence that in 1942, Jersey City was receiving at least \$1,400,000.¹ The *Commission* was informed that Camden collected about \$30,000 from intangibles.² It has received no report from Trenton.

* * *

Distribution of the yield: The *Commission* has frequently emphasized that it is not a revenue-raising commission nor is it in any sense a spending commission. It was appointed by the Legislature to adjust inequalities in the tax structure—particularly as these were exemplified in the treatment of intangible personal property.

Nevertheless, the *Commission* has been constantly aware of both the demand and the need for the relief of real estate from

¹ *Public Hearings*, p. 34.

² *Ibid.*, p. 87.

an excessive burden of taxation. Recent developments have emphasized the hazards and uncertainties involved in changing the property tax base of even one large taxpayer in a single municipality, and the *Commission* believes that until tax pressures are removed from real estate, there can be neither tax security for the local property owner nor fiscal adequacy for our municipal services. It therefore proposes that a beginning be made at once to relieve property owners from an excessive and unfair burden of taxation. To this end, therefore, the *Commission* recommends as follows:

That out of an approximate \$6 million to \$7 million estimated annual yield from the proposed *Corporation Business Tax*, beginning in 1946, \$4 million shall be applied toward reduction of the State School Tax upon local property. The remainder shall be paid into the State General Fund to assure replacement of revenues lost through the proposed repeal of the State Capital Stock Tax.

* * *

Third. The Establishment of a Permanent Legislative Commission on State Tax Policies: The *Commission* strongly recommends that a Permanent Legislative Commission on State Tax Policies be established by the Legislature to report to the Legislature at each session on necessary and timely adjustments in the tax structure. Only through the careful and deliberate planning of such a *Commission* over a period of years can the many problems in New Jersey taxation be solved.

The *Commission* is acutely aware of the many important gaps in its recommendations which pertain only to the limited field of personal property in which it has been working. The question of the taxation of tangible personal property used in business, is as vital as the question of intangibles. Though neither as extreme nor as drastic as the intangible problem, "tax lightning" is a real hazard on business personalty and has the additional danger of being more widespread, more consistently and more continuously applied and equally subject to abuse and discrimination.

The complete exemption of intangible personal property raises separate problems with respect to individual residents and with respect to business. Even as to business, corporate and unincorporated business require separate consideration. While individuals will benefit from the *Commission's* recommendations, no attempt has been made to solve the problem of intangibles held

by individuals. At present they offer no problem as compared to corporate held intangibles, but their exemption from taxation nevertheless, raises important questions of both policy and methods.

Among these is the possible effect of the exemption of intangibles held by individuals on the present bank stock tax. The State may constitutionally tax national banks only to the extent authorized by Congress in Federal statutes. The present statute, commonly cited as *R. S. 5219* (12 *U.S.C.A.* §548) provides:

"The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with: . . .

"(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: *Provided*, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed money capital within the meaning of this section."

It is not clear from the decisions of the courts as to what is meant by "other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks." The leading United States Supreme Court case, however, held unconstitutional a tax on bank stock at the rate of \$1.75 per hundred, while the rate was only 95 cents per hundred dollars valuation of intangibles held by individuals, including bonds, notes, etc., and it was shown that the capital taxed at the lower rate was in relatively material competition with the national banks in the State.¹

The bank stock tax is assessed to the various banks and is imposed at a rate of 7½ mills on a defined value of shares of common stock of national and State banks in New Jersey—as compared with the proposed complete exemption of individuals. For this reason, it is quite probable that the complete exemption of all intangible personalty held by individuals in New Jersey will create a substantial basis of litigation in which the bank stock tax could be declared unconstitutional as to national banks. It is of course unlikely in that event that State banks would continue to be taxed

¹ *Merchants National Bank of Richmond, Va., v. City of Richmond*, 265 U. S. 635, 41 Sup. Ct. 619 (1929).

under the existing plan. If such a situation were to materialize, it would be an appropriate matter for the proposed permanent *Commission*.

The taxation of farm and household personalty is still another field which requires thorough examination and adjustment. This is of great importance to our rural counties and of equal importance to our suburban areas. Particularly in the matter of household personalty, the *Commission* has been impressed with evidence of the greatest discrimination and neglect—not only as among municipalities, but among individual taxpayers themselves.

It is impossible to treat any portion of the New Jersey tax structure and not raise large ancillary problems, some of which are more significant than the one under consideration. It has been beyond the facilities of the *Commission* to do more than it has proposed, and at the same time inform itself on the great need for a thorough examination and adjustment of our tax structure. It would be futile to adopt these proposals and fail to provide for a continuous study of the vital problems that remain. The *Commission* would repeat that no other great industrial State has done so little in the past fifty years to bring its tax structure into line with its social, economic and political development. It is not possible to overcome the effect of this long-neglect with a single statute or a series of statutes. So deep have been the effects of an archaic tax structure that the disturbance of a single exemption or even the adjustment of an important taxpayer threatens to disrupt significant parts of the economy.

One of the most important developments out of the work of this *Commission* is a realization of the need to establish a *Permanent Legislative Commission on State Tax Policies* to guide New Jersey toward sound and equitable methods of supporting its public services.

* * *

APPENDIX A

TAX EXEMPTION OF INTANGIBLE PERSONALTY IN NEW JERSEY

[EXTRACTED FROM A MEMORANDUM SUBMITTED TO THE JOINT LEGISLATIVE COMMITTEE ON INTANGIBLES TAXATION, NOVEMBER 27, 1942, BY JOHN B. MCGEEHAN, ESQ., COUNSEL TO THE COMMISSION ON STATUTES.]

Intangible Personal Property Not Subject to Taxation Under General Tax Act

The following intangible personal property cannot be reached by taxation under our General Tax Act because it is either (a) inherently non-taxable, (b) excluded from taxation, (c) not permitted to be listed for taxation, (d) exempt from taxation provided that in the case of securities sworn claim for exemption is filed, as required by 34:4-5, or (e) not subject to taxation under the General Tax Act but taxed under a separate act. In the following list the classification into which each appears to fall is indicated by (a) (b) (c) (d) (e), as the case may be.

I. All intangible personal property owned by:

1. United States, New Jersey, or any county, school district or taxing district thereof (54:4-3.3) (Pt. a, pt. d).
2. The Morris Canal and Banking Company, in trust for the State, so long as the title is so vested (54:4-3.3) (d).
3. Any organization under the jurisdiction of this State, or of the United States, when owned and used for military purposes by it, on condition that all the income derived from the property above the expense of its maintenance and repair shall be used exclusively for such military purposes (54:4-3.5) (d).
4. Any exempt firemen's association, firemen's relief association and volunteer fire company incorporated under the laws of this State, which is used exclusively for the purpose of the corporation (54:4-3.10) (d).
5. An association or corporation organized under the laws of this State to maintain, and actually maintaining a public fire patrol or salvage corps for the public purpose of saving life and property from destruction by fire, when used exclusively for the purpose of such association or corporation (54:4-3.13) (d).

6. Any corporation organized under the laws of New Jersey to provide instruction in agricultural pursuits for soldiers and sailors of the United States who have been permanently crippled while in active service in time of war, provided all income derived from the property in excess of the expense of its maintenance and operation shall be used exclusively for the benefit of such crippled soldiers and sailors (54:4-3.15) (d).
7. Any association or organization, either incorporated or unincorporated, organized for the purpose of furnishing voluntary aid to the sick and wounded of armies in time of war or for the purpose of continuing and carrying on a national and international system of relief in peace time to mitigate the suffering caused by pestilence, famine, fire, floods or other great national calamities, or for both of said purposes, if the legal or beneficial ownership is in such association or organization and no part of such property is used for pecuniary profit (P. L. 1942, c. 10) (d).
8. Port of New York Authority when acquired by it for the construction, operation and maintenance of such bridges (Arthur Kill Bridges) (32:1-66) (b).
9. Port of New York Authority when acquired by it for the construction, operation and maintenance of such bridge (George Washington Bridge) (32:1-90) (b).
10. Port of New York Authority when acquired by it for the construction, operation and maintenance thereof (Bayonne Bridge) (32:1-113) (b).
11. Port of New York Authority when acquired or used by it for such purposes (vehicular bridges and tunnels within the Port of New York District, including the Holland Tunnel and the Midtown Hudson Tunnel) (32:1-131) (b).
12. Delaware River Joint Commission when acquired or used by it for such purposes (32:3-12) (b).
13. Delaware River Joint Toll Bridge Commission when acquired or used by it for purposes authorized by this agreement (32:8-9) (b).
14. Hackensack River Sewerage District when acquired by it for the purposes of this chapter (58:15-42) (b).
15. South Jersey Transit Authority when acquired or used by it for such purposes (48:21-17) (b).

23. By an Industrial Commission created under P. L. 1936, c. 184, for the purposes authorized by said act only from paying to the city by which created any taxes upon said property. (P. L. 1936, c. 184) (b).

III. Specific intangible personal property regardless of ownership or use:

24. Bonds and other securities of the United States (54:4-3) (a).
25. Stock of National Banks which are located in another State (a).
26. Bonds, securities, improvement certificates, and other evidences of indebtedness of this State or any county, taxing or school district thereof (54:4-3.1) (d).
27. Shares of stock of any street railway, traction, gas and electric light, heat and power corporations, using or occupying public streets, highways, roads or other public places in this State (P. L. 1940, c. 5, section 3) (b).
28. Shares of stock, bonds and certificates of indebtedness of railroad companies, when real and tangible personal property of the company is taxed, under the Railroad Tax Act (P. L. 1941, c. 291) (b).
29. Shares of capital stock of any domestic insurance company (54:4-20, 54:4-22) b).
30. Shares of stock of any domestic corporation, which by contract with this State is expressly exempted from taxation (54:4-3.8) (a).
31. Shares of stock of any domestic corporation, the capital or property of which is made taxable to or against the corporation (54:4-3.8) (d).
32. Shares of stock of a foreign corporation owned by citizens or corporations of this State, provided taxes have been actually assessed and paid by the foreign corporation in the foreign State within twelve months prior to our assessing date (54:4-3.2) (d).
33. Bonds and other securities issued by the Port of New York Authority (32:1-33) (d).
34. Bonds and other securities and obligations issued by the Delaware River Joint Commission (32:3-12) (d).
35. Bonds and obligations issued by the Delaware River Joint Toll Bridge Commission (32:8-9) (d).

36. Bonds of the Hackensack River Sewerage Commission (58:15-64) (d).
37. Bonds and other securities and obligations of the South Jersey Transit Authority (48:21-17) (d).
38. Bonds or other evidences of indebtedness of the South Jersey Port Commission (12:11-40) (d).
39. Tunnel revenue bonds issued by the Gloucester Tunnel Commission (32:13A-8) (d).
40. Bonds issued by municipalities for sewer and disposal plants under Article 3 of chapter 63 of Title 40 (40:63-140) (d).
41. Bonds or obligations issued by an Industrial Commission created under P. L. 1936, c. 184 (40:190-12) (d).
42. Bonds issued by counties to provide for a district welfare-house under chapter 1 of Title 44 not subject to taxation except for State purposes (44:1-53) (d).
43. Mortgages or debts secured by mortgage on property exempt from taxation under chapter 4 of Title 54, the General Tax Act (54:4-3.14) (d).
44. Mortgages or debts secured by mortgage on real property which is taxed in this State (54:4-33) (c).
45. Mortgages or debts secured by mortgage on personal property or on both personal and real property, unless a deduction therefor shall have been claimed by the owner of the mortgaged premises and allowed by the assessor (54:4-15) (c).
46. Shares of stock of savings banks organized under the authority of this State (54:9-3) (b).

IV. Specific intangible personal property when held by particular persons, etc.:

47. The funds of all charitable and benevolent institutions and associations collected and held exclusively for the sick and disabled members thereof, or for the widows of deceased members, or for the education, support or maintenance of the children of deceased members (54:4-3.7) (d).
48. The funds of hospital service corporations subject to P. L. 1938, c. 366, P. L. 1938, c. 366 (d).
49. The funds and property of medical service corporations subject to P. L. 1940, c. 74, P. L. 1940, c. 74 (d).

50. All endowments and funds held and administered exclusively for charitable, benevolent, religious, or hospital purposes within this State (54:4-3.7) (d).
51. Moneys in the various funds created under the Teachers' Pension and Annuity Fund Law (18:3-110) (d).
52. Moneys in the various funds created under the State Employees' Retirement System Act (43:14-42) (d).
53. Share loans, cash and liquid investment fund, and any other statutory investment fund of domestic building and loan associations (54:4-3.22) (d).
54. Cash on hand or on deposit, and loans on collateral of savings banks, mutual savings banks, and institutions for savings organized under the laws of this State (54:4-3.23) (d).
55. Moneys of any person, firm, association or corporation, individually or in a fiduciary capacity, or to the credit of any person, firm, association or corporation, individually or in any fiduciary capacity with any bank, trust company, national bank, or savings bank doing business in this State (54:4-3.23) (d).
56. Bonds or obligations issued by a railroad or public utility company of any State while owned by a savings bank or institution for savings of this State (54:4-33) (d).
57. Notes, investment securities or cash owned by any credit union under P. L. 1938, chapter 293 (P. L. 1938, chapter 293, section 46) (b).
58. The right of a teacher to a pension, an annuity, or a retirement allowance, to the return of contributions, any benefit or right accrued or accruing to any person under the Teachers' Pension and Annuity Fund Law (18:13-110) (d).
59. The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, any benefit or right accrued or accruing to a person under the provisions of the State Employees' Retirement System (43:14-42) (d).
60. All pensions granted under the pension fund for probation officers of counties having over eighty-three thousand inhabitants (43:10-57) (d).

61. All pensions granted under the pension fund for certain employees of first-class counties (43:10-14) (d).
62. All pensions granted under the pension fund for employees for cities of the first class (43:13-9) (d).
63. All pensions granted under the pension fund for employees of villages in counties of the first class (43:13-44) (d).
64. All amounts paid as relief, assistance or support under Chapter 5 of Title 30 (Children's Guardians) (30:5-12) (d).
65. All amounts paid as Old Age Assistance (44:7-35) (d).

V. Intangible personal property not subject to taxation under the General Tax Act, but taxed under a separate act:

66. All intangible personal property owned by domestic life insurance companies which are taxed under 54:4-20 and 21 (54:4-20, 21) (e).
67. All intangible personal property owned by domestic insurance companies other than life which are taxed under 54:4-22 (54:4-22) (e).
68. All intangible personal property owned by street railway, traction, gas and electric light, heat and power corporations, using or occupying public streets, highways, roads or other public places in this State, which are taxed under (P. L. 1940, Chapter 5).
69. All intangible personal property owned by railroad companies which are taxed under P. L. 1941, Chapter 291 (e).
70. Shares of common capital stock of banks and trust companies which are taxed under Chapter 9 of Title 54 at $7\frac{1}{2}$ mills on valuation (54:9-7) (e).

Further Exemption Which may be Applied Against Any Intangible Personal Property Assessment

VI. The following New Jersey residents are granted an exemption on proper claim from State, county, or municipal taxation upon real and personal property, or both, to a valuation not exceeding in the aggregate \$500.00, which may be assessed against their property:

1. All persons enrolled as active members of the fire department or of any organized volunteer fire department of any taxing district or fire district under the control of any authorized public body (54:4-3.12).
2. All exempt firemen of any taxing district (54:4-3.12).

3. All honorably discharged soldiers and sailors who have served in the Army or Navy of the United States during any war or rebellion, and their widows during widowhood (54:4-3.12).
4. All members of the national guard during their term of service (54:4-3.12).
5. Any nurse who has served in the Army, Navy or Marine Corps of the United States during any war in which the United States has been engaged, and who has been honorably discharged from such service (54:4-3.12).
6. All persons who were or will be mustered or drafted into Federal military service for the present war or who have or shall have voluntarily enlisted for the duration of the present war in the Army, Navy or Marine Corps but exemption is limited for duration of present war and for six months thereafter, P. L. 1942, Chapter 70.

APPENDIX B

FORMS



STATE OF NEW JERSEY
DEPARTMENT OF TAXATION AND FINANCE
TAX RESEARCH UNIT

Special Informational Return

Required of ALL Corporations

(Revised Statutes, Chapters 1, 50 & 52
of Title 54.)

Corporate Name _____

State of
Incorp. _____

Address of Chief Office in New Jersey _____

Kind of Business _____

Business Classification Serial Number as
shown on 1943 Corporation Income Tax Return.

NOTE: No tax is payable with respect to information contained in this form. Kindly fill in the indicated information and return on or before January 30, 1945 to the Tax Research Unit, Department of Taxation and Finance, State House, Trenton, New Jersey.

Please supply the balance sheet items on this page as of December 31, 1943 or fiscal year beginning _____ 1943 and ending _____ 1944.

Be sure to complete percentages in Col. 3. If any item in Col. 1 is zero, enter X in corresponding line of Col. 2. If any item in Col. 2 is zero, enter zero in corresponding line of Col. 3.

DO NOT USE CONSOLIDATED FIGURES!

(PLEASE TYPE)

A S S E T S	Col. 1 TOTAL WITHIN AND WITHOUT N.J.	Col. 2 TOTAL WITHIN N.J. ONLY	Col. 3 % WITHIN N.J.
INTANGIBLE PERSONAL PROPERTY			
Cash and Deposits	1 \$ _____	2 \$ _____	3 _____
Notes Receivable	4 _____	5 _____	6 _____
Accounts Receivable (Net)	7 _____	8 _____	9 _____
Stocks	10 _____	11 _____	12 _____
Bonds, Mortgages & Notes	13 _____	14 _____	15 _____
Obligations of the U.S. Government	16 _____	17 _____	18 _____
N.J. State & Local Govt. Bonds & Other Obl.	19 _____	20 _____	21 _____
All other Intangible Personalty	22 _____	23 _____	24 _____
TOTAL INTANGIBLE PERSONAL PROPERTY	25 \$ _____	26 \$ _____	27 _____ %
TANGIBLE PROPERTY			
Land	28 _____	29 _____	30 _____
Buildings and other Improvements (Net)	31 _____	32 _____	33 _____
Machinery & Equipment (Net)	34 _____	35 _____	36 _____
Inventories	37 _____	38 _____	39 _____
Other Tangible Personalty (Net)	40 _____	41 _____	42 _____
TOTAL TANGIBLE PROPERTY	43 \$ _____	44 \$ _____	45 _____ %
Patents	46 _____	47 _____	48 _____
Goodwill	49 _____	50 _____	51 _____
Deferred Charges	52 _____	53 _____	54 _____
All other Assets	55 _____	56 _____	57 _____
TOTAL ASSETS	58 \$ _____	59 \$ _____	60 _____ %
LI A B I L I T I E S			
Indebtedness evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mort- gage or deed of trust _____ 61 \$ _____			
All other liabilities, (Accounts payable, accruals, etc.) _____ 62 \$ _____			
TOTAL LIABILITIES _____ 63 \$ _____			
NET WORTH			
Surplus reserves _____ 64 \$ _____			
Capital Stock - Pfd. _____ 65 _____			
Capital Stock - Common _____ 66 _____			
Paid-in or Capital Surplus _____ 67 _____			
Earned Surplus & Undivided profits _____ 68 _____			
TOTAL NET WORTH _____ 69 \$ _____			

Highest number of employees reported to the New Jersey Unemployment
Compensation Commission in the last quarter of 1943 _____ 70 _____

TAXES IN NEW JERSEY - 1943

Corporation Franchise Tax _____ 71 \$ _____
Local Personal Property Tax:
a. Amount of Tax _____ 72 _____
b. Assessed Valuation
73 _____
Real Estate Tax:
a. Amount of Tax _____ 74 _____
b. Assessed Valuation
75 _____
Unemployment Compensation * 76 _____
(* Employer's Contribution only.)

FEDERAL TAXES - 1943

Income & Excess Profits Tax _____ 77 \$ _____
Social Security & Fed. Excise
Tax on Payrolls _____ 78 _____
Net Income (Page 1, Item 31
on 1943 Fed. Income Tax Ret.) 79 _____
In which Collection District was your last
Federal Corporation Income Tax return filed?
80 _____

RECEIPTS:

a. From sales of merchandise and other tangible personal property located
in New Jersey at time of receipt of, or appropriation to, the orders _____ 81 _____
b. From sales of merchandise and other tangible personal property not lo-
cated, at time of receipt of or appropriation to the orders, at any per-
manent or continuous place of business outside New Jersey, where the or-
ders were received or accepted in New Jersey _____ 82 _____
c. From services performed in New Jersey _____ 83 _____
d. From rentals of property situated in New Jersey _____ 84 _____
e. From royalties for the use in New Jersey of patents & copyrights _____ 85 _____
f. All other business receipts earned in New Jersey (INCLUDING INTEREST AND DIVIDENDS) 86 _____
g. Total of lines 81 through 86 inclusive _____ 87 _____
h. Total receipts, within and without New Jersey, from all sales, services,
rentals, royalties and other business transactions. _____ 88 _____
i. Percentage in New Jersey $\left[\frac{\text{Item 87}}{\text{Item 88}} \times 100 \right]$ _____ 89 %

TOTAL WAGES, SALARIES AND OTHER COMPENSATION OF EMPLOYEES (Do not exclude amounts in excess of \$3,000)

Wages, salaries & other compensation attributable to New Jersey _____ 90 _____
Wages, salaries & other compensation - Everywhere _____ 91 _____
Percentage in New Jersey $\left[\frac{\text{Item 90}}{\text{Item 91}} \times 100 \right]$ _____ 92 %

Copy Item 45 from Page 1 _____ 93 %
Copy Item 89 Above _____ 94 %
Copy Item 92 Above _____ 95 %
Total Items 93, 94 & 95 _____ 96 %

Divide Item 96 by 3. _____ 97 %
Note: If item 45 was X,
divide by 2.

Dated _____

X _____
Signature of Officer

Title



DEPARTMENT OF TAXATION AND FINANCE

HOMER C. ZINK, Commissioner

FRANK E. WALSH
DIRECTOR
DIVISION OF TAXATION

TAX RESEARCH UNIT
STATE HOUSE
TRENTON 7, NEW JERSEY

January 5, 1945.

Gentlemen:

At the recent public hearings by the Governor's Commission on Taxation of Intangible Personal Property, it seemed generally agreed that the present tax laws affecting both tangible and intangible personal property are in serious need of revision. It was generally agreed also that the present corporate franchise tax is archaic and inequitable.

At the same time, all those appearing before the Commission agreed that a principal obstacle to the development of concrete proposals for correcting the inequities and formulating a sound tax program is the absence of adequate data.

It is likely that some corrective legislation will be introduced at the forthcoming session of the Legislature. To guard against the possibility of legislation which might unfairly affect your corporation and business groups generally, it is necessary to obtain basic data from which the impact, reasonableness and equity of various proposals may be determined. Although we do not wish to add to the already heavy burden of business reports, it is the duty of this Department to secure this data not now available anywhere.

Enclosed is a Special Informational Return Form, relating to the year 1943. It does not require any current figures. Your 1943 federal income tax report will in most cases provide most of the information required. The information sought is of a general nature and is not intended to fit any particular program suggested by the groups participating in the public hearings.

Kindly complete the enclosed form and return it to the Tax Research Unit, Division of Taxation, not later than January 30, 1945. Instructions are on the reverse side of this letter.

We wish to emphasize that the return is for informational purposes only. The information will be treated in the strictest confidence. The calculations and statements that you make on this informational return will be without prejudice to any method of reporting or any elections you may subsequently wish to adopt on your regular tax reports and will not be binding upon you in the making of such subsequent reports.

Your fullest cooperation in this effort to promote the interests of all taxpayers generally and of business activities in particular will be appreciated.

Sincerely yours,

Frank E. Walsh
Director, Division of Taxation

INSTRUCTIONS FOR USE WITH FORM 200

PURPOSE: The purpose of these instructions is to enable you to report in a uniform manner the various data required. No tax can at any time be assessed or paid upon the basis of this return. These instructions, and the items to which they relate, do not necessarily assume to declare or interpret any existing law or regulation - they are designed only to facilitate computation and analysis of pertinent statistics. Any request for information concerning the forms, the items to be filled in, or these instructions, should be addressed to:

Department of Taxation and Finance

Tax Research Unit

Att: William Kingsley, Supervisor

State House, Trenton 7, N.J. - or - (Telephone: Trenton 2-2131, Ext. 359)

BALANCE SHEET GENERALLY:

All balance sheet, income and expense figures should be taken from or reconciled with your 1943 Federal Income Tax Return, wherever possible.

BALANCE SHEET ALLOCATIONS: GENERAL NOTE:

All required allocations are solely for the purpose of statistical information to be compiled from this return. They are without prejudice to any method of reporting or any elections you may have previously adopted or which you may subsequently follow for your regular tax reports.

COLUMNS 1, 2 and 3: ALLOCATION OF PERSONAL PROPERTY:

INTANGIBLE PERSONAL PROPERTY:

Domestic corporations should, for the purpose of this return only, allocate to New Jersey all intangible personalty which does not have a business situs outside the state.

Foreign corporations should allocate to New Jersey only such intangible personalty as has business situs here. Intangible personal property shall be deemed to have a business situs in New Jersey when it is used, managed or controlled in this state as an integral part of some business or series of transactions localized here, regardless of whether or not securities or written instruments evidencing such intangible personalty are actually physically located in New Jersey. For example:

ACCOUNTS RECEIVABLE:

- (a) Place where sales orders are controlled as to final approval and acceptance, or
- (b) When resulting from sales from a stock of goods maintained in New Jersey, or
- (c) When resulting from services rendered by employees reporting to an office in this state.

BANK DEPOSITS:

Place where withdrawals are directed and controlled.

STOCKS AND BONDS:

Place where instrument is managed and controlled; this would not be the state of incorporation if actual principal office of management is situated in another state.

TANGIBLE PROPERTY:

Tangible property of all kinds should be allocated according to its place of physical presence as of the date of the balance sheet.

PATENTS, GOODWILL, ETC: Items 46 to 57

Allocate these items within and without the State of New Jersey in the same way as indicated above for intangible personal property.

RECEIPTS ALLOCATION: Items 81 to 89

If your corporation in the year covered by this return did not classify its business receipts according to the items listed (81 to 89), please base your figures for these items on the best estimates you can make.

ALL OTHER BUSINESS RECEIPTS EARNED IN NEW JERSEY: Item 86

Include among "all other business receipts" such items as interest and dividends received or payable in New Jersey. Receipts from sales of capital assets, (property not held by the taxpayer as a dealer for sale to customers in the regular course of business) are not deemed business receipts. Receipts from the sale of real property, held by the taxpayer as a dealer for sale to customers in the regular course of business, are business receipts and are allocable to New Jersey if the real property was situated in New Jersey. Receipts from sales of intangible personal property, held by the taxpayer as a dealer for sale to customers in the regular course of business, are business receipts and are allocable to New Jersey if the sales were made in New Jersey or from a regular place of business maintained by the taxpayer in New Jersey.

TOTAL RECEIPTS: Item 88

Exclude receipts from sales of capital assets (sales of property not held by the taxpayer as a dealer for sale to customers in the regular course of business).

WAGES, SALARIES AND OTHER COMPENSATION ATTRIBUTABLE TO NEW JERSEY: Item 90

Include, as attributable to New Jersey, ALL wages (not excluding amounts in excess of \$3,000) of all employees working in or out of a New Jersey office or whose principal duties are performed in New Jersey.

State of New Jersey
**COMMISSION ON TAXATION OF INTANGIBLE
PERSONAL PROPERTY**
20 Nassau Street
Princeton, N. J.

**Please return completed copy of this
form on or before May 15, 1944**

.....
(municipality)

.....
(county)

SURVEY OF PERSONAL PROPERTY ASSESSED
(Authorized by Joint Resolution No. 4, 1944)

.....
(Signature of approving officer)

CLASSIFICATION OF PROPERTY	1939 and 1944				1939 Personalty Taxes Delinquent 12/31/43
	Number of Assessments		Net Personalty Valuations Taxable		
	1939	1944	1939	1944	
I. TOTAL BUSINESS PERSONALTY ASSESSMENTS					
A. Total business tangible personalty					
1. Against corporations having registered office only					
2. Against corporations operating business in your municipality					
3. Against unincorporated business					
B. Total business intangible per- sonalty					
1. Against corporations having registered office only					
2. Against corporations operating business in your municipality					
3. Against unincorporated business					
II. TOTAL HOUSEHOLD AND INDI- VIDUAL PERSONALTY					
A. Total household and individual tangible personalty					
1. Against owners of real estate					
2. Against non-owners of real estate					
B. Total individual intangible per- sonalty					
1. Against owners of real estate					
2. Against non-owners of real estate					
III. TOTAL FARM PERSONALTY AS- SESSMENTS					
A. Total farm tangible personalty					
1. Farm households					
2. Stock and machinery					
B. Total farm intangible personalty					

~~NOV 17 1955~~

MAY 7 1956