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A FEW REMARKS CONCERNING TAXATION.

The subject of taxation is now so extensive covering, as it does, all our activities from before birth to after death, that no one man can grasp it entirely. The combination of the efforts of specialists in its many branches is necessary to adequately cover this broad and increasing field.

Taxes began with government; that is to say they were begotten of, by, and for the government. The more government the greater the tax, both in size and diversity. The more government we have, that is the more interference with the rights of the individual and with his liberty, the more necessary and indispensable are taxes upon which the government must exist. And the more taxes there are the more machinery is necessary to provide for their levy, collection and disbursement.

Taxes arose before the invention of money. They were collected in kind. Pharaoh's treasuries were not a mint of money, but storehouses of the many products of the fields and shops exacted from a subject people. The invention of money simplified the collection and disbursement of taxes. So, also, did the invention of banks and the substitution of figures in a ledger for metallic and paper money.

As trade and invention grew, increasing the things subject to use and ownership, so grew the ingenuity of the tax assessor and collector. We now have more kinds and greater amounts of taxes than were ever known in the history of the world, since we have more forms of human activity and a greater number and variety of things subject to ownership. It was openly claimed in the last campaign, and never denied, that the price of a loaf of bread includes 59 different taxes. In looking through a compilation of some of the taxing statutes of Oklahoma, recently published, we find there listed the following kinds of taxes; Personal property ad valorem tax, real estate ad valorem tax, license, franchise, gross production, excise, income, inheritance, legacy, succession, stamp, and registration taxes. Those specific heads include numerous subheads, such as mortgage, chose in action,

corporation license, freight car tax, estate tax, motor fuel tax, motor vehicle license tax, motor vehicle excise tax, motor carrier license tax, consumers tax, cigarette stamp tax, beverage tax, oleomargarine stamp tax, license fees for dealers, lawyers, fisherman, and hunters' tax and the highest state income tax in the 48 states. In addition to these we leave numerous special property assessments such as paving, sewer, grading, drainage and weed taxes, dog taxes and now a pay roll tax, both on employee and employer, in an increasing ratio for purposes little understood by those who passed the law and less clearly understood by those who have to pay it. These are only those taxes levied by the state and city. Federal taxes in the greatest amount and a variety known to our history are already upon us.

To illustrate the fact that taxes grow out of government and in turn create more power for the government and less liberty for the citizen let us look at the State Tax Commission. This governmental adjunct was not known in this state until recent years. The idea was to simplify the collection of taxes, in other words to make it easier. This result has already been partially accomplished; the collection of taxes by the state has been greater in amount than ever before. This fact appears to have been followed by the same result that history teaches us would follow. The appetite for more government power and more governmental spending has increased. And this is followed by the demand for more power to the tax gatherer and less liberty to the citizen.

I hold before me a tentative bill prepared by the Oklahoma State Tax Commission for submission to the coming legislature.

This act is entitled

"STATE TAX UNIFORM PROCEDURE ACT"

This seemingly innocent title is full of "procedure" which would be a delight to a Persian king or a Louis Fourteenth. . For instance Section 8 of Article Three of the act provides that all state taxes of any kind

* * * shall be a personal debt of the taxpayer to the State of Oklahoma, recoverable in any court of competent jurisdiction in an action in the name of the State of Oklahoma on relation of the Oklahoma Tax Commission, and such suit shall be maintained, prosecuted and

all proceedings taken to the same effect and extent as for the enforcement of and right of action for debt, and all provisional remedies available in such actions shall be, and are hereby made, available to the State of Oklahoma in the enforcement of the payment of any State tax. Such debt, whether sued upon or not, shall be a lien on all the real estate, tangible and intangible personal property of the debtor except as against an innocent purchaser for value in the usual course of business and without notice thereof, and said lien shall have preference in any distribution of the assets of the taxpayer whether in bankruptcy, insolvency or otherwise."

The provision fixing a lien upon personal property goes beyond anything known to our present law. It disregards exemptions, personal and homestead. No money judgment of any state or Federal Court is a lien upon personal property without an execution issued from that court and an actual seizure of the property by the sheriff or marshall.

Section 9 provides that all delinquent state taxes (of any kind whatsoever) shall bear interest at the rate of one percent per month.

Section 10 provides that such tax shall be in addition to all special penalties already provided by law.

Section 11 provides that

"If any taxpayer shall fail to make any report or return as required by any state tax law, the Commission may make an estimate of the tax liability of such taxpayer, from any information in its possession, and according to such estimate so made, compute and assess the taxes, fees, penalties and interest due the state from such taxpayer, give notice of such assessment to the taxpayer, and make demand upon him for payment."

Thus is seen in operation a body which may act without a hearing, and fix a lien on all the real and personal property of the citizen, by its own estimate.

Section 12 provides that even though a return is filed under the provision of any state tax law the Commission may make such "investigation as it may deem necessary", and levy an additional tax which is also a lien on all earthly belongings of the debtor.

Section 13 is entitled "Jeopardy Assessment". Briefly this Section allows the Commission to fix and declare a tax before it is due and proceed to enforce it before it is due, if the Commission

"finds that a taxpayer designs quickly to depart from this State or to remove therefrom his property, or any property subject to any state tax,"

or to do any other act tending to prejudice the computation or collection of the tax. No procedure is provided for arriving at the findings of the Commission in this regard, but the findings, after being made, are then to be reported to individual concerned. This section winds up with this clause:

"In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the finding of the Commission made as herein provided, whether made after notice to the taxpayer or not, shall be, for all purposes, presumptive evidence of the taxpayer's design."

This is a very neat substitute for evidence and for the "due process of law" guaranteed to us by the Constitution of our forefathers.

Sections 14, 15 and 16 provide for the due date of taxes and a special penalty of 5% in addition to the interest of one percent per month.

Section 17 reads as follows:

"If the failure to pay any such tax when due is explained to the satisfaction of the Commission, it may remit or waive the payment of the whole or any part of any penalty, and may remit or waive the payment of any interest charge in excess of the rate of one-half of one per centum (1/2%) per month."

What kind of explanation is necessary to secure "satisfaction" to the Commission remains unwritten.

Sections 18 and 19 cover cases where a tax payer, by excess of civic pride, or otherwise, desires to assure the Commission that he will pay future taxes not yet accrued or due he may provide the Commission with security to that effect.

Section 20 provides that the Commission shall issue a warrant in case of delinquent taxes directed to the sheriff of any county in the state commanding him to levy upon and sell any real or personal property of the delinquent in his county. It is the further duty of the sheriff to file a copy of the warrant with the court clerk of the county who shall docket the same as a judgment against the tax payer

"and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in any real property, chattels, real or personal property of the taxpayer against whom such warrant is issued in the same manner as a judgment duly docketed in the office of such court clerk; and such lien shall be preferred and superior to all mortgages or other liens

filed or recorded subsequent to the date such tax lien became effective."

Failure of the sheriff or clerk to act shall subject him to removal from office.

Section 27 permits the commission to review its own acts and to allow the tax payer a hearing before the same body that made the levy. No recourse to any court, except an appeal to the Supreme Court, is provided.

The procedure of courts is rigidly regulated by law. Not so the Commission under this act. It may "make and enforce such rules and regulations as it may deem necessary". Such is the language of Section one of article Four.

The 4th amendment to the Constitution of the United States guarantees that the persons, houses, papers and effects of the people shall not be subject to search or seizure except upon a warrant, supported by oath or affirmation particularly describing the place to be searched and the persons or things to be seized. Not so Section 2 of Article 4 of the proposed act. Under it any agent or employee of the Tax Commission may go into the place of business of any citizen and examine any book, record, paper, voucher, account or document of the tax payer, without warrant or warning. And it is the duty of the citizen to produce and exhibit, without warrant or warning any such book, record, paper, voucher, account or document. Failure to so do is a misdemeanor, punishable by fine not in excess of \$500.00, or by imprisonment not in excess of one year, or by both such fine and imprisonment.

The Commission may issue subpoenas and compel the attendance of any witness at any place in which it may conduct its hearings. This power is denoted as the "inquisitorial" power. The Spanish Inquisition, well known to all students of history, had such power, hence its name.

False swearing before the Commission has the status of perjury and it "shall be punished as provided by law" that is it is a felony, punishable by imprisonment in the penitentiary.

Any notice required may be served by mailing to the person at the last address given in his last report or return.

Article Five deals with appeals from the orders of the Commission which may be taken only to the Supreme Court.

Article Six deals with criminal penalties. In addition to the interest, costs and expenses already provided for the tax payer, this section permits him to be fined not to exceed \$5,000.00 for each offense. Some offenses also carry an additional jail sentence not exceeding one year.

The alleged offender may be a well known citizen of the country where he lived and made his return or report. His standing may be such that a local jury of his fellow citizens might hesitate to convict. The county attorney may hesitate to act, knowing the difficulty of obtaining sufficient evidence to satisfy a jury of the vicinity. Sections 4, 5, and 6 of the proposed act take care of such situations. They read as follows:

"Certain Offenses Deemed to have Occured in Part at the Office of the Commission. The failure to do any act required to be done by, or under the provisions of, this act shall be deemed an act committed in part at the office of the Commission in Oklahoma City, Oklahoma County. The certificate of the Commission to the effect that any acts required to be done by, or under the provisions of, this act, shall be prima facie evidence that such acts have not been done."

"Venue. The venue of prosecutions arising under the preceding sections may be in either the county where such return or report was verified or in Oklahoma County where such return shall have been filed."

"Procedure; Complaints. All prosecutions of offenses provided for by any section of this act, or of any state tax law, may be maintained upon complaint or information, endorsed by the Attorney for the Commission, to the same effect as by the other methods of criminal prosecution provided by law."

Article 8 provides that the remedies shall be cumulative, thus giving the Commission the "inquisitorial" powers so precisely and effectively provided for, in addition to all other powers it may already have.

This proposed act has not been introduced in the legislature. It may not be. However, that such an act is contemplated by those in authority illuminates the tendencies of the times.

John Marshall, the great justice, said clearly

"The power to tax is the power to destroy".

Speaking of King Solomon, his wonderful temple, and more wonderful palace, and the burdensome taxes thrown on the people thereby, Mr. Will Durant says:

"When he died Israel was exhausted, and a discontented proletariat had been created whose labor found no steady employment, and whose sufferings were to transform the warlike cult of Yahveh into the almost socialistic religion of the prophets."

Speaking of the great Chinese Liberal Emperor Wu Ti (140-87 B.C.)

Mr. Durant says:

"Wu Ti experimented with socialism by establishing national ownership of natural resources, to prevent private individuals from reserving to their sole use the riches of the mountains and the sea in order to gain a fortune, and from putting the lower classes into subjection to themselves. The production of salt and iron, and the manufacture and sale of fermented drinks, were made state monopolies. To break the power of middlemen and speculators -- "those who buy on credit and make loans, those who buy to heap up in the towns, those who accumulate all sorts of commodities" as the contemporary historian, Szuma Ch'ien expressed it - Wu Ti established a national system of transport and exchange, and sought to control trade in such a way as to prevent sudden variations in price. State workmen made all the means of transportation and delivery in the empire. The state stored surplus goods, selling them when prices were rising too rapidly, buying them when prices were falling; in this way, says Szuma Ch'ien, 'the rich merchants and large shop-keepers would be prevented from making big profits, --- and prices would be regulated throughout the empire.' All incomes had to be registered with the government, and had to pay an annual tax of five per cent. In order to facilitate the purchase and consumption of commodities the Emperor enlarged the supply of currency by issuing coins of silver alloyed with tin. Great public works were undertaken in order to provide employment for the millions whom private industry had failed to maintain; bridges were flung across China's streams, and innumerable canals were cut to bind the rivers and irrigate the fields."

For a time the new system flourished. Trade grew in amount, variety and extent, and bound China even with the distant nations of the Near East."

But, he continues:

"A combination of natural misfortunes with human devilry put an end to this brave experiment. Floods alternated with droughts, and raised prices beyond control. Harassed by the high cost of food and clothing, the people began to clamor for a return to the good old days of an idealized past, and proposed that the inventor of the new system should be boiled alive. Business men protested that state control had diminished healthy initiative and competition, and they objected to paying, for the support of these experiments, the high taxes levied upon them by the government. Women entered the court, acquired a secret influence over important functionaries, and became an element in a wave of official corruption that spread far and wide after the death of the Emperor. Counterfeiters imitated the new currency so successfully that it had to be with-

drawn. The business of exploiting the weak was resumed under a new management, and for a century the reforms of Wu Ti were forgotten or reviled."

Mr. Durant gives us an example of the results of more government, therefore, more taxes, and less liberty in the Nova period of Japanese history during the 8th century of our era.

"In the Nara period the state nationalized the land, and rented it to the peasant for six years or, at most, till death; but the government discovered that men did not care to improve or properly care for land that might in a short time be assigned to others; and the experiment ended in a restoration of private ownership, with state provision of funds in the spring to finance the planting and reaping of the crops. Despite this aid, the life of the peasant was not one of degenerative ease. His farm was a tiny tract, for even in feudal days one square mile had to support two thousand men. He had to contribute annually to the state thirty days of forced labor, during which death by a spear-thrust might be the penalty of a moment's idleness. The government took from him, in taxes and levies of many kinds, 6% of his product in the seventh century, 72% in the twelfth, and 40% in the nineteenth."

In conclusion we know now by actual experience that every article, every convenience, every service that precedes and accompanies our advent into this world is taxed. We know that every article we own or use during life is taxed and that after death, our heirs may succeed only to that portion of our estates left after the tax gatherer has had his fill of estate and inheritance taxes.

We know by the teachings of history that government, under the pretext, or honest belief, that it is aiding the people seeks always more power accompanied by more taxation and less liberty, until finally a French Revolution, a Russian Revolution or a foreign invader destroys the state itself.

Taxes to reward the farmer for failure to produce wheat, corn or cotton may be exacted for a time. Taxes to build public edifices of imposing magnificence may be collected for a time. Old age pensions, unemployment insurance, disability benefits, administered by the state with funds collected by the State have been tried in Germany and in a lesser degree in other European countries, for many years. They have not resulted there in more happiness, more prosperity and more contentment. More taxes, extreme misery, and entire loss of liberty in some countries, are present, in spite of such laws.

Such may not be the result here. We may be so fortunately situated that we can and will void those results, so uniform in the past. However, we do know, that if we resist the extension of government we are resisting the increase of taxes; that if we resist the increase of taxes we thereby resist increase of governmental power and authority and resist that power which is "the power to destroy".

I conclude with another quotation from Mr. Will Durant:

"If the average man had had his way there would probably never have been any state. Even today he resents it, classes death with taxes, and yearns for that government which governs least. If he asks for many laws it is only because he is sure that his neighbor needs them; privately he is an unphilosophical anarchist, and thinks laws in his own case superfluous."