STATE OF OHIO

OHIO CONSTITUTIONAL REVISION COMMISSION

Recommendations for Amendments to the Ohio Constitution

PART 4

TAXATION

May 1, 1974
Ohio Constitutional Revision Commission
41 South High Street
Columbus, Ohio 43215

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COLUMBUS, OHIO 43215 Tel. (614) 466-6293

Ann M. Eriksson, *Director*

May 1, 1974

The Ohio General Assembly
State House
Columbus, Ohio 43215

Gentlemen:

This report, the fourth from the Constitutional Revision Commission to the General Assembly, deals with Article XII, Taxation. It completes our work on fiscal matters, as our second report covered Article VIII, State Debt.

The recommendations in this report resulted from the studies of our Finance and Taxation Committee. These recommendations do not suggest any major changes in the constitutional provisions for taxation, which we found to be basically sound. Adoption of these proposals, we believe, will serve to clarify and modernize the provisions of Article XII.

It is a pleasure for me to be associated with this continuing effort to study the Ohio Constitution in a thoughtful and deliberate way, and to present to the General Assembly and to the people of Ohio recommendations for amendments, fulfilling our assigned task.

Respectfully Submitted,

Richard H. Carter

Richard H. Carter, Chairman

The Ohio Constitutional Revision Commission

The 108th General Assembly (1969-1970) created the Ohio Constitutional Revision Commission and charged it with these specific duties, as set forth in Section 103.52 of the Revised Code:

A. Studying the Constitution of Ohio;

B. Promoting an exchange of experiences and suggestions respecting desired changes in the Constitution;

C. Considering the problems pertaining to the amendment of the Constitution;

D. Making recommendations from time to time to the General Assembly for the amendment of the Constitution.

The Commission is composed of thirty-two members, twelve of whom are members of the General Assembly selected (three each) by the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President Pro Tem of the Senate, and the Minority Leader of the Senate. The General Assembly members select twenty members from the general public. Currently, there is one vacancy among the Senate membership, and one among the public membership.

Part 1 of the Commission's recommendations was presented to the General Assembly December 31, 1971. That report dealt with the organization, administration and procedures of the General Assembly, and included recommendations for improving the legislative process, having the Governor and Lieutenant Governor elected as a team, and repealing obsolete sections of the Constitution. The recommendations in that report were the result of study by a committee appointed to study the Legislative and Executive branches of government, chaired by Mr. John A. Skipton of Findlay.

Part 2 of the Commission's recommendations was presented to the General Assembly as of December 31, 1972 and dealt with State Debt. Included were recommendations respecting all sections in Article VIII and one section in Article XII. These recommendations resulted from the work of the Finance and Taxation Committee, chaired by Mr. Nolan W. Carson of Cincinnati.

Part 3 of the Commission's recommendations dealt with aspects of the constitutional amendment process and affected only one section of the Constitution—Section 1 of Article XVI. It resulted from the work of the committee appointed to study Elections and Suffrage, chaired by Mrs. Katie Sowle, of Athens.

This report, Part 4 of the Commission's recommendations, deals with Taxation and covers Article XII of the Constitution. It is the result of the work of the Finance and Taxation Committee, chaired by Mr. Nolan W. Carson of Cincinnati. Other members of that committee were: Senators Dennis and Ocasek, and Messrs. Bartunek, Bell, Carter, Guggenheim, Mansfield, and Wilson.

The Commission has completed action on recommendations dealing with county government and with the executive branch of government, and reports on these subjects are being prepared. Currently, Commission members are concentrating on elections and suffrage, the initiative and referendum, municipal government, the judiciary, and education and the bill of rights.

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Members of the
Ohio Constitutional Revision Commission
May 1, 1974

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Senator Robert E. Stockdale

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Senator Douglas Applegate
Senator Anthony O. Calabrese
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Julius J. Nemeth
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[1] Resigned March 14, 1974

Summary of Recommendations

Part 4

Taxation

The Commission recommends to the General Assembly the following action with respect to Article XII of the Constitution of the State of Ohio:

ARTICLE XII

Section 1	No Change
Section 2	No Change
Section 3	Enact New Section
Section 4	Amend
Section 5	No Change
Section 5a	No Recommendation
Section 6	Repeal (See Report, Part 2)
Section 7	Repeal; transfer provisions as changed to new section 3
Section 8	Repeal; transfer provisions as changed to new section 3
Section 9	Amend; renumber
Section 10	Repeal; transfer provisions to new section 3
Section 11	No Recommendation; referred to Local Government Committee
Section 12	Repeal; transfer provisions to new section 3

This report also recommends a new provision authorizing state laws imposing taxes to adopt provisions of the Statutes of the United States prospectively, to be included in new section 3.

TAXATION

Introduction

This is the second report of the Commission to to the General Assembly on constitutional provisions governing fiscal matters. The first of these, dated December 31, 1972, concerned primarily Article VIII and questions of state debt. The present report on Article XII deals primarily with provisions which prescribe the types of taxes which may be levied or are prohibited, the uniform rule of real property taxation, permissible exemptions from taxation, and the limitation on unvoted property taxation. These recommendations, like the recommendations on state debt, are the work of the Finance and Taxation Committee of the Commission, chaired by Mr. Nolan W. Carson of Cincinnati.

Matters of state taxation and matters of state debt are necessarily related to the extent that taxes are used for the payment of debt, and many state constitutions, including all of those which have been adopted recently, contain only one article covering these related subject areas. Ohio's first constitution, the Constitution of 1802, except for the fact that it expressly prohibited the imposition of a poll tax, was silent on the specifics either of state taxation or of state debt. Such specificity was introduced into the Constitution in 1851 because of the near-chaotic fiscal conditions prevailing in Ohio during the second quarter of the nineteenth century, as a restraint on the power of the General Assembly. The subjects of debt and taxation were dealt with separately by the Constitutional Convention of 1850-1851 because the question of debt was, at the time, such an overriding issue that it was thought to merit special consideration by a committee of the Convention separate from the one which considered finance and taxation. While the products of the two committees—Article VIII and Article XII, respectively—show unmistakable signs of overlap, the separate existence of these articles has not been a source of major constitutional problems. Probably for this reason, the Constitutional Convention of 1912, which made major changes especially in Article XII, did not combine the two articles. The Finance and Taxation Committee of this Commission considered the possibility of such consolidation but found no compelling reason to recommend it.

The 1912 Convention made no change in the basic concept relative to state debt expressed in Article VIII—namely, that no significant amount of debt shall be incurred except by constitutional amendment. It did, however, contribute considerably to the then-prevalent practice of specifying fiscal matters in rather minute detail in the Constitution. This is particularly evident in Article XII which, for example, was revised so as to specifically authorize the imposition of inheritance, income and severance taxes, and to authorize inheritance and income taxes to be either uniform or graduated as to rate.

Knowledgeable observers agree that since taxation is an inherent power of a state, a state constitution need not contain authorization for the imposition of specific types of taxes. While the Commission shares this view, it is not aware of a compelling reason to recommend a departure from the basic approach evidenced in present Article XII in this regard. Neither does the Commission conclude that there are compelling reasons to recommend changes at this time in the provisions governing the one per cent limitation on unvoted property taxation, the uniform rule of taxation of real property and exemptions.

Except for one provision to permit the incorporation and prospective operation of federal statutes in Ohio's tax laws, the Commission's recommendations on Article XII all have their roots in existing sections of the article. Although a few substantive changes are recommended, most of the recommendations involve the rearrangement of sections, modernization of language and changes to promote clarity and conciseness. Where the Commission has concluded that existing provisions state sound basic fiscal principles still applicable today, it recommends no substantive changes.

Taxation is a very delicate subject. The structure of Ohio's system of taxation has developed over the years, constantly refined by the interaction of the General Assembly and the Courts. The Commission took the view that, in the main, this structure has served the state well over the years and, under it, Ohio has prospered; consequently the Commission concluded that the structure should not be disturbed unless there are compelling inequities which require rectifying, or problems which call for the proposal of alternatives. Moreover, the Commission recognized that the General Assembly has wide power to adjust and revise our system of taxation within constitutional limits, so that considerable flexibility is available to change and refine the tax structure in future years. It is the hope and belief of the Commission that its approach to the revision of Article XII has produced an article which is both firmly grounded in the principles of taxation traditional in Ohio, and precise and flexible enough to meet the needs of the present and the foreseeable future.

It will be noted that this report includes recom-

mendations with respect to each existing section of Article XII except Sections 5a, 6 and 11. Considerable discussion occurred within the Commission, and several proposals were considered, relative to the repeal or broadening of Section 5a, which restricts the expenditure of highway "user" taxes to highway purposes. Since the necessary ⅔ vote of the Commisson could not be secured with respect to any disposition of this section, consideration of it was tabled. Consequently, this report does not recommend any changes in Section 5a, although it is possible that the Commission may be able, prior to completing its work, to reach the necessary consensus on a definitive recommendation.

In regard to Section 6, which concerns the manner of incurring debt for internal improvements, the Commission has already recommended its repeal in Part 2 of its report to the General Assembly dated December 31, 1972, for the reason that it views this section as superfluous.

Section 11, interpreted in conjunction with the one per cent limitation on unvoted property taxation contained in Section 2 of Article XII, imposes the so-called "indirect debt limit." The indirect debt limit question (and Section 11) has been referred, at the suggestion of the Finance and Taxation Committee, to the Commission's Local Government Committee for further study since it primarily involves a local government problem. It is anticipated that a recommendation with respect to Section 11 will be included in a later report of the Commission.

The report of the Finance and Taxation Committee also contained a recommendation to the Commission for a constitutional provision formalizing and refining the Ohio doctrine of taxation preemption which has developed through a long line of court decisions. Following Commission discussion, and at the suggestion of the Finance and Taxation Committee, this question was likewise referred to the Commission's Local Government Committee for further study. Consequently, no recommendation is included in this report on this subject.

ARTICLE XII

Section 1

PRESENT CONSTITUTION

Section 1. No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

COMMISSION RECOMMENDATION

No change.

COMMISSION RECOMMENDATION

The Commission recommends that no change be made in the present Section 1 of Article XII.

HISTORY AND BACKGROUND OF SECTION

A poll tax is a tax of a fixed rather than a graduated amount per head or person which is levied on adults and the payment of which is often made a requirement for voting.

Ohio was among the first states to express a constitutional proscription against the levying of poll taxes. Indeed, the Constitution of Ohio has always included a ban on poll taxes. The framers of Ohio's first Constitution, the delegates to the 1802 Convention, harbored such strong feelings about the undesirability of taxes by the poll that they included a prohibition on the levying of such taxes in the part of the Constitution of 1802 which they titled the Bill of Rights. The statement on poll taxes is among the very few substantive references to taxation in the Constitution of 1802, and reads as follows:

> That the levying taxes by the poll is grievous and oppressive; therefore the legislature shall never levy a poll tax for county or state purposes.[1]

The strength of such a constitutional statement is obvious, and caused one commentator to remark more than a century after its adoption:

> The members of the convention of 1802 had no theories on taxation except on one point . . . They were determined that no tax gatherer should be permitted to call on citizens of the new state and demand a *per capita* based on their manhood.[2]

When the Constitution of 1802 was revised and the present Constitution adopted in 1851, the substance of the ban on the levying of poll taxes was transferred, with only stylistic modifications, to Article XII, which deals with finance and taxation. As originally incorporated into the Constitution of 1851, the provision read:

> The levying of taxes, by the poll, is grievous and oppressive; therefore the General Assembly shall never levy a poll tax, for county or state purposes.[3]

In accordance with these provisions of the Constitutions of 1802 and 1851, no poll tax was ever required to be paid before an Ohio citizen could vote. However, beginning in 1804 state law did require that every male citizen either perform annually a given amount of work on the public roads or contribute a certain sum of money to the road fund.[4] These requirements constituted a poll tax in fact, and concern over this situation was expressed in the debates of the Constitutional Convention of 1850, as is evident from these comments:

> Under our present system of laws, there is but one manner in which a tax by the poll is levied—for road purposes. This law enforces upon every citizen the obligation to perform a given amount of labor on the public highway, and this, without regard to the amount of property he may possess or, in fact whether he may have property or not.[5] . . .[T]he obligation to labor on the highway is really and truly a poll tax.[6] . . . [and] what [we] desire to provide against is, the practice of making a man perform labor on the road, who has no property.[7]

Despite the awareness at the 1850 Convention that the highway labor requirement was in actuality a poll tax, and the continuation in the 1851 Constitution of the provision prohibiting the levying of a poll tax, state law, in 1912, required male citizens over twenty-one years of age to donate annually either two days of their labor or $3.00 for the maintenance of the public highway system. This was seen by some as merely a nominal tax which was applied narrowly, had never been abused, and was not a burden on the people.[8]

However, the drafters of the 1912 revisions of the Ohio Constitution did see fit to retain the provision barring the levying of a poll tax and amended the section to the form in which it exists today. The revision of the section appears to have been adopted by the 1912 Convention without formal debate, and there is little in the records of that Convention to reflect the effect intended by the language modifications made in

it at that time. As amended in 1912, and as it now exists in the Constitution, Article XII, Section 1 reads:

> No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

It can only be deduced from the 1912 revision of Section 1 that its framers wanted to clearly prohibit not only those poll taxes which might be levied as requirements on exercising the right to vote or other privileges of citizenship, but also poll taxes requiring the performance of physical services for which payments of money could be substituted. By this change, the spirit of the original poll tax provision written in 1802 was at last fully implemented.

RATIONALE FOR RETAINING SECTION

The rationale for retaining Section 1 is based on a desire to provide continued protection for the people of Ohio from a form of taxation which the Commission believes would be viewed by Ohioans today as "grievous and oppressive" just as it was by the Ohioans of earlier years. It should be noted that the United States Supreme Court has construed the Equal Protection Clause in the Fourteenth Amendment to the United States Constitution to prohibit the levy by any state of a poll tax if payment of the tax is made a condition to exercising the elective franchise.[9] It would, therefore, be violative of the federal Constitution for Ohio to levy a poll tax as a condition of voting whether or not the Ohio Constitution would so allow. However, since the Ohio prohibition goes further than the Supreme Court's interpretations of the federal Constitution, the Commission feels Section 1 should be retained intact.

INTENT OF THE COMMISSION

A poll tax, regardless of historical or technical definition, is today popularly associated with the abridgement of voting rights. It is the intent of the Commission in retaining Section 1 not only to safeguard the exercise of voting rights from the future imposition of any such burden but also to continue to prohibit a "head tax" (and service in lieu of payment of such a tax) as a condition of the exercise by Ohioans of any perquisites of citizenship in the state. This prohibition has served Ohio well—it should not be disturbed.

Footnotes

Section 1

1. *Constitution of Ohio, 1802*, Article VIII, Section 23.
2. Nelson W. Evans, *A History of Taxation in Ohio* (Cincinnati: The Robert Clarke Company, 1906), p. 7.
3. *Constitution of Ohio, 1851*, Article XII, Section 1.
4. 2 O. Laws 207, at 217.
5. *State of Ohio, Debates and Proceedings, Constitutional Convention, 1850*, pp. 34-35 (December 9, 1850). (Hereafter cited as *Debates*).
6. 2 *Debates* 745 (February 27, 1851).
7. 2 *Debates* 746 (February 27, 1851).
8. See "Our Present Problems in Taxation," an address by U. G. Denman, Attorney General of Ohio, at the Thirteenth Annual Meeting of the Ohio State Bar Association, July 8, 1909, (Toledo: Legal News Printers, 1909), pp. 19-20. The work requirement was removed from the law, General Code Section 5649, in 1913. 103 O. Laws 489.
9. *Harper v. Virginia Board of Elections*, 383 U. S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1969).

ARTICLE XII

Section 2

PRESENT CONSTITUTION

Section 2. No property taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of residents sixty-five years of age and older, and providing for income and other qualifications to obtain such reduction. All bonds outstanding on the 1st day of January, 1913, of the state of Ohio or of any city, village, hamlet, county or township in this state, or which have been issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, which bonds were outstanding on the 1st day of January, 1913, and all bonds issued for the world war compensation fund, shall be exempt from taxation, and without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

COMMISSION RECOMMENDATION

No change.

COMMISSION RECOMMENDATION

The Commission recommends that no change be made in the present Section 2 of Article XII.

HISTORY AND BACKGROUND OF SECTION

Section 2, without precedent in the Constitution of 1802, was proposed by the Constitutional Convention of 1850 and adopted, in its original form, as a part of the Constitution of Ohio in 1851.

As proposed by the Convention and ratified in 1851, Section 2 expressed a mandate for taxation by uniform rule and prescribed a system of *ad valorem* taxation for real and personal property. It also permitted the exemption of certain property from taxation. It read as follows:

> Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money; but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published, as may be directed by law.[1]

In the years since its adoption, Section 2 has been amended six times. Currently, the provision deals with four major subject areas: the one per cent limitation on unvoted *ad valorem* property taxes, the taxation of real property by uniform rule according to value, the exemption of property from taxation, and the recently added provision permitting partial "homestead exemptions."

Section 2 was first amended in 1905, when a mandatory exemption was written into the section. Unlike the original exemption provision which merely made permissible the passage of general laws exempting certain types and amounts of property, the 1905 amendment directly exempted from taxation the bonds of the state and its subdivisions as well as the bonds issued in behalf of public schools.

The Constitutional Convention of 1912, after vigorous and divisive debate, proposed a second amendment to the section. At the center of this debate, which raged for a number of days, stood the issue of the uniform rule versus the classification of property for taxation. Business interests generally supported classification, anticipating that it would give favorable treatment to intangible personalty. Proponents of retaining the uniform rule argued that it was fairer to the people of the state and that to allow classification would be to allow an inroad to manipulation of the tax laws.

Many of those endorsing the uniform rule also maintained that all bonds, including those types exempted by the 1905 amendment, should be subject to taxation. The delegates favoring the uniform rule and the taxation of bonds prevailed, and the 1912 amendment, as adopted by the electorate, retained the uniform rule, limited the exemption of bonds to those previously exempt and still outstanding, reworded the provision referring to the exemption of property devoted to charitable purposes and increased, from $200 to $500, the amount of an individual's personal property which could be exempted from taxation.

Regardless of the attention given Section 2 by the 1912 Convention, the amendment adopted in that year was destined to be short-lived, because the section was again revised in 1918. The nature of this change was a clarification of just which government bonds were exempt from taxation. The 1912 amendment had referred to those bonds "at present outstanding" as being exempt, and the 1918 change substituted the words "outstanding on the first day of January, 1913."

Section 2 was next amended in 1929. The most important substantive changes included in this amendment were: (1) confinement of the application of the uniform rule to real property only; (2) imposition of a one and one-half per cent limitation on the amount of *ad valorem* property taxes which could be levied without voter approval; and (3) modification of the exemption provisions.

By confining the application of the uniform rule to real property, and thus permitting classification and a different tax treatment of both tangible and intangible personal property, this amendment allowed significant changes in Ohio's tax system.

In 1910 (101 Ohio Laws 430), the General Assembly had prohibited the levy of more than ten mills on each dollar of tax valuation of the taxable property without voter approval. The delegates to the 1912 Constitutional Convention debated placing a similar limitation in the Constitution, but ultimately rejected the proposal. The statutory limitation was increased to 15 mills in 1927 (112 Ohio Laws 391). The 1929 amendment to Section 2 of Article XII imposed a limit on unvoted *ad valorem* property taxes of one and one-half per cent of "true value in money."

Finally, the 1929 amendment included a provision exempting from taxation the bonds sold pursuant to Section 2a of Article VIII, adopted in 1921, the proceeds of which constituted the World War Compensation Fund. The amendment also removed the $500 limit on the amount of personal property which could be exempt from taxation, and made other modifications of the exemption provisions, which are discussed in more detail under the heading "Rationale for Retaining Section" in this comment.

When the proposed revision of Section 2 was submitted to the voters in 1929, the question of whether or not to repeal Section 3 of Article XII was included on the same ballot. Section 3, an original part of the Constitution of 1851, provided for the taxation of property employed in banking, but it had little practical effect, being largely redundant of other sections on corporations and taxation. Section 3 was repealed as the amendment to Section 2 was adopted.

A fifth revision of Section 2 was approved by the electorate in 1933. This amendment of the section was, at least in part, a response to the economic depression of the 1930's and did nothing more than lower from one and one-half to one per cent of true value the constitutional limitation on unvoted property taxes.

The statute was also changed, reducing the 15 mill limit to 10 mills. It may be noted that the statutory limit on unvoted *ad valorem* property taxes has always been 10 or 15 mills, as the case may be, on the tax valuation (or assessed value) of the taxable property, whereas the constitutional limit of one or one and one-half per cent, as the case may be, is based on the "true value in money" of the property. Thus, the constitutional and statutory limitations are, in fact, different limitations. As long as the tax valuation is less than true value in money, which has been traditional under Ohio's assessment pattern, the statutory limit is lower than the constitutional limit.

The most recent amendment to Section 2 was adopted in 1970, when the so-called "homestead exemption" was added to the provisions of the section. The new provision is not technically an exemption but is an exception to the uniform rule. It permits the passage of statutes reducing taxes on the homesteads of residents 65 years of age and older through a reduction in taxable valuation determined by income and other qualifications.

RATIONALE FOR RETAINING SECTION

The One Per Cent Limitation

The one per cent limitation imposed by Section 2 places a maximum on the extent to which property, both real and personal, which is taxed according to value, may be taxed without specific voter approval or authorization set forth in a municipal charter. The limitation is cumulative and applies to the state and all of its political subdivisions which have the authority to levy taxes.

As noted earlier, the statutes currently impose a ten-mill limit on the tax valuation of taxable property (Section 5705.02 of the Revised Code). Although the ten-mill statute and the one per cent constitutional provisions impose the same limitation only if the base on which they are measured is the same (which is not

presently the case), Section 5705.02 declares that the ten-mill limit refers to and includes both the limit of the statute and the limit imposed by Section 2 of Article XII of the Constitution. It reads as follows:

> The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the "ten-mill limitation," and wherever said term is used in the Revised Code, it refers to and includes both the limitation imposed by this section and the limitation imposed by Section 2 of Article XII, Ohio Constitution.

In considering a recommendation as to the one per cent limitation, the Commission considered three basic alternatives: (1) deleting the provision; (2) increasing the limitation to some greater percentage; and (3) retaining the limitation as it now exists. It was recognized that the one per cent limitation, as implemented by statute, guarantees the protection of a basic right held by the people of Ohio for over 60 years, namely the right of the people to determine at the polls what property tax burden beyond a restricted amount they are willing to assume. The Commission found no compelling reason to eliminate or restrict this right and concluded that the limitation on unvoted *ad valorem* property taxation should be retained unchanged in the Constitution. Parenthetically, the Commission views this position as fully consistent with its recommendation of an unvoted flexible debt limit for state purposes in Article VIII because the issues involved in state or local tax levies required to be submitted to the voters as a result of the one per cent rule, are by their very nature more limited in scope, and far easier for the electorate to comprehend adequately than the lengthy and often extremely complex constitutional amendments which are now part of the procedure by which the state incurs debt.

No discussion of the one per cent (and statutory 10-mill) limitation would be complete without at least a recognition of the "indirect debt limit", which results from a conjunctive interpretation of Section 2 and Section 11 of Article XII. See Section 11 for the present Commission disposition of this problem.

The Uniform Rule

No provision of Article XII has, since its adoption in 1851, occupied a more prominent place in the history of taxation in Ohio than the uniform rule, yet uniformity received relatively little debate during the 1850 Convention, and it can only be deduced that its framers intended the rule mainly to assure that all kinds of property subject to taxation were taxed equally, regardless of ownership. This intent may be ascribed, in large part, to the unfavorable reaction of the general public to taxing statutes then in effect which had, as a result of a pragmatic interest in encouraging the internal economic development of the new state, exempted from taxation, or granted favorable tax treatment to, certain factories and mills as well as the capital of banks and the property of railroads.

The uniform rule has been interpreted by the Ohio Supreme Court to require that all real property in the state "be assessed on the basis of the same percentage of actual value," and that the best method for determining such value "is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so."[2] The Court has also said that the "current use" method of valuation cannot be used in conformity with the uniform rule, because this method "excludes, among other factors, location and speculative value which comprise market value."[3]

The opposite of taxation by uniform rule is the classification of property for tax purposes. Only a minority of states permit real property classification—Minnesota being the state that has classified most profusely—but even in those jurisdictions which have no constitutional prohibition against it, classification has been used sparingly. Real property classification may be of two types: (1) classification based on current use or (2) classification based on land-value or site-value. Classification based on current use is the more prevalent in the United States, and such a system usually includes at least the classification of agricultural, residential, commercial and industrial property. Land-value or site-value taxation—which in its pure form shifts the entire tax burden to land and imposes none on improvements in order to encourage the most intensive use of land—exists in modified form in Hawaii and Pennsylvania, and is also practiced abroad, particularly in Australia and New Zealand. However, because this theory of taxation has never been widely used since it was first proposed nearly 100 years ago, there is little hard evidence on which to conclude that any of the existing land-value or site-value systems of taxation would have a significant influence in stimulating either real property improvement or urban redevelopment, and at least one prominent student of tax systems concludes that under the tax rate levels now prevailing in America, replacing the real property tax with a tax on land alone would result in a prohibitive loss of revenue by causing a drastic decrease in the value of land.[4]

Minnesota is among those states which classify real property as to use, and the Commission examined the

Minnesota experience as a part of its study to determine whether a constitutional revision permitting or providing for real property classification should be recommended for Ohio. More than a dozen classes, and many subclasses, of real property had been established in Minnesota as of 1970, but the Commission found no good reason to conclude from the Minnesota experience that the classification system promotes equitable taxation. In fact, some observers of the Minnesota taxing structure, including a former tax commissioner, have reported that the classification system in that state has not worked satisfactorily and that it might be well to abolish it.[5]

The Commission concludes that the uniform rule has served Ohio well, and that there is little demand for its change or repeal. More importantly, the Commission has found no basis on which to conclude that a detailed system of classification of real property for tax purposes would result in a more equitable tax structure. The Commission recognizes the considerable present interest in decreasing the property tax burden on agricultural land and, possibly, certain other limited types of real estate. However, the Commission believes that inequities in relation to the taxation of specific categories of real property should best be considered and redressed individually without the outright abolition of the uniform rule, as the people did in 1973 when they adopted an amendment to Section 36 of Article II permitting special tax treatment of "agricultural land".

Exemptions

Concerning the exemption provisions of Section 2, it may be said that the five categories of property enumerated in the exemption clause are merely suggestions for exemption, and that the General Assembly has the power to determine exemptions from taxation, which power is limited only by the Equal Protection Clause contained in Article I of the Ohio Constitution. This is clearly the view of the Supreme Court expressed in *Denison University v. Board of Tax Appeals,* 2 Ohio St. 2d 17, 205 N.E. 2d 896 (1965), and is based on the removal from this section of the requirement that "all" property be taxed by uniform rule according to value, and the addition of the phrase "without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom," in the 1929 amendment of this section.

Ohio laws providing for exemptions have been criticized as being too generous and resulting in substantial reductions in the amount of taxable property in some areas.[6]

The Commission considered several possible alternatives with respect to the provisions in Section 2 dealing with the exemption of property from taxation. Revision of the exemption clause could provide for the enumeration of mandatory or permissible exemptions and prohibit any others, the prohibition of all exemptions, or the establishment of a system of partial exemptions. Or, the exemption provisions might be completely repealed. Since the *Denison* case, it is settled law under the present language of Section 2 that the General Assembly has the power to determine all exemptions, limited only by Article I of the Ohio Constitution.

The Commission concluded that exemptions from taxation are appropriately a legislative function, and should be neither prohibited nor mandated in the Constitution. Although it might be argued, for the same reason, that the enumeration of certain exemptions in the Constitution, even though not mandatory, should be eliminated, the Commission felt that removal of the specific permissive exemptions might be construed as an indication of a conclusion that these exemptions should not be permitted. Since the Commission reached no such conclusion, it does not recommend any change in the exemption language. The Commission does, however, urge the General Assembly to conduct a periodic review of exemptions in order to make certain that the public interest and welfare, and equitable and equally applied principles, are served by its policies in this field.

INTENT OF THE COMMISSION

The Commission has devoted considerable attention to Section 2 and believes that its recommendation to leave this section unchanged is appropriate and responsive to the collective interests of the people of Ohio in the foreseeable future. Section 2 has often been amended in conformity with exigencies of the time, and it is the analysis of the Commission that in its present form, and as construed by the courts, the section today presents a reasonable and workable structure for the imposition and control of *ad valorem* property taxation in this state.

FOOTNOTES

Section 2

1. 2 *Debates* 863 (March 10, 1851).
2. *Park Investment Company v. Board of Tax Appeals,* 175 Ohio St. 410, 195 N.E. 2d 908 (1964).
3. *State ex rel. Park Investment Company v. Board of Tax Appeals,* 32 Ohio St. 2d 28 at 33, 289 N.E. 2d 579 at 582 (1972).
4. L. L. Ecker-Racz, *The Politics and Economics of State-Local Finance* (Englewood Cliffs, New Jersey: Prentice Hall, 1970), pp. 100-103.
5. Rolland F. Hatfield, *Report to Governor's Minnesota Property Tax Study Advisory Committee,* (Minnesota State Planning Agency, November 1970).
6. E. g., Arnold W. Reitze, Jr., "Real Property Tax Exemptions in Ohio—Fiscal Absurdity," 18 W. Reserve L. Rev. 64 (1967).

ARTICLE XII

Section 3

PRESENT CONSTITUTION

Vacant. Former Section 3 repealed November 5, 1929.

COMMISSION RECOMMENDATION

Enact new section, below

COMMISSION RECOMMENDATION

The Commission recommends the enactment of a new section 3 to read as follows:

Section 3—(A) LAWS MAY BE PASSED PROVIDING FOR:

(1) THE TAXATION OF DECEDENTS' ESTATES OR OF THE RIGHT TO RECEIVE OR SUCCEED TO, SUCH ESTATES, AND THE RATES OF SUCH TAXATION MAY BE UNIFORM OR MAY BE GRADUATED BASED ON THE VALUE OF THE ESTATE, INHERITANCE, OR SUCCESSION. SUCH TAX MAY ALSO BE LEVIED AT DIFFERENT RATES UPON COLLATERAL AND DIRECT INHERITANCES, AND A PORTION OF EACH ESTATE MAY BE EXEMPT FROM SUCH TAXATION AS PROVIDED BY LAW.

Section 7—Repeal

Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation.

(2) THE TAXATION OF INCOMES, AND THE RATES OF SUCH TAXATION MAY BE EITHER UNIFORM OR GRADUATED, AND MAY BE APPLIED TO SUCH INCOMES AND WITH SUCH EXEMPTIONS AS MAY BE PROVIDED BY LAW.

Section 8—Repeal

Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated, and may be applied to such incomes as may be designated by law; but a part of each annual income as provided by law may be exempt from such taxation.

(3) EXCISE AND FRANCHISE TAXES AND FOR THE IMPOSITION OF TAXES UPON THE PRODUCTION OF COAL, OIL, GAS, AND OTHER MINERALS; EXCEPT THAT NO EXCISE TAX SHALL BE LEVIED OR COLLECTED UPON THE SALE OR PURCHASE OF FOOD FOR HUMAN CONSUMPTION OFF THE PREMISES WHERE SOLD.

Section 10—Repeal

Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals.

Section 12—Repeal

On and after November 11, 1936, no excise tax shall be levied or collected upon the sale or purchase of food for human consumption off the premises where sold.

(B) LAWS IMPOSING TAXES MAY ADOPT BY REFERENCE PROVISIONS OF THE STATUTES OF THE UNITED STATES AS THEY THEN EXIST OR THEREAFTER MAY BE CHANGED.

This recommendation includes the repeal of present Sections 7, 8, 10, and 12 of Article XII. The proposed section is a composite, in amended form, of these four sections. The format brings together in Division (A) of this section every provision of Article XII—except Sections 1 and 2—which deal with the imposition of specific types of taxes. In addition, the proposed section contains a new provision relating to the incorporation into Ohio tax law, by reference, of laws of the United States prospectively. Section 1, which prohibits the poll tax, is kept separate to emphasize its historic significance.

HISTORY AND BACKGROUND OF PROPOSED SECTION 3, DIVISION (A) (1)

Division (A) (1) is derived from present Section 7 of Article XII, which has remained in the Constitution unchanged since its adoption in 1912, and was placed there to settle a question concerning the constitutionality of a *graduated* inheritance tax which had arisen as the result of a series of Ohio cases decided before 1912.

In 1894 the General Assembly had imposed a graduated tax on inheritances, or the right to receive an estate. Estates valued at not more than $20,000 were entirely exempt; but estates valued at more than $20,000 were taxed on the entire amount at graduated rates. The Ohio Supreme Court held this tax unconstitutional in *State ex rel. Schwartz v. Ferris,* 53 Ohio St. 314 (1895). The basis for the decision was not the inability of the General Assembly to levy such a tax, since it had long been recognized in Ohio that the power of the state to levy taxes is an inherent incident of sovereignty.[1] Rather, the exemption feature and the graduation of the amount of the tax, by imposing a greater rate on larger estates, were held to violate the equal protection clause of Section 2 of Article I of the Ohio Constitution. In the *Ferris* case, the Court held that an exemption must operate equally for all, and the rate of taxation must be the same on all estates.

In 1904 the General Assembly levied a new inheritance tax, which contained a $3,000 exemption applied to all estates, and a flat tax rate of two per cent applicable to all estates. This act was upheld by the Supreme Court in *State ex rel. Taylor v. Guilbert,* 70 Ohio St. 229 (1904). In the *Ferris* case, the Court had indicated that the maximum exemption which could be permitted was $200 (reasoning from a constitutional provision permitting a $200 personal property exemption), but this statement was rejected in the subsequent *Guilbert* case. There, in upholding the new act, the Court said:

> We are of the opinion that an excise tax which operates uniformly throughout the state and applies equally to all the subjects embraced within its terms cannot be said to deprive any one of the equal protection of the law, or in any manner to violate the bill of rights, or any section of the constitution . . When it is determined . . . that the authority to impose the tax is conferred by the general grant of legislative power, then the selection of the subjects on which the tax will be imposed must be within the legislative competency.[2]

If the decisions seem inconsistent in the treatment of the exemption question, the matter was resolved by the 1912 Convention, which added Section 7 to Article XII, authorizing a graduated inheritance tax, and permitting "a portion of each estate not exceeding twenty thousand dollars" to be exempt from taxation.

On July 1, 1968, the Ohio legislature repealed the inheritance tax and adopted an estate tax[3], but no change in the language of Section 7 has occurred. An inheritance tax is a tax on the right of devisees or legatees to inherit, generally measured by the value of the property, whereas an estate tax is a tax on the property composing a decedent's estate.

EFFECT OF CHANGE

In the transfer from Section 7 to the proposed Section 3 (A) (1), two substantive changes have been made: (1) the taxation of estates is specifically authorized and (2) the constitutional ceiling of twenty thousand dollars on exemptions is removed in favor of permitting exemptions to be set by law.

RATIONALE FOR CHANGE

The reason for the transfer of Section 7, as amended, to the new Section 3 is to consolidate in one section all provisions of Article XII, except Sections 1 and 2, which authorize, or prohibit, the imposition of specific types of taxes. The Commission recommends the retention of the substance of Section 7, as amended, because the section specifically authorizes the graduation of taxes, an option which the Commission believes should continue to remain available, and based on the history of the inheritance tax in Ohio prior to the adoption of Section 7, a question may arise concerning the constitutionality of a graduated tax in the absence of specific authorization to impose it, because of the requirements of equal protection.[4]

The Commission further recommends that the section be amended to add a reference to an estate tax, as well as an inheritance tax, for purposes of clarity and specificity.

The use of the term "decedents' estates" will assure that the estate tax could not, by any interpretation, be imposed on the estates of living persons, because this term has gained a well-settled meaning in probate law. The change from the phrase "and such taxation may be uniform" to the phrase "and *the rates* of such taxation may be uniform" is for clarification purposes and reflects the fact that most people tend to think of taxation with this term in mind.

Finally, the Commission recommends that the $20,000 limitation on exemptions be removed from the Constitution because the value of money changes and this is a legislative detail, better left to the discretion of the General Assembly, particularly in view of the fact that Ohio's estate tax, like the income tax, is modeled, to a large extent, on the federal estate tax law.[5]

HISTORY AND BACKGROUND OF PROPOSED SECTION 3, DIVISION (A) (2)

Division (A) (2) is derived from Section 8 of Article XII, which also originated in 1912. It was amended in 1973 to remove the $3,000 exemption limit.

As previously noted, the state's power to levy taxes had been recognized as an inherent power prior to 1912. Why, then, did the delegates in 1912 deem it necessary to add Section 8 to Article XII? There was little or no discussion about the point that the General Assembly could levy an income tax if it so desired, without constitutional authorization. The first effort by Congress to levy an income tax, and a very limited one at that, had been held unconstitutional by the Supreme Court of the United States in the case of *Pollock v. Farmers' Loan and Trust Co.*, 157 U.S. 429 (1895), on strictly federal constitutional questions involving the interpretation of Section 2 of Article I of the federal Constitution which reads in part: "Representatives and direct taxes shall be apportioned among the several states . . . according to their respective numbers", and which has no counterpart in any state constitution. Although some states may have felt it necessary to authorize, specifically, an income tax in their constitutions because of the federal decision, this factor did not enter into the discussions in 1912 in Ohio. Rather, it seems clear that both the inheritance and income tax sections of Article XII were proposed by the 1912 Convention because of the prior decision in Ohio holding an inheritance tax unconstitutional, not because the General Assembly had no power to levy such a tax, but because of its graduation and exemption aspects.

The Supreme Court of Ohio, in reviewing the sections of Article XII drafted by the 1912 Convention and authorizing the imposition of specific types of taxes, certainly reached this conclusion when it said in *State ex rel. Zielonka v. Carrel*, 99 Ohio St. 220 (1919), at page 223:

> Section 7 of this article is a new product, and is in no sense a limitation of power, being rather a special grant, and has to do with taxation on inheritances. . . .
>
> Section 8 of the same article, providing for the taxation of incomes, for the same reason cannot be said to be a limitation of power, nor can it be said to be equivalent to a conclusion that without such express grant incomes might not be the subject of taxation. It is much more likely that the incorporation of this new section by the constitutional convention of 1912 was occasioned by a desire on the part of its members that the method of levying taxes on incomes should be precisely similar to taxation of inheritances, in so far as it might relate to graduation of rates and exemption.

The exemption provision of Section 8 was undoubtedly modeled on the corresponding inheritance tax provision of Section 7. The specific amount on the limitation on exemptions, three thousand dollars, was probably suggested by the pioneer income tax law of Wisconsin which had considerable influence on the deliberations of the Convention on the question of an income tax. The limit on exemptions was removed by the voters in Ohio in November, 1973, and the legislature now has authority to provide for exemption in any amount.

EFFECT OF CHANGE

There are a number of grammatical changes in proposed Division (A) (2) from the language of present Section 8. The only substantive change recommended by the Commission was the removal of the $3,000 limitation on exemptions, and this change has already been made by the voters.

RATIONALE FOR CHANGE

The transfer of Section 8, as amended, to Division (A) (2) is intended to effect a consolidation of all tax-authorizing or tax-prohibiting sections of Article XII, except Sections 1 and 2, as previously noted. In addition, the change to the phrase "and *the rates* of such taxation may be either uniform or graduated" from the phrase "and such taxation may be either uniform or graduated" is recommended for the same reason as the corresponding change is recommended in Division (A) (1), that is, to update the constitutional language to reflect current usage. Likewise, substitution of the phrase "as may be *provided* by law" for the phrase "as may be *designated* by law" is intended to reflect current bill-drafting practice in Ohio.

One noteworthy by-product of the proposed revision is the removal of the word "annual", thus obviating the necessity for defining "annual income" in the last phrase of Section 8, which reads "but a part of each such annual income as provided by law may be exempt from such taxation." This is especially significant in view of the fact that the state income tax law, as previously noted, is modeled on the federal one and, in fact, adopts the definitions of many terms used in the Internal Revenue Code.[6] The proposed removal would forestall a possible conflict in definition between state and federal law.

HISTORY AND BACKGROUND OF PROPOSED SECTION 3, DIVISION (A) (3)

Division (A) (3) is derived from two present sections of Article XII. That portion of the proposed division which precedes the semi-colon is transferred in substance from Section 10, which dates from 1912 and has not been changed since, and that portion of the

proposed section which follows the semi-colon is transferred, without the phrase "On and after November 11, 1936", from Section 12, which was adopted on November 3, 1936.

EFFECT OF CHANGE

No change in meaning results from the transposition.

RATIONALE FOR CHANGE

The transfer of Sections 10 and 12, as amended, to Division (A) (3) of Section 3 completes the consolidation envisioned by this proposed section. The further consolidation of Sections 10 and 12 in Division (A) (3) is deemed appropriate because both of these sections deal, at least in part, with excise taxes.

In regard to the state's power to levy a severance tax the Supreme Court of Ohio said in *State ex rel. Zielonka v. Carrel, supra*, at page 224:

> Section 10 of Article XII of the new Ohio Constitution declares that laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals.
>
> It is to be concluded that the incorporation of this new section in the constitution was to make certain the authority of the general assembly to levy tax on the specified minerals named, for certainly in view of the legislation and construction thereof by the supreme courts of both Ohio and the United States no express grant of power was required in order to sustain either excise or franchise taxation.
>
> A majority of this court are of the opinion that there is no constitutional limitation resting upon the authority of the general assembly to levy tax on property of every kind and character, except that it must be uniform and according to its true value in money. Nor is there even this limitation on its power to provide for the levy of taxation on incomes, inheritances and franchises, including the imposition of excise taxes.

The above comment by the Court on the severance tax has caused some theorists to question whether a severance tax may not in fact be a property tax subject to the uniform rule, thus needing constitutional authorization in order to permit the levy of such a tax in other than a uniform manner. This does not appear to have been litigated, but it is apparent that the 109th General Assembly, in enacting Section 5749.02 of the Revised Code, which imposes a severance tax on minerals, did not treat this tax as a property tax, since it imposed the tax on a *unit* basis—so much per ton—and not on the *value* of the minerals severed. At the present time, however, the Commission does not feel justified in recommending the removal of specific authority to levy a severance tax from the Constitution.

Since present Section 10, which authorizes the severance tax, also authorizes excise and franchise taxes, the possibility exists that removing the reference to excise and franchise taxes while leaving the reference to the severance tax might be construed to negate the state's power to levy excise and franchise taxes, even though, as *Zielonka* points out, these taxes could have been levied without specific constitutional authorization. The Commission also feels that the deletion of the reference to excise and franchise taxes, which are clearly transaction taxes, might be construed in the future to give a different meaning to the severance tax authority than was originally intended when the section was adopted. For these reasons, the Commission recommends the retention of the substance of Section 10, *in toto*.

The Commission has also concluded that the prohibition of an excise tax on food contained in present Section 12 represents a policy judgment of sufficient importance to merit continued constitutional attention. Since present Section 10 generally authorizes the imposition of an excise tax while Section 12 prohibits the imposition of an excise tax on a specific subject, it was thought appropriate to combine them in the division proposed here.

The deletion of the reference to a specific date, now in Section 12, merely removes a legislative detail from the Constitution.

HISTORY AND BACKGROUND OF PROPOSED SECTION 3, DIVISION (B)

Proposed Division (B) has no present counterpart in the Constitution.

EFFECT OF CHANGE

The proposed Division (B) would give constitutional authorization for the prospective adoption of provisions of federal tax law by the state through laws enacted by the General Assembly.

RATIONALE FOR CHANGE

In recent years, several states have adopted constitutional provisions of a similar nature, as the practice of "dovetailing" portions of the tax laws of the states on the federal tax law has become more common. These states include Colorado[7], Illinois[8], Kansas[9], Nebraska[10], New Mexico[11], New York[12], and North Dakota[13].

Certain portions of the tax laws of Ohio, too, are written so as to adopt portions of the federal law by reference prospectively. For example, Section 5731.01 (E) of the Revised Code states, in part: "The value

of the gross estate [for state estate tax purposes] may be determined, if the person required to file the estate tax return so elects, by valuing all the property in the gross estate on the alternate date, if any, provided in Section 2032. (a) of the Internal Revenue Code of 1954, *or any amendments or reenactments thereof,* as such section generally applies, for federal estate tax purposes, to the estates of persons dying on the decedent's date of death"; and the first paragraph of Section 5747.01 of the Revised Code—the definition section of the personal income tax law—states: "Except as otherwise expressly provided or clearly appearing from the context, any term used in Chapter 5747. of the Revised Code has the same meaning as when used in a comparable context in the Internal Revenue Code, and all other statutes of the United States relating to income taxes." Division (I) of Section 5747.01 then defines "internal revenue code" as the "internal revenue code of 1954, 68A stat. 3, 26 U.S.C. 1, *as now or hereafter amended.*" (Emphasis added).

There is no constitutional question with respect to the power of a state legislature to adopt by reference provisions of federal law which are in existence at the time the state law is enacted, However, and even though the trend of more recent cases tends to indicate that such action is permissible within prescribed limits, there is still a question in the minds of some constitutional theorists as to whether a state law which authorizes the adoption of federal law by reference, prospectively, constitutes an unlawful delegation of the state's legislative power to Congress, within the meaning of the Constitution of the United States and certain state constitutional provisions.[14] The relevant provisions of the Constitution of Ohio are that portion of Section 1 of Article II which provides that the legislative power of the state shall be vested in a General Assembly and Section 26 of Article II, which reads:

> All laws, of a general nature, shall have a uniform operation throughout the State; nor, shall any act except such as related to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except, as otherwise provided in this constitution.

The question of whether the foregoing provisions prevent the adoption by the state of portions of the federal tax law, prospectively, has not been litigated and the Commission expresses no view on the validity of such action. However, the Commission recommends the adoption of the proposed Division (B) of Section 3 to clarify the matter, and to assure that the General Assembly is empowered to insure the consistency of Ohio's tax laws with federal laws if such consistency is deemed desirable.

The Commission considered but rejected the idea of including federal tax regulations, in addition to federal statutes, in the proposed new language.

INTENT OF COMMISSION IN PROPOSING SECTION 3

The intent of the Commission in proposing Divisions (A) (1), (A) (2) and (A) (3) of Section 3 is three-fold: (1) consolidating all sections of Article XII—except Sections 1 and 2—which either authorize or prohibit the imposition of specific types of taxes in one section; (2) updating the language of the provisions to reflect contemporary drafting practice and usage and, in the case of the reference to the estate tax, to give explicit constitutional recognition to the imposition of this type of tax; and (3) removing from the document certain legislative details, such as specific dates and exemption limits, which, in the view of the Commission, are not appropriately a part of a constitution.

The intent of the Commission in proposing Division (B) of Section 3 is to remove any constitutional doubt concerning the power of the General Assembly to adopt provisions of federal tax law prospectively.

Footnotes

Section 3

1. *Western Union Telegraph Co. v. Mayer*, 28 Ohio St. 521 (1876).
2. *State ex rel. Taylor v. Guilbert*, 70 Ohio St. 229 (1904).
3. Sections 5731.01 *et seq.* of the Revised Code.
4. *Kroger Co. et al. v. Schneider*, 9 Ohio St. 2d 80 (1967).
5. See Sections 5731.01 (E) and 5731.18 (B) of the Revised Code.
6. Section 5747.01 of the Revised Code.
7. *Colorado Constitution*, Article X, Section 19.
8. *Illinois Constitution*, Article IX, Section 3(b).
9. *Kansas Constitution*, Article 11, Section 11.
10. *Nebraska Constitution*, Article VIII, Section 18.
11. *New Mexico Constitution*, Article III, Section 16.
12. *New York Constitution*, Article III, Section 22.
13. *North Dakota Constitution*, Article XI, Section 175.
14. James O. Huber, "Constitutionality of a Federalized Income Tax", 1963 Wisconsin L. Rev. 445, 449.

ARTICLE XII

Section 4

PRESENT CONSTITUTION

Section 4. The General Assembly shall provide for raising revenue, sufficient to defray the expenses of the State, for each year, and also a sufficient sum to pay the interest on the State debt.

COMMISSION RECOMMENDATION

Section 4. The General Assembly shall provide for raising revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay principal and interest as they become due on the state debt.

COMMISSION RECOMMENDATION

The Commission recommends the amendment of Section 4 of Article XII as follows:

Section 4. The General Assembly shall provide for raising revenue, sufficient to defray the expenses of the ~~State~~ STATE, for each year, and also a sufficient sum to pay ~~the~~ PRINCIPAL AND interest AS THEY BECOME DUE on the ~~State~~ STATE debt.

HISTORY AND BACKGROUND OF SECTION

Section 4 is an original part of the Constitution of 1851 and has remained unchanged since its adoption. There was no direct predecessor of this provision in the Constitution of 1802. Rather, Section 4 is among the constitutional revisions made in 1851 as a remedial response to the financial laxity of the state government during a period of approximately 25 years before the call of the Constitutional Convention. During that period Ohio had embarked on a series of internal improvement projects, including the construction of a canal system. The building of the canals in Ohio was begun in 1825, and it was anticipated that the system when complete would, by improving transportation, encourage the growth of the state's economy. The state financed the project in part through the sale of interest-bearing "transferable certificates of stock" which had many of the indicia of modern bonds. The legislation which provided for the issuance of the stock pledged state funds for the payment of interest and principal, and made the auditor responsible for determining the tax necessary to satisfy the state's obligations on the stocks.[1] However, during the ensuing years the Auditor, often with the support of the Governor and the General Assembly, fell into the practice of diverting funds from other state purposes to servicing the canal debt. Thus, Ohio established a pattern of borrowing money to pay the interest due on previous borrowing. This practice extended beyond the financial obligations of the canal projects begun in 1825, for it also tainted the state's payment of debts incurred in a second phase of internal improvements entered into in 1836, and was compounded by the financial abuse resulting from the "Loan Law" of 1837.[2]

The action of the General Assembly in calling the Constitutional Convention for 1850 was very much a response to these and other financial and tax difficulties in which the state found itself. Among the main objectives of the delegates to the Convention was restricting the financial power of the General Assembly and, as a part of that objective, prescribing a method for paying the public debt.

During the Convention the position was expressed that the people had been deceived in the General Assembly's failure to levy taxes sufficient to meet the expenses of interest, and in the use of borrowed money to pay interest.[3] This sentiment carried the Convention and Section 4 was proposed as a measure to assure that the pattern of borrowing to pay interest would be brought to an end, never to be revived, and that taxes sufficient to meet the expenses of the state would thereafter be levied.

EFFECT OF CHANGE

The Commission does not foresee that the suggested amendment to Section 4 will cause any change in the manner in which the state debt is presently managed or paid. The General Assembly already provides through the revenues it raises for the principal as well as interest on state debt to be paid when due. Therefore, rather than giving the General Assembly direction to modify its current practice, the proposed revision of this section merely makes the original constitutional provision more complete. The effect of the amendment is to retain a concept of fiscal policy which has proven to be sound, and to add to the section slight changes which will modernize it and, hopefully, perfect the constitutional direction.

RATIONALE FOR CHANGE

The history of Section 4 shows that abuses in the area of interest payments on the state debt were an

overriding concern to the framers of the Constitution of 1851. It may be inferred from this concern that there was no specific intent to exclude the raising of sufficient sums to meet payments on the *principal* of debt from the constitutional mandate, and that the omission of reference to principal in the 1851 provision was just that—an omission and not an intentional exclusion. The Commission believes that the addition of the word "principal" completes the constitutional mandate in a logical manner and provides the people with a more effective protection against any future financial mismanagement which might otherwise arise in this area.

The Commission suggests the inclusion of the words "as they become due" in this section to emphasize that the requirement of this section in regard to the payment of principal and interest on the state debt is intended to apply only to that portion of the debt for which provision must be made in any fiscal year, and not to the entire debt. Most modern state debt is serial in form, so that not all obligations incurred in any one year must be met or satisfied at once at some later point in time. In addition, this language requires *timely* payment of debt service payments— a necessary adjunct to fiscal responsibility of government.

INTENT OF THE COMMISSION

The Commission believes that Section 4, although more than 120 years old, makes a viable statement on fiscal policy for Ohio, and it desires to clarify and perpetuate that policy by way of the proposed amendment. The original adoption of the section was intended to mandate a change in state fiscal policy and correct a great abuse which no longer exists. However, a constitution is adopted to give the fundamental directions for the operation of government, and making provision for paying the expenses incurred directly or through debt is such a basic responsibility of government that the Commission feels that a provision setting out and assigning that responsibility should be retained in the Ohio Constitution.

Footnotes

Section 4

1. 23 *O. Laws* 50.
2. 35 *O. Laws* 76.
3. 1 *Debates* 481 (June 18, 1850).

ARTICLE XII

Section 5

PRESENT CONSTITUTION

Section 5. No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied.

COMMISSION RECOMMENDATION

No change

COMMISSION RECOMMENDATION

The Commission recommends that no change be made in the present Section 5 of Article XII.

HISTORY AND BACKGROUND OF SECTION

Section 5 is an original part of the Constitution of 1851. No change has been made in the section since 1851, and there was no parallel provision in the Constitution of 1802. Like Section 4 of Article XII, Section 5 was among the constitutional provisions adopted in 1851 with the intent of putting an end to the gross mismanagement of government finances which had gone on during the second quarter of the 19th century and with the hope that an orderly system of taxation and expenditure could be established. Some of the provisions on fiscal affairs which were placed in the Constitution of 1851 may readily be criticized as being too remedial in nature and not directed effectively enough toward the establishment of a permanent framework for government. Certainly, remedy was a strong motivation in the adoption of Section 5, but the provision sets forth a limitation on the powers of the General Assembly, which limitation is of continuing value.

The concepts of Section 5 are relatively simple: no tax may be levied unless the General Assembly first enacts a statute which authorizes the levy; any such enabling legislation must set forth the purpose of the levy or be invalid; and the revenue derived from the levy must be applied solely to the purpose indicated in the enabling statute or statutes. By imposing these guidelines on the levying of taxes and the expenditure of resulting revenue, Section 5 protects the people from having to pay taxes not fully considered and formally authorized by the General Assembly and from having to contribute revenue which is used in unspecified ways or expended for purposes other than those which the people, through their representatives, have approved.

EFFECT OF RETAINING SECTION

No change in the meaning or effect of Section 5 is intended.

RATIONALE FOR RETAINING SECTION

An initial reading of the first clause of Section 5 would seem to indicate nothing more than the obvious, to wit: taxes may only be levied when authorized by statutory provision. However, the Commission believes that such basic safeguards as this statement are eminently appropriate for inclusion in the Constitution of Ohio. The limitation of the first clause, or indeed the entire section, would not be clearly implied in the General Assembly's general power of taxation. For the people to enjoy the continued protection of having taxes levied only when authorized by statute and having revenues thereby produced applied only to the statutory purposes, such a provision should be retained in the Constitution. The Commission understands that the intent of the second clause of Section 5, to require taxing statutes to set forth their objectives and to limit the application of resultant revenues to those purposes, may be compromised by the enactment of tax legislation which states only the broadest and most general objectives. Nonetheless, the Commission recommends that the second clause also be retained in any revision of the Constitution because it does express a protection to the people of the state which seems just and proper—and requires the General Assembly to justify in advance the uses and purposes for which new taxes are to be devoted.

INTENT OF THE COMMISSION

Within the Commission's overall task of recommending to Ohioans a Constitution which states the fundamental rights of the people and establishes a framework for modern government is the responsibility to analyze the provisions of the existing Constitution and to suggest the retention of those sections which, however old, have continuing vitality. It is the intent of the Commission in recommending that Section 5 of Article XII be retained that a safeguard still thought to be important not be excluded from the statement of the most basic law of Ohio.

ARTICLE XII

Section 5a

PRESENT CONSTITUTION

Section 5a. No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

COMMENT

During its deliberations concerning a possible recommendation on this section—which is relatively new, having become effective on January 1, 1948 — the Commission considered five alternatives:

1. Making no change in the section. This would, of course, continue the present situation.

2. Repealing the section. This would permit the General Assembly freedom to expend Section 5a-related funds, without preconditions, for any purpose, except to the extent any of these funds are committed for debt service on bonds issued pursuant to constitutional amendments.

3. Permitting Section 5a-related funds to be expended for any purpose with the concurrence of two-thirds of the members elected to each house of the General Assembly. This alternative would, likewise, permit the General Assembly to expend these funds, not otherwise committed, for any purpose, without preconditions, except that it would impose the requirement of a two-thirds vote, which is the same majority as is presently required to pass emergency legislation. This recommendation was contained in the report of the Commission's Finance and Taxation Committee, with the comment that this approach would give the General Assembly the option to change priorities in the future, should it desire to do so, while at the same time assuring that such a change would never be made lightly.

4. Requiring that all state revenues derived from any transportation source be expended only for publicly owned or publicly operated transportation facilities. This alternative would pool all transportation-related revenues, including Section 5a funds, in a common fund to finance all types of publicly owned or publicly operated transportation facilities. It would, in effect, broaden both the types of earmarked revenues and the purposes for which they are earmarked. This approach was suggested to the Commission by the Ohio Department of Transportation.

5. Permitting Section 5a-related funds to be expended for any transportation purpose. (Variations of this approach might include limiting the expenditure of such funds to publicly owned or publicly operated facilities). Under this alternative, Section 5a-related funds would not be pooled with other transportation-derived revenues by constitutional mandate, but would nevertheless be available for transportation purposes other than highways, should the General Assembly deem it appropriate to use them for such purposes.

The Commission was unable to secure the necessary approval for any of the alternatives, and thus makes no recommendation with respect to Section 5a at this time. If approval of a recommendation is reached later, it will be transmitted to the General Assembly.

COMMISSION RECOMMENDATION

The Commission has no recommendation with respect to Section 5a at this time.

ARTICLE XII

Section 6

PRESENT CONSTITUTION

Section 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

COMMENT

The Commission has already recommended the repeal of Section 6 of Article XII as being unnecessary, in Part 2 of its report, dated December 31, 1972.

ARTICLE XII

Section 7

PRESENT CONSTITUTION

Section 7. Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation.

COMMISSION RECOMMENDATION

Repeal and transfer.

COMMISSION RECOMMENDATION

The Commission recommends the repeal of present Section 7 and the transfer of its provisions, with some changes, to Division (A) (1) of the proposed Section 3.

COMMENT

The discussion of the history and background of present Section 7, the rationale for recommending changes in the section, and the intent of the Commission in making these recommendations, appears following the proposed Section 3, beginning at page 20.

ARTICLE XII

Section 8

PRESENT CONSTITUTION

Section 8. Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated, and may be applied to such incomes as may be designated by law; but a part of each annual income as provided by law may be exempt from such taxation.

COMMISSION RECOMMENDATION

Repeal and transfer.

COMMISSION RECOMMENDATION

The Commission recommends the repeal of present Section 8, and the transfer of its provisions, with some changes, to Division (A) (2) of the proposed Section 3.

COMMENT

The discussion of the history and background of Section 8, the rationale for recommending changes in the section, and the intent of the Commission in making these recommendations, appears following the proposed Section 3, beginning at page 20.

ARTICLE XII

Section 9

PRESENT CONSTITUTION

Section 9. Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the county, school district, city, village, or township in which said income or inheritance tax originates, or to any of the same, as may be provided by law.

COMMISSION RECOMMENDATION

Section 6. Not less than fifty per cent of the income, estate, and inheritance taxes that may be collected by the state shall be returned to the county, school district, city, village, or township in which said income, estate, or inheritance tax originates, or to any of the same, as may be provided by law.

COMMISSION RECOMMENDATION

The Commission recommends the amendment of Section 9 to read as follows:

Section ~~9~~ **6**. No less than fifty per ~~centum~~ CENT of the income, ESTATE, and inheritance taxes that may be collected by the state shall be returned to the county, school district, city, village, or township in which said income, ESTATE, or inheritance tax originates, or to any of the same, as may be provided by law.

The renumbering of this section results from the fact that present Sections 7 and 8, as amended, would be transferred to Divisions (A) (1) and (2) of the proposed Section 3 of Article XII, and present Section 6 would be repealed.

HISTORY AND BACKGROUND OF SECTION

Section 9 was adopted in its original form in 1912 when it read:

> Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the city, village or township in which said income and inheritance tax originate.

This provision was amended effective November 4, 1930 to include specific reference to counties and school districts, and by the addition of the words "or to any of the same, as may be provided by law" at the end of the section.

The Debates of the Constitutional Convention of 1912 are of no assistance in ascertaining the original intent of Section 9, although it appears that the "fifty-fifty" formula contained in it is, by its very nature, a compromise between state and local taxing interests. The 1930 amendment, on the other hand, followed by a year the adoption of the "classification amendment" to Section 2 of Article XII, which removed personal property from the uniform rule of taxation contained in that section, and there was apparently little doubt at the time that classification of personal property would reduce revenues from the property tax. The 1930 amendment can be seen, then, as an effort to ease the burden of loss of revenue created by classification and by reappraisal, particularly on counties and school districts, which relied heavily on the property tax and were not receiving any part of the inheritance tax, then the only tax levied under this section. However, the amendment by no means assured counties and school districts that they would *automatically* benefit from the inheritance tax, and a possible income tax, as a result of their specific mention in Section 9, since the last part of the amendment clearly gives the General Assembly the power to determine which subdivisions shall benefit.

EFFECT OF CHANGE

No change in meaning results from the proposed amendment.

RATIONALE FOR CHANGE

The Commission concluded that the concept of requiring one-half of all taxes levied under this section to be returned to the point of origination should be retained in the Constitution and that the people of Ohio would not today accept a repeal of these provisions.

As previously stated, this section would be renumbered to fill a vacancy left by the proposed reorganization of Article XII.

The change from "per centum" to "per cent" is simply a matter of style, while the addition of the reference to estate taxes, as in the proposed Section 3 (A) of Article XII, recognizes the fact that Ohio now imposes such a tax. Parenthetically, the Commission has been advised that a portion of the estate taxes which are being collected are, in fact, being returned to local units as if the estate tax were specifically mentioned in Section 9.

The possibility of requiring the return of part of the corporate franchise tax under this section was considered by the Finance and Taxation Committee of the Commission, but the committee was advised that such a requirement would cause serious problems in ad-

ministration, particularly in regard to the allocation of the income of corporations which derive income from several counties or from statewide operations. Additional problems could be caused by a change in the basis on which a corporation pays income taxes, which may change from year to year. In recognition of these problems, the Commission concluded not to include the franchise tax in this section as a tax "measured by income."

The Commission also concluded that any change in the "origination language" of this section to define more clearly the point of origin of the tax revenues would be as likely to create new problems of administration and interpretation as it would be to solve existing ones. Hence, no change in this language is recommended.

INTENT OF COMMISSION

The intent of the Commission is to change the language of this section to reflect contemporary usage and to add a specific reference to the estate tax.

ARTICLE XII

Section 10

PRESENT CONSTITUTION

Section 10. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals.

COMMISSION RECOMMENDATION

Repeal and transfer.

COMMISSION RECOMMENDATION

The Commission recommends the repeal of Section 10, and the transfer of its provisions, with some changes—including their combination with the provisions of Section 12, as changed—to Division (A) (3) of proposed Section 3.

COMMENT

A discussion of the history and background of Section 10, the rationale for recommending changes in the section, and the intent of the Commission in making these recommendations, appears following the proposed Section 3, beginning at page 20.

ARTICLE XII

Section 11

PRESENT CONSTITUTION

Section 11. No bonded indebtedness of the state, or any political sub-divisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.

COMMENT

Section 11 of Article XII, when read in conjunction with the one per cent limit of Section 2 of Article XII and the ten-mill limit of Section 5705.02 of the Revised Code, creates an indirect debt limit. Since this limit has its greatest effect on political subdivisions, rather than on the state, the Commission determined, after considerable study by the Finance and Taxation Committee and upon that Committee's recommendation, to refer the matter to the Local Government Committee. Therefore, it has no recommendation with respect to Section 11 at this time.

COMMISSION RECOMMENDATION

The Commission has no recommendation with respect to Section 11 at this time. It has been referred to the Commission's Local Government Committee, and will be included in a future report of the Commission.

ARTICLE XII

Section 12

PRESENT CONSTITUTION

Section 12. On and after November 11, 1936, no excise tax shall be levied or collected upon the sale or purchase of food for human consumption off the premises where sold.

COMMISSION RECOMMENDATION

Repeal and transfer.

COMMISSION RECOMMENDATION

The Commission recommends the repeal of present Section 12 and the transfer of its provision with some changes—including their combination with the provisions of Section 10, as changed—to Division (A) (3) of the proposed Section 3.

COMMENT

A discussion of the history and background of Section 12, the rationale for recommending changes in the section, and the intent of the Commission in recommending these changes, appears following the proposed Section 3, beginning at page 20.

APPENDIX

ARTICLE XII, OHIO CONSTITUTION

Section 1

No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

Section 2

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of residents sixty-five years of age and older, and providing for income and other qualifications to obtain such reduction. All bonds outstanding on the 1st day of January, 1913, of the state of Ohio or of any city, village, hamlet, county or township in this state, or which have been issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, which bonds were outstanding on the 1st day of January, 1913, and all bonds issued for the world war compensation fund, shall be exempt from taxation, and without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

Section 4

The general assembly shall provide for raising revenue, sufficient to defray the expenses of the State, for each year, and also a sufficient sum to pay the interest on the State debt.

Section 5

No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied.

Section 5a

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provide therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

Section 6

Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement.

Section 7

Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation.

Section 8

Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated, and may be applied to such incomes as may be designated by law; but a part of each annual income as provided by law may be exempt from such taxation.

Section 9

Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the county, school district, city, village, or township in which said income or inheritance tax originates, or to any of the same, as may be provided by law.

Section 10

Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals.

Section 11

No bonded indebtedness of the state, or any political sub-divisions thereof, shall be incurred or renewed unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity.

Section 12

On and after November 11, 1936, no excise tax shall be levied or collected upon the sale or purchase of food for human consumption off the premises where sold.


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