CUTTING THE GORDIAN KNOT OF INTERSTATE TAXATION

GEORGE D. BRADEN*

This article starts with three assumptions. First, in a federalism in which governmental functions are fairly well divided between the central and local governments and in which the sources of taxable economic wealth are fairly well dispersed throughout the economy, someone must exercise some control over the competitive efforts of tax-gatherers to meet the fiscal requirements of their respective governments. The need for such control increases as the economy becomes more complex, for complexity is accompanied by expanded government services and by a relative decrease in the value of immovable wealth and a relative increase in the amount of wealth that is elusive—intangible or movable—and therefore frequently attributable to more than one geographical location.[1]

Second, the only governmental instrumentality that has so far endeavored to exercise such control in the United States is the United States Supreme Court and its endeavors have by and large been unsuccessful.[2] Third, in the nature of things the Supreme Court can never exercise successfully the control required. The first assumption seems self-evident and requires no discussion. The second assumption is based on the conclusion reached — with varying degrees of explicitness — by numerous writers and will be accepted without further consideration.[3] The third assumption requires justification.

THE INADEQUACY OF THE SUPREME COURT

The Supreme Court is a judicial arbiter. It remains inert until

*Yale University, L.L.B.; Member of the Connecticut Bar; formerly Associate Professor of Law, Yale Law School; now employed as an attorney by the General Electric Company. The author does not handle legal problems involving interstate taxation for General Electric Company and the views expressed herein are those of the author and not necessarily those of the General Electric Company.

[1] See note 14, *infra,* and accompanying text.

[2] Congress has long regulated the powers of states to tax national bank shares, including provisos designed to prevent discriminatory taxation and multiple taxation. 44 Stat. 223 (1926), 12 U.S.C. §548 (1946), revising 13 Stat. 111 (1864). See HARTMAN, STATE TAXATION OF INTERSTATE COMMERCE 281 (1953).

[3] *E.g.,* HARTMAN, *op. cit.* note 2 *supra;* Hellerstein, *State Taxation of Interstate Business under the Commerce Clause,* 5 Journ. of Tax 303 (1956); Friou, *Taxation of Interstate Business Still Confused Despite Spector and Other Cases, Id.* at 168 (1956); Barrett, *State Taxation of Interstate Commerce—"Direct Burdens," "Multiple Burdens," or What Have You?,* 4 VAND L. REV. 496 (1951). The literature is voluminous. Professor Barrett lists some 30 books and articles on the subject, and Professor Hartman lists over 50 books and articles dealing with interstate taxation. I have read many but not all of these articles; I recall no article that expresses full approval of the Supreme Court's efforts.

someone who has a dispute with someone else pushes it. These disputants, normally limited to two, can induce the Court to act only after the dispute has been reduced to simple propositions expressed in legal language. The Court will settle the dispute, but only the dispute before it, and will express its reasons for its particular solution only in narrow legal terms. It may discuss the dispute before it in a context of the greatest breadth, but the focus of the discussion will be the narrowest issue that can settle the dispute.

The problems of multiple taxation in a federalism do not lend themselves to judicial treatment. Judges may speak of the great task of balancing the needs of the public fisc against the Constitution's injunction to preserve freedom of commerce. But when the case before a court is whether this government may levy this tax against this person, there are so many ways of resolution of the dispute, so many ways of expressing the rule of resolution, that the larger act of statesmanship is likely to get obscured.

Moreover, the context of judicial resolution is that of trial by combat. Thus, interstate taxation becomes a game in which hundreds of taxing units and their lawyers search for new avenues to revenue and thousands of taxpayers and their lawyers search for ways to avoid the payment of taxes. Put all of these people to work with words—the vehicle for expressing their conflicting desires and the courts' endeavors to umpire their conflicts—and the basic problem can only become more difficult as time passes. Each effort of the Court to maintain a delicate balance between taxer and taxed is just so much grist for the legal mill. One answer by the Court produces at best two new disputes.

The Supreme Court can always abandon the task of maintaining a fair balance between revenue needs and commercial freedom. It can move toward one side or the other and establish a new line. If it wishes to place the needs of the public treasury ahead of the flow of commerce it can announce, for example, that it will permit any exaction of a tax that does not discriminate against commerce.

This sort of rule can be translated into a political theory of no taxation without representation.[4] Political pressures are such that any ordinary mortal will be tempted to obtain revenue from outsiders who cannot complain. It seems unlikely that the Supreme Court would ever do less than maintain this modicum of freedom of commerce.[5]

If the Supreme Court were to toss out the present basketful of

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[4] See South Carolina State Highway Comm. v. Barnwell Bros., 303 U.S. 177, 185n. 2 (1938).

[5] Mr. Justice Black, the foremost exponent of leaving the matter to Congress, McCarroll v. Dixie Greyhound Lines, Inc., 309 U.S. 176, 188 (1940) (dissenting); Gwin, White & Prince v. Henneford, 305 U.S. 434, 455 (1939) (dissenting); Adams Manufacturing Co. v. Storen, 304 U.S. 307, 316 (1938) (dissenting), has agreed that the Court must at least forbid discrimination. Best & Co. v. Maxwell, 311 U.S. 454 (1940); *cf.* Hale v. Bimco Trading, Inc., 306 U.S. 375 (1939).

rules and preserve only the rule against discrimination, it would end the chaos in the law of interstate taxation. It would not end the chaos in interstate taxation. Indeed, the real situation would get worse, for today the tax law drafter must not only avoid discrimination, he must strive to make his exaction look fair. He must pay at least lip service to the proposition that he must not burden commerce and if cautious he will go a little further and pay lip service to the conceptualism of the *Spector* case.[6] Remove these restraints and the economic burdens of local taxation will profoundly disturb the economic complex upon which we depend to create the wealth that provides the tax revenues.[7]

The Supreme Court can move in the other direction and forbid any taxation of interstate commerce. This would decrease the quantity of legal chaos. It would not bring complete order, for it would be necessary to draw lines between interstate commerce and local activities and this has always been a continuing source of litigation.[8] Such an approach by the Court would also mean that interstate commerce would no longer pay its own way. This would profoundly disturb the economic complex of America and would greatly decrease the sources available for local revenue.[9]

Thus it is that one must start with the assumption that the Supreme Court cannot solve the problem of local taxation of multistate business

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[6] Spector Motor Service v. O'Connor, 340 U.S. 602 (1951).

[7] The argument is, of course, that Congress should take over, that it can do a better job of balancing all the conflicting interests than the Court can. Things might get worse before they would get better, but to those who believe Congressional action to be preferable, the immediate chaos following judicial abandonment of the field is worth the cost. The opposing argument is that the Court should continue to exercise its power as long as Congress permits the existing system to continue. By silence, it is argued, Congress accepts judicial supervision.

[8] Ever since Cooley v. Board of Port Wardens, 12 How. 299 (U.S. 1851), established the proposition that the state police power (and state taxation) can affect interstate commerce, it has been necessary for the courts to draw lines between valid and invalid interference with commerce. Any rule on taxation of commerce other than the rule of "any tax except a discriminatory tax" will breed litigation. Perhaps the greatest justification for the "discrimination rule" is that it takes the courts pretty much out of the picture. This is presumably its principal appeal for Mr. Justice Black. See his dissent in Southern Pacific Co. v. Arizona, 325 U.S. 761, 788 (1945).

[9] One of the ironies of life in America is the self-defeating nature of many states' rights arguments. If the Supreme Court were to abandon its effort to control state regulation and taxation of interstate industry, the great expansion of state power would lead to such pressure for Congressional action that centralization of government would inevitably follow. If the Supreme Court attempts to increase its control over state taxing power, the loss of state revenue will increase the demands of the states for federal financial assistance. The Commission on Intergovernmental Relations argued for the return of power to states, but it recognized that at present the states by and large have antiquated and inefficient governmental systems and are incompetent to provide for today's needs. A REPORT TO THE PRESIDENT, Ch. 2, pp 36-58 (1955).

in America today. If the Court tries to do a complete job it simply superimposes a complex legal word game on a difficult economic situation. If it tries to simplify the legal structure it either disturbs the economic situation or interferes with the tax requirements of local governments, or both.

Local Self Help

It is the tradition in America to avoid the obvious road to solution of national problems. We have a Federal Government in Washington, the legislative arm of which is chosen locally and the executive arm of which is headed by a person elected by all of us. It is logical to turn to this Government to solve a national problem, but such is our fear of Washington that we first shop around for other means of meeting our needs. Out of respect for this tradition, I shall discuss lesser means of meeting the problem of interstate taxation, but since the problem is a national one it seems likely that only a national solution will work.

The abstract problem of interstate taxation is relatively easy to solve. Part of the solution is to arrange the tax structure of local taxing units so that on a national basis all like businesses are treated alike. It is also necessary to see that the quantity of incidences of taxation multiplied by the number of taxing instrumentalities is not so large that the economic burden of compliance is too heavy. The actual level of taxes is no part of this problem.

If the Commission on Uniform State Laws were to draft a statute covering all taxes that could be levied by a state on all businesses that cross state lines, and if all lesser governmental instrumentalities were limited to such local items as real property taxes and local license fees, and if all states adopted the uniform act without change, the problem of interstate taxation would probably be solved. This will not happen.

Nothing is more jealously guarded than the power to tax. Many state constitutions have comprehensive provisions controlling the taxing structure of the state. Indeed, some antiquated state constitutions cannot be modernized because of a fear on the part of many that revision might alter the taxing powers.[10] The idea of a uniform statute in the face of this history is almost laughable. Moreover, agreement could hardly be reached in any event. Uniform statutes are possible only in non-controversial, non-political areas. The type of tax to be levied by a state is a political item of great importance. Any possible uniform statute would inevitably provide for a type of tax which is politically unacceptable somewhere.

It could be proposed that there be a series of uniform statutes so that if a state had a sales tax or a gross receipts tax, it would be uniform. Even if this were politically feasible, which it is not, it would solve only part of the problem, for a complete solution requires consistency

[10] This is particularly the case in states whose constitutions prevent the levying of a graduated, progressive income tax.

among the types of taxes. Furthermore, as a minimum every state would have to enact a uniform corporate franchise/privilege/income tax since no state omits this type of tax. It would be as easy to secure this as it would be to secure a uniform corporation code.

Another self-help device is by reciprocity statutes. All the difficulties of uniform statutes exist here. Shortly stated, it would be necessary to have a uniform reciprocity statute if the problem of multistate taxation is to be solved. Reciprocity statutes, it is true, might in some instances obviate a constitutional inhibition, but the fact remains that the problem of interstate taxation is national in scope and impact and even if all constitutional objections to multiple taxation are removed it does not necessarily follow that the economic consequences of the local taxing structures across the country apply fairly.

In the case of both uniform statutes and reciprocity statutes there is the further difficulty of the application of statutes. Without a national tribunal to enforce uniformity of interpretation even the existence of uniform statutes is no guarantee of multistate fairness.

A final form of local self-help is interstate compacts. This has long been a favorite device for keeping the Federal Government out of "local" matters. The compact is ideal for handling a regional matter that is beyond the power of a single state. It is of little value for a truly national problem. The problem of interstate taxation could be solved by an interstate compact joined in by 48 states. This is obviously impossible.

Congress to the Rescue?

New York State has a personal income tax whereas New Jersey and Connecticut do not. Connecticut has a sales tax whereas New York State does not but New York City does. People who live in Connecticut or New Jersey and work in New York City have to pay a non-resident income tax on their New York earnings but do not get to deduct charitable gifts—except to New York State charities—or interest or medical expenses.[11] Purchases made in New York City for shipment to Connecticut are not subject to the New York City sales tax.[12] Purchases made in Connecticut for shipment to New York City are not subject to the Connecticut sales tax.

It is inconceivable that a group of rational beings would erect a structure of taxation such as that set forth. This brief description of the tax tangle for metropolitan New York, it is to be noted, does not include the problems of a multistate business. The businessman must

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[11] Thus, a non-resident whose sole income is from his work in New York is likely to pay a higher New York income tax than a resident.

[12] Connecticut residents are supposed to report such purchases and to pay a use tax. It is well known that only a handful of such reports are filed—presumably by such people as the Governor and the Tax Commissioner. Out-of-state automobile purchases are picked up when the car is registered for Connecticut license plates.

consider the vicissitudes of state taxation in choosing the state of incorporation, the state of the principal office, the state and locality of manufacturing plants, warehouses, and the like. Even on a small scale, the problem is formidable. I know of a case where a charitable institution for technical reasons had to create a feeder corporation to hold a particular asset. A Delaware corporation was chosen because of the low annual franchise tax. The officers and location of the "home office" had to be chosen with care because not all states give such a feeder corporation the same tax exemption given to the charitable institution.

The fact is that in many respects the United States has outgrown its federal system. Metropolitan areas have grown up without respect to state boundaries. Commerce has grown on a national scale and many state and local governmental functions are ineffective when exercised over national commerce. For political and historical reasons Americans have resisted modernizing government to meet the needs of today.

Decentralization of government is vital in a democracy, for the closer government is to the people governed the more responsive it is to the needs of the governed. On the other hand, problems are not well handled if the unit of government is smaller than the problem. The American difficulty is that its federal system was created at a time when the economy and the people were substantially immobile. The size of a state was not as significant in 1787 as it is today.

Nowhere does this difficulty stand out so clearly as in the area of taxation. Before the growth of our extensive economic system, the wealth of the country was in large measure the wealth of the land and the tangible property used on the land. The general property tax adequately served the needs of local government. As the population increased in mobility and personal wealth began increasingly to be held in intangible form, the general property tax began to fall behind. In the search for revenue state and local governments had to turn to sources that reached the newer forms of wealth.

American taxable wealth today is largely the continuing production of industry and the multitudiuous services that complement it. The tax gatherer must reach that wealth, but he can reach it only at a limited number of points: at the ultimate resting point of income—the personal income tax; at a point which measures the wealth-producing capacity of a producing unit—the corporate income tax, a franchise or privilege tax, a gross receipts tax; or at a point which measures the wealth produced—an excise tax, a transfer tax, a sales or turnover tax. None of these taxes can satisfactorily be levied by multiple taxing units.

The ideal solution was proposed over twenty years ago by Fred Rodell, when he argued that only the Federal Government should levy taxes of this sort, returning the proceeds to the states.[13] The simplicity

[13] *A Primer on Interstate Taxation,* 44 YALE L. J. 1166, 1181-1185 (1935). Rodell deals with property, inheritance and income taxes. He does not discuss the interstate problems of sales taxes.

and perfection of this solution is matched by its political impossibility. Actually, we move slowly in that direction. The United States pays for more and more things that can be and should be done locally—slum clearance, highways, and now perhaps, education.[14] In all these cases Federal aid is in part a recognition of the limited ability of states to tap fairly the real sources of wealth and partly a recognition that the producing wealth is not equitably distributed across the country.

Short of this direct elimination of interstate tax problems, there are several intermediate steps that Congress could take. It could, for example, state that

> "Be it enacted, etc. That all taxes or excises levied by any State upon sales of tangible personal property, or measured by sales of tangible personal property, may be levied upon or measured by, sales of like property in interstate commerce, by the State into which the property is moved for use or consumption therein, in the same manner and to the same extent, that said taxes or excises are levied upon or measured by sales of like property not in interstate commerce and no such property shall be exempt from such taxation by reason of being introduced into any State or Territory in original packages, or containers, or otherwise: Provided, that no State shall discriminate against sales of tangible personal property in interstate commerce, nor shall any State discriminate against the sale of products of any other States: Provided further, That no State shall levy any tax or excise upon, or measured by, the sales in interstate commerce of tangible personal property transported for the purpose of resale by the consignee: Provided further, That no political subdivision of any State shall levy a tax or excise upon, or measured by, sale of tangible personal property in interstate commerce. For the purpose of this act a sale of tangible personal property transported, or to be transported in interstate commerce shall be considered as made within the State into which such property is to be transported

[14] The crisis in education today is primarily a fiscal problem. Primary and secondary education has always been a local govermental function supported by the general property tax. Real estate assessments have not kept pace with the increase in the general price level. (Indeed, I think one gets more for his real estate tax dollar than for almost any other dollar spent these days. By the same token the most expensive dollar in depression days was the same real estate tax dollar. All of which is simply to say that immovable land lends itself to a sluggish method of tax administration.) Moreover, population movements have aggravated the fiscal problem. Suburban communities with land utilization substantially limited to housing have a harder time financing education than communities with a large amount of land utilized for industrial purposes. In the long run local education will have to be financed to a greater extent by state and federal aid because only these larger governmental units can tap the financial sources of wealth and equalize the educational burdens of governmental units in metropolitan areas.

for use or consumption therein, whenever such sale is made, solicited, or negotiated in whole or in part within that State."[15]

This negative legislation would in general permit an interstate sale always to be taxed but to be taxed only once. Enactment of such a statute would eliminate one important source of constitutional litigation. The elimination of the power of municipalities and other local taxing districts to levy retail turnover taxes would also relieve interstate industries of the administrative burden of keeping track of so many different taxable transactions.

Congress could also tackle the problem of the corporate franchise/privilege/income tax.[16] It could prescribe the apportionment formula to be used in any state in which an interstate corporation or partnership does business. Difficulties exist here but they could be covered by the creation of a federal administrative agency that would be charged with interpretation of the apportionment formula. Even in the absence of such an agency, the very existence of a controlling federal statute would guarantee a considerable degree of uniformity through the power of the Supreme Court to monitor the interpretation of the apportionment statute.

Congress could go much farther than promulgation of such limited requirements of uniformity but without absorbing the power of states to tax interstate business. It could, for example, divide up the taxing power between state and nation, using as a guide the degree of interference with interstate commerce caused by each type of tax. The new Republic of India operates under a Constitution initially adopted in 1950. Considerable attention is given to the taxing powers of state and nation. Almost all such power is parceled out on an exclusive basis.

The several states possess exclusive taxing power on land, agricultural income, inheritance of agricultural land, mineral rights, advertising, animals, boats, vehicles, liquors, narcotics, professions, trades, luxuries, (including entertainments, amusements, betting and gambling), and heads, that is, capitation taxes.[17] The central government has the

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[15] Sen. 2897 (Harrison Bill), 73d Cong., 2d Sess., 78 Cong. Rec. 4598 (1934), quoted in HARTMAN, *op. cit.* note 2, p. 282.

[16] The direct approach would be to abolish state incorporation for any business operating in more than one state, substituting therefor federal incorporation. Tax losses could be offset by rebates from the Federal Government or by permitting state taxation of the local portion of the business according to a standard apportionment formula. It is interesting to note that under the Indian Constitution the central government has the exclusive power of incorporating "trading corporations, including banking, insurance and financial corporations," and "corporations, whether trading or not, with objects not confined to one State." Constitution of India, Seventh Schedule, List I—Union List, Entries 43 and 44. See also the further discussion of India, *infra* pp 69-71.

[17] Constitution of India, Seventh Schedule, List II—State List, Entries 45-51, 53, 55, 57-62. Special exceptions exist in some cases. For example, the power to tax advertisements does not include newspaper advertisements. An additional power, not included in the listing above is "taxes on goods and passengers carried by road or on inland waterways." Entry 56.

exclusive power to tax incomes other than agricultural income, exports and imports, excises other than alcohol and narcotics, corporations, inheritances except of agricultural land, and capital values other than agricultural land.[18] The only split in taxing power is in stamp duties. Both the states and the central government may levy stamp duties but in the case of commercial documents the central government has the exclusive power to set the rates and in all other cases the states have the exclusive power to set the rates.[19]

It will be seen at once that the division of taxing power as set out above fairly well avoids any interstate tax barriers.[20] The one important tax power given to the states that could produce interstate tax difficulties is the power to levy sales taxes[21] and in this case the drafters of the Indian Constitution included specific language designed to prevent multiple taxation.[22] The drafters left some ambiguities in the provision, but the Indian Supreme Court in a definitive series of opinions construed the provision to permit an interstate sale to be taxed but once and that tax to be levied by the state of consumption.[23]

India is not comparable to America and it does not follow that we should have a Constitution along the Indian lines. It is important to note, however, that the Indian Constitution is a document of the middle of the 20th Century and that it was drawn with current interstate problems in mind. The interstate problems of taxation are avoided by dividing the powers to tax between state and nation primarily on the basis of what is local and what is national in scope. To cover the possibility that the sources of taxation reserved to the states are not sufficient the Indian Constitution provides the method for administration of grants in aid[24] and for the return to the states of the proceeds of certain federal taxes.[25] The fact that India took this approach at this time lends support

[18] *Id.*, List I—Union List, Entries 82-88. Certain technical exceptions and taxes are omitted. The corollary power to the power set out in the preceding footnote is to tax goods and passengers carried by railway, sea or air. Entry 89.

[19] *Id.*, List I, Entry 91; List II, Entry 63; List III—Concurrent List, Entry 44. The three Lists of powers under the Indian Constitution are set out in full as an Appendix to Braden, *Constitutional Law in India, Part III*, 30 CONN. BAR J. 287, 308-317 (1956).

[20] The fact that states are allowed to tax highway and inland waterway transportation is inconsistent with this unless, as I suspect is the case, such transportation is not particularly important interstate. I should also point out that in the case of state power to levy excise taxes on alcohol and narcotics it is limited to "goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured elsewhere in India." List II, Entry 51.

[21] *Id.*, Entries 52 and 54.

[22] The provision, Article 286, is set out in Braden, *op. cit.* note 19 *supra*, at 290.

[23] The cases are discussed, *ibid*, pp 291-294.

[24] Part XII, Ch. I, in general. See Articles 273, 275 in particular.

[25] *Id.*, particularly 268-270. For example, all inheritance taxes collected by the central government are for the account of the states.

to the argument that such an approach in America is the logical method of solving our contemporary problem.

PROSPECTS

So many problems of interstate taxation can be solved so easily. Yet one must admit that direct and simple solutions are the least likely to be adopted. The reasons for this are fairly obvious and quickly lead one to the conclusion that the direct approach should be discarded. But an exploration of these reasons may point to a road that offers some promise of relief.

The principal stumbling block to action is States' Rights. This ideological bloody shirt has always been an important factor in American politics and is of extreme significance today because of racial segregation. Insofar as States' Rights are an argument for local control of local matters, it is a valid arguing point. The difficulty is that people who are interested in preserving local control over local matters tend to feel that States' Rights must be defended as they apply to everything in order not to weaken the argument where it is legitimate.

Likewise, interstate industry has in the past used the argument of States' Rights to oppose national regulation in areas other than interstate taxation for the very reason that the matter to be regulated was not local and hence could not be effectively regulated locally. Arousing the emotions over States' Rights is a convenient device for avoiding effective governmental action.

The first problem, therefore, is to isolate or tranquilize the States' Righters. This is not easy, but is perhaps not impossible. The people who should be interested in eliminating interstate tax inequalities are the corporations that do an interstate business. This is a reasonably large and influential segment of the political society. If this group could forget its predisposition to wave the flag of States' Rights whenever Federal legislation is proposed and could unite on Congressional control over interstate taxation, much of the usual force against Federal action would be weakened. If at the same time the Federal Government proposed a realignment of taxes, such as giving up some of its excise taxes that are purely local in incidence, opposition from local sources would be lessened. A well organized campaign ought to go far toward neutralizing opposition based solely on the argument of States' Rights.

Of much more force against change is the predisposition to oppose any change in a tax structure for fear that it will result in higher taxes. This fear is based on the not entirely unreasonable assumption that legislators will happily spend money if they do not have to worry about where it comes from. The obvious solution discussed earlier of having the Federal Government collect most tax money for the account of the states is more likely to arouse opposition based on this type of fear than opposition based on the more likely danger that Congress might not set

rates high enough to provide the revenue necessary to meet the needs of the states.

This fear of higher taxes is not likely to be valid in the case of any proposed federal legislation that simply requires uniform treatment across the country. It may be that some interstate industries feel that they can cut their tax load if they can operate in the chaotic system that exists today. It seems doubtful that this is very often true. Unless the Supreme Court turns the clock way back and asserts, in effect, that interstate commerce need not pay its own way, the control which the Court can effectively exercise can never cut the overall tax burden. The Court's constitutional criterion must be reasonableness, and apportionment formulae, for example, can all be reasonable but add up to unfair burdens. Moreover, it is likely that the cost to industry of keeping track of so many taxes is a greater burden than the burdens resulting from inequitable taxes.[26] A federal statute that included elimination of municipal retail turnover taxes in its relief from interstate tax burdens might very well more than offset any current ability to outguess some state tax-gatherers.

It is interstate industry as a whole that holds the key. A united campaign in support of federal legislation designed to regularize taxation of interstate commerce but not to end it, to equalize the burden but not to lift it, accepting the proposition that interstate commerce must pay its own way—this would have a chance of success. But the campaign would have to be convincing. This means that interstate industry cannot unite on principle and then diverge in application with each segment trying to get a particular twist into the statutes to provide a special exception. It will also be necessary for interstate industry to dispel the notion that its proposal is only a subterfuge for tax relief.

This latter necessity can be met by providing a convincing picture of the real situation in the United States today. This can be done by a massive research project directed and controlled by people with no personal interest in the matter. Ideally, a foundation would finance such a project to be conducted by a university which could utilize law professors, economists, political scientists and statisticians. The need is not, however, for ivory-tower speculation. Any report on interstate taxation must be based on an aggregation and synthesis of facts that prove both that interstate industry and indirectly the public are needlessly burdened and that the local taxing authorities and indirectly the public will not be injured by any changes that would have to be made. One of the

[26] On several occasions I have made reference to the cost of paying taxes to multiple taxing units. The source of my information goes back to 1949 when a group of people interested in this problem of interstate taxation worked with me on a research project of the sort discussed below. This group had already obtained opinions from several large interstate operators that the cost of paying taxes to so many government units was more of a burden than the possible unfairness of several taxes on the same event.

difficulties about interstate taxation is that everybody talks about it but nobody has any facts.[27] Congressional reform will not come unless the facts are obtained and obtained by someone who will be believed.

There may be those who believe that the burdensome situation today is so obvious that a comprehensive research project into the facts will only establish the obvious. This may be true but so far Congress has not been moved by the obvious and it may be that overwhelming proof of the obvious backed by strong support from interstate industry is what will activate Congress. At least it is worth a try.[28]

Counter Prospects

When it comes to experimenting in government the Americans put the British to shame as "muddlers through." For all our leadership in business and industry, in invention and innovation, in mechanization and automation, we recoil in horror if any one attempts to disturb a tradition in government. Only under the spur of a Pearl Harbor or a Great Depression do we permit substantial changes in the governmental way of doing things. The problems of interstate taxation are the result of clinging to an 18th Century frame of government while trying to live in a 20th Century society. The ideas of the Founding Fathers may be and probably are in most respects universally valid, but the application of those ideas today in the manner of 1789 is ridiculous. Until we recognize this across the board, there is little likelihood that we shall recognize it in such a minor area as multiple tax burdens on interstate industry. Since nobody, especially the leaders of interstate industry, is prepared to tackle the job of bringing the American frame of government into the 20th Century there is little likelihood that the Gordian knot of interstate taxation will be cut.

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27 ". . . only scattered and inconclusive evidence is available concerning the effects on firms engaged in interstate business of diverse apportionment formulas applied under income and business taxes." Federal, State, and Local Fiscal Relations, Senate Document No. 69, 78th Cong., 1st Sess. (1943) p. 7.

28 In 1949 I prepared an outline for such a research project. It is available for any one who thinks he can raise the $100,000 or so that the project would cost.