SURVEY OF SALES TAXES APPLICABLE TO NEVADA

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FOREWORD

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PREFACE

At a meeting held at Carson City, Nevada, on November 7, 1947, the Legislative Counsel Bureau ordered the Legislative Counsel to make a comprehensive and exhaustive study of sales taxes, and to make every effort to get complete data on the matter for the use of legislators and the general public. The study begins with an introduction and summary, discusses types of sales taxes, the structure of a retail sales tax, and possible modifications of a retail sales tax including personal exemptions and graduated tax rates. Chapters are devoted to the operations of sales taxes in the several States, Canada, Australia, and England. An example of a retail sales tax law is included as a supplement. The study ends with a selected bibliography and index.

Sales taxes, first widely adopted in the United States during the depression of the 'thirties, are now imposed by twenty-seven States and the Territory of Hawaii, and provide the largest single source of State revenues. Eleven States, however, have nullified or abandoned this form of taxation, four after popular referenda.

Sales taxes include those based on gross business income, as well as levies solely upon retail sales. Most of the general sales tax laws limit the tax base to retail sales of tangible goods, but several also include amusements and sales of utilities and other services within the scope of the tax. Sales taxes may also apply to manufacturing, wholesaling, and contracting while a few, as the Washington and West Virginia occupations taxes and the Hawaii and Indiana gross income taxes, reach most business activities. Rates vary from 1 to 3 percent, with eighteen States taxing at the rate of 2 percent.

Numerous statutory exemptions and the problem of dealing with constitutionally exempt interstate commerce have complicated administration of State sales taxes. The latter difficulty has been partially solved by the widespread enactment of use taxes, based upon the privilege of storing or using products which have escaped sales taxation. Another administrative problem, collecting a tax amounting to a fraction of a penny, has been met by issuing tax tokens, or more commonly now, by the use of tax brackets.

Highly controverted, retail sales taxes have been attacked as regressively heavy upon low-income groups, but defended for their productivity in all stages of the business cycle.

The Legislative Counsel Bureau gratefully acknowledges the valuable assistance of Mr. E. C. D. Marriage, State Librarian; Mr. Edwin

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Printed copies may be obtained free of charge from the Nevada Legislative Counsel Bureau, Carson City, Nevada.

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SURVEY OF SALES TAXES APPLICABLE TO NEVADA

CHAPTER ONE
INTRODUCTION AND SUMMARY

General sales taxes have become the largest source of State revenues in the postwar period. First adopted on a wide scale during the depression of the 1930's to provide "stop-gap" funds for the emergency needs of the States, sales taxes remained in the fiscal structures of twenty-three States in 1938. This number remained constant during the war, but in 1947 four additional States—Connecticut, Maryland, Rhode Island, and Tennessee—enacted retail sales taxes.

With the dollar volume of transactions rising to unprecedented heights in the current inflationary period, receipts from taxes on sales have steadily mounted. In fiscal 1944, the States collected $721 million from general sales, gross receipts, and use taxes, according to the Bureau of the Census.[1] By 1945 this total had risen to $776 million; to $900 million in fiscal 1946; and to $1,179 million in the fiscal year which ended June 30, 1947, accounting for more than one-fifth of total State revenues from all taxes.[2] As of September 1947, each of twenty-two sales-tax States reporting showed gains over the preceding year, the increases in tax receipts varying from 6 to 34 percent.[3]

Despite their high yields, several States adopted sales taxes, only to drop them by legislative action or vote of the people. After brief experiments with the sales tax during the 'thirties, Kentucky, New Jersey, and Vermont repealed their levies, while those of Maryland, New York State, and Pennsylvania were allowed to expire. The Minnesota sales tax was vetoed by the Governor in 1935, while similar measures were defeated in popular referenda in Idaho, Maine, New Hampshire, and Oregon. Again in October 1947, the voters of Oregon rejected a proposed sales tax, thereby incurring heavier personal income taxes.[4]

The levies grouped together as sales taxes actually are of two overlapping types: general sales taxes and gross receipts taxes. Most of

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[1] *Sources of State Tax Revenue in 1947* (State Finances: 1947, No. 5).

[2] *Ibid.* Exclusive of unemployment compensation tax payments.

[3] *Tax Administrators News*, October, 1947, p. 119. The average increase over 1946 for fifteen States reporting collections for November 1947 was 19.5 percent. (*Tax Administrators News*, December, 1947, p. 143.)

[4] Chapter 540 of the 1947 Oregon Session Laws made larger personal exemptions from the income tax contingent upon approval by the people of a new 3 percent sales tax. The defeat of the sales tax proposition automatically decreased personal exemptions from $900 to $500 for single persons, and from $1,800 to $1,000 for married couples.

the States imposing general sales taxes restrict the tax base to retail sales of tangible personal property. Occasionally, certain categories of goods are taxed at a lower rate, but the common practice is to levy a uniform rate, varying from 1 to 3 percent, on sales at retail. The most prevalent rate is 2 percent, with eighteen of the twenty-seven State sales taxes currently set at this percentage. Frequently amusements, utilities, and other services are also included in the scope of the general sales tax, but manufacturing, wholesaling, and other sales for resale are usually excluded.

Gross receipts taxes (in some States called gross income, general excise, or occupation taxes), in addition to reaching retail sales, may apply to products of farms and mines, as in Arizona; to wholesalers, as in Indiana, Mississippi, and North Carolina; to manufacturers, contractors, and members of various professions, as in New Mexico. Washington and West Virginia levy separate taxes on retail sales and upon business occupations, while Indiana has combined features of both sales and income taxes in her gross income tax, which applies to wages and salaries as well as business income, but also grants personal exemptions. The Hawaii general excise (gross income) tax reaches all forms of business income, but excludes wages and salaries, assessed under the compensation-dividends tax.

Rates applied against manufacturing, processing, and wholesale distribution are, with few exceptions, a fraction of those on retail transactions. Under the Mississippi law, for example, wholesalers are taxed 1/8 of 1 percent upon their gross receipts, compared with 2 percent on retail sales. The Indiana levy applies a 1/4 of 1 percent rate to wholesalers and jobbers, half of the retail tax rate.[5] The Hawaii general excise partially deviates from this pattern, imposing a tax of 1 percent on the gross receipts of wholesalers, 1½ percent on manufacturing and producing, while taxing retail sales and income from professional work, amusements, and other services at a rate of 2½ percent. Gross income of sugar companies, canneries, and contractors, however, is also taxed at 2½ percent.

All but four of the sales-tax States[6] include in their tax base sales of electricity, gas, or water by public utility companies, and approximately two-thirds reach the amusement industry by sales or gross income taxes upon admissions. While services, such as those furnished by laundries, barbershops, and undertaking parlors, are usually not taxed, some States, including Missouri, Oklahoma, Utah, and Wyoming, do attempt to collect taxes upon certain classes of services.

Every State exempts some type of sales from taxation, and a complete catalogue of these exemptions would virtually run the gamut of economic activities. Several, however, appear frequently enough in the tax statutes to warrant mention. All but seven of the twenty-seven sales-tax States, for example, favor specified charitable, educational, scientific, religious, and other nonprofit institutions by lifting the sales tax upon their purchases or sales. Another common exemption is that

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[5]Manufacturers, however, pay 1 percent upon their gross income.

[6]California, Illinois, Louisiana, and Tennessee. Public utility companies are exempted in Alabama, Ohio, and Washington, if the State utility tax has been paid, as they are in Hawaii in respect to net income taxed under the Public Utilities Tax (chapter 106 of the Revised Laws of Hawaii 1945).

afforded farmers upon the purchase of certain agricultural supplies. As a general rule, sales for resale are excluded from the tax base. Casual or isolated sales are tax free in all but five States, usually on condition that the seller does not hold himself out as engaged in retail trade. Food, medical supplies, newspapers, and advertising are also exempted under the general sales-tax laws of several States, while most States explicitly exempt sales to their departments and subdivisions, as well as sales to the United States or its agents.[7] Taxation of goods in interstate commerce is prohibited by the commerce clause of the Federal Constitution.

The inability of the States, under the Federal Constitution, to tax sales arising from interstate transactions has led to the widespread adoption of consumption or use taxes. Designed to stem avoidance of the sales tax by purchasers, rather than as a revenue-raising measure, the use tax has been added as a sales tax complement by all but six of the sales-tax States. In every instance, the use-tax is identical with that upon retail sales.

Based upon the privilege of using or storing commodities, the scope of the use tax is usually as wide as that of the sales tax, except that it is generally restricted to tangible goods, while the sales tax often extends to amusements and charges for services. Under the compensating use-tax laws, transactions already assessed under the sales tax or specific excise taxes of the State are exempt. The major class of taxable goods, therefore, consists of those bought outside the State, though strict interpretation of the use-tax law would subject to taxation all intrastate purchases, unless specifically exempted.[8]

One of the earliest use-taxes in this Nation, it may be noted, was adopted by the Territory of Hawaii in 1935. The consumption-tax law then passed, and still part of the Hawaii tax system,[9] is complementary to the general excise tax and is designed to reach imports constitutionally exempt from taxation while passing in interstate commerce. Its rate has been revised upward to equal that on retail sales imposed by the general excise tax. Under the law, the purchase during any month of goods valued up to $100 is exempt from the consumption tax. Similar exemptions of specified amounts are found in the use taxes of Louisiana, Michigan, and Oklahoma.

Another tax auxiliary to the territorial general excise was added by the 1947 Legislature in the form of a compensating tax.[10] This levy was enacted to prevent avoidance of the general excise tax by means of purchases from dealers not licensed under the general excise tax law through manufacturers' representatives, brokers, purchasing agents, etc. The rate, except on purchases by contractors, is again equal to the retail tax under the general excise.

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[7]Although sales to the United States government and its instrumentalities have been regarded as immune from taxation by the States under the doctrine established by *McCulloch v. Maryland* (1819), 4 Wheaton 316, cost-plus contractors working for the Federal government have usually been held liable for payment of sales and use taxes. (*Alabama v. King and Boozer*, [1941] 314 U. S. 1.) Contrary court decisions have, however, been rendered in some States. (*Lytle Co. v. Carpenter*, [1942], Colo. Dist. Court, El Paso County.)

[8]Criz, Maurice, *The Use Tax*, p. 3.

[9]Chapter 99 of the Revised Laws of Hawaii 1945.

[10]Chapter 98.01 of the Revised Laws of Hawaii 1947.

A long and growing list of Supreme Court cases illustrates the legal complexities inherent in the administration of State sales taxes in a Federal form of government. A large portion of court cases have arisen over the Interstate Commerce Clause of the Constitution,[11] and application of the tax to purchases by Federal instrumentalities or contractors working for the United States Government.

In addition to such problems arising from Federal-State relationships, the administration of the sales tax has been further complicated by the numerous exemptions provided in the tax statutes, some of which are outlined above. In particular, exemptions granted to services, intangibles, and sales for resale have created difficulties for the tax official charged with the task of applying revenue laws to complex and changing forms of business organization. The length and detailed nature of sales tax regulations promulgated in many States attests to these difficulties.[12]

It is difficult if not misleading to judge the efficiency of a tax by the costs of administering it. A tax department content to collect only from the most compliant taxpayers will be able to report a much lower cost of administration per dollar of yield than will the agency which attempts to prevent any evasion, and thus finds it necessary to spend a large part of the revenue extracted from the most recalcitrant taxpayers. Using percentage cost figures is especially inconclusive in the case of sales taxes, where the initial collection is made by business firms, their expenses being reimbursed in some States by allowance of a "discount" from the tax proceeds remitted to the State,[13] or, as in Illinois, by setting the tax base at 98 percent of gross receipts, permitting the retailer to retain the tax upon the other 2 percent.

Data that is available, however, indicates that the cost of administering State sales taxes are "moderately but not conspicuously low," ranging from 1.61 percent to 4.30 percent of State sales-tax revenue, according to one study.[14] Professor James W. Martin reported in 1944 that the average cost among sales-tax States was approximately 2 percent.[15] In Hawaii, the expenditures of the Gross Income and Consumption Tax Bureau of the Tax Commissioner's Office amounted to less than 1 percent of its collections during 1946. Even if the proportionate share of general administrative expenses were to be added—amounts ascertainable only under detailed cost accounting—it appears that this cost ratio would remain conspicuously low.

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[11]For a discussion of such cases decided up to 1945, see *State Sales and Use Taxation and the Commerce Clause*, Federation of Tax Administrators, Research Memorandum 237, April 1945.

[12]In taxing sales involving both tangible property and services, such as purchases from tailors, shoe-repairers, optometrists, etc., regulations of the taxing agency usually entirely exempt the transaction if the service is considered the more important part of the sale, and fully tax the sale if the service furnished is merely incidental. Where the property and service ingredients are both held important, the tax is sometimes apportioned.

[13]As in Alabama, Arkansas, Colorado, Louisiana, Maryland, Missouri, North Carolina, Ohio, Oklahoma, Tennessee, and Utah. Vendors are permitted to exclude $50 of gross sales each month from taxation under the 3 percent Michigan sales tax, thus receiving approximately $18 annually to cover their costs of handling tax receipts.

[14]Quoted in Groves, Harold M., *Financing Government*, Rev. Ed. p. 315.

[15]"Costs of Tax Administration: Statistics of Public Expense," *Bulletin of the National Tax Association*, February 1944, p. 134.

One of the knotty problems peculiar to low-percentage taxes on retail sales is the difficulty of equitably and conveniently collecting taxes of a fraction of a penny. Since taxes of 1, 2, or 3 percent frequently result in taxes accurately measurable only in mills, the States taxing sales at retail have been compelled to adopt means of splitting the penny between purchaser and the merchant acting as tax collector.

One such device is the sales-tax token, supplementary "money" issued by the State government for the purpose of paying taxes of less than one cent. During the depression, several States adopted mill-tokens, including small aluminum coins, plastic and fiber disks, and milk-top covers. In a majority of these States, however, the tokens were withdrawn from circulation, leaving but six States which still use this method of collecting less-than-penny taxes.[16] Ohio prints tax coupons which are purchased by the retailer, who in turn issues them to customers in receipt for sales tax payments. These coupons, however, are of penny and not mill denominations, and are designed to expedite collection of the tax, not to provide for fractional taxes.[17]

Most of the sales-tax States now depend on bracket systems to determine the amount of tax due on purchases totalling less than one or two dollars. Such bracket systems, specifying the amounts of taxable sales upon which one, two, or three cents shall be collected, have been adopted either by legislative action,[18] or by regulation of the administrative agency. In Maryland, to use a recent example, the 1947 sales-tax law provides that the 2 percent tax shall be collected according to the following schedule: no tax upon sales up to nine cents; one cent upon sales from nine to fifty cents; two cents upon sales from fifty-one cents to a dollar and one cent; one cent for each additional fifty cents of taxable sales.

Among the States which base their sales taxes upon the privilege of engaging in business, the law holds the vendor liable for payment of the tax, but commonly requires him to pass it on to the consumer, or at least prevents him from representing that the tax is not shifted to the customer. In those States which impose the tax on the transaction, rather than on the vendor, the legal incidence is deemed to be upon the purchaser.[19] Under such laws the vendor acts as collector of the levy in behalf of the State, and here also is often required by law not to represent that he will absorb the tax.[20]

The economic incidence of sales taxation, however, may not coincide with the legal incidence as provided by statute or regulation. Over a short period of time merchants may find it necessary to absorb part or

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[16] Arizona, Mississippi, Missouri, New Mexico, Utah, and Washington.

[17] Ohio also employs these coupons to increase compliance with the tax law, by encouraging taxpayers to turn in their receipts to charitable, fraternal, and religious organizations. These groups are permitted to redeem the coupons from the State Government at 3 percent of their face value.

[18] Alabama, Colorado, Connecticut, Maryland, Ohio, Rhode Island, and Wyoming.

[19] *State Sales Taxes*, Federation of Tax Administrators, Research Memorandum 236, April 1945, p. 5.

[20] California, Colorado, Iowa, Kansas, Missouri, North Carolina, North Dakota, South Dakota, Washington, and West Virginia all prohibit licensed vendors from stating that the price of taxable commodities has not been increased by the amount of the sales tax.

all of the tax, if they believe that a price increase would cause a disproportionately large decline in the amount of goods sold. Since sales taxation is in practice seldom universal, but usually provides exemption for certain categories of sales, there may be a tendency for firms selling goods which compete with exempted products partially to absorb the tax.[21] Thus proprietors of restaurants in Ohio, in setting their prices, which are subject to sales taxation, must take into consideration the exemption of food sold for home consumption. These considerations would apply still more strongly to taxes of a larger magnitude than the 2 percent levy typically imposed by sales-tax States. Such would be the case, for example, if a 2½ percent retail sales tax were added to the present 2½ percent excise on retail sales under the Hawaii gross income tax.

In general, however, the concensus among economists is that most, or even all of the State sales taxes are shifted to consumers.[22] Regardless of its legal form, if billed directly to the ultimate buyer or included in the cost of goods, the sales tax is largely borne by the retail purchaser, whether or not he is made conscious of the fact by separate statement of the amount of tax paid. Legal requirements of shifting, it may be generalized, are in fact usually achieved, statutory provisions merely requiring what would take place even in their absence.

Since its widespread adoption during the depression of the 'thirties, the sales tax has been one of the most controverted levies in the fiscal system of the States. Its proponents have stressed its high productivity, its universality in reaching every family, its administrative feasibility. Viewing the entire economy, they recommend the sales tax as a curb against inflation and a counterbalance against a Federal tax system based upon a progressive income tax.

Opponents of the general sales tax admit its productivity, but point out that low-income groups contribute a disproportionately large share of the yield. They argue that a general sales tax, among the more regressive fiscal devices,[23] should not be adopted by State governments which already have tax structures that bear heavily upon small and medium incomes. High-revenue yields achieved by taxing low-income groups, they also point out, while serving to check inflation during

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[21]This is clearest in the case of merchants competing with untaxed mail-order houses or doing business near a State borderline, when sales across the line are not taxed by the neighboring State. The use tax is in part intended to allow borderline merchants to collect the sales tax without losing patronage, but it has been proven extremely difficult to impose the use tax on small purchases.

[22]von Mering, Otto, *The Shifting and Incidence of Taxation*, p. 179. This generalization assumes competition among buyers and the lapse of sufficient time for price adjustments to be made following imposition of the tax.

[23]Specific excises, such as those imposed by most States upon tobacco and alcoholic beverages, are even more regressive, since they do not vary with the price of the article. (Thus the cheapest and the most expensive liquors of each type usually bear identical State taxes.) Sales taxes, imposed *ad valorem*, are regressive only because taxable purchases typically represent a much greater part of small incomes than of large. Under the Hawaii tax laws, taxes upon sales under the general excise tax, and excises on liquor and tobacco, are of the same order of regressiveness, since all are imposed *ad valorem*.

boom periods, will accelerate and lengthen the downward phase of the business cycle by reducing purchasing power.[24]

The arguments concerning sales taxes ultimately center around social policy and considerations of equity. Authorities and partisans to both sides of the question agree on the facts: the State sales tax is lucrative, feasible if not easy to administer, and regressive. The controversy hinges on the desirability, in each jurisdiction and in the Nation as a whole, of adding to or lessening the tax burden of middle and low-income groups.

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[24]Hansen, Alvin H. and Perloff, H. S., *State and Local Finance in the National Economy*, pp. 64–67.

CHAPTER TWO

FACTORS AFFECTING THE CHOICE OF A RETAIL SALES TAX IN PREFERENCE TO THE OTHER TYPES OF SALES TAXES.

The term "sales tax" ordinarily refers to the "general sales tax," which is a levy on the sale of a wide variety of goods and services. Although some writers use the term to refer also to taxes on the sale of particular commodities, these taxes are more commonly called "selective sales taxes" or "excises."

There are several varieties of general sales taxes. Some apply to the sale of a commodity each time it changes hands; these are commonly called "turnover" or "transactions" taxes. More frequently, however, sales taxes are of the "single stage" type, applying to the sale of a commodity only once as it passes through production and distribution channels and into the hands of consumers. The widespread preference for single-stage sales taxes is due principally to the fact that multiple-stage sales taxes discriminate against nonintegrated industrial systems. A tax which applies at more than one stage in the production-distribution process encourages business integration and places small independent concerns at a competitive disadvantage. Moreover, a multiple-stage tax probably would create unmanageable problems in wartime price stabilization.

The single-stage sales tax may take one of three possible forms, depending upon the level of production or distribution at which it is levied. A manufacturers' sales tax, such as has been employed in Canada since 1924, applies to sales by manufacturers, except sales of materials and parts for use in the further manufacturing of other articles. A wholesale sales tax, as levied in Australia since 1930 and introduced in Great Britain in 1940, applies to sales of finished articles to retailers. The retail sales tax, in wide use by the American States since 1933, generally applies to sales of finished products by retailers.

The making of a choice among the three types of single-stage sales taxes is difficult because of the conflicting economic, administrative, and political factors involved. An examination of the characteristics of each type of tax with reference to these factors will clarify the issues involved and will facilitate the careful weighing of the relative merits and disadvantages of the three taxes.

I. DEGREE OF INTERFERENCE WITH PRICE CONTROL

If a retail sales tax were introduced, the tax could ordinarily be quoted separately without difficulty. This procedure is followed now in most sales-tax States. In the case of either the manufacturers' or the wholesale sales tax, however, several difficulties would be encountered in keeping the tax separately stated from the time of the taxable sale to the time of the sale to the final consumer. Marking of merchandise and record-keeping would be complicated and retailers would be inconvenienced. Even more significant is the fact that separate quotation of the tax would reveal distributors' margins to competitors and to the public.[1] Merchants probably would oppose any procedure which revealed their margins on specific articles. If separate quotation were actually enforced, administration of the tax might be impaired by the resentment and ill will which would arise.

A retail sales tax would be superior to the other types in avoiding interference with price control, if such were again instituted by the United States Government. As a practical matter, all purchases by business concerns cannot be excluded from a sales tax, yet any tax applying to such sales increases business costs and exerts pressure on price ceilings. Since a retail tax would require a lower tax rate to raise a given amount of revenue than would the other forms of sales taxes, it would exert less pressure on price ceilings per $1 of revenue.

II. AVOIDANCE OF PYRAMIDING AND EXCESSIVE PRICE INCREASES TO CONSUMERS

During a period of general price regulation, whether a tax is shifted by separate quotation or by revision of prices, it is likely that price increases greater than the amount of the tax would be kept to a minimum.

Once price control is eliminated, however, tax-induced price increases to consumers would tend to exceed the amount of the tax under manufacturers' or wholesale sales taxes. The purchase prices of goods bought by retailers, and in the case of the manufacturers' tax the purchase prices of goods bought by wholesalers, would usually be increased by the amount of the tax. Under the customary pricing procedures of wholesalers and retailers, selling prices are determined by adding to purchase prices a more or less constant mark-up percentage. Thus, the merchants would tend to increase their selling prices by amounts greater than the tax, because the mark-up would be applied to the higher purchase prices (including the tax). Consequently, consumers would be forced to bear an additional price increase over and above the amount of the tax.[2] It is possible that competitive forces might ultimately eliminate part of the pyramiding, but some price increase due to pyramiding would probably remain.

Under a retail sales tax, pyramiding is far less significant because

[1]For example, under a 10 percent wholesale sales tax, if an article were offered for sale for $10 plus 50 cents tax, it would be obvious that the retailers' margin on the article was $5.

[2]For example, if a merchant applies a 30 percent mark-up to purchase price, he will sell for $1.30 an article costing him $1. If a 10 percent wholesale sales tax is introduced, his purchase price of this article will rise to $1.10. The merchant, applying his 30 percent mark-up, will sell the article for $1.43. The price to the consumer thus will have risen 13 cents, although the tax applying to the sale of the article and the tax collected is only 10 cents.

the tax generally applies at the point of final sale to individual consumers and, accordingly, enters into the costs of business concerns only infrequently. While retailers and other business concerns may ultimately readjust mark-up and selling prices if sales volume falls as a result of the tax, these adjustments are less likely to occur than is pyramiding under manufacturers' or wholesale taxes.

III. REVENUE YIELD AT A GIVEN TAX RATE

A retail sales tax is estimated to yield approximately 50 percent more revenue than a wholesale sales tax and about 100 percent more than a manufacturers' sales tax levied at the same rate. The greater yield of the retail tax is due primarily to the larger tax base at the retail level, inasmuch as the tax applies to prices which are higher by the distributors' margins. In part, however, the greater yield is due to the wider coverage possible under the retail tax. During a war period, some additional yield could be anticipated by the reaching of retailers' stocks of goods which would escape the tax under the other forms.

Even though an equal amount of revenue could be obtained from the other types of sales taxes by employing higher rates, it is not likely that in practice a rate sufficiently higher to yield the same revenue would be imposed.

The lower rates required under the retail tax to raise the same revenue would create less incentive to evasion than would be created by the higher rates required under the manufacturers' and wholesale sales taxes. Some taxpayers who would not consider it worth while to evade a low-rate tax might be tempted to do so under a higher tax. The unfair competition that would arise out of tax evasion would be more serious with a high rate of tax and would tend to lead competing concerns to attempt evasion in self-defense.

Finally, as indicated above, the lower-rate retail tax would place less pressure on business costs and, thus, on price ceilings relative to the amount of tax revenue collected.

IV. ADAPTABILITY OF THE TAX TO DESIRED SCOPE

In general, it is advisable to avoid exemptions in a sales tax wherever possible; but certain exclusions from the tax, especially of articles entering into business costs, are desirable insofar as they are administratively feasible. The larger number of taxpayers and the less adequate sales records generally kept by retailers would make the handling of exemptions and exclusions more difficult under the retail tax than under either of the other types.

In other and more significant respects, however, the retail tax could be adjusted more easily to the desired scope than either of the other types. There is considerable justification for including within the scope of a sales tax services rendered to consumers on a commercial basis by established business enterprises, such as repair and fabrication services, and laundry and dry cleaning. These services are necessarily rendered at the retail level and do not pass through manufacturing or wholesale stages. Although their inclusion within the scope of a manufacturers' or a wholesale tax is not impossible, enforcement would be expensive in relation to the added revenue. The administrative machinery for such taxes would not be geared to the handling of the relatively large number of small taxpayers with inadequate records. A retail sales tax administration, however, would necessarily be set up in such a manner that it could handle taxpayers rendering services as well as those selling goods. Indeed, many concerns rendering consumers' services also sell goods at retail and would be taxpayers under a retail sales tax even if services were not taxed.

Certain types of exemptions which probably would be necessary under manufacturers' and wholesale taxes would not be necessary under a retail tax. Since it probably would not be administratively feasible to include farmers in the category of manufacturers or wholesalers, unprocessed farm products, many of which are sold by farmers directly to retailers, would escape tax entirely under manufacturers' and wholesale sales taxes. If discrimination were to be avoided, all sales of unprocessed foods probably would have to be exempted from either type of tax. Under the retail tax, goods sold by farmers to retailers would be taxed when sold by the retailer.

Sales of second-hand goods would likewise escape taxation under wholesale or manufacturers' sale taxes, since few second-hand goods pass through the hands of manufacturers or wholesalers. Second-hand sales, except those made on a casual basis, could be reached by a retail tax.

Finally, a retail sales tax reaches the sale of goods already in the hands of retailers at the time of the imposition of the tax. With taxes levied at the manufacturing or wholesale level, such articles escape the tax entirely. In the latter case not only is the tax yield reduced, but discrimination results during the first months or years the tax is in operation.

V. UNIFORM DISTRIBUTION OF TAX OVER TAXABLE PURCHASES BY CONSUMERS

Under the flat-rate general sales taxes, it is presumably intended that the tax be shifted to final consumers in proportion to their purchases of taxable articles. This intent would be realized, however, only if the tax represented the same percentage of retail selling price for all articles. If this were not the case, persons who spent disproportionately large percentages of their income on articles bearing more than the average rate of tax would be subject to more tax per dollar of expenditure than those who spent large percentages on articles bearing relatively small amounts of the tax. The latter group would escape part of their proper tax load.

Under a retail sales tax, since the tax applies to sales to final consumers, the intent indicated above generally would be realized. Although some retailers might avoid shifting the tax on some goods and add disproportionate amounts to the selling prices of other goods, such procedure is likely to be infrequent, especially during a time of general price controls. Also, in the case of that part of the retail tax applying to sales to business concerns, the desired uniform distribution of tax would not be attained.[3]

Under manufacturers' and wholesale sales taxes, however, the tax generally represents nonuniform percentages of retail selling prices. The price mark-ups between manufacturer and consumer and between wholesaler and consumer vary widely among different lines of goods. Accordingly, a flat-rate manufacturers' sales tax or wholesale sales tax would represent widely varied percentages of retail selling prices.[4]

VI. NUMBER OF TAXPAYERS

The costs of tax administration and compliance are to a considerable extent determined by the number of taxpayers. There would be approximately 17 times as many taxpayers under a retail tax as under a manufacturers' tax, and over 9 times as many as under a wholesale tax[5].

It should be noted that this advantage of the manufacturers' and wholesale sales taxes is due in part to the assumption in the estimates that small taxpayers (those with annual sales of less than $5,000) would be exempted. Such exemptions probably could be made with these taxes because the competitive disturbances and discrimination created would be relatively minor. With the retail tax, the disturbances probably would be so significant that the exemption of small retailers would not be advisable.

VII. ADEQUACY OF TAXPAYERS' RECORDS

The condition of taxpayers' records also affects administrative costs and effectiveness. The accounts and records of retailers are generally much less adequate for computing and checking sales tax liability than are those of manufacturers and wholesalers. This situation is due partially to the smaller average size of retailers as compared with manufacturers and wholesalers. In addition, the more specialized nature of the businesses of manufacturers and, to a lesser extent, of wholesalers facilitates supplying the type of information needed for sales-tax administration. State sales-tax experience has demonstrated the virtual impossibility of inducing sufficient improvement in many retailers' records. Accordingly, with a retail tax, errors in calculating tax

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[3]This would also be true, however, under the manufacturers' and wholesale sales taxes.

[4]On one article the total distributors' margins may be 50 percent of the retail selling price; on another, only 10 percent. A 20 percent manufacturers' sales tax would represent 10 percent of the retail selling price (net of the tax) of the first article and 18 percent of the second. If both of these articles retailed at $1, the manufacturer's price of the one would be 50 cents and of the other approximately 90 cents; the sales tax would amount to 10 cents and 18 cents, respectively.

[5]Revenue Revision of 1942, Hearings before the Committee on Ways and Means, p. 350, House of Representatives.

liability would be more likely to arise and greater opportunity would exist for outright evasion. Complete checking of returns would be more difficult, more time-consuming and, in many cases, impractical if not impossible.

VIII. VALUATION PROBLEMS

Under all types of sales taxes the determination of the proper sale price to which the tax rate should apply presents some problems—so-called valuation problems. The need for valuation arises partly because the actual sale price does not always represent the actual commercial value of the article and partly because distribution systems of competing concerns are not uniform. Not only do the manufacturers' and wholesale taxes require valuation in a greater number of cases than does the retail tax but, when required, they present much more difficult administrative problems.

The principal source of difference between actual sale price and commercial market value of an article is common ownership or affiliation of seller and buyer in a taxable transaction. Many manufacturers own or control wholesale distribution facilities and retail outlets; wholesalers often operate retail units, and sometimes manufacturing establishments; retailers may own wholesale houses or manufacturing plants. Some taxable transactions consist of transfers of goods from one establishment in such an integrated organization to another without a bona fide sale. When sales are made under such conditions, the price may be far lower than the commercial value of the article and the determination of a proper sale price for tax purposes presents difficult problems. Substantial administrative effort is required to determine a fair price and sufficient administrative authority must be granted to enforce its use.

Under a retail tax, since retailers seldom have a financial interest in the consumers of their articles, transactions requiring revaluation are relatively few. Some valuation problems are, of course, to be found, especially in the case of taxable articles produced for use by business concerns, but they are far less numerous than under the other types of taxes.

The need for readjustment of selling price for tax purposes under manufacturers' and wholesale taxes also arises when manufacturers and wholesalers sell to purchasers at different levels of the distribution system. A manufacturer may sell to wholesalers, to jobbers, to retailers, and to consumers. The prices charged the different types of buyers are usually substantially different. Unless price readjustments are made for tax purposes, the amount of tax applied to sales made directly to retailers and consumers would be substantially greater than the tax on sales to wholesalers. Such direct sales would be discouraged and those producers whose distribution systems are based on direct sale to consumers or to retailers would have their competitive position affected in comparison with those manufacturers normally selling to wholesalers. Similar, though less serious, difficulties exist in the case of a wholesale tax. The process of valuation in such cases is a difficult one, unless the concerns also make sales at the price level which would be used as the basis for revaluation. In contrast, under a retail tax, taxable sales are those made to final users and valuation problems arising out of diversity of distribution systems would be avoided.

IX. IDENTIFICATION OF TAXPAYERS AND TAXABLE TRANSACTIONS

A retail sales tax probably involves fewer problems of identifying taxpayers and determining whether particular transactions are taxable than do either of the other two taxes. In the case of a manufacturers' sales tax, the chief source of difficulty lies in determining whether certain activities constitute manufacturing. Such activities as packaging, bottling, rebuilding, and cleaning, illustrate the nature of the difficulties. In the case of the wholesale tax, the chief source of difficulty lies in the frequent inability of taxpayers to know at the time of a sale whether it is to be the last wholesale sale and therefore taxable. Many concerns do both wholesale and retail business. If a wholesaler or manufacturer sells to one of these concerns, the sale is taxable if the buyer intends to resell the article to a consumer. It is not taxable if the article is to be resold to a retailer. Chances for error and tax evasion would be numerous and frequent tax readjustments would have to be made when articles were ultimately sold to different types of buyers than was intended at time of purchase.

With the retail tax some problems of determining taxpayers and taxable sales also arise, but in general they appear to be less serious than those arising under the other types of sales taxes. This is due primarily to the fact that most retail sales are made to individual consumers who are not in the business of selling taxable articles.

X. ATTITUDE OF TAXPAYERS

Successful sales tax administration depends in large part on the willingness of taxpayers to cooperate with the tax administrator. On the basis of available information, most businessmen would prefer a retail sales tax. In large part, this preference appears to be due to the greater ease with which a retail tax could be shifted to consumers under present conditions.

XI. CONCLUSION

In certain respects the retail sales tax would be more difficult to administer than either of the other types of single-stage sales taxes, for the number of taxpayers is substantially greater and a larger percentage of the taxpayers keep inadequate records. Both factors lead to greater administrative personnel and equipment requirements and make effective collection more difficult to attain.

There are several administrative features of a retail tax, however, which tend to outweigh these disadvantages. One is the avoidance of the serious valuation problems which would arise under wholesale and manufacturers' taxes. Under the retail tax, the actual sale price would be used in almost all cases in computing tax liability; with the other types of taxes, however, the selling prices frequently would have to be adjusted. The retail tax probably would involve fewer problems of identifying taxpayers and determining taxable transactions than would either of the other types of sales taxes.

Furthermore, the retail tax in most respects can be adapted to the desired scope of a sales tax more satisfactorily than can the other types. Consumers' services can be included much more easily and certain exemptions necessary with the other types can be avoided. In one respect, however, the retail tax is less adaptable; the introduction of exemptions impairs administration of the other two taxes less than that of the retail tax.

Not only would the retail tax minimize pyramiding, but it would provide a more uniform distribution of tax over all purchases of taxable goods and services. Under the other taxes, the tax would constitute nonuniform percentages of selling prices to final consumers because of the varied margins of distributors in different fields.

Finally, the revenue yield under a retail sales tax at any given tax rate is substantially greater than that of the other two taxes. In view of resistance to high tax rates, it is unlikely that either the manufacturers' or wholesale sales taxes would be imposed at a rate sufficiently high to yield the revenue that would be obtained under a retail sales tax.

CHAPTER THREE

FACTORS AFFECTING THE STRUCTURE OF A RETAIL SALES TAX

Part One—Scope of the Law

Determination of the most satisfactory scope of a retail sales tax involves the consideration of three principal issues. These are: (1) The definition of retail sale, with particular reference to the question of the extent to which such sales should include sales of articles used by business concerns; (2) the extent to which services should be taxed; and (3) the extent to which exemptions from the tax should be provided. These issues will be considered in turn.

I. DEFINITION OF RETAIL SALE

What constitutes a retail sale for tax purposes depends upon the statutory definition of the term and not upon the distinction usually drawn between "wholesale" and "retail" sales. In the following discussion it will be noted that the term as defined for tax purposes would include not only retail sales as ordinarily understood, but also certain sales by wholesalers and manufacturers.

A. THE CONCEPT OF A RETAIL SALE

Under State retail-sales taxes the concept of a retail sale is, in general, a sale of tangible personal property for the purpose of utilization, rather than resale, by the purchaser. Under this concept of the term, two types of problems are presented. In the first place, it must be ascertained whether the purchaser is engaged in the business of selling tangible personal property.[1] If the business activity of the purchaser involves the performance of service rather than the sale of tangible personal property, it follows that all sales of property for use in the performance of that service are retail sales. For example, sales to a telephone company, a laundry, or an insurance company, of property used in the course of its business, would be retail sales. Frequently, however, the problem is not so easily solved. Contractors furnish a great variety of articles ranging from materials such as lumber and cement to manufactured products such as elevators and air-conditioning equipment under several different types of contracts for the

[1]The term "sale" includes all transfers for a consideration of title to property and possession of property under conditional sales and similar contracts. In addition, the term is defined to include the furnishing of meals and drinks. By the term "tangible personal property" is meant all corporeal personal property. It should be noted that stocks, bonds, mortgages, and other similar claims to property are not tangible personal property. Real property consists of land and improvements thereon such as houses and store and factory buildings.

improvement of real property. The determination of whether their activities under a particular type of contract should be regarded as involving sales or service may be very diffcult. The States, for example, have differed in their treatment of the activities of printers, photographers, and shoe repairmen, some States regarding one or more of these activities as services while others have concluded that they involve, to some extent at least, the sale of tangible personal property.

If the business activities of the purchaser involve the sale of property, it becomes necessary to distinguish between the property purchased for use and that purchased for resale. Under State practice, property is generally considered to be purchased for resale only if it is to be resold in its original form or as a part or material physically incorporated into other tangible personal property.

Under this definition, all sales to business concerns are retail sales except sales of materials and articles to be resold by the concerns. Thus, sales of locomotives to railroads, sales of fuel and machinery to manufacturing plants, and sales of showcases to retailers are retail sales. This concept is substantially different from the usual one outside the sales-tax field, in which retail sales are considered to be sales to individual[2] consumers. As the concept has developed in the tax field, whether a sale is a retail sale does not depend in any way upon the nature of the property or upon the character of the seller or purchaser, but rather upon the intended disposition of the property by the purchaser.

It must be emphasized that under this definition many retail sales are made by concerns not generally considered to be retailers, in contrast to the common concept of a retail sale as one made by a concern engaged primarily in the business of selling at retail. Most wholesalers make some sales to individual consumers and industrial users. Although these sales would be regarded as sales at wholesale in business terminology, under the above definition they are retail sales rather than sales for resale. Likewise, sales by manufacturers to individual consumers and to business concerns of property for use by the purchaser are retail sales. On the other hand, a sale made by a concern engaged primarily in the business of retailing to another retailer for resale by the latter is not a retail sale. Whether a sale is a retail sale does not depend in any way upon the general nature of the business of the seller.

The principle which distinguishes a retail sale from a sale for resale is known as the physical-ingredient or component-part rule. Under this rule, an article not to be resold in its original form must become a physical ingredient or component part of other tangible personal property if its sale is to be considered as a sale for resale.[3] Thus, sales of flour and eggs used in the making of bread are considered to be sales for resale. Sales of fuel, however, used to bake the bread are considered retail sales. It is not necessary that the ingredient retain its

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[2]The term "individual" is used herein to differentiate between persons and business concerns.

[3]If an article becomes a component part of real property (a house or other building) which is to be sold, the sale of the article is a retail sale rather than a sale for resale. The sale is a sale for resale only if the article becomes a component part of tangible personal property which is to be sold.

separate identity when incorporated into the article; it is sold for resale if the materials or elements of which it is composed become, in a physical sense, a part of the article to be sold. It may be clearly identifiable in the article, as in the case of drawer knobs sold to a furniture manufacturer; it may be completely changed in form, as in the case of cement sold to a concrete pipe manufacturer; or it may be completely changed through chemical reaction, as is coal used in making plastics.

Here, too, difficult problems of interpretation may be encountered. Chemical analysis may be required to ascertain whether certain compounds actually enter into the final products which are to be sold or serve merely as catalytic agents. The question of the character of sales of feeds to livestock producers and of seeds and fertilizer to producers of agricultural products is not so readily answered. The fact that the term "retail sale" is generally defined in some such way as a sale for any purpose other than resale gives rise to another group of problems. Containers and packing materials generally pass on to the purchaser of the commodities packed therein. As might be expected, however, there is a difference of opinion as to whether they are purchased for the purpose of use or consumption in the dealer's business or for resale to his customers. Certain property may in fact be purchased for a dual purpose, *e. g.*, coke purchased by a foundry may be used for the purpose of adding carbon and furnishing heat.

B. THE SCOPE OF TAXABLE RETAIL SALES

1. Application of the Tax Only to Retail Sales.

Apart from the taxation of certain services, as discussed below, it is highly desirable that the tax apply only to retail sales. That is, it should not be extended to include any sales for resale.

State experience has demonstrated the feasibility of so limiting the tax to sales at retail.[4] The inclusion of sales for resale would destroy the single-stage nature of the tax, since it would then apply more than once to sales of a particular article or parts thereof before the article reached the final consumer. The tax would become a multiple-stage tax with all the undesirable features of the latter, such as discrimination against independent business concerns, furthering of integration, pyramiding, and unnecessary interference with price ceilings.

The physical-ingredient rule provides a workable administrative test for drawing the line between articles used and those resold. The buyer of goods ordinarily knows at the time of purchase whether he intends to resell or use the goods. There are, however, exceptions to this general rule as in the case of plumbers. The plumber ordinarily is regarded as a consumer of at least some portion of the materials furnished by him in the performance of contracts for the improvement of real property. Frequently he also sells materials to other plumbers for use by them and, in these instances, he is entitled to purchase such property for resale. Perhaps the most important source of difficulty

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[4]None of the States tax sales for resale under retail sales-tax Acts. Under multiple-stage taxes, however, rates lower than those applied to retail sales are imposed on sales made by manufacturers and wholesalers for resale.

in handling the separation will arise out of the incomplete record-keeping of many concerns making both types of sales. However, the average small retailer, the type of taxpayer most likely to have inadequate records, does not ordinarily make sales for resale.

A system of resale certificates generally is employed as the means by which the purchaser informs the seller of the intended disposition of the property purchased. The resale certificates are retained by the seller as prima-facie evidence that the sales covered by the certificates are not subject to the tax. Almost all sales-tax Acts provide for the licensing of sellers, which facilitates the operation of the resale-certificate system.

2. Restriction of Tax to Retail Sales to Individual Consumers.

a. Desirability of Excluding Sales to Business Concerns from the Tax.

For several reasons of considerable importance it would be desirable, if administratively feasible, to confine the tax to retail sales to individual consumers and to exclude from the tax sales to business concerns of articles to be used in their operations.

In general, the reasons for not taxing sales for resale apply with equal force to sales of all articles used in production and distribution. If the retail-sales tax is to be truly a single-stage tax and avoid the disadvantages of the multiple type, the tax should apply so far as possible only to sales to individual consumers. The essential reason why materials should not be taxed is that costs of materials enter into the prices of the finished products, and not the fact that the materials become physical ingredients or component parts of the products. Since fuel costs, for example, as well as material costs, enter into the costs of the finished products, fuel used by business concerns for purposes of production and distribution should not be subject to the tax if exclusion is feasible. The fact that fuel is not a physical ingredient does not alter the economic desirability of excluding it from the scope of the tax.[5]

The purpose of levying a retail-sales tax is to obtain revenue from individuals in proportion to their expenditures for taxable goods and services. A retail-sales tax is not generally regarded as a tax which applies to sales of articles used by business concerns, and most persons advocating such a tax probably do not intend that it be borne by business concerns but expect it to be shifted to individual consumers. Such intent could be fully realized only if the tax were restricted to sales of finished goods to individual consumers. It is true that the portion of the tax applying to sales to business concerns would in many cases ultimately be shifted forward to individuals, but the shifting is often a slow process requiring many readjustments and causing competitive disturbances.[6]

Insofar as the portion of the tax applying to sales to business concerns would not immediately be shifted forward, it would rest as an inequitable burden on the concerns. Those firms using processes

[5]That fact may be of significance, however, in determining the administrative feasibility of excluding fuel.

[6]Even when shifting did occur the tax would not be distributed in proportion to consumer purchases of taxable goods and services.

which require relatively high percentages of taxable goods would be placed at a disadvantage in competing with firms producing the same or similar articles by the use of processes which require smaller percentages of taxable articles. New firms starting business after the enactment of the tax would be placed under a temporary handicap because their older competitors purchased their capital equipment before the tax was in operation. Even in the absence of price ceilings, producers would find it almost impossible, except over a long period of time, to shift the tax forward.[7]

Apart from these discriminatory and inequitable aspects, the application of a high rate of tax to sales of articles used by business concerns would encourage the use of methods of production requiring relatively small percentages of taxable articles, methods which may be somewhat less efficient than others and which would not be used in the absence of the tax. To the extent that such shifts occurred, maximum utilization of resources would not be attained, full benefit of the most efficient methods of production would not be realized, and there would be a tendency for the tax to pyramid and burden the consumers by amounts greater than the tax. Under customary pricing procedures, wholesalers and retailers would apply more or less constant mark-up percentages to the new purchase prices of articles reflecting the tax, and thus raise their selling prices by amounts greater than the tax.

b. Administrative Obstacles to Exclusion of Sales for Business Purposes.

While there is a good reason for restricting the tax to sales to individual consumers, in practice it would be virtually impossible from an administrative standpoint to avoid inclusion of many sales of articles used by business concerns. The basic source of the difficulty is the fact that a great many articles can be used either for production or consumption purposes. Examples include automobiles, typewriters, coal, gasoline, light bulbs, and building materials.

Accordingly, it would not be feasible to exempt all sales to business concerns either by exclusion of all classes of articles which are sold for use by business concerns, or by exclusion of all sales actually made to such concerns, regardless of the nature of the article. With the former method an unnecessarily large portion of the tax base would be eliminated because a very wide variety of articles are sometimes used by businesses. The latter method could not be used because owners of businesses would be able to purchase articles tax-free for their individual use and the use of their friends, since the State would be unable to make a sufficiently complete check to discover such diversions. Accordingly, the only alternative would be to provide for the exclusion of all sales to business concerns of articles to be used in operation of the businesses.

Theoretically, this method would avoid the loopholes under the other methods, but, in practice, it would be impractical to administer. In the first place, sellers in many cases would not be able to determine the ultimate use of articles at the time of sale. Because of the very large number of small transactions, it would be impossible to check the

[7]Producers of articles of which there is a substantial shortage probably could shift the tax without much difficulty in the absence of price ceilings.

subsequent use of articles purchased and widespread evasion would be inevitable. Furthermore, for effective control to be exercised, all business concerns would probably have to be licensed and required to quote their license numbers when purchasing articles for business use. This procedure would require the licensing of farmers as well as other business groups which in any case would not be licensed. Thirdly, many articles are used for both business and consumption purposes, as for example fuel purchased by a grocer to heat a building containing both his store and his home. Finally, and of great importance, is the fact that many retailers do not keep records sufficiently complete to assure accurate distinction between sales for consumption and production purposes. Many retailers keep virtually no records and a large part of those who maintain records do not have adequate ones.

It is clear, therefore, that administrative considerations preclude complete exemption of all sales for business use. Examination of the principal classes of articles used primarily or largely for business purposes indicates, however, that exclusion of several important groups may be feasible. Before indicating these classes, the criteria for determining the feasibility of excluding particular classes of commodities purchased by businesses will be discussed.

c. Criteria for Determining Feasibility of Excluding Particular Classes of Articles Sold to Business Concerns.

The following criteria appear to be significant in deciding whether it is feasible to exclude particular classes of producers' goods from the tax.

(1) The class of commodities should comprise a relatively important element in business costs. Administrative difficulties inherent in the exclusion of particular groups of commodities from the tax are such that exclusion is not justified unless the commodities concerned are important business costs.

(2) The class should be clearly definable so that both the administrator and sellers will be in agreement as to the scope of the exclusion in order that frequent resort to litigation may not be required.

(3) The articles should be used primarily for business purposes. If the article is widely used for individual consumption purposes, too many persons will escape proper tax payment and the tax yield will be reduced unnecessarily.

(4) The sales should be made for the most part by relatively specialized sellers who keep satisfactory records. If the articles are sold by concerns selling many other articles and generally not maintaining satisfactory records, the exclusion will lead to incorrect tax payments and evasion.

(5) Administration of the exclusion will be facilitated if transactions in the commodities are, on the average, of considerable size.

Also, it is essential that there be only a limited number of separate exclusions. Each exclusion gives rise to some interpretative questions, increases the difficulties of sellers in applying the tax properly, in keeping records and in making proper tax returns, and results inevitably in some underpayment of taxes and evasion. If the excluded classes are held to a small number, serious impairment in the administration of the tax is less likely to occur. As the number of excluded classes is increased, however, the effectiveness of tax administration tends to be reduced.

d. Classes of Goods Used for Business Purposes Which Might Be Excluded from the Tax.

Examination of the articles bought by business concerns indicates that at least three classes of such articles are of sufficient importance to warrant serious consideration of their exclusion from the tax in the light of the foregoing criteria. These classes are: Feed, seed, and fertilizer; fuel; and industrial, agricultural and commercial machinery.

(1) Feed, seed, and fertilizer: Feed, seed and fertilizer are important cost elements in agricultural production. They account for about 39 percent of those commodities used in production that are included in the index of prices paid by farmers.

Evidence is available that these items may be defined with sufficient clarity to permit the effective administration of the exclusion. Under the majority of State sales taxes, sales of feed, seed, and fertilizer to persons engaged in the commercial production of livestock and agricultural products have not been taxed as retail sales either by statutory exclusion and exemption or by administrative interpretation that such sales are sales for resale. Some problems would arise, however, in defining the exact scope of the exclusion. For example, in the case of feed, it might be desirable to limit the exclusion to feeds for livestock and poultry in order to tax sales of feeds consumed by household pets. Furthermore, it might be necessary to distinguish between feeds and medicines, also between assimilated feeds and such items as granite grit used by poultry producers. It might be advisable, on the other hand, to extend the exemption to medicines, and perhaps even to the nonassimilated articles, so as to avoid these distinctions.

In the case of seed and related articles, the problem of clearly defining the exclusion may be more complex because of the differences between annual seeds, perennials, bulbs, plants, and trees. The question also arises whether the exclusion should be limited to seeds, etc., used in the production of food and fiber or whether it should be extended to those used for decorative purposes, such as for flowers, bushes, lawns, and ornamental trees. Still another line of distinction might be made between sales of the latter items to commercial producers and sales to individual consumers.

In defining fertilizers, the exclusion might include soil correctives, as well as plant foods, in order to avoid the necessity of distinguishing between the two.

Feeds, seeds, and fertilizers are used primarily for commercial production purposes, although substantial quantities of seeds and fertilizers are used in home gardens and for ornamental plant purposes. Under some of the State sales taxes the attempt is made in various ways to exclude sales of the articles used in commercial production and to tax the noncommercial sales. Serious difficulties are encountered, however, in the administration of the distinction, since it is necessary to tax that portion of the sales to commercial producers which is used in producing farm products for their own consumption. Other States avoid these administrative problems by exempting the articles as classes of commodities, irrespective of whether the buyer is a commercial user or individual consumer and regardless of their intended use.

The concerns dealing in feeds, seeds, and fertilizers generally are relatively specialized sellers, although a wide variety of concerns are selling seeds, plants, and fertilizers for garden and ornamental purposes. Moreover, the size of the sales transaction may frequently be small, as, for example, the purchase of one or two packets of vegetable or flower seeds.

Feed, seed, and fertilizer are comparable to physical ingredients insofar as the commercial purchasers thereof are concerned. Consequently, since physical ingredients and component parts would be excluded from the tax, feeds, seeds, and fertilizers should also be excluded. The exclusion of the articles as classes of commodities might be the most practical method of defining the scope of the exclusion.

(2) Fuel: The importance of fuel as a cost element varies significantly among different types of businesses. It is a particularly significant cost item in the field of transportation and in the production of electricity, gas, and in the heavy industries such as steel. It is a relatively unimportant item in commercial establishments and certain types of agriculture.

Another consideration in determining whether fuel should be excluded is the possible discrimination which may arise among different types of producers if fuel is taxed. For example, large integrated business organizations such as steel companies sometimes own their sources of fuel supply. In order to avoid tax discrimination it would be necessary to tax the fuel produced and used by integrated business organizations as well as sales of fuel. The taxation of fuel produced and used by the integrated organizations, however, raises the question of the practicability of administering such a provision. Since there is no sales price, the tax would have to be measured by some such basis as the fair market value of the fuel. The determination of that amount can be expected to produce serious controversies between the taxpayers and the administrator. The taxing of fuel would lead to problems for the producers of electricity and gas, whose rate structures are fixed by public utility commissions, and for other producers whose selling prices are fixed by price control. If fuel sales were taxed but sales of gas and electricity excluded, competitive disturbances might be introduced between the sellers of gas and electricity and other forms of fuel since all of these commodities are sold in competition with each other.

No great difficulties are expected to be encountered in defining the term "fuel." It would include such commodities as coal, coke, fuel oils, Diesel oil, kerosene, gasoline, and cordwood.[8]

Perhaps the most serious objection to the exclusion of fuel arises from the fact that a considerable amount of it is purchased for individual consumer use in home lighting, heating, and cooking and in the operation of automobiles. In this connection, it should be noted that a

[8]If gas and electricity were not otherwise exempted (see II B below) from the tax, they probably should be included within the definition of the term "fuel."

number of States provide for tax-free sales of fuel to certain business users. The extent of the exemption varies among the States, but, generally, sales to manufacturers and to public utilities such as electric, gas, and transportation companies are excluded. If it is attempted to restrict the fuel exclusion to certain business users, such as manufacturers, it appears that important administrative difficulties would be encountered. In the first place, it would be necessary to distinguish between manufacturing and other activities. In addition, there would be many instances in which only a portion of the business activities of a concern would constitute manufacturing, and in such cases it would be necessary to determine what portion of the fuel consumed was for manufacturing purposes. Consequently, the desirability of restricting the exclusions in this manner is to be questioned. Moreover, restricted exclusions of the foregoing type may be impractical unless the business entitled to the exclusions are licensed for the purpose of controlling their applications for tax-free sales. Licenses, however, would not solve the problems of improper tax-free sales since they merely provide a means of identifying the users. Therefore, investigation would be required to insure that fuel purchased for manufacturing purposes was not diverted to other uses.

Fuels are to a very large extent distributed through specialized dealers, such as wood and coal yards, fuel-oil companies, and service stations. Sales range all the way from small transactions involving a sack of wood or coal or a few gallons of gasoline to those involving carloads of coal or thousands of gallons of oil. If it is determined that fuel sales should be excluded, the administrative problems involved in distinguishing between sales for business and individual consumption purposes might require exclusion of all fuel sales, even though substantial portions of fuel sales are for other than business purposes.

(3) Industrial, commercial, and agricultural machinery: Machinery is a very important cost factor in some industries, especially the heavy industries most needed for producing war materials, but it is relatively unimportant in other fields of business such as retail trade. In addition to the effects on profits of business concerns which had to absorb the tax and on price ceilings where the tax was permitted to be shifted forward, application of the sales tax to machinery would tend to introduce short-run discrimination among business enterprises. That is, concerns which did not buy machinery for several years after the imposition of the tax would be placed in a relatively better cost position than their competitors who bought machinery and had to pay the tax. This discrimination, however, would decrease in importance with the passage of time as business concerns replaced their machinery.

It appears that it would be extremely difficult to define with clarity and exactness the type of product intended to be excluded. To attempt to exclude machinery by employing in the tax merely the expression "industrial, commercial, and agricultural machinery, and parts therefor" would raise a host of interpretative questions and, undoubtedly, lead to considerable litigation. The tax administrator would have to draw several lines of distinction. For instance, what is the dividing line between machinery and tools? Tools, such as handsaws and hammers, are certainly not machinery, but the line is not so easily drawn in the case of other articles such as hand drills and certain types of gages. Furthermore, since the term "machinery" embraces the appurtenances necessary to the working of a machine, numerous questions would arise as to what portion of the considerable body of nonmechanical equipment used in connection with machinery could be considered to be machinery. If the operator of a machine must use a special tool to adjust it, is the tool machinery? Another line of distinction that would have to be clarified involves the difference between industrial, commercial, and agricultural machinery and other kinds of machinery. This would first entail a definition of the terms "industry" "commerce," and "agriculture." It would then be necessary to decide whether machinery of the type usually used in industry, commerce, or agriculture was exempt, irrespective of where used, or whether machinery of any type was exempt only when used in industry, commerce, or agriculture. Either alternative would require an extensive number of administrative interpretations. If it were decided to use the first alternative, then an individual buying an industrial lathe for his hobby could buy it tax-free, while business concerns would have to pay the tax on some purchases of machinery, *e. g.*, a household refrigerator.

Machinery might be excluded from the tax on somewhat the same basis as in certain State sales-tax laws. Only a few of the State retail sales taxes exclude machinery and other articles used directly in production. The most notable are those of Michigan and Ohio. The Michigan definition of a retail sale excludes sales of tangible personal property for consumption or use in industrial processing or in agricultural production. Sales of both machinery and materials for use directly in production are therefore not taxable. The regulations interpret the industrial processing exclusion to cover sales of tools, dies, patterns, and machinery used in manufacturing or processing; oil, grease, waste, wiping cloths and cleaning compounds used in connection with such tools and machinery; and substances used to create a chemical reaction in manufacturing or processing. Materials for use in administrative departments, however, are subject to tax as are also sales of items used only incidentally in production, such as clocks, janitors' supplies, and fire extinguishers.

Ohio's definition of a retail sale excludes not only sales of tangible personal property for consumption or use directly in manufacturing, processing, refining, mining, production of crude oil and natural gas, and farming, but also those for consumption or use directly in making retail sales. Thus, sales of store fixtures, such as shelves, showcases, cash registers, and other equipment used by a retailer in his business, are not taxable.

The States' regulations indicate that these methods of excluding sales of articles used by business concerns have proved to be exceedingly complex in their administration. Very detailed regulations have become necessary and many fine distinctions have been drawn. It can be readily seen that the taxing, in Michigan, of items used only incidentally in production cannot help but raise many questions as to whether an article is taxable. It appears that exclusions of the Michigan and Ohio types cannot be administered with any high degree of effectiveness.[9] Consequently, it is doubtful whether these plans would offer the most practical means of excluding machinery and other business cost items from the tax.

Still another method of excluding machinery would be to list by name in the tax Act those articles which could be sold tax-free. This seems to be an extremely difficult task since it would require that the Legislature determine the taxable character of thousands of articles. It should be noted, however, that even if the Legislature effected the exclusion by definition, the administrator would have to specify by regulations the names of articles embraced within the definition.

A suggested solution of the machinery exclusion problem might well be deferred until the interested parties have had an opportunity to present methods which they consider desirable. The issues are so complex that it appears necessary to have aid from all possible sources before making the final decision.

e. Taxation of Other Articles Purchased by Business Concerns.

The other principal classes of articles sold at retail for use by business concerns include: (1) durable equipment (other than machinery), such as tools, desks, and tables, filing cabinets, and showcases; (2) livestock for breeding purposes, work animals, dairy cows, and poultry for laying purposes; (3) consumable articles (other than fuel), such as returnable containers, lubricants, abrasives and polishing agents, and chemicals (other than those becoming physical ingredients); (4) miscellaneous supplies, such as cleaning materials, stationery, and light bulbs; and (5) building materials.

If either the Michigan or Ohio plan were adopted, the foregoing articles would be excluded to the extent they were used directly in production. It will be readily apparent that the administration of either plan would be extremely difficult in connection with many of these articles. For example, light bulbs used in a plant would be tax-free, whereas light bulbs used in an office connected with the plant would be taxable. Similarly, hand or platform trucks used in the plant would be exempt, while those used in the shipping department would be taxable. The question may be raised as to the tax status of trucks used in transporting property from the plant to the shipping department. An engine used on a farm for pumping water for livestock would be tax-free. A similar engine used for pumping water for the farmhouse would be taxable. What would be the tax status of an engine which performed both functions?

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[9]According to the Commissioner of Revenue in Michigan, "In the cases of sales for industrial processing, agricultural production, and commercial advertising, however, there are cogent arguments against their being treated as deductible sales. For example, the task of administration is complicated to an extreme degree in determining whether property sold is for consumption or for use in industrial processing * * *. It is, therefore, recommended that the Legislature define these exemptions in precise fashion so that the department may determine with greater accuracy what is or is not an exempt sale." (Michigan Department of Revenue, Annual Report, fiscal year ending June 30, 1942, p. 8.)

The extent to which these groups of articles are important cost factors in industry is not clear. It may be, however, that certain of these articles such as abrasives and polishing agents are important cost elements in specific industries as in the metal-working and optical goods industries. In other instances chemicals may be important as in the case of the photographing and the cleaning industries.

Containers may be important taxable cost elements depending upon the method of their treatment. If all containers are regarded as used by the concerns packaging and bottling commodities therein, the tax may be an important cost element, as for example in the toilet preparations industry. It is doubtful, however, whether it would be consistent with the concept of retail sale to tax sales of containers when, for all practical purposes, they are integral parts of the articles sold to consumers. If sales of such containers were regarded as sales for resale, returnable containers would be the only class of such articles which might be subject to tax. Returnable containers are used in the distribution of milk, soft drinks, fermented malt liquors, gases, and chemicals. Returnable containers are a cost element at least to the extent of breakage and depreciation in the hands of the bottler or packager. For this reason and because of the difficulty of distinguishing between returnable and nonreturnable containers it might be desirable to exempt all containers.

Since the general group of articles under discussion is composed of commodities differing widely in nature, it would be impossible to develop an inclusive definition which would be clear in its application. Consequently, exclusion of these articles from the tax would require a number of separate provisions such as detailed definitions or the listing of particular commodities.

A very large number of the articles under discussion, *e. g.,* lubricating oils, light bulbs, stationery, and building materials, are commonly sold to individual consumers as well as to business firms. Others, such as chemicals and containers, are probably sold almost entirely to business firms. The number and variety of the articles preclude any generalization as to the relative proportions in which they are sold to the two types of purchasers. This consideration may be of little moment, however, since from the standpoint of definition it is unlikely that the articles could be considered as a class. The attempt to exclude the articles only when sold to business concerns would involve the administrative difficulties of checking diversion from business to individual use, and of dual use already mentioned. Administrative difficulties generally would also be encountered if it were sought to exclude groups or particular commodities, since each additional exclusion would give rise to interpretative problems and intensify record-keeping and auditing problems.

It is likewise impractical to generalize so far as the matters of sale through specialized sellers and size of sales are concerned. Here, too, the various articles fall into different categories. Chemicals and containers are generally sold by specialized firms, but light bulbs and stationery are widely sold in relatively small amounts by retail stores selling many other lines of goods. While from the standpoint of dollar volume the great bulk of building materials are probably sold by building materials supply houses, innumerable sales of small inexpensive items of builders' hardware are sold by five-and-ten-cent stores, department stores, and hardware stores.

II. THE TAXATION OF SERVICES

A retail sales tax is frequently regarded as a tax applying only to sales of goods and not to the rendering of services. Perhaps the reason for this conception is the recognition of substantial differences in the nature of most transactions involving the rendering of services as compared with the nature of those involving the sale of goods. A great many services are not rendered by established commercial enterprises on a buyer-seller basis, but rather by individuals hiring themselves to business concerns or individuals on an employee-employer basis. Even in the case of many of those services rendered to the public at large, as for example professional services, the methods of conducting business and the relationships between the customer and the person rendering the service differ from those of the usual sales transaction.

The effective administration of a retail sales tax requires that the tax be applied insofar as possible only to sales by established business enterprises operated on a commercial basis. Consequently, it would be desirable not to extend the scope of the tax to services which generally are not rendered by such enterprises. Furthermore, a large number of services, both those provided by established enterprises and by individuals, are rendered to business concerns and the taxation of such services would be undesirable for the same reasons that taxation of other purchases by business concerns is undesirable.

On the basis of these considerations, it appears that a sales tax should not be applied in blanket fashion to all services. An examination of the various types of services, however, reveals several whose inclusion within the scope of the tax would not only be feasible but would actually facilitate efficient administration as well as further the attainment of the other objectives of the tax. There is another group of relatively important services which also might be included within the scope of the tax but which are, for the most part, already subject to selective excises and probably can be taxed somewhat more satisfactorily in that manner.

A. SERVICES WHICH MIGHT BE TAXED

The group of services which might be included within the scope of the tax consists of consumers' services ordinarily rendered by established commercial enterprises conducting business in a manner substantially the same as that of concerns selling tangible personal property.[10] The group includes:

1. Repair and fabrication of taxable articles, such as shoe repair, tailoring, and household appliance repair.[11]

[10]Most States do not tax such services. Of the retail sales-tax States, West Virginia and Colorado alone have general provisions for taxation of a wide range of services.

[11]Not including repair of real property nor repair of articles the sale of which are not taxed.

2. Laundry service and dry cleaning.
3. Barber shop and beauty parlor services.
4. Rental of taxable tangible personal property, such as linen, clothing and costumes, automobiles, and bicycles.[12]

These services might be included for the reasons that administration of the sales tax would be facilitated and tax revenue would be increased.

From the standpoint of administration, inclusion of these services would actually facilitate efficient collection of the tax on sales of property. Many of the enterprises rendering these services make some sales of tangible personal property and, thus, would be taxpayers even if the services were not taxable. If the services were not taxed, it would be necessary for many of these concerns to distinguish between sale and service elements in keeping records of transactions. The determination whether certain repairs (such as shoe and furniture repairing) should be regarded as involving sales of tangible personal property as well as the rendering of service is frequently a difficult administrative problem. If the repair transaction is regarded as involving the sale of property, it is necessary for the repairman to allocate a portion of his charges to sales of property and to maintain records showing the allocations. This procedure renders tax compliance more difficult for the taxpayer and also increases the audit work for the administrator.

B. SERVICES SUBJECT TO EXCISES

Two important groups of services, namely, those performed by public utilities and the amusements industry, can either be included within or excluded from the scope of a retail sales tax.[13]

Public-utility services are rendered by regularly established concerns ordinarily of substantial size. They are subject to regulation in the public interest and ordinarily maintain adequate books and records. Accordingly, a sales tax applied to all public-utility services should not cause unusual administrative difficulty. Subjecting these services to a sales tax, however, might be undesirable.[14]

In the first place, as in the case of fuel, public utility services are to a large extent consumed by business concerns. Taxation of this portion of the services might be undesirable because it would increase the cost of operations of businesses of all types. Ordinarily the tax on business consumption of utility services would be very difficult to shift forward to consumers. Secondly, many large industrial users produce their own gas, electricity, and water, and, for purposes of equity, it might be necessary to tax the retail value of such production. Consequently, it might be more practical not to include public utility services under the general retail-sales-tax plan.

Amusement services are also rendered by established commercial enterprises and clearly are consumer services. Failure to include

[12]Rental of real property or of space in or on such property would not be taxed.

[13]Under State general sales taxes, 17 States tax some types of public-utility services and 16 States tax amusements.

[14]For purposes of equity the sales tax would have to be levied on the consumers of the services and not on the "retailers," since the rates charged by the utilities are fixed by public commissions and cannot be changed readily.

admissions under the sales tax would not create administrative problems, since the rendering of such services does not involve the sale of tangible personal property.

Application of the sales tax to cabarets may present some administrative problems. At present, cabarets are taxed by the Federal Government at the rate of 20 percent of their charges for admission, refreshment, service, and merchandise. In the absence of special provisions in the Sales Tax Act, it would be necessary to distinguish between sales of goods, such as meals and drinks, and charges for entertainment. If it is attempted to avoid this problem by applying the sales tax to the total charges of cabarets, the taxpayer would have to make two sets of returns. With the high Federal tax, additional State taxes might drive many such establishments out of business.

C. OTHER SERVICES

In general, it might be questioned whether services other than those mentioned above should be included within the scope of a retail sales tax, because of the nature of the transactions involved and because their inclusion would produce definite disadvantages. These other services fall within one or more of the following classes.

1. Services Not Provided by Regularly Established Enterprises Operated on a Commercial Basis.

There are a number of services that are ordinarily not provided by regularly established enterprises on a commercial basis comparable to those engaged in selling commodities. Some of these services are rendered by individuals hiring themselves out on a more or less permanent basis either to business concerns, as for example employees of businesses, or to individuals, such as domestic servants and gardeners. In other cases, although more or less regularly established places of business are operated, the services are of such nature that the transactions are quite different from those of typical commercial sales. Examples include the various professions, the furnishing of education, many housing services, and many services involving repair of real property.

Taxation of such services would add numerous additional taxpayers, many of them difficult to locate and liable for only small amounts of tax. In most cases, if a tax were to be placed on transactions of this sort, it could be administered much more easily if it were levied upon the "purchaser" (the employer) rather than upon the "seller" (the employee). In general, other forms of tax are more suited to the taxation of wages paid to individuals and similar charges than a retail sales tax designed primarily to reach an entirely different type of transaction.

2. Services Rendered to Business Concerns.

A very substantial part of all services, including many of those falling into the first group above as well as many provided on a commercial basis by established enterprises, are rendered to business concerns. Example, apart from that of practically all wage earners, include legal, architectural, engineering, and accounting services, and rental of business property. The taxation of these services would be undesirable for the same reasons that taxation of sales of materials and other articles purchased by business firms is considered to be undesirable. Taxation of these services would infringe upon the single-stage nature of the tax and would introduce the disadvantages of multiple taxation, especially pyramiding, inequity among competing firms, and unnecessary pressure on price ceilings.

3. Housing Services.

The application of the tax to rent might be considered inadvisable because of the inability to prevent discrimination against renters as compared to home owners without creating an impracticable administrative task. To tax only rents actually paid would be very inequitable to renters; yet to attempt to determine the use value of all owner-occupied homes would create a tremendous administrative task which could not be accomplished with any satisfactory degree of efficiency. Apart from this problem, application of the tax to rents would be made difficult by the existence of many small landlords who do not operate commercially established businesses.

4. Services Not Involving Consumption.

There are several important services which do not involve consumption in the usual sense of the term. The two principal examples are insurance and the lending of money. Insurance premium payments are made for the purpose of handling certain risks in an orderly fashion and also as a means of saving. Neither would generally be considered as constituting consumption. Furthermore, a large part of all insurance premium payments, other than those on life insurance, are made by business concerns. The borrowing of money, while enabling persons to increase their current consumption over the levels which would otherwise be possible, in itself involves no consumption. Also, as in the case of insurance, a very large portion of interest charges are paid by business concerns.

5. Services Not Sufficiently Important to Warrant Special Provisions to Make Them Taxable.

There are a number of relatively unimportant services which would probably not yield sufficient revenue to warrant their inclusion within the scope of the tax. Examples include automobile parking charges and food locker rentals.

III. CONSIDERATIONS RESPECTING EXEMPTIONS

The effectiveness of a retail-sales tax depends in large measure upon the extent to which exemptions are limited. In determining the desirability of various possible exemptions, the effects upon the realization of the objectives of equity, revenue, and efficient administration must be considered. The principal exemptions found in sales-tax laws may be classified into three general types: Those made on the basis of type of commodity, type of buyer, and type of seller.

A. EXEMPTION OF SALES OF PARTICULAR COMMODITIES

The three principal classes of articles for which the possibility of tax-exemption warrants consideration are those articles generally considered to be necessities, especially food, medicine, and clothing; articles already subject to excises; and second-hand goods. Before considering each in turn, certain general objections to the exemption of any particular class of goods should be pointed out.

In the first place, exemptions reduce the yield of the tax. It may not be possible to obtain increases in rate to offset the loss, and in any case, high tax rates tend to increase administrative problems and magnify the significance of inequalities in the application of the tax.

Secondly, exemptions are likely to produce discrimination. Regardless of the amount of care taken in defining an exemption, in many cases one of two articles competing for a particular use will be taxable and the other will be exempt. A certain amount of discrimination in favor of the producers and distributors of the exempted article results.

In the third place, as the number of exemptions increases, it becomes more difficult to refuse exemption to other articles. Various groups of producers or users of particular commodities will seek exemptions and the scope of the tax may be determined largely on the basis of such pressures. If the number of exemptions can be kept very small, there is less opportunity for groups to seek other exemptions and less basis for their arguments.

Finally, and of great importance, is the serious effect of exemptions on efficient administration. Regardless of the care with which the exemptions were defined in the law, numerous administrative rulings would be necessary to determine the exact scope of each exemption. At the same time, taxpayers would be in doubt as to the applicability of the tax to many transactions and almost certainly would make mistakes in application. A substantial educational program would be necessary to instruct sellers as to the exact scope of the tax. Many sellers keep no records other than total sales figures. Moreover, the records of those concerns which maintain more complete accounts do not normally show sales of different commodities and cannot easily be adjusted to do so accurately. Accordingly, many sellers would have no means of knowing their exact taxable sales volume, and in making returns would be forced to use estimates. The natural tendency, of course, would be to maximize the estimates of exempt sales. State sales-tax experience has demonstrated that it is virtually impossible to force all sellers to keep records adequate for tax purposes. In the case of stores selling many items in small quantities, the keeping of accurate record of sales of different types of commodities is virtually a physical impossibility.

1. Necessities.

One of the principal objections to a sales tax is the relatively heavy burden it places on the very low-income groups. In general, lower-income persons spend a larger percentage of their incomes on taxable articles than do persons with higher incomes and, accordingly, pay a relatively larger percentage of their incomes in sales tax. The problem of regressiveness itself may not be too serious during a period when income-tax rates are being made more progressive, but the problem of the tax burden on the very low-income persons remains.

If the basic necessities of life were excluded from the tax, the burden on the low-income groups would be lightened materially and the regressiveness reduced. In this connection, one of the chief problems would be the selection of those commodities to be exempted.[15] There is no clear-cut distinction between luxuries and necessities. If an attempt were made to exempt broad classes of commodities, many luxury articles would automatically be exempted and the tax yield would be unnecessarily reduced. Thus, for example, if food were exempted, various luxury foods such as expensive steaks, certain types of bakery goods, vegetables and fruits out of season, and many imported foods would be included in the exemption.[16]

If clothing were exempted, all luxury items as well as articles of absolute necessity would be tax-free. Exemption of all medicines would exclude from the tax many proprietary preparations of doubtful medicinal value. The exemption might be limited, however, to medicine furnished upon prescription.

The alternatives to the exemption of large classes of articles raise serious problems of their own. The selection of a list of specific items within the classes would not be an easy task because of the lack of any generally accepted concepts of exactly which articles constitute necessities. This task would be especially difficult in the case of clothing. but apart from this issue, the administrative problems created by the exemption of long lists of articles would be serious. Another alternative would be to limit the exemption to specific articles sold below certain prices, as, for example, meat sold for less than 50 cents a pound and men's suits sold for less than $35. This method requires the drawing of sharp and arbitrary lines of exemption. The drawing of reasonably satisfactory lines for a number of articles would be difficult in itself, but enforcement would be virtually impossible. For example, retailers would attempt to avoid the tax on suits selling at more than $35 by selling the pieces separately. While it might be possible to define the exemption to preclude such action so far as the statute was concerned, the problem of enforcement would remain. Even though auditors made detailed and time-consuming investigations of sales records, it is doubtful if avoidance or evasion of this type could be prevented. In many cases higher prices indicate not luxury articles

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[15] California, North Carolina, Ohio, and New York City have general food exemptions. West Virginia allows taxpayers an exemption of 50 cents upon the purchase price of food products. North Carolina and New York City also exempt medicine.

[16] Rationing, of course, would tend to reduce the extent of luxury expenditures.

but goods which are more durable and serviceable, and the use of an exemption of this type would discriminate against those persons who prefer to buy better quality merchandise because they find it more economical in the long run.

Apart from the problem of selecting necessities, this type of exemption suffers from all the disadvantages of any exclusion of particular commodities, especially those of loss of revenue and impairment of administrative efficiency. The revenue obtained from a sales tax at a particular rate would be reduced very materially even if food alone were exempted, and especially if food, clothing, and medicines were tax-free.

From the standpoint of effect on revenue yield, a basic criticism of exempting necessities is the fact that the exemption would apply to all sales rather than merely to those to low-income groups in whose interest the exemption would be provided.[17]

2. Commodities Subject to Excises.

A few States exempt from sales tax all articles subject to State excises. The more common practice is to exclude only certain articles subject to excises, especially gasoline, tobacco, and alcoholic beverages.

3. Second-hand Articles.

Many articles are used in the course of their lifetime by more than one consumer. It is sometimes argued that taxation of sales of second-hand goods involves double taxation, since the tax applies to more than one sale of the same article. The second and subsequent consumers of an article can be considered to be subject to the tax twice on the same article only if the second-hand purchase price reflects entirely or to a significant extent the tax which applied to the original sale of the article. It is unknown to what extent the prices of second-hand articles would be affected by the sales tax paid on previous sales. Many of the second-hand articles that will be available, however, would not have been subject to the sales tax at previous sales and, consequently, double taxation would not be involved in these cases. From the revenue standpoint, it would be desirable that a sales tax apply to sales of second-hand articles. Because of stoppage or great reduction in the production of many articles, there is increased reliance upon used goods and the tax yield would be decreased by their exemption. Furthermore, since second-hand articles are frequently sold by dealers who also sell new articles, the administration of the sales tax would be facilitated by taxing both used and new goods alike.

B. EXEMPTION OF SALES TO CERTAIN TYPES OF BUYERS

There are two general classes of buyers, namely, governments and charitable organizations, sales to which are frequently exempted under

[17]There are several alternative methods of reducing the burden on low-income groups. These plans involve some sort of grant to those with low incomes, either of coupons with which to pay sales tax or of refunds in cash or redeemable bonds to cover the amount of sales tax paid.

sales-tax laws.[18] The features of the two classes of exemptions are somewhat different and will be treated separately.

1. Sales to Governments.

If the State taxes sales made to itself there would be no direct revenue gain from such sales since government expenditures would almost certainly increase by the amount of the tax revenue collected from the sellers. Since a certain amount of expense is involved in the collection of taxes, application of a sales tax to State purchases ordinarily should be avoided unless the administration of the exemption is more expensive than the cost of collecting the tax. Apart from administrative costs, taxation of sales to the State would require adjustments in current budget allotments to various agencies and probably would also require adjustment of many outstanding contracts for purchase of goods by the State. Inclusion of sales to the State within the tax would make the gross tax yield appear to be greater than the actual net revenue and perhaps lead to confusion in the making of policy decisions in regard to the tax.

State taxation of sales to counties and their political subdivisions does result in a net increase in State revenue. Taxation of sales to the counties involves a departure, however, from the intent of the sales tax that individuals be required to pay tax in proportion to their purchases of taxable goods and services. Moreover, the counties and local governments would be forced to pass the tax on to their own taxpayers.

Complete exemption of all sales to government, however, would raise administrative problems of such significance as to make advisable a reappraisal of the policy of exempting such sales. The exemption of sales to government does not operate automatically. It creates two basic problems. The first is the need for identifying government purchases to prevent individuals from making tax-free purchases for personal use. Effective identification would require the use of exemption certificates executed by authorized persons on behalf of the government. These would be delivered to sellers and retained by them in their records to establish the tax-free character of the sales. When government purchase orders were issued and payments were made by government checks, the handling and checking of the exemption certificates would be comparatively simple, but the execution and handling of the certificates would nevertheless involve a certain amount of expense. In the case of emergency purchases, however, which were made through petty cash funds or directly by governmental employees who were subsequently reimbursed, there is opportunity for the improper use of government exemption certificates. Since the certificates would have to be readily available throughout government offices if they were to be used for these purchases, they could be used by employees or others in connection with their individual purchases. The only check upon such improper use of exemption certificates lies in the audit of sellers' records and investigation of the purchases to determine whether they were actually made on behalf of governments.

The second basic problem is that of insuring adequate record-keeping

[18] Seven States exempt sales to charitable organizations. Approximately half of the States exempt sales to themselves and their political subdivisions.

and correct reporting by concerns selling to governments. The bulk of government purchases, especially on the part of State governments, are made in large quantities from more or less specialized concerns, but a very substantial number are made from ordinary retail stores. State experience demonstrates that retailers' records are frequently inadequate and that they do not contain proper evidence of tax-exempt sales. Accordingly, as in the case of other exemptions, field audits would be required to determine the accuracy of the deductions taken by retailers.

Thus, in general, the exemption of the great number of small purchases by governments probably would involve more cost to the governments and taxpayers than the expense of handling the tax collections if such transactions were taxed. The exemption, therefore, if any is made at all, should be limited so far as possible to purchases from which there is definite gain to be realized.

Several methods might be used in selecting classes of purchases for exemption. These are type of contract, monetary value of the purchase, and class of commodity. Under the first method, the exemption would be limited to purchases made under certain types of contracts. There are, however, so many different types of contracts in use and such variety of purchasing procedures that it would be impractical to employ this method.

Under the second method, exemption would be limited to purchases above a certain monetary figure, perhaps $250. With this method, also, a dividing line can be determined only with difficulty and on a more or less arbitrary basis. This method would present the problem of determining exactly what constituted a purchase, and of handling transactions which appeared at first to be on one side of the dividing line and proved ultimately to be on the other side. Finally, it would tend to discriminate against small governmental units making most of their purchases in relatively small amounts.

The third method would exclude from the tax particular classes of articles when purchased by governments. A portion of all government purchases would be excluded, of course, if sales of fuel and of various types of machinery were excluded from taxable retail sales as discussed in previous sections. It is questionable whether this method would prove advantageous except where the exemption is extended to all sales of particular articles (irrespective of the character of the buyer) or where the nature of the article is such that it is sold only to governments.

Closely related to the problem of exempting sales to governments is that of exempting sales to business concerns of articles to be used in fulfilling State contracts. These articles include building materials, fuel, machinery and equipment, and supplies used in the performance of contracts for the improvement of real property or the production of finished articles for sale to governments. In general, the reasons favoring the taxation or exemption of such sales are the same as those respecting sales made directly to governments. The exemption procedures become more involved in these cases, however, and more open to abuse. For example, it would be necessary to determine the taxability of articles (*e. g.*, trucks and other equipment) purchased partly for use in the performance of State contracts and partly for other purposes.

Then, too, contractors frequently purchase such articles as building materials in greater quantities than necessary for the completion of a particular project. If the exemption were extended to these purchases, it would be necessary for the contractor to report and pay the tax on the excess of articles remaining upon completion of the State contracts. Consequently, the chances for evasion through improper use of exemption certificates probably would be greater than in the case of direct sales to governments, and the handling of exemptions would be complicated because of the large number of relatively small purchases made by many contractors from retailers.

2. Sales to Religious, Charitable, and Other Nonprofit Organizations.

The taxation of sales to religious, charitable, and other eleemosynary institutions is in many respects undesirable. The burden of a sales tax must rest either upon the funds of these institutions or upon the individuals supplying the funds; yet neither is desirable from the standpoint of the intent of a sales tax. If the burden rests upon the institutions' funds, their ability to carry on their work is reduced by the amount of the tax collected. If the tax is in some manner shifted to those supplying the funds for the organizations, it obviously is not resting in the manner intended under a sales tax, namely, upon persons in proportion to their consumption.

The administration of exemptions of this type would require the determination of the various kinds of organizations covered. There would arise a number of border-line cases requiring specific administrative rulings. It would be necessary to identify the exempt organizations and to provide a system of exemption certificates by which the exemption could be established. Since there would be many exempt organizations, the tax might be evaded through purchases in the name of any one of such organizations by unauthorized purchasers. It would appear, accordingly, that in view of the additional expense that would be incurred in the administration of the exemption, the possibility of fraudulent use of the exemption certificates, and the errors that would occur in reporting taxable sales due to the inadequacy of sellers' records, the exemption would probably not be desirable. Furthermore, many nonprofit organizations, other than religious and charitable organizations, are engaged in business in competition with private enterprises, and exempting sales to such organizations would be inequitable and would tend to decrease the good will and cooperation of other taxpayers.

C. EXEMPTION OF SALES BY CERTAIN TYPES OF SELLERS

In general, exemption on the basis of class of seller avoids most of the administrative problems of exemption by class of article or by class of purchaser. The only significant administrative problem under this type of exemption would be that of identifying the organizations covered. This type of exemption, however, would give rise to inequalities and tend to reduce taxpayer good will, since the exempt sellers frequently would be competing with other sellers who would be taxpayers.

1. Sales by Governments.

Activities of governments may be classified into two general types: Those of an essential governmental character and those of a commercial or proprietary nature. The former group consists almost entirely of services, such as police and fire protection. The second group includes the rendering of services, such as electricity and transportation, and sales of commodities, such as alcoholic beverages and electrical equipment.

It would appear desirable to apply the tax to sales made by governmental agencies in the course of proprietary or commercial activities. Exemption of such sales would discriminate against private businesses competing with the publicly owned enterprises and would allow those consumers who were fortunate enough to be able to purchase from publicly owned enterprises to escape their proper share of the sales tax.

2. Sales by Charitable and Other Nonprofit Organizations.

In general, exemption of sales by charitable and other nonprofit organizations would not appear to be desirable. Sales made by many charitable organizations are in large measure competitive with sales by business concerns. The tax on such sales, as in the case of other retail sales, would tend to be passed on to the purchaser and would not be a charge on the funds of the charitable organizations or their contributors. The exemption of such sales would allow those persons purchasing articles from the organization to escape tax and would discriminate against private business establishments.

The same objections apply to the exemption of sales by other nonprofit organizations, such as farm and consumer cooperatives, and are more significant here because sales of these organizations are ever more directly competitive with other private businesses than are those of eleemosynary institutions.

An additional reason for not providing a general exemption of sales by charitable and nonprofit organizations is the administrative difficulties involved in distinguishing between bona fide charitable organizations and organizations the activities of which are only partially or incidentally directed toward charitable functions.

There are two situations, however, in which the exemption might be desirable. The first involves sales of meals and clothing at lower than market prices by charitable organizations exclusively as a matter of charity or assistance to the purchasers. It would appear desirable on the basis of equity considerations neither to tax the charity nor the recipients of the charity. The second involves sales of meals and publications by schools of less than collegiate grade or by student or parent-teacher organizations of such schools. Collection of the tax on such sales would be relatively costly and difficult, and neither equity nor revenue considerations would appear to warrant their taxation.

3. Casual Sales.

A substantial number of sales, primarily of second-hand goods and farm products, are made by individuals not regularly engaged in the business of selling at retail. Examples include the sale of a used washing machine to a neighbor, and occasional sales of eggs by a farmer not regularly engaged in the business of selling at retail.

To attempt to tax such transactions would in most cases involve more expense than the amount of revenue involved and, in any case, a substantial number of sales would inevitably escape taxation. The cost of discovering such transactions and the handling and auditing of returns would frequently be greater than the amount of tax due. In the light of these considerations, casual, occasional, or isolated sales probably should be exempted from the tax.[19] There would be little or no loss in net revenue, and administrative effort could be used more advantageously.

The exemption probably should be limited to sales made by persons who are not regularly engaged in the business of selling at retail. The exemption should not apply, for example, to sales at roadside stands or through regular routes, since in such cases the seller would be offering his goods at retail to the public. Moreover, the exemption probably should not extend to sales by retailers of property previously used in the course of their business operations, as, for example, a cash register or showcase. Since the sellers would be taxpayers it would be feasible to tax such sales. In addition, the problem of distinguishing between such sales and retail sales of commodities of the type ordinarily sold would be avoided.

Part Two—Tax Rate and Yield

There are two principal problems in regard to the rate of a sales tax; name, that of the choice between a single, uniform rate and a multiple-rate system applying different rates to different classes of commodities, and that of the amount of the rate.

I. CHOICE OF UNIFORM OR DIFFERENTIAL TAX RATES

The use of a differentiated rate structure,[20] if it could be effectively administered, would tend to further both the equity and revenue objectives of the tax. The application of lower rates to articles of wide and necessary use, such as food and clothing, and of higher rates to less necessary articles would tend to reduce the burden on the low-income groups and lessen the regressivity of the tax. However, a large portion of the tax base will consist of sales of necessities. Consequently, only to a limited extent could decreases in revenue from lower rates on necessities be offset by higher rates on nonessentials.

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[19] Almost all State sales taxes exempt casual sales.

[20] In a sense, if exemptions from the tax are provided, differentiation is introduced into the rate structure, since on the exempt commodities the rate is zero and on other commodities the rate is a positive figure. The concept of rate differentiation usually is confined to the use of two or more positive rates. Many of the problems arising out of exemptions, however, are similar to those arising out of the use of differentiated rates.

The problem of selecting the articles and services to be placed in the various rate groups would be a difficult one. As indicated in the discussion of exemption of necessities, there are no definite and generally accepted criteria of necessity and luxury. Differentiation of rates would tend to impair the efficiency of administration in much the same manner as would the exemption of necessities, primarily because most retailers do not keep adequate records of sales by classes of commodities. From the taxpayers' viewpoint, problems of interpretation of the scope of the various rate classes would introduce appreciable uncertainty as to the proper tax rate applicable to particular commodities and, consequently, some misapplication of rates would result.

In view of the foregoing considerations, a uniform rate would appear preferable to a differential rate structure.[21]

II. AMOUNT OF THE TAX RATE

In determining the amount of revenue to be obtained from a sales tax, considerations of governmental financial requirements must be balanced against the need of avoiding excessive tax burdens on very low-income groups, inability to exclude all cost goods from the tax, and the greater administrative difficulties to be expected as the rate increases. The latter would arise primarily because of the greater incentive for taxpayers to attempt to avoid or evade high tax rates. In turn, evasion at high tax rates by some taxpayers would be of more serious concern to other taxpayers who would be making proper tax payments, since the latter would be subjected to more severe, unfair competition. In this way, the number of taxpayers that would be subjected to greater pressure to evade the tax would tend to increase, and administrative problems would be magnified.

III. YIELD

The yield of a sales tax depends not only upon the rate, but upon the tax base as settled by the Legislature. Statistics on the value of agricultural sales, the retail trade, the wholesale trade, etc., have always been meager for the State of Nevada, and especially so since 1939, the date of the last Federal census. Economic trends prior to 1939 may be unreliable when applied to the following years influenced by the emergencies of World War II. An attempt is made to complete all data for the year 1946, the latest possible year.

Table 1 is compiled from data of the "United States Census of Agriculture" (1945) Vol. 1, Part 31, as taken by the Department of Commerce and the Bureau of the Census, and of the "Statistical Abstract of the United States" (1947) as compiled by the same agencies. It is to be noted that the amounts spent for feed, machinery, and fertilizer for the year 1946 are pure estimates resting upon a general 100% increase over the 1939 base, and are inserted because of the possibility of exempting these items from the tax base.

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[21]Practically all State retail sales taxes employ uniform rates. There are, however, a limited number of exceptions. For example, in Alabama and New Mexico sales of automobiles are taxed at rates lower than the regular sales-tax rate.

TABLE 1. AGRICULTURE IN NEVADA—1929-1946
(In Thousands of Dollars)

Year	Number of farms reporting	Cash income	Number of farms reporting	Amount spent for feed	Number of farms reporting	Amount spent for machinery	Number of farms reporting	Amount spent for fertilizer	Tons of fertilizer purchased
1929	--------	----------	2,157	$1,721	1,334	$822	41	$6	
1930	3,442								
1935	3,696								
1936	--------	$11,300	--------	--------	--------	--------	----	----	L–500
1937	--------	13,000	--------	--------	--------	--------	----	----	L–500
1938	--------	11,800	--------	--------	--------	--------	----	----	L–500
1939	--------	12,300	2,163	1,019	1,191	745	106	6	L–500
1940	3,573	14,000	--------	--------	--------	--------	----	----	L–500
1941	--------	16,000	--------	--------	--------	--------	----	----	L–500
1942	--------	22,000	--------	--------	--------	--------	----	----	1,000
1943	--------	24,575	--------	--------	--------	--------	----	----	L–500
1944	--------	---- ----	--------	--------	--------	--------	----	----	L–500
1945	3,078	23,321	--------	--------	--------	--------	----	----	1,000
1946	3,400	31,162	--------	†2,038	--------	†1,490	----	†12	

L–Less than. †Estimated.

TABLE 2. BUSINESS IN NEVADA—1929-1947
(In Thousands of Dollars)

Year	Value retail trade	Value wholesale trade	Value manufacturers	Value new construction public and private	Value new construction public	Value new construction private	Receipts service establishments	Receipts hotels	Value fuel sales
1929	$48,861	$13,718	$33,717						
1933	28,6[illegible]0	9,763	9,172						
1935	43,039	15,300	15,931	----------	----------	----------	$1,392	$1,750	
1939	61,828	23,249	20,582	$17,800	$10,700	$7,100	3,348	2,991	†$1,483
1940	93,609	----------	----------	21,000	13,700	7,300			
1941	----------	----------	----------	29,500	18,300	11,200			
1942	----------	----------	----------	130,400	116,400	14,000			
1943	----------	----------	----------	90,100	84,200	5,900			
1944	--	----------	----------	16,400	13,300	3,100			
1945	*132,087	----------	----------	17,300	12,700	4,600			
1946	*162,512	*67,962	†45,280	25,900	6,900	19,000	†7,365	†3,589	†3,900
1947	----------	----------	----------	‡23,000	‡5,800	‡17,200			

*"Sales Management" (May 1947), by permission.
†Estimated.
‡Three-quarters of a year only.

Table 2 gives Bureau of the Census figures on Business in Nevada for the years 1929–1939, but no data is available for some of the years in various trades and businesses. The 1946 estimates on the value of manufactures, and receipts by service establishments and hotels, are guesses involving a 120% increase over the 1939 figures as compiled by the Bureau of the Census. Figures on fuel sales are estimates based upon national averages as compiled by the Bureau of the Census. The figures on the value of construction were compiled by the Bureau of Foreign and Domestic Commerce, Department of Commerce. The value of the retail trade for the years 1945 and 1946, and of the wholesale trade for the year 1946, are based upon estimates made by "Sales Management" (a well-known business magazine) in its Survey of Buying Power made in May 1947. Again, the inclusion or exclusion of these various items, along with the value of agricultural products, would determine the tax base.

Table 3 gives figures on the value of the retail trade in Nevada for the year 1946, that are based upon estimates made by "Sales Management" in its survey of buying power made in May 1947, upon estimates compiled from the "Study of Family Expenditures" issued by the Reno Chamber of Commerce in June 1947, and upon estimates compiled from national averages as compiled by the Bureau of the Census and "Sales Management" magazine.

On the assumption that service establishments and hotels would be taxed, and that the nongovernmental exclusions from a retail sales tax would be limited to feed, seed, fertilizer, fuel, and commercial, industrial and agricultural machinery, it is estimated that the tax base for the calendar year 1946 would be $166,026,000. On this base the tax would yield $1,660,260 with a 1% rate, $3,320,520 with a 2% rate, and $4,980,780 with a 3% rate.

Table 3 presents detailed information and estimates respecting the composition of the tax base and yields at designated rates of tax.

Part Three—Measure of the Tax

The measure of the tax, *i. e.*, the amount to which the tax rate is applied to determine the extent of tax liability should be fixed in the light of certain considerations of equity and administrative practicability. It would appear that the tax, in general, should apply to the bona fide sales prices of commodities and services, including payments for taxable services rendered in conjunction with the sale of commodities but not including payments for nontaxable services so rendered. The measure of the tax might, accordingly, be regarded as the seller's gross sales of taxable goods and services, less deductions[22] for discounts taken, returned goods, the amount of the tax and other retail sales taxes, and delivery, finance, interest, and other service charges which would not be taxable when the services were rendered independently of a sale.

[22]While precise terminology would probably require the use of the term "exclusion" rather than "deduction" in this connection, the latter is being used herein since it is generally employed in the sales-tax States.

TABLE 3. ESTIMATED SAMPLE BASE AND YIELD OF A RETAIL SALES TAX IN NEVADA, CALENDAR YEAR 1946

(Based on the Retail Trade in 1946)

Classes of retail sales	Amount (in thousands)	Percent of total	Tax yield at 1%	Tax yield at 2%	Tax yield at 3%	Tax yield at 4%	Tax yield at 5%
Food	*$34,594	21%	$345,590.00	$691,880.00	$1,037,820.00	$1,383,760.00	$1,729,700.00
Apparel	†22,517	14%	225,170.00	450,340.00	675,510.00	900,680.00	1,125,850.00
General merchandise	*14,774	9%	147,740.00	295,480.00	443,220.00	590,960.00	738,700.00
Household furnishing and supplies	8,126	5%	81,260.00	162,520.00	243,780.00	325,040.00	406,300.00
Automotive supplies and equipment	17,876	11%	178,760.00	357,520.00	536,280.00	715,040.00	893,800.00
Building material and hardware	9,751	6%	97,510.00	195,020.00	292,530.00	390,040.00	487,550.00
Drugs, tobaccos, and confectionery	*6,537	4%	65,370.00	130,740.00	196,110.00	261,480.00	326.850.00
Meals and drinks	22,435	14%	224,350.00	448,700.00	673,050.00	897,400.00	1,121,750.00
Feed and farm supply	4,875	3%	48,750.00	97,500.00	146,250.00	195,000.00	243,750.00
Other retail stores	†21,027	13%	210,270.00	420,540.00	630,810.00	841,080.00	1,051,350.00
Totals	*$162,512	-------	$1,625,120.00	$3,250,240.00	4,875,360.00	$6,500,480.00	$8,125,600.00
If service establishments and hotels are included	10,954	-------	109,540.00	219,080.00	328,620.00	438,160.00	547,700.00
Totals	$173,466	-------	$1,734,660.00	$3,469,320.00	$5,203,980.00	$6,938,640.00	$8,673,300.00
If following are excluded—							
Feed, seed, fertilizer	2,050						
Fuel	3,900						
Com., Ind., Ag., machinery	1,490						
	—$7,440	-------	—74,400.00	—148,800.00	—223,200.00	—297,600.00	—372,000.00
Totals—Tax base and yield	$166,026	-------	$1,660,260.00	$3,320,520.00	$4,980,780.00	$6,641,040.00	$8,301,300.00

*"Sales Management" (May 1947), by permission.
†"Study of Family Expenditures" (June 1947), Reno Chamber of Commerce.

I. GROSS SALES OR GROSS RECEIPTS

A sales tax may be applied either to gross sales, the total value of all taxable sales made during the reporting period, or to gross receipts, the total amount of money received from taxable sales during the period. While the sales and receipts of stores selling exclusively for cash will be identical during any given period of time, those of stores selling on credit will be different. The gross sales basis appears to be the more satisfactory of the two, both from the standpoint of tax revenue and, of far greater importance in this instance, of administration.

Regardless of the extent to which exemptions would be avoided, many concerns selling at retail would make both taxable and nontaxable sales. When such concerns sell on a credit basis and merely make additions to the customer's account in connection with taxable and nontaxable sales, difficulties are unavoidable under the gross receipts basis when the customer makes a payment on the account without allocation to any particular sale. Some plan for the segregation of the amount paid between the two classes of sales would have to be devised and the seller would in each instance have to make the computations required under the plan. Sellers' records generally are not kept in such a manner that computations of this type can readily be made and, accordingly, their compliance costs could be expected to increase if the gross-receipts method were employed.

A division of gross sales into taxable and nontaxable sales can be made much more easily. The gross-sales method would prove far simpler of administration in the event that at some time after the imposition of the tax, the rate was changed or exemptions were either added or eliminated. Under this method the statute as modified would apply to sales made after the effective date of the amendments. Under the gross-receipts method, however, if discrimination between cash and credit sales made before the change in the law were to be avoided, it would be necessary to apply the old rate after the effective date of the amendments to amounts paid pursuant to sales before that date. In the case of changes in exemptions, the seller would have to distinguish in his records between sales of the affected commodities before and sales thereof after the effective date of the amendments in order properly to collect and return the tax. For example, if the law as originally enacted did not exempt food, but an exemption of food were subquently provided, the seller would not collect and pay the tax on food sales made after the date of the amendment. He would, however, continue to collect and pay it after that date with respect to amounts paid him on food sales made on credit before that date. Confusion would be inevitable and the keeping of records would be greatly complicated.

From a revenue standpoint, the use of the gross-sales method would not only secure earlier payment of the tax on credit and installment sales, but would also avoid loss of tax revenue when payments were not ultimately made. In the case of installment sales, the seller can protect himself against loss under the gross-sales method by adding the tax to the down payment. In the case of ordinary credit sales, however, the tax must in most cases be regarded by the seller as an additional factor to be considered in determining the amount of credit to be extended to a purchaser.

II. THE NATURE OF GROSS SALES

Gross sales consist in general of the sum of the prices actually charged for all articles sold or services rendered, regardless of whether payment is made in cash, property (such as used articles traded in), or services; and regardless of whether the entire price is actually paid. In relatively few cases the prices actually charged would not be bona fide arm's-length selling prices because of an identity of ownership or control of both the buyer and seller. Under such conditions, the amounts charged might be far less than the bona fide selling prices of the articles, and readjustment of the selling prices would be necessary to prevent avoidance of the tax.

III. DEDUCTIONS FROM GROSS SALES

Charges for services, such as delivery and installation, are frequently made in connection with retail sales. If the services were taxable when rendered independently of a sale, no question would arise as to the deductibility of the charges. If, however, the services were not taxable when independently rendered, it appears that a deduction should, under certain conditions, be allowed for such charges when made in connection with sales. The principal charges of this nature are those made for interest, insurance, delivery, and installing tangible personal property in real property. If deductions were not allowed in these cases, there would be discrimination against sellers rendering the services in conjunction with sales of articles and such sellers in many cases would cease providing these services. It would probably be advisable to confine the deductions to those additional charges for services which were stated separately from the prices of the articles. This requirement provides a somewhat limited safeguard against the tendency of sellers to overstate the deduction as a means of avoiding the tax and would lighten the task of the State in determining whether the deductions were reported correctly by taxpayers.

Since the measure of the tax is intended to be the actual selling price of taxable articles and services, any discounts taken, such as those provided on a cash, trade, or quantity basis, would also seem to be proper deductions.

Furthermore, it would probably be advisable to allow the deduction of amounts collected by sellers from purchasers as reimbursement of the tax, and for the amounts of other retail-sales taxes applying to the transactions, provided the taxes are separately quoted. The deductions should probably apply both to specific excises on retail sales of particular commodities, such as the Federal jewelry, fur, and cosmetics taxes, and to general retail-sales taxes imposed by the Federal Government and cities regardless of whether the latter were levied upon the retailer or the consumer. This distinction in the manner of imposition of such sales taxes would appear to be without significance so far as the question under discussion is concerned. The deduction would apply, however, only to separately stated taxes. Manufacturers' and wholesale excise or sales taxes probably should not be deductible in view of the difficulties involved in determining the amount of the retail selling price representing such taxes. While it might be administratively feasible to permit the deduction of such taxes when the retail sale (within the meaning of the retail-sales tax law) was made by the manufacturer or wholesaler, such a practice would appear undesirable insofar as it would result in discrimination against transactions wherein the retail sale was not so made.

The selling price of returned articles should, of course, be deductible, since in such cases no sale occurs. When payments on credit sales are not made in full, however, it is doubtful whether a deduction should be allowed for the unpaid portion of the selling price, regardless of whether the article sold was repossessed. The allowance of a deduction for bad debts would add to administrative difficulties since it would introduce into the sales tax not only most of the problems arising under the Federal income-tax law in this connection, but would require even additional effort and record-keeping in the case of sellers making both taxable and nontaxable sales. If an account representing both classes of sales proved uncollectible, the seller would be required to examine it item by item to ascertain the amount deductible, for he could deduct only such amounts as arose from taxable sales. When audits were made, the representative of the State would also be required to follow this procedure, at least to the extent of a test check, to verify the accuracy of the deductions claimed by the seller. Furthermore, if the deductions were allowed, persons failing to pay for their purchases in full would be enabled to escape a portion of their tax liability. If sellers were liable for the full amount of the tax, regardless of whether all payments were made, they would be encouraged to require full payment of tax at the time of purchase. It should be noted, however, that retailers generally believe they are entitled to a bad-debt deduction and, consequently, allowance of such a deduction would tend to increase their good will toward the tax.

IV. ALLOWANCE TO RETAILERS

The introduction of a sales tax results in an increase in the costs of retailers.[23] Not only are costs of keeping records increased but a certain amount of expense arises out of the handling of returns. In addition, retailers are not always able to shift the entire amount of tax on a sale to the purchaser.

The good will and cooperation of sellers are of paramount importance in the administration of a sales tax. It is questionable, however, whether an allowance designed to cover increases in costs due to the tax, as granted by several sales-tax States, is desirable.[24] The allowance would reduce the net yield of the tax and one based on the amount of taxable sales might be very discriminatory in its application

[23]The Shoup study of the New York City sales tax indicated that every store investigated reported the tax had increased accounting costs, in many cases the increase amounting to 5 to 10 percent of the tax collected. See Shoup, "The Experience of 2,000 Retailers Under New York City's Sales Tax," National Tax Association Bulletin, January 1936.

[24]Eight States provide such an allowance.

to various sellers. Take, for example, the case of two sellers with total annual sales of $100,000. One might make only taxable sales, and, assuming a tax of 10 percent and an allowance of 3 percent of the tax, would receive a benefit from the allowance of $300. The other might make both taxable and nontaxable sales, and, assuming an even division between the two classes of sales, would receive an allowance of only $150. Despite the fact that the sales-tax-compliance costs of the latter would probably be greater than those of the former, since he would have to obtain resale or exemption certificates and keep his records in such a manner as to separate the taxable and nontaxable sales for tax-reporting purposes, he would receive only one-half the allowance granted the former. No allowances are provided to cover the substantial compliance costs to taxpayers resulting from the Federal income, excise, and pay-roll taxes, and it may be inadvisable to establish a precedent for such allowances.

Part Four—Legal Liability for and Shifting Of the Tax

The tax could be imposed upon sellers or consumers. In either case, however, the tax would be paid to the State by the seller and collected by him, either as a tax or as tax reimbursement, from his purchasers. Advertising of absorption of the tax by the seller should probably be prohibited as a means of preventing unfair trade practices.

I. LEGAL LIABILITY FOR THE TAX

Whether the sales tax was imposed in the form of a tax upon the privilege of selling at retail, upon retail sales, upon property sold at retail, or upon consumers, it would in legal effect be a tax levied upon either the seller or the consumer. Even though it was imposed upon the consumer the statute would necessarily require that it be collected from him by the seller and paid by the latter to the State. There are advantages in placing legal liability for the tax solely upon the seller and experience indicates that this method is the more satisfactory of the two.

The imposition of the tax upon the seller would make it possible to tax sales to the counties and their political subdivisions, if it was deemed advisable to do so. A tax upon the consumer might not be constitutional as applied to such sales. A tax imposed upon the seller would be deductible only by the seller for income tax purposes, but the deduction would be offset since the seller would be required to include in his gross income the amount collected from his customers as tax reimbursement. If levied upon the consumer, however, even though collected and paid by the seller, the tax would be deductible by the consumer in the absence of express provision precluding the deduction. In general, a State sales tax should be deductible by consumers for income-tax purposes.[25] On the whole, such a deduction

[25] Allowance of deductions of all State sales taxes by consumers may be desirable as a means of avoiding discrimination arising from the fact that

would tend to make the tax more regressive, since the privilege of deduction is of no value to low-income groups paying no income tax, but increases in importance as the marginal rates of the income-tax increase in successively higher income brackets. The deduction would of course reduce the yield of the income tax.

II. SHIFTING OF THE TAX

Since the retail sales tax is intended to be a tax resting finally upon individual consumers in proportion to their purchases of taxable articles and services rather than a tax upon business firms, it is desirable that the entire amount of the tax be shifted from sellers to consumers. If the tax were levied upon the consumer, he would be required by law to pay it to the seller in connection with taxable sales. If, however, the tax were levied upon the seller, the statute might compel shifting, might be silent upon the matter of shifting, or might contain a statement of policy to the effect that sellers are expected to shift the tax. The first alternative is of doubtful desirability. It might have the effect of changing the form of the tax to one imposed on the consumer and would probably be virtually meaningless and unenforceable. Sellers could readily avoid the requirement, if they desired to do so and except as they might be restricted by the operation of fair-price Acts, simply by reducing their selling prices (exclusive of tax) by the amount of the tax. In almost all cases, the tax would be shifted to the same extent regardless of the treatment of the matter in the statute. In order that there be no doubt as to the intention of the Legislature, however, it might be advisable to set forth in the law a general policy statement that sellers are expected to shift the tax to their purchasers whenever feasible.[26]

It might also be well to provide in the statute that it is unlawful for sellers to advertise that they are absorbing the tax. Advertisements of this nature are misleading, since concerns may frequently shift the tax by price readjustments even if they do not collect it as a separate item. The prohibition would accordingly check a form of unfair competition and aid in obtaining the good will of sellers.

In general, quotation of the tax separately from the selling price of the article or service is preferable to shifting of the tax by readjustment of the price, since with separate quotation there is greater likelihood of the shifting of the exact amount of the tax. Under price-control regulations sellers would have to quote the tax separately, since only by this means could they shift it without obtaining a readjustment of their price ceilings. The separate quotation procedure is likely to be followed, even in absence of special statutory provisions.[27] To encourage the practice, a statement that sellers would be expected to quote the tax separately when feasible might be included in the law.

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some States place the tax on consumers while other States place it on sellers. Allowance of deduction of all State retail-sales taxes was provided by the Revenue Act of 1942.

[26]Such a provision is found, for example, in the California sales-tax law.

[27]The practice of separate quotation is almost universal in the sales-tax States. One of the few exceptions is the retail tax portion of the Indiana gross income tax, which has a very low rate.

Another problem relating to shifting is that of passing forward an amount of tax involving a fraction of a cent. Two principal methods are available, namely, the use of tokens or a schedule of brackets. The latter method involves essentially the adjustment of the amount of tax to an even cent.

The tokens used by several States involve a certain amount of expense, the cost of manufacturing such tokens often being equal to or greater than their face value. Sellers and consumers might find them inconvenient, especially when they were first introduced. While there may be justification for the use of tokens with the low-rate sales taxes in some States, it is questionable whether there would be sufficient need for tokens in Nevada to justify the expense and the inconvenience involved.

Under the bracket method, a schedule indicating the amount of tax to be collected on each sale price would be established. For example, a possible schedule under a 5-percent tax might be as follows:

Amount of sale	Tax (cents)
1 to 19 cents	0
20 to 39 cents	1
40 to 59 cents	2
60 to 79 cents	3
80 to 99 cents	4

A possible schedule under a 2-percent tax might be as follows:

Amount of sale	Tax (cents)
1 to 49 cents	0
50 to 99 cents	1

A possible schedule under a 1 percent tax might be as follows:

Amount of sale	Tax (cents)
1 to 99 cents	0
$1 to $1.99	1
or	
1 to 49 cents	0
50 cents to $1.49	1
$1.50 to $2.50	2
or as in Rhode Island	
1 to 24 cents	0
25 cents to $1.39	1
$1.40 to $2.39	2

Under this system, a purchaser would frequently not pay the precise amount of tax actually due on any particular purchase but, on the average, would probably pay a rate of tax equal to the tax rate provided by the statute. This method is the simpler of the two for both merchants and consumers and, in general, is equitable for both groups, although a small group of concerns having a high percentage of sales in the lowest bracket might not collect enough tax reimbursement to cover their tax payments.[28] With a 5 percent tax rate, the number of concerns thus affected might be small, but with a 2 percent or a 1 percent tax, the number of concerns affected would be increasingly large.

[28]Operators of vending machines, however, might not be able to collect any tax reimbursement.

It would seem advisable not to set forth the bracket schedule in the statute and, assuming it were to be prescribed by the State, to issue it by regulation. It would then be much easier to readjust the brackets should experience indicate such need. If the schedule were deemed to be solely a matter of adjustment between sellers and their customers, the State might refrain even from issuing it by regulation. In this case a schedule or schedules would undoubtedly be provided by merchants' associations.

Part Five—Administrative Provisions

The effectiveness with which a retail-sales tax might be collected depends to a large extent upon the statutory provisions relating to the administration of the tax. Some of the important issues which might arise in this connection will be discussed.

I. LICENSES

To facilitate administration, 20 of the 27 sales-tax States require that licenses be obtained by all persons selling at retail.[29] So far as State practice is concerned, it appears that licenses are believed to be desirable.

Licenses are employed for several important purposes. First, they provide a means of establishing a list of sellers subject to the tax. Through the application for license the State is able to obtain necessary information such as the exact names and addresses of the owners of business concerns, the nature of the businesses and whether seasonal, the date the business started if opened after the effective date of the tax Act, and the name and license number of the prior owners of the business if the business was purchased after the effective date of the tax. Information could also be obtained respecting the financial responsibility of the applicant for the purpose of ascertaining the most desirable tax return period for him and whether he should be required to furnish security to insure compliance with the Act.

Secondly, the threat of revocation and actual revocation of licenses in cases of tax delinquency have proved to be extremely effective means for enforcing payment of the tax.[30] Under a retail-sales tax there would be many small retailers, operating from hand to mouth, who frequently would be delinquent in their tax payments even though they had collected the tax from their customers. These retailers would have little in the way of property which could be levied upon to satisfy the tax liability. Some States have found a forceful license revocation procedure a more effective collection method than seizure of the retailers' property. When notified to show cause why their licenses should not be revoked for failure to pay tax, retailers make every possible effort to meet their liabilities or to enter into arrangements with the State for the orderly settlement of the liability in order that they may continue in business.

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[29] Taxpayers are also licensed under the Canadian manufacturers' sales tax and the Australian and British wholesale sales taxes.

[30] 13 of the 20 States which require licenses have specific statutory provisions authorizing revocation.

Thirdly, licenses provide a means whereby manufacturers and wholesales can identify business concerns entitled to make tax-free purchases for resale. A retail sales tax imposes a great responsibility upon sellers to ascertain the disposition of goods by the purchasers. It would appear that the State owes a duty to sellers to assist them in identifying persons entitled to make tax-free purchases for resale. Although the results might be harsh in certain cases, the effective administration of a retail sales tax requires that liability for the tax be definitely fixed upon the seller. If, through error or misrepresentation, a person buying for consumption furnishes the seller a resale certificate and the transaction later is discovered by the State to have been a taxable sale, the seller would be liable for the tax.[31] Licensing would not only provide sellers with a means of identifying persons entitled to purchase for resale (through quotation of license numbers), but would also provide the State with a means of controlling the misuse of resale certificates, since repeated misuse of the resale certificate by a business concern would be a ground for the revocation of its license.

In the light of these considerations it might be desirable to license all sellers of tangible personal property, for it then would be possible to require that resale certificates bear a license number. Farmers, however, probably could be exempted from the licensing requirement without significant effect upon the operation of the resale-certificate system. Assuming that feed, seed, and fertilizer were exempt from the tax, the only important classes of property purchased for resale by farmers would be containers and packing materials, livestock, poultry, and eggs for hatching. It would be impractical to license farmers for the purpose of controlling their limited number of purchases for resale. It would seem preferable to permit farmers to execute resale certificates for the purpose of purchasing the foregoing classes of property for resale without quotation of license numbers.

Although the licensing system provides very valuable aids to the administration of a sales tax, it should not be assumed that licenses are absolutely essential. That is, licensing really supplements other methods of enforcement which would be employed in any event and which might prove adequate in the absence of licensing. A list of sellers could be developed from existing lists of Federal taxpayers, such as those under the old-age insurance tax, the Federal retail excise taxes, and occupational taxes. Additional sources are also available, such as trade association lists. Even though licenses were required, it would be necessary to check the licensees against the existing lists of sellers. It would also be necessary to conduct extensive field investigations to determine whether sellers required to file tax returns actually were doing so. Moreover, a limited amount of the information that would be obtained through the application for license could also be obtained on the tax-return forms.

Methods other than revocation of license could be employed for the handling of delinquencies. Broad powers to enforce payment through levy on personal property and the placing of liens against real property could be set up.

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[31] In this case, it probably would also be possible to subject the purchaser to liability for the tax.

The resale-certificate system could be operated even though licenses were not required. The imposition of a penalty for the misuse of resale certificates by buyers would tend to prevent the unwarranted use of the certificates.

The licensing of more than 2,500 sellers[32] would be a large undertaking requiring substantial amounts of personnel and equipment. While it is probably true that licenses would increase personnel and equipment requirements, it should be noted that even in the absence of licenses large amounts of personnel and equipment would be needed. The additional advantages which would be offered by the licensing system, therefore, should be considered in the light of the larger manpower and equipment requirements.

If licenses are provided, permanent licenses might be preferable to annual or periodically renewable licenses. The licenses, however, probably should be nontransferable as respects either change of ownership or location. Since the license requirement is intended as a method of control and not as a source of revenue, only a nominal fee, if any, should be charged.

II. TAX RETURNS

The retail-sales-tax returns might be required on a monthly, bimonthly, or quarterly basis. The quarterly basis probably would be preferable. Although monthly returns would provide a more frequent check upon retailers, they would materially increase the expense of administration.[33] Under the monthly basis, it would be extremely difficult if not impossible to complete the checking of returns and the preparation of a delinquency list for any month prior to the filing of the returns for the following month.

Efficiency of administration would be increased if the delinquencies for one period were cleared, through payments or other arrangements, before the delinquencies for the next period were ascertained. This would be possible under a quarterly return basis.

While the quarterly basis should prove satisfactory for most taxpayers, in some cases shorter periods might be desirable. For example, more frequent returns would be desirable in the case of financially unstable concerns and from concerns operating on a seasonal basis. Accordingly, the tax administrator might be authorized to require the filing of returns for other than quarterly periods.

III. COOPERATIVE ARRANGEMENTS

The efficiency with which a retail-sales tax could be administered might be increased and the cost reduced through cooperation with county and city agencies engaged in tax administration. Accordingly, the State agency administering the tax might be authorized to enter into cooperative arrangements with county and local officials for the purpose of facilitating administration of the sales tax.

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[32]It is estimated that for the calendar year 1947 there would be about 2,500 taxpayers. If all sellers (excluding farmers) of tangible personal property were licensed, this number would be somewhat larger.

[33]Monthly returns would require the handling of approximately 30 thousand returns annually as compared to about 10 thousand on a quarterly basis.

CHAPTER FOUR

POSSIBLE MODIFICATIONS OF A RETAIL SALES TAX; PERSONAL EXEMPTIONS AND GRADUATED TAX RATES.

Several proposals have been made in connection with the consideration of a retail sales tax to modify the usual form of the tax with a view to ameliorating its regressive effects. It has been suggested (1) that universal personal exemptions be provided, (2) that personal exemptions be provided for low-income families and individuals, and (3) that the tax be imposed at graduated rates. It should be noted that any one of these proposals would have to be superimposed upon a retail sales tax of the usual type.

To provide personal exemptions under a retail sales tax, it has been proposed that the State either refund part of the tax collections to everyone in the form of a certificate redeemable for cash, or distribute to everyone free of charge a specified amount of sales-tax coupons acceptable in payment of the tax. Consumers would then pay the tax added by sellers to the regular selling prices of taxable goods and services either with money or with the tax coupons.

Under an alternative plan, only those with low incomes would be entitled to the tax refund. Here, too, either certificates or coupons could be employed.

Personal exemptions would minimize, in some cases even eliminate, the heavy burden that a sales tax would impose on those with very low incomes. In this way a progressive distribution of the tax load within the lower and middle income groups would be achieved. Thus, if a feasible administrative system could be devised to handle the distribution of the exemption to thousands of individual consumers, one of the important arguments against a sales tax would largely be nullified.

To provide for a sales tax imposed at graduated rates, it has been suggested that the State furnish to consumers at a low tax rate coupons good for paying the tax on a specified amount of expenditures,[1] but sell them additional tax coupons at successively higher rates according to a tax schedule based on expenditures. For example, if an adult consumer were required to buy coupons for the first \$200 worth of taxable expenditures at a 2 percent tax rate, he might be charged 10 percent for the next \$200 worth of coupons, 20 percent for the next \$200, 30 percent for the next \$200, etc. The sales tax would be paid by consumers directly to the State through the purchase of coupons. Consumers would deliver the coupons to sellers in settlement of sales tax liability when they bought taxable goods and services. Under this

[1]Consumers might be given the first quantity of tax coupons free as under the exemption plan.

plan, low-income consumers might be relieved of an unduly heavy tax burden. In addition, the tax could be made as progressive as desired in relation to **expenditures.**

Part One—Personal Exemption System—Universal Exemptions

The fact that a retail sales-tax rate as high as 5 percent would unduly burden those with very low incomes has led to the suggestion that a certain amount of essential expenditures be exempted from the tax. One suggested method would provide a system of tax refunds under which the State would give back to all individuals or to all residents a portion of the sales tax collections. These tax refunds might be in the form of certificates which could be cashed or exchanged for bonds depending upon the current needs of individuals.

An alternative method of distributing the exemption would employ tax coupons. An amount would be distributed to each individual or resident equal to the tax liability on the exempt specified amount of purchases, the coupons then to be used for paying the tax.

The administration of a personal exemption system presents many problems in addition to those ordinarily involved in the enforcement of a sales tax. The size of the administrative requirements depends largely on the nature of the plan adopted. The simplest personal exemption plan provides for the distribution of the benefit to everyone. Universal distribution of exemptions might be at a flat amount per capita or varied according to age or dependency status. In the following discussion, attention is focused on both the equitableness and the administrative practicability of the exemption provisions.[2]

I. SIZE OF PERSONAL EXEMPTIONS

A sales tax refund system consistent with the purpose of relieving low-income persons from the burden of the tax might exempt an amount of expenditure necessary to preserve a maintenance standard of living. This amount depends on the classes of expenditures which would be excluded from the sales tax, the size of family, and the cost of providing essential needs to families differently situated.

Because of administrative and other considerations, there probably would be excluded from a retail sales tax many classes of consumer expenditures. Even though expenditures for education, fuel, rent, medical services, transportation and other utilities were excluded from the tax, many essential goods and services would be taxable. These include food and beverages, clothing, medicine, household supplies and furnishings, and personal care.

The amount of the personal exemption might be gaged by the cost

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[2]Since the two proposed methods (certificates and coupons) are similar in most respects, the discussion will not distinguish between them except where it is necessary to do so.

of food necessary to health and efficiency.[3] The cost of a "maintenance" food budget for a family of four is estimated at $900.[4] Since the cost of a family's food requirements generally varies with its size, a per capita exemption would be better than a flat exemption per family. An allowance of $200 for each member, for example, would compensate for the sales tax on $800 of expenditure by a family of four. The annual value of this exemption would depend on the tax rate; at 5 percent it would amount to $40. The per capita allowances might also be varied according to age or dependency status of individuals such as $250 for adults and $150 for minors.

Different allowances might also be justified by reason of variations in cost of living between different sections of the State and between urban and farm families. For example, since home-produced food would not be subject to tax, a smaller personal exemption for farm families might be justified.[5] Differentiation between farm and urban families, however, would be difficult.

II. BASIS OF ALLOTMENT

A choice would have to be made among several bases of allotment to the single persons and families. Since the cost of a maintenance standard of living varies with family size and composition, it might be desirable to establish the amount of family exemptions in accordance with these variables. Under one method there would be provided a flat amount of exemption to each member of the population. The alternative methods depend largely on the desirability of distinguishing between adults and minors, or between income recipients and those with dependency status. Thus, the size of the exemption given a minor or dependent might be smaller than that given to an adult or income recipient. The practicability of administering each of these plans, however, should be balanced against the purpose of achieving an equitable adjustment of the benefit to personal and family needs.

A. EQUAL PER CAPITA EXEMPTIONS

If a flat exemption of, say, $200 were given to everyone regardless of his income, dependency status, or age, the administration of an

[3]Exemption of food from the tax offers an alternative method of providing this relief. The distribution of the benefits, however, would be substantially different because expenditures on food increase as income increases whereas nutritional requirements for a maintenance standard of living are more closely related to factors such as age and activity. See Factors Affecting the Structure of a Retail Sales Tax, part 1, section III, A.

[4]Intercity Differences in Costs of Living, March 1935, 50 Cities, Works Progress Administration, Research Monograph XII, United States Government Printing Office, 1937, page 19. The $448 estimate given in this study was adjusted for current prices by the December 1945 cost-of-living index for food. It should be noted that this "maintenance" standard is above that of an "emergency" level of $340 for March 1935.

[5]Home-produced food accounted for 57 percent of the total money value of food for rural farm families in 1941. (See Rural Family Spending and Saving in Wartime, U. S. Department of Agriculture, Miscellaneous Publication No. 520, June 1943, p. 32.) However, the cost of producing this food should be considered, and it should be noted that the amount produced various considerably among farm families.

exemption system would be greatly simplified. Distribution of this amount to every member of the population would reduce the sales-tax base by about $27 million, using the 1947 population estimate of 135,414. It is questionable, however, whether this plan would apportion this amount in the most equitable manner among single individuals and families of different size. The cost of maintaining a family does not increase in proportion to the increase in its size. Consequently, under a flat per capita exemption, large families would tend to get a disproportionate amount of the benefits as compared to single individuals and small families.

B. ADULT-MINOR CLASSIFICATION

Reduction of the annual allowance to persons below 18 years of age from $200 to $150 would tend to be more commensurate with the increase in costs of family maintenance. This would permit the allotment to those above 18 years of age to be raised to $225 without additional reduction in the sales-tax base.[6] An adult-minor classification would increase the administrative difficulties since it would be necessary to require evidence of the age of all individuals.

C. DEPENDENCY CLASSIFICATION

Some justification might be made for the adoption of an exemption system similar to the present income-tax classification of taxpayers into married couples, heads of families, single individuals, and dependents. According to this classification, a married couple, or the head of a family together with his first dependent, would be entitled to about twice the benefit granted a single person, with an additional allowance for each dependent. As in the case of the adult-minor classification, the dependency classification also would tend to be more commensurate with the increase in costs of family maintenance.

Many additional complexities would be introduced since it would be necessary to verify the personal status of single individuals, married persons, heads of families, and the dependency of persons for whom exemption claims were made. Moreover, continuous revision of the State's records would be necessary to account for changes in marital status, births, and deaths, etc.

III. EFFECT OF PERSONAL EXEMPTIONS ON THE DISTRIBUTION OF A RETAIL SALES TAX

Universal personal exemptions would bring about a substantial change in the distribution of a sales tax among various income groups. The burden on those with low incomes would be reduced and in some cases eliminated. In fact, those whose annual expenditures for taxable goods were less than the annual exemption would realize a small increase in their incomes under the certificate plan. This would also tend to occur under the coupon plan because of the difficulty of preventing the coupons from being sold or transferred.

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[6] It is estimated that in 1947 there were approximately 93,436 persons above 18 years of age and 41,978 below 18.

As a result of the exemptions, the distribution of the sales tax on the lower and middle income groups is made slightly progressive. Table 1 illustrates the estimated distribution of a sales tax in Nevada by income levels for the year 1943. Data for the year 1943 was used in Tables 1, 2, 3, and 4 because that is the last year for which complete figures are obtainable. Table 1 illustrates that the heaviest burden of a sales tax rests upon low-income groups.

Table 2 illustrates distribution with a food exemption. The lowest income group would experience the highest ratio of tax to income, .57 percent in the case of a 1-percent tax. Between this group and the $4,000–$5,000 level, the percentage of tax to income would decline gradually to about .34 percent; above the $5,000 level, the regression would be more rapid. The major differences in distribution of burden between a sales tax with personal exemptions and one with a food exemption would be within the lowest income groups up to about $1,500.

Tables 3 and 4 illustrate the effect of a flat per capita exemption of $170 on the distribution of a sales tax. The $170 per capita exemption was chosen in order to aggregate the same amount (about $24 million) as the estimated store and restaurant sales of food in Nevada in 1943, when the population of the State was approximately 143,000. Either exemption would reduce the tax base approximately $24 million for the year 1943. Retail sales in Nevada for the year 1946 have been estimated at $140,428,800.[7] The national averages compiled by the Bureau of the Census[8] show that 40% of retail sales is devoted to the sale of food. On that basis, food sales in Nevada for the year 1946 can be estimated at $56,171,520, and a food exemption would decrease the tax base of $140,428,800 by that amount. On the basis of a 1946 population of 159,804 (including personnel of the armed forces returned to civilian life) a $350 personal exemption would aggregate the same amount as estimated store and restaurant sales of food in Nevada for 1946.

Returning to the examination of Table 4, it is found that on the average, those families with incomes below $500 would receive a greater value of exemption than their expenditures on taxable goods. In other words, this income group would receive, on the average, an excess of personal exemption over estimated taxable expenditures equal in value to about .8% of its money income with a 1% sales tax, and 1.6% with a 2% sales tax. The burden of the sales tax would increase from this negative amount to a maximum of about .42% of average income at the income levels between $2,500 and $4,000, and would then decline in the higher income levels.

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[7]Income and Market Analysis for Clark County, Nevada, Series One, Las Vegas Chamber of Commerce, January 1947.

[8]Statistical Abstract of the United States, 1946, p. 952.

Sources: Division of Research, Office of Price Administration; Division of Research and Statistics, Treasury Department, June 30, 1943; "Considerations Respecting a Federal Retail Sales Tax" prepared by Division of Tax Research Treasury Department, with assistance of the Office of Tax Legislative Counsel of the United States, October 12, 1943.

TABLE 1. ESTIMATED DISTRIBUTION OF SALES TAX BY INCOME LEVELS, YEAR 1943

Money income levels	Total retail expenditures	1% Tax Percent of income	2% Tax Percent of income	3% Tax Percent of income	4% Tax Percent of income	5% Tax Percent of income
Under $500	$470.00	.94	1.88	2.82	3.76	4.70
$500 to $1,000	770.00	.77	1.54	2.31	3.08	3.85
$1,000 to $1,500	1,080.00	.72	1.44	2.16	2.88	3.60
$1,500 to $2,000	1,320.00	.66	1.32	1.98	2.64	3.30
$2,000 to $2,500	1,550.00	.62	1.24	1.86	2.48	3.10
$2,500 to $3,000	1,770.00	.59	1.18	1.77	2.36	2.95
$3,000 to $4,000	2,200.00	.55	1.10	1.65	2.20	2.75
$4,000 to $5,000	2,550.00	.51	1.02	1.53	2.04	2.55
$5,000 to $7,500	3,375.00	.45	.90	1.35	1.80	2.25
$7,500 to $10,000	3,800.00	.38	.76	1.14	1.52	1.90

TABLE 2. ESTIMATED DISTRIBUTION OF SALES TAX BY INCOME LEVELS, FAMILIES AND SINGLE CONSUMERS, YEAR 1943, WITH FOOD EXEMPTION

Money income levels	Total retail expenditures	Retail expenditures excluding food	Food expenditures	1% tax excluding food (percent of income)	2% tax excluding food (percent of income)	3% tax excluding food (percent of income)	4% tax excluding food (percent of income)	5% tax excluding food (percent of income)
Under $500	$470.00	$285.00	$185.00	.57	1.14	1.71	2.28	2.85
$500 to $1,000	770.00	450.00	320.00	.45	.90	1.35	1.80	2.25
$1,000 to $1,500	1,080.00	645.00	435.00	.43	.86	1.29	1.72	2.15
$1,500 to $2,000	1,320.00	800.00	520.00	.40	.80	1.20	1.60	2.00
$2,000 to $2,500	1,550.00	975.00	575.00	.39	.78	1.17	1.56	1.95
$2,500 to $3,000	1,770.00	1,110.00	660.00	.37	.74	1.11	1.48	1.85
$3,000 to $4,000	2,200.00	1,400.00	800.00	.35	.70	1.05	1.40	1.75
$4,000 to $5,000	2,550.00	1,700.00	850.00	.34	.68	1.02	1.36	1.70
$5,000 to $7,500	3,375.00	2,250.00	1,125.00	.30	.60	.90	1.20	1.50
$7,500 to $10,000	3,800.00	2,600.00	1,200.00	.26	.52	.78	1.04	1.30

TABLE 3. ESTIMATED DISTRIBUTION OF SALES TAX BY INCOME LEVELS FOR SINGLE PERSONS, WITH $170 PERSONAL EXEMPTION, YEAR 1943

Money income levels	Total retail expenditures	1% Tax Percent of income	2% Tax Percent of income	3% Tax Percent of income	4% Tax Percent of income	5% Tax Percent of income
Under $500	$470.00	.60	1.20	1.80	2.40	3.00
$500 to $1,000	770.00	.60	1.20	1.80	2.40	3.00
$1,000 to $1,500	1,080.00	.61	1.21	1.82	2.43	3.03
$1,500 to $2,000	1,320.00	.58	1.15	1.73	2.30	2.88
$2,000 to $2,500	1,550.00	.55	1.10	1.66	2.21	2.76
$2,500 to $3,000	1,770.00	.53	1.07	1.60	2.13	2.67
$3,000 to $4,000	2,200.00	.51	1.02	1.52	2.03	2.54
$4,000 to $5,000	2,550.00	.48	.95	1.43	1.90	2.38
$5,000 to $7,500	3,375.00	.43	.85	1.28	1.71	2.14
$7,500 to $10,000	3,800.00	.36	.73	1.09	1.45	1.82

TABLE 4. ESTIMATED DISTRIBUTION OF SALES TAX BY INCOME LEVELS, FOR AVERAGE THREE-PERSON FAMILIES, WITH $170 EXEMPTION PER PERSON, YEAR 1943

Money income levels	Total retail expenditures	1% Tax Percent of income	2% Tax Percent of income	3% Tax Percent of income	4% Tax Percent of income	5% Tax Percent of income
Under $500	$470.00	—.80	—1.60	—2.40	—3.20	—4.00
$500 to $1,000	770.00	.26	.52	.78	1.04	1.30
$1,000 to $1,500	1,080.00	.38	.76	1.14	1.52	1.90
$1,500 to $2,000	1,320.00	.41	.81	1.22	1.62	2.03
$2,000 to $2,500	1,550.00	.42	.83	1.25	1.66	2.08
$2,500 to $3,000	1,770.00	.42	.84	1.26	1.68	2.10
$3,000 to $4,000	2,200.00	.42	.85	1.27	1.69	2.11
$4,000 to $5,000	2,550.00	.41	.82	1.22	1.63	2.04
$5,000 to $7,500	3,375.00	.38	.76	1.15	1.53	1.91
$7,500 to $10,000	3,800.00	.33	.66	.99	1.32	1.65

IV. ADMINISTRATIVE ORGANIZATION

The nature of the administrative problem under the several exemption plans has been briefly indicated. Further consideration should be given to the nature of the organization required for the registration of individuals, the distribution of exemptions and their redemption, and the routine operation of the plan.

A. REGISTRATION

The distribution of a substantial sales tax exemption in the proper amount to each single individual and family requires the development of an organization and technique which would eliminate at least the major opportunities for abuse. One of the prerequisites is a system of registration which would guard against false claims and duplicate registration. For this purpose, a system like the latest war ration book registration might be employed. The certificates or coupons could be issued upon presentation of the ration books by authorized persons. In order to provide a check on duplicate registration, surrender of a designated ration stamp could be required.

The rationing registration was inaccurate and incomplete in a number of respects. For this reason it should be used with care and checked for the elimination of invalid books. One abuse which was difficult to avoid was multiple registration for the war ration books themselves. In addition, many books were not turned in as required in cases of death or induction into the armed forces. While the statements of age on the ration books might be used to classify the population according to adult-minor status, they would not give sufficient evidence of dependency. Should the latter basis be employed for distribution of different amounts of benefits, a supplementary certificate or other evidence of dependency status would be necessary.

B. ISSUANCE OF EXEMPTIONS

It might be advisable to withhold the issuance of an exemption until the validity of the claim had been verified. Issuance immediately upon registration might encourage false claims since it would appear that the statements made by the registrant were not being adequately verified. An independent check on the distribution of exemptions would assure better accountability for the certificates or coupons issued and assist in the prevention of fraud or collusion.

A separate administrative organization might be established in the Tax Commission to approve the issuance of exemptions. It would supervise the conduct of the registration, be responsible for the verification of the registration statements, and undertake investigations of doubtful and fraudulent cases. An adequate and independent administrative system would reduce misrepresentation and provide a means for correcting honest mistakes arising from ignorance and misinterpretation of the law and regulations. In any case, an extensive educational program would be necessary to inform the public of its privileges.

V. REDEMPTION OF EXEMPTIONS

Provision would have to be made for the redemption of the exemptions if they were issued in the form of certificates. They should be made redeemable as currently as possible in order to provide relief in necessitous cases. The time of redemption should be at the option of the individual, however, so that he might save the cash value of the exemption if he so desired. Redemption of the certificates could be made in cash or bonds at banks or other authorized agencies.

If tax coupons were employed, redemption would involve transfer of the coupons to retailers who, in turn, would use them in payment of their sales tax liabilities to the State. Use of exemption coupons, however, would entail a coupon collection system. While a tax coupon system obviates the distribution of cash and would probably identify the exemption more closely with its purpose of rebating the sales tax, there are objections to this plan. Probably the most serious objection would be the additional costs of compliance. The handling of the tax coupons by retailers would introduce a new complication and probably confusion.[9]

VI. CONCLUSIONS ON UNIVERSAL PERSONAL EXEMPTIONS

A. MERITS

If a retail sales tax were modified by an exemption system covering a minimum amount of essential expenditures, the burden imposed on those with very low incomes would be minimized and in some cases entirely eliminated. The importance of the relief would depend on the tax rate and the size and basis of allotting the exemption. The universal exemption system would relieve low-income families from the sales tax burden more effectively than would a food exemption of the same aggregate amount.

If a sales tax is desired as a means of exacting a contribution to the State from those who are not subject to the Federal income tax, a system of personal exemptions offers a means of achieving this objective without making the burden too oppressive on the lowest-income groups.[10] At the same time a personal exemption system would achieve a progressive distribution of the tax within the lower- and middle-income groups. While the regressivity of the tax would not be altered appreciably within the higher-income levels, the Federal income tax effectively compensates for this.

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[9]See discussion in pt. 3, sec. VI, B, 5, below.

[10]For example, a family of four with an annual income of $1,500 may have nontaxable expenditures of $500 (rent, life insurance, medical expenses, etc.) and taxable expenditures of $1,000 on which a tax of $10 was paid at 1 percent. A rebate of $8 (1 percent on $200 for each member of the family) would reduce the rate of tax to 0.2 percent.

B. OBJECTIONS

Personal exemptions extended to everyone would reduce significantly the revenue yield of a retail-sales tax at any given rate.[11] The benefits would relieve the tax burden on low-income consumers and allow them to maintain their consumption of goods and services. In some cases their spending power would actually be increased by the tax value of the excess of the exemptions over the amount of taxable purchases. Among the higher of the exemptions over the amount of taxable purchases. Among the higher-income consumers the benefits would reduce the amount of excess spending power which would be withdrawn by a sales tax.

The use of a personal-exemption system would add greatly to the administrative requirements of enforcing a sales tax. A flat exemption to everyone, however, would be the simplest form of exemption to administer. Administrative complexities would be increased by attempting to adjust the size of the exemption to family cost-of-living requirements on the basis of either age or dependency status. It would be impracticable to take account of differences in cost of living between urban and rural areas as well as among various sections of the State.

The abuses which might arise under an exemption system (for example, counterfeiting of tax coupons, collusion, misrepresentation and falsification) are potentially great and would have to be guarded against in order to maintain confidence in the tax system.

Finally, the nature and form of the exemption itself may be objectionable. It may be difficult to justify a sales-tax rebate to everyone irrespective of need in order to protect only a minority of the population. Furthermore, the essential connection between an exemption certificate and a sales-tax refund may be lost in the process of redeeming it in cash. Sales-tax coupons would be more directly related to the purpose, but would increase retailers' costs of compliance with a sales tax.

Part Two—Personal Exemption System—Exemptions Limited To Low Income Groups

In principle, personal exemptions should be limited to those whose health and efficiency would be impaired by the tax. Little purpose would be served by a tax rebate to those whose incomes provide an adequate family budget. Sales-tax revenue would be unnecessarily reduced. Consideration should, therefore, be given to the practicability of distributing sales-tax exemptions only to those who can least afford to bear the tax.

In restricting the benefits to those with low incomes it would be necessary to establish certain income limits for individuals and families of different sizes above which the exemptions would not be allowed. In addition, a notch provision would be required for the equitable

[11]The reduction in net sales tax revenues could be compensated for by higher rates, but other problems would be intensified, including the taxation of business purchases which cannot feasibly be exempted from a sales tax.

adjustment of the exemption benefits between those with incomes just below and just above these limits. For example, it would be quite inequitable to grant a $60 tax benefit to a family of four with an income of $1,500 and give no benefit to another family of the same size with an income of $1,505.

I. DETERMINATION OF ELIGIBILITY REQUIREMENTS

A. DEFINITION OF INCOME-RECEIVING UNIT

With regard to the income limit, decision would have to be made between the adoption of a family-income unit or an income-recipient unit, or some workable compromise between these two. Basing the claim for exemption on family income has some justification insofar as the members of a family pool their incomes, but ignores the fact that many families have more than one self-supporting member entitled to separate consideration. However, it would be difficult to distinguish between families where income is pooled for consumption purposes and where it is not. It might be preferable, therefore, to choose the present Federal income-tax basis. According to this classification, individuals with incomes below $500, and married couples and heads of families with incomes below $1,000 would be eligible for the exemption; and $500 additional income would be allowed for each dependent. Thus, a family of four would be eligible for exemption benefits if its income were $2,000 or less. These income limits would also have the advantage of avoiding confusion between the income tax and the sales tax personal exemption systems.

Many complications would arise, however, in adapting a sales tax personal exemption system to the income-tax classification. One is the treatment of dependent children over 18 years of age. If they are students, for example, and still a responsibility of their parents, the heads of families probably should be entitled to an additional exemption allowance. The separation of income between husband and wife presents another problem. Here the separate incomes probably should be treated on a family-unit basis (joint-return basis), if both contribute to the support of the family. The problem in a community property State like Nevada might be treated in the same way.

Whether the income limits should be calculated on a net or gross income basis would also have to be decided. While deductions of necessary business expenses would be justified, it would be questionable whether deductions for items such as donations, taxes, and interest should be allowed. Moreover, the adoption of a strictly net income basis would unduly complicate the administration of the plan because of the year-end adjustments necessary.

B. EQUITABLE ADJUSTMENT OF INCOME LIMITS

The income limits should be adjusted in order to avoid the harsh discrimination between those just above and below the exemption lines. If such adjustment were not provided, the exemption plan would be inequitable in its sharp differentiation between individuals and families who, for all practical purposes, would have about the same ability to pay taxes. In addition, the plan would tend to place an undue premium on evasion by providing substantial benefits to those who could meet the income requirements by slightly under-reporting their incomes.

The inequality could be ameliorated by a notch provision which would reduce the size of the exemption to those within a certain range of income either below or above the income limits. For example, if a family of four with an income of $2,000 were entitled to an exemption of $800, its value would be $8 at a tax rate of 1 percent. Under a notch provision the benefits of the full exemption might be extended only to those whose incomes were less than the income limits by $250 for each adult and $150 for each dependent. In this case, the full $8 benefit would be given only to families of four with incomes of $1,200 or less (that is, $2,000 less $800). Families of four with incomes of more than $1,200 but less than $2,000 might be given only one-half the full benefit or $4. The notch could, of course, be graduated, but this would increase the administrative problems.

II. ADMINISTRATION OF THE REFUNDS

An exemption system limited to those with incomes below specified amounts would create many administrative difficulties which would not be encountered if the benefits were granted to all.[12] If the sales-tax exemption is to serve the purpose of providing relief to needy cases, it should, in principle, be made on a current-income basis. Income in the preceding year would not be a good criterion because the majority of incomes fluctuate from year to year. The most feasible plan probably would be to prorate the exemption on a quarterly basis so as to reduce the lag between income receipts and expenditures. Distribution of the benefits would then be determined by the income of the preceding quarter. This method probably would be impractical, however, with respect to farmers and small businessmen.

A. REGISTRATION AND CONTROL

Initial application for exemption benefits would require registration in person of those whose incomes in the preceding quarter were below the income limits. Subsequently, a more routine administration of the quarterly claims might be developed, which would eliminate need of personal application except for new applicants. For example, forms might be made available for filing the claims by mail and the exemption certificates or coupons might also be mailed. To require personal application at all times would not only increase the personal requirements and office facilities needed to administer the system, but it would also inconvenience workers who would lose valuable working time in reporting to the designated office.

[12]An alternative plan would provide for the universal distribution of exemption certificates, with current redemption limited to those with incomes below a certain amount. This plan would introduce an element of compulsory lending, the salient features of which are discussed in pt. 4 in connection with another proposal.

If it were planned to grant coupons only to those with incomes below specified levels, a more extensive organization would have to be developed for the purpose of reviewing the quarterly applications. While it should not be necessary to file each quarterly application in person, the registration offices should be conveniently located in order to permit personal interviews with new registrants and to provide a place to handle complaints, conduct investigations, etc. The extent of decentralization and size of these offices would depend on the degree of standardization that could be installed in handling the applications. In any event, it probably would be necessary to handle around thousands of quarterly applications throughout the State, depending on the income standards adopted and the level of national income. The tremendous personnel requirements of such an organization are readily apparent, not only for initial registration, routine inspection of applications, typing and filing of records, mailing of certificates or coupons, but particularly for the current investigation and post-audit of incomes to reduce errors and to prevent fraud.

B. PROBLEMS OF VERIFYING INCOME STATEMENTS

Verification of claims for exemptions would entail a considerable amount of administrative work which might delay the distribution of the tax refund certificates or tax coupons. One means of minimizing delay would be to require proof of earnings for the preceding period. For this purpose an employer's statement of wages might be used. Income of the self-employed could not be obtained, however, except by affidavit. Those dependent on pensions, annuities, or income from trust funds could be required to secure income statements from the payers.

Numerous difficulties would arise in the adoption of the foregoing type of plan. Where more than one job was held in the previous period, an income statement from one employer would understate the applicant's income. A check on such underreporting could be provided by requiring a statement of the length of time worked so that other employment during the period would be disclosed.[13] Other special problems would also arise where wives were working or where supplemental income was received from investments or from a part-time job. If exemptions were prorated on a quarterly basis, cases would arise of benefits being received by individuals whose annual incomes exceeded the maximum limits because of seasonal fluctuations, wage increases, etc. Finally, another objection to the plan is the additional work that would be placed on employers.

C. POST-AUDIT AND INVESTIGATION

If an adequate system of investigation and post-audit[14] were instituted for the enforcement of a sales-tax-exemption plan, it might prove possible to dispense with preliminary proof of income. In this case,

[13]Evidence of unemployment might be required in order to account for this time.

[14]"Considerations Respecting a Federal Retail Sales Tax" prepared by Division of Tax Research, Treasury Department, with assistance of the Office of Tax Legislative Counsel of the United States, October 12, 1943.

initial reliance would be placed on the individual's statement that he earned less than the required amount, but his application would be subject to post-audit and investigation. Penalties imposed for falsification, such as repayment of excess payments and forfeiture of future benefits, would tend to reduce abuse.

Should the income limits for exemption purposes be equivalent to those established for the individual income tax, auditing might be facilitated by the use of the income-tax returns. The adoption of similar income exemption limits would enable a check to be made on the basis of the gross income reported for income-tax purposes.

An alternative method of checking might be provided by the withholding tax returns filed by employers with respect to wages and salaries of persons whose tax was withheld at the source. This information, however, would have certain shortcomings. The returns would not contain information on investment income or wages of domestics, farm laborers and others not subject to withholding. Verification of income derived by one person from more than one employer would necessitate the collating of the separate reports of employers of the individuals who may have been moving from job to job and often from one part of the country to another. The same sort of difficulty would be encountered in checking the income of working wives.

III. EVALUATION OF THE PLAN

A. MERITS

A personal exemption system limited to those with low incomes would have about the same advantages described above for a universal exemption system without some of its objections. Restricting the exemption would avoid gratuitous benefits to those able to pay the sales tax and the net yield of the tax would be larger.

B. OBJECTIONS

While it would be more desirable to limit sales-tax exemptions to those below a maintenance standard of income, the size of the administrative requirements appears to be prohibitive. The cost of operating the plan on a scale necessary to insure efficient administration and enforcement would be excessive and would represent a drain on scarce manpower and facilities. An extensive organization would have to be established for the purpose of reviewing the quarterly claims for refund, maintaining a permanent file of the beneficiaries, investigating questionable claims, and auditing the incomes of exemption recipients in order to guard against errors and misrepresentation. The treatment of persons with incomes subject to marked fluctuations during the year would raise additional complexities.

Part Three—A Sales Tax With Graduated Rates

A retail-sales tax imposed at graduated rates[15] differs from the usual retail sales tax in that it is collected in the first instance by selling coupons to consumers at rates which increase with the aggregate amount of their taxable purchases. This type of tax should be distinguished both from a graduated spending tax,[16] and from sales taxes with rates differentiated according to classes of goods and services.[17]

The sales tax would be paid in tax coupons purchased from the State at graduated rates. Coupons equivalent in face amount to the first bracket expenditures would be obtainable at a low rate of tax, or could be issued free. Coupons covering the next bracket of expenditures would be purchased at a higher tax rate. Additional coupons would be obtainable at successively higher tax rates depending on the size of the expenditure brackets. The tax coupons would ordinarily be sold in booklets, the coupons bearing face values equal to money units of taxable purchases (such as 1 cent, 5 cents, 10 cents, $1). Thus, a book of coupons would be good for payment of tax on purchases aggregating, say, $200, whether the consumer had paid $2 (1-percent tax), $4 (2-percent tax), $6 (3-percent tax), $8 (4-percent tax), or $10 (5-percent tax) for it. Sellers would be required to collect the coupons in face amounts equivalent to the dollar value of their taxable sales and to remit them periodically to the State in discharge of their tax liability.

The principal features of the plan requiring detailed consideration include exemption of expenditures and tax rates for each bracket of expenditure, registration of consumers, issuance and sale of coupons, collection and accounting for coupons by sellers, and the taxation of sales to business concerns.

I. DETERMINATION OF GRADUATED TAX RATES

The size of the initial bracket might be determined on the basis of an estimate of the amount of expenditures for taxable goods and services which would be essential to a maintenance standard of living.[18] Free coupons might be issued, either to everyone or only to those with incomes below specified amounts. In general, the size of succeeding expenditure brackets and the rates of tax applied would depend on

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[15]The similarity of this plan to general expenditure rationing should be noted. In the latter plan, persons would exchange their money for a special type of money which would be required for purchasing articles at retail. The amount allowed each person would be limited to a certain percentage of income.

[16]Differences arise because of the difference between "sales" and "expenditures" and by reason of the usual exclusion from a retail sales tax base of expenditures on rents and various services.

[17]Some of these plans advocate a sales tax on different classes of goods graduated according to the degree to which they are subject to inflationary pressure. Others would classify sales according to the degree of "necessity" or "luxury" of the articles.

[18]See discussion of "Size of Personal Exemption," pt. 1, sec. I.

the extent to which the tax was intended to raise revenue. Table 5 presents a hypothetical tax schedule for purposes of illustration; the rates are of course not presented as recommended rates.

TABLE 5. AN ILLUSTRATIVE GRADUATED SALES–TAX SCHEDULE

Annual Taxable Expenditures

Tax rates	Single person	Married couple, no dependents	Married couple, two dependents
0 percent (no tax)	$1 to $400	$1 to $600	$1 to $800
1 percent	$400 to $800	$600 to $1,200	$800 to $1,600
2 percent	$800 to $1,200	$1,200 to $1,800	$1,600 to $2,400
3 percent	$1,200 to $1,600	$1,800 to $2,400	$2,400 to $3,200
4 percent	$1,600 to $2,000	$2,400 to $3,000	$3,200 to $4,000
5 percent	Over $2,000	Over $3,000	Over $4,000

As shown by Table 6 under this hypothetical schedule a married couple without dependents would pay a tax of $100 on $2,500 of taxable expenditures; a married couple with two children would pay $75 on the same amount; and a single person would pay $125 on $2,500 expenditures. If this schedule were thought too punitive, it could easily be modified by increasing the expenditure brackets or reducing the rates.

TABLE 6. AN ILLUSTRATIVE GRADUATED SALES TAX; TAX LIABILITY FOR SELECTED TAXABLE EXPENDITURES

Amount of annual taxable expenditures	AMOUNT OF TAX PAYABLE — Single person	Married couple, no dependents	Married couple, two dependents
$500	$5.00		
750	7.50	$7.50	
1,000	20.00	10.00	$10.00
1,500	45.00	30.00	15.00
1,900	76.00	57.00	38.00
2,500	125.00	100.00	75.00
3,500	175.00	175.00	140.00
4,500	225.00	225.00	225.00

Administrative considerations require the use of an easily defined consumer unit. The tax schedule might be devised on the basis of equal per capita expenditure brackets as shown in the "Single person" and "Married couple, no dependents" columns of Table 5. Or the schedule might vary the expenditure brackets for minors or dependents as shown in the "Married couple, two dependents" column of Table 5. The basic problems encountered in evaluating these alternative plans are discussed in part 1, section II, above.

TABLE 7. AN ILLUSTRATIVE GRADUATED SALES–TAX SCHEDULE, BASED ON MONEY INCOME LEVELS, YEAR 1943

Money income levels	Average annual retail expenditures	Percent tax	Amount of tax payable
Under $1,000	$770.00	0	None
$1,000 to $3,000	1,430.00	1	$14.30
$3,000 to $5,000	2,375.00	2	47.50
$5,000 to $7,500	3,375.00	3	101.25
$7,500 to $10,000	3,800.00	4	152.00
Over $10,000	(*)	5	(*)

*Figures not available.

A sales-tax schedule based upon money income levels might be devised, as illustrated by Table 7. The figures given on retail expenditures are for the year 1943, since no later figures are available. Such a plan would require much administrative machinery with attendant costs, perhaps to the point of being impractical. The basic problems in evaluating this plan are discussed in part 1, section III, and part 3, above.

II. ISSUANCE OF COUPONS

Some of the prerequisites to the sale of the coupons are similar to those outlined in part 1 in connection with the distribution of exemptions.[19] Registration of all individuals and some system of checking their identities when they purchase coupons would be necessary to prevent multiple registration. A substantial personnel force would be required to check the accuracy of the registration statements.

Following registration and verification of personal and dependency status, some form of receipt book (similar to a bank book) could be issued to each separate consumer unit. This book would be used to record the amount of coupons issued.[20] Coupons could be purchased only upon presentation of the book for entry of the amount received.

Agencies would have to be established for the sale of tax coupons. These agencies probably would be under the direct supervision of the Tax Commission. The selling organization would have to be greatly decentralized for the convenience of coupon purchasers so as to avoid standing in line, loss of working time, and to minimize other costs of taxpayers' compliance. At the same time, adequate control over coupon sales, in order to tax consumers at the proper graduated rates, would require additional administrative controls if individuals were allowed to buy coupons at more than one designated office. In this case, duplicate records would have to be kept for each person in order to provide some internal check on the sales of coupons and the accuracy of the tax rates applied, and to facilitate handling cases where receipt books were lost or stolen.

One approach to the solution of these difficulties would be to establish local sales agencies under centralized control. Each individual would be assigned to a central office covering a limited territory. This office, managed by the Tax Commission, would be responsible for keeping the records of sale and taxes paid for each individual's account. Existing agencies such as banks could be authorized to sell the coupons upon the presentation of any individual's own receipt book. The amount of the sale and the tax paid would be recorded in this book and a duplicate receipt sent to his central office (as designated in the individual's receipt book) where the amount of coupons purchased and tax paid would be posted to his account.

The advantages of such an organization would be several-fold. Consumers would be free to buy coupons at the place most convenient to them at the time of need. Moreover, full utilization of existing selling facilities would limit duplication of office space, machines, and personnel and, thus, reduce cost of operation.[21] A record would be available of each individual's purchases, enabling a check to be made on

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[19] See discussion in pt. 1, sec. IV.

[20] If coupons were issued in blocks of standardized amounts, some provision would have to be made for year-end refunds of unused coupons.

[21] A fee would be necessary to reimburse the selling agencies, as in the case of ration banking.

excess purchases at each rate. A system of control over the selling agencies would be possible by charging their accounts with the taxable value of coupons transferred to them.[22]

III. COLLECTION OF COUPONS AND ENFORCEMENT OF RETAILERS' LIABILITY

At the time consumers purchased taxable goods and services they would be required to give retailers an amount of tax coupons equal in face value to the money value of the purchases made. Anyone who did not have enough tax coupons at time of purchase would be required to pay tax in cash at the maximum rate provided in the tax schedule. By this means evasion of the graduated rate features of the tax might be reduced.

Retailers would be required to file periodic returns (similar to those under the usual form of sales tax) showing their liability for collection of a face value of tax coupons equal to their net taxable sales. If retailers failed to return sufficient coupons to cover their tax liability, they would be required to pay the difference in cash at the maximum rate provided in the tax schedule. This requirement would tend to induce retailers to collect from consumers either the correct value of coupons or cash equal to the maximum rate provided under the tax.

IV. TAXATION OF SALES TO BUSINESS CONCERNS

It is probable that a retail-sales tax would apply to a substantial volume of sales of articles used by business concerns.[23] The reasons which are given for the adoption of a progressive sales tax do not apply to sales of articles used by business concerns. In addition, the application of graduated tax rates to sales of articles used by industrial, agricultural, and commercial users would have drastic effects on business profits, and price controls, if such existed. Unless existing price ceilings were evaded or reestablished to allow for the increased costs of the graduated tax rates, the tax on sales of articles used by businesses would be extremely inequitable. Accordingly, some means would have to be provided to avoid application of the graduated tax to business purchases.

A special type coupon, carrying the lowest tax rate, might be used by business concerns for purchases of articles not exempt from the tax.[24] At the end of specified accounting periods, the concerns might be required to account for the coupons purchased by showing that the

[22]Coupons carrying different rates could be differentiated by number or color.

[23]There seems to be no satisfactory way of excluding from the scope of a retail-sales tax all sales of articles to be used by business concerns.

[24]In some respects, issuance of coupons to business concerns free of charge would be preferable to sales at the lowest rate, since there are serious objections to taxing sales of articles used for business purposes. However, issuance of the coupons free of charge would increase the incentive for evasion of the tax by individuals.

taxable purchases had been used for business purposes. This procedure would entail substantial personnel and effort to handle the applications and to audit taxable purchases in order to prevent evasion of the progressive rate feature by individuals. It would be impossible to check the invoices of the many small business concerns, especially farmers, with any degree of care, and it would be inevitable that many purchases, ostensibly made for business purposes, would be used for personal consumption.

The sale of coupons of a different design to business concerns might provide some check on evasion if retailers were forbidden to accept such coupons for other than business purchases. Many opportunities for evasion would remain, however, even though retailers were policed. In the case of duel purpose goods even the best intentions of retailers would be defeated since the goods could be put to different use from that declared by the purchaser. A farmer buying paint for his barn could use it to paint his house. A merchant buying light bulbs and fixtures for his store could install them in his home. There are literally thousands of articles covered by a sales tax which can be used for both business and individual consumption purposes.

V. EVALUATION OF THE PLAN

A. MERITS

If a graduated sales tax could be administered, it would possess important advantages over a uniform-rate sales tax. The burden on low-income consumers would be limited if the initial rates were very low, or if a basic amount of coupons were distributed free. At the same time, progression would be introduced into the sales-tax structure.

B. OBJECTIONS

Analysis of a graduated-rate retail-sales tax reveals many administrative difficulties which would seriously impair its efficacy in achieving the desired ends. The principal problems are those of the transfer of coupons among individuals, the control of registration and sale of coupons, the exclusion of purchases for business use from the graduated rates, the auditing of retailers, and the inconvenience and cost of complying with the plan.

1. Transfer of Coupons.

There appears to be no satisfactory method of controlling transfers of coupons and, consequently, of enforcing the graduated tax-rate structure. If the objectives of the tax are to be attained, it is essential that persons be able to obtain coupons only from authorized sales agencies. In practice, it would be virtually impossible to prevent trafficking in coupons because of the mutually advantageous opportunity for persons with large incomes and high expenditures to buy coupons from those with a lower level of expenditure who could purchase additional coupons at lower rates. Not only would individuals buy and sell these uncontrolled coupons on a casual basis, but it is likely that an organized tax coupon market would arise.

There are various devices which might contribute to checking coupon transfers. Persons might be required to present their coupons to retailers undetached from the coupon books, and the retailers required to identify the purchaser and to detach the coupons at time of sale. This provision would add to the inconvenience arising from the tax. Moreover, it would be virtually impossible to prohibit retailers from accepting detached coupons. There is no satisfactory standard for prescribing a relationship between the amount of income and the amount of taxable purchases.

Unless a method can be devised to prevent sales of coupons from lower to higher expenditure groups, the effectiveness of the graduated rates in checking excess spending would be lost. Once the abuses of such a system were practiced by only a small percentage of the population, a serious breakdown in its administration would be inevitable. To entrust the operation of the plan to the good will and cooperation of consumers would result in a tax on honesty and provide another opportunity for a black market.

2. Control of Registration and Coupon Issue.

Universal registration would be a prerequisite to the distribution of tax coupons. The task of registering all persons and checking registration statements would involve considerable expense and manpower. An adequate administrative organization for investigations would be indispensable to the equitable operation of the plan and to the realization of effective graduation in rates. Changes in dependency, births, and deaths, as well as migration from one district of registration to another, would have to be taken into account.

The task of selling coupons would also be of considerable magnitude, even if existing agencies could be used. Apart from personnel, office space, and equipment necessary to handle the distribution and sale, the task of preventing fraud would be great. It would be necessary to control the improper use of stolen and lost coupon receipt books and to prevent trafficking and counterfeiting.

Many abuses might be circumvented by the maintenance of duplicate records of registered individuals in central offices. One function of these central offices would be to trace stolen books and to discover fraudulent practices of selling agencies and others. Considerable labor and machines would be required, however, merely to post coupon purchases to individual accounts and to file the receipts by name or account number. The cost of such a system would have to be added to the usual administrative cost incident to a sales tax.

3. The Exclusion of Sales to Business Concerns from Graduated Rates.

Some system would have to be developed for the exclusion from the graduated rates of sales of articles for business use. This exclusion, however, would provide a means of evasion of the graduated rates unless careful audits were made of the actual use of articles bought under the special provision for business concerns.

The enforcement of such a system would place much additional work on the sales tax auditing personnel and would necessitate a significant increase in the size of this force. In any case, careful checking of the invoices of several thousand business concerns would be virtually impossible in view of the need to trace down the actual use of the articles purchased if evasion were to be prevented.

Complete exemption from the tax of sales of articles to be used by business concerns would be even more unsatisfactory, since such a provision would afford an opportunity for individuals to escape the entire tax rather than only the graduated rates.

4. Control Over Retailers.

Aside from previously indicated causes of evasion, retailers would have virtually the same opportunities to evade the graduated retail-sales tax as they would to evade a sales tax of the usual type. The filing of returns by sellers and audit of their accounts would be essential; otherwise retailers would not only fail in some cases to collect tax coupons but would sell some of the coupons which they received.[25] Persons making substantial expenditures would have particular incentive to buy from retailers who did not demand coupons and such retailers could profit by charging higher prices and selling a larger volume. Retailers could also profit by reselling coupons either to individuals or black-market brokers. A requirement that coupons be perforated by retailers immediately upon receipt would aid in checking coupon resales, but only to a limited extent. The only effective means of insuring proper collection of coupons would be to audit retailers' accounts in the same manner as under a retail-sales tax of the usual type.

5. Inconvenience and Cost of Handling Tax Coupons.

a. Consumers.

Individuals would be required to have tax coupons in addition to money before they could complete an ordinary daily purchase. If they failed to have coupons at time of purchase, they would be subject to the maximum tax rate. If special provisions were made to sell "convenience" coupon books with a tax value of $1 or $2 in order to accommodate low-income consumers who could not afford to lay out $5 or $10 tax at any one time, these consumers would be subject to the additional trouble of frequent trips to selling agencies and the nuisance of standing in line. It is difficult to estimate the reaction of consumers to such inconveniences, but, while each inconvenience in itself may be small, the sum total of these inconveniences might be very burdensome. About all that can be said is that the tax coupon system would add to the growing list of controls which cost the consumer considerable time and energy in his attempt to adjust the family's daily business of living with a minimum of necessary hardship. Coupons of various color or design, made to fit the needs of a graduated tax based

[25]The necessity of holding sellers liable for collection of tax coupons is often overlooked by proponents of classified graduated sales taxes.

upon money income levels, would tend to create social consciousness and embarrassment on the part of individuals in lower income brackets, when presenting their coupons at times when purchases were made.

b. Businessmen.

The complications of present-day retail selling would also be increased by the introduction of sales-tax coupons. Sellers would be obliged to collect not only cash but tax coupons as well. The length of time necessary to complete each transaction would be increased and operating costs would be correspondingly increased, particularly if coupon change had to be made.[26] Besides this, sellers would be obliged to exercise special care with respect to sales of articles for business use and might incur additional tax liability as a result of ignorance of the law or an erroneous determination that certain property was purchased for business use. Sellers would also be required to sort the coupons received and to protect them against loss and theft. It might be necessary that they open special tax coupon bank accounts in addition to their checking accounts. All these factors contribute to an increase in the cost of tax compliance (compared with a sales tax of the usual form) for which retailers might be entitled to compensation. It is questionable whether these banks actually could handle the distribution of coupons to consumers and provide for the deposit of the tax coupons collected by retailers.

c. Government.

The complications introduced by a graduated-rate sales tax would entail substantially greater cost to the State than would the administration of a uniform-rate sales tax. In summary, these additional expenses would include the cost of registration, compensation to agencies employed to sell tax coupons to consumers and to receive them from retailers, maintenance of duplicate records for each consumer unit in the central issuing offices of the Tax Commission which would be set up for the control of coupon sales, additional personnel to cope with the increased possibilities of fraud, trafficking in coupons, and counterfeiting, and, finally, the considerable cost of printing and distributing the coupons.

[26]Unless coupon books could be designed to eliminate the necessity for making such adjustments, it would be necessary to permit the use of detached coupons and this would limit the ability to control a black market in coupons. It should be clear, however, that the coupons are really a special kind of tax money and, consequently, present organizational, control, and distribution problems similar to those of the money and banking system.

CHAPTER FIVE

STATE SALES TAXES: SUMMARY OF PRINCIPAL PROVISIONS AND PRACTICES.[1]

I. EXTENT OF STATE TAXATION OF GENERAL SALES

In recent years general sales taxes have been employed in 35 States.[2] At present only 27 of the laws are in effect; 8 have expired or have been repealed, but four States enacted sales tax laws in 1947. Table 2 indicates the years in which State sales taxes were adopted and also shows the dates of expiration or repeal of those taxes which have been discontinued. Most of the State sales taxes were adopted during the period 1933–1935. Between 1937 and 1947 no additions were made to the list.[3]

II. TYPES OF STATE SALES TAXES

Twenty-two States impose sales taxes under which the base generally is restricted to retail sales.[4] Seven States levy broader forms of taxes which apply to other kinds of transactions as well as to retail sales.[5] Washington and West Virginia are included in both groups, since they levy retail sales taxes as well as broader forms of business and occupational taxes which apply to the gross receipts or gross income of retailers. Of the multiple-stage taxes, those of North Carolina and Arizona are the most restricted. North Carolina applies a tax at both the wholesale and retail levels; a low rate of one-twentieth of 1 percent being applied in the former case and 3 percent in the latter. The Arizona tax reaches the manufacturing and processing of agricultural products, and extracting, as well as retailing. Mississippi, New Mexico, and Washington extend the scope of the tax still further to

[1]In addition to the State sales taxes, the retail sales taxes imposed by the cities of New Mexico and New Orleans are also considered.

[2]This study does not include the low rate license taxes imposed on a sales or purchase basis upon merchants in Delaware and Virginia, and Connecticut's unincorporated business tax applicable to gross income of manufacturers, wholesalers, and retailers.

[3]Louisiana enacted a sales tax on September 1, 1942, but this tax replaced one which had been repealed in 1940. Oregon's 1943 Legislature enacted a 3-percent retail sales tax which is to be referred to the electorate for approval at the next general election. Oregon voters refused to approve a sales tax on at least two previous occasions.

[4]Alabama, Arkansas, California, Colorado, Illinois, Iowa, Kansas, Louisiana, Michigan, Missouri, North Dakota, Ohio, Oklahoma, South Dakota, Utah, Washington, West Virginia, and Wyoming.

[5]Arizona, Indiana, Mississippi, New Mexico, North Carolina, Washington, and West Virginia.

TABLE 1. STATE SALES TAXES: TYPES AND RATES. JULY 1, 1947

State	Type of tax[1]	Use tax	Rates on Retail Sales: Tangible personal property	Automobiles	Amusement places	Restaurants	Public utilities	Rates on receipts from other specific sources
Ala.	Retail sales	x	2	½[2]	2	2		
Ariz.	General sales	--	2	2	2	1	1	Manufacturing, preparation for sale of agricultural and horticultural products, slaughtering animals for food, sales of feed to poultrymen or stockmen for own use, ¼%; extracting, processing, printing, and publishing, contractors, advertising, 1%; hotels, apartment houses, office buildings, and garages, credit and collection agencies, 2%; printing and photography, 2%.
Ark.[3]	Retail sales	--	2	2[2]	2	2	2[4]	
Calif.	Retail sales	x	2½	2½	--	2½		
Colo.	Retail sales	x	2	2	--	2	2[5]	
Conn.	Retail sales	x	3	3	--	3		
Ill.	Retail sales	--	2[6]	2[6]	--	--	3[5]	
Ind.	Gross income	--	½	½	1	½	1	All other income, 1%, except that received from wholesales, display advertising, and industrial processing, ¼%; drycleaning and laundering, ½%.
Iowa	Retail sales	x	2	2[7]	2	2	2[4]	
Kans.	Retail sales	x	2	2	2	2	2[4]	
La.	Retail sales	x	1[8]	1	--	1		
Md.	Retail sales	x	2	--	--	2	2[9]	
Mich.	Retail sales	x	3	3	--	3	3[9]	
Miss.	Gross receipts	x	2[10]	1[11]	--	2	2[12]	Wholesaling, ⅛%; manufacturing, ⅛–1%; contractors, 1%; extracting, 2–2½%; all other businesses and professions not specifically exempted, 2%.
Mo.	Retail sales	--	2	2	2	2	2[4]	
New Mex.	Gross receipts	x	2[8]	1[11]	2	2	2	Wholesaling, ⅛%; extracting, ½ or 2%; processing and manufacturing, ¼ or ½%; contractors, 2%; real estate commissions, factors, agents, brokers, advertising, personal and professional services, 2%.
N. C.[13]	General sales	x	3	3	3	3		Wholesaling, 1/20%.
N. Dak.	Retail sales	x	2	2	2	2	2[4]	
Ohio	Retail sales	x	3[8]	3	--	3		

Okla.	Retail sales	x	2	2[14]	2	2	2[15]	Printing and publishing, advertising, hotel service, auto storage, 2%.
R. I.	Retail sales	x	1	1	--	1	1[4]	
S. Dak.	Retail sales	x	2	2	2	2	2[4]	
Tenn.	Retail sales	x	2	2	--	2		
Utah	Retail sales	x	2	2	2	2	2[16]	
Wash.	Retail sales	x	3[8]	3	--	3		
	Gross receipts	--	¼	¼	--	¼		Wholesalers (except wholesalers of wheat, oats and barley, which are 1/100%), extractors, manufacturers, printers and publishers, ¼%; all other businesses and professions not specifically exempted, ½%.
W. Va.	Retail sales	--	2[8]	2	2	2		All services except personal and professional services and public utility services, 2%.
	Gross income	--	½	½	65/100	½	1.3–5.2	Wholesaling, 195/1000%; extracting, 1.3–7.8%; manufacturing, 39/100%; contractors, 2%; industrial loan companies, 1%; all other businesses not specifically exempted, 1%.
Wyo.	Retail sales	x	2[8]	2	2	2	2	

[1]Type of tax—

(1) Retail sales—Imposed upon sales of tangible personal property at retail or for consumption. In most States applies also to admissions and restaurant and public utility sales.

(2) General sales—Applies to wholesaling, extractive industries and manufacturing in addition to sales at retail.

(3) Gross receipts—Includes sales of public services and personal and professional services in addition to transactions and receipts under (1) and (2).

(4) Gross income—Applies, in addition to all transactions and receipts under (1), (2), and (3), to receipts from nonbusiness activities such as wages and salaries of employees, interest, rents, and dividends.

[2]Applies to new automobiles only.

[3]Rates in cities or incorporated towns bordering other States same as that in adjoining State.

[4]Applies to all public utilities except transportation; in Missouri, all except transportation of freight.

[5]Applies to telephone and telegraph services, gas and electricity sales. In Illinois the rates on utilities are imposed under a separate Act.

[6]The 2% rate is applied to 98% of gross receipts.

[7]Sales of new motor vehicles are taxed under the use tax and are exempt from the sales tax while sales of used motor vehicls are taxed under the sales tax.

[8]Tax applies to rentals as well as sales.

[9]Applies to gas and electricity only.

[10]The rate on retail sales of pasteurized milk is 1%.

[11]Applies to automobiles, trucks and tractors.

[12]The rate on industrial sales of gas and electricity is 1%.

[13]Maximum tax of $15 on a single article.

[14]The sales tax specifically exempts sales of motor vehicles but a special excise tax of 2% is levied upon the transfer of ownership and the use of a vehicle registered in the State and upon the use of a vehicle registered for the first time in the State.

[15]Applies to all public utilities except water and transportation of freight.

[16]Specifically excluded are street railway fares and intrastate movements of freight and express.

include personal and professional services. The broadest type of sales tax is levied by Indiana and West Virginia and includes, in addition to all the above-mentioned transactions and receipts, the important categories of salaries, wages, investments, and other nonbusiness income.

TABLE 2. YEARS OF ADOPTION OF SALES TAXES, BY STATES

1929	Georgia.[1]
1930	Mississippi.
1932	Pennsylvania.[1]
1933	Arizona, California, Illinois, Indiana, Iowa, Michigan, New Mexico, New York,[1] Oklahoma, South Dakota, Utah, Washington, West Virginia.
1934	Kentucky,[2] Missouri, Ohio.
1935	Arkansas, Colorado, Florida,[3] Idaho,[2] Maryland,[5] New Jersey,[2] North Carolina, North Dakota, Wyoming.
1936	Alabama, Louisiana.[4]
1937	Kansas.
1947	Connecticut, Rhode Island, Tennessee.

[1]Expired: Georgia, 1931; Pennsylvania, 1933; New York, 1934.
[2]Repealed: Idaho and Kentucky, 1936; New Jersey, 1935.
[3]Repealed, 1941. The Florida flat ½ of 1 percent tax on gross receipts of retailers was part of the chain-store tax the graduated gross receipts tax provisions of which were held unconstitutional.
[4]Repealed, 1940; reenacted, 1942.
[5]Expired, 1936; reenacted, 1947.

Limitations on the States' taxing power under the Federal Constitution prevent the application of State sales taxes to certain transactions wherein property is purchased outside the State or in interstate commerce. In order to prevent avoidance of their sales taxes through out-of-State purchases or purchases in interstate commerce, 21 of the States have enacted use taxes which impose a tax equal to that of the sales tax with respect to property purchased outside the State or in interstate commerce for use within the State. The definitions, rates, and exemptions of the use-tax Acts are similar to those of the sales-tax Acts. While the use tax is considered a complementary tax, the usual practice is to impose a uniform tax on the use of all property and then to exempt the use of property upon which a retail sales tax is paid to the taxing State, and, in the case of some States, to exempt the use of the property to the extent to which a retail sales tax is paid thereon to another State. Since one of the chief purposes of the use tax is to remove the discrimination that would otherwise result to local business, some of the States exempt from the use-tax commodities "not readily obtainable in the State."

III. SCOPE OF TAXABLE RETAIL SALES

A. RETAIL SALES OF TANGIBLE PERSONAL PROPERTY AND OF SPECIFIED SERVICES

1. Application to Retail Sales.

The States generally have attempted to limit the application of the retail sales tax to a single stage by applying it to sales of tangible personal property to final users and consumers. The determining factor in classifying a sale as taxable or nontaxable is whether the article is to be used or consumed by the purchaser or is to be resold, and not whether the seller is a manufacturer, wholesaler, or retailer.

That is, retail sales consist of all sales except those made for sale. Sales for resale consist of sales of articles to be resold either in the form in which purchased or as ingredients or component parts of other tangible personal property.

In order to control sales for resale, most States require that sellers secure exemption certificates from buyers stating that the goods are purchased for the purpose of resale.[6] The exemption certificate may be accepted by the State as prima-facie evidence that the goods were sold for resale, or auditors may examine all the facts relative to the purchase and sale before honoring the certificate. The seller is not necessarily relieved of liability for tax by taking a resale certificate, but the certificate operates to relieve him of the burden of proving that the sale was not a retail sale. For example, the California administrative agency states that the law places direct responsibility for the tax upon the retailer and, where subsequent investigation discloses that the sale was in fact a retail sale, the retailer is liable for tax even though a resale certificate was given.[7] Generally, however, in the absence of bad faith, the seller is not held responsible for checking whether the buyer actually resells the article. The good faith of the seller is questioned if he has knowledge of facts which give rise to a reasonable inference that the purchaser does not intend to resell the property, as, for example, knowledge that a purchaser of particular merchandise is not engaged in selling that kind of merchandise.

In cases where substantially all the purchases made by a concern are for resale, the seller may be authorized to take a blanket certificate of resale from the purchaser stating that all of his purchases "until further notice" will be purchased for resale. Blanket certificates, as well as those covering single sales, frequently state that the purchaser assumes liability for payment of the sales tax in the event the property is used by him. Issuance of the blanket exemption certificate does not relieve the seller from keeping detailed records of all sales for resale, but it does relieve both seller and buyer of the considerable amount of additional work that would be involved in the issuance and filing of an exemption certificate for every sale.

If the State retail sales taxes were strictly single-stage taxes, they would exempt from tax all articles which enter into the cost of producing and distributing finished articles. Actually, multiple taxation exists in that they apply ordinarily not only to retail sales of consumers' goods but also to final sales of finished articles, such as machinery, equipment, and supplies to industrial and commercial users. The extent to which cost goods are exempt will be discussed in more detail below under Exclusions and Exemptions.

2. Leases and Rentals.

Some of the State retail sales taxes specifically cover leases and rentals of tangible personal property.[8] Transactions whereby possession of the property is transferred but the seller retains the title as security

[6]The form of the exemption certificate is usually prescribed by statute or regulation.

[7]Letter of State Board of Equalization to Prentice-Hall, Inc.

[8]Among these are Louisiana, West Virginia, and Ohio.

for full payment are deemed sales in all States. In cases where the tax does not cover leases, however, it has been avoided to some extent through leasing agreements whereby title is not transferred and installments of rent are paid during the useful life of the property in amounts aggregating the normal purchase price. This arrangement has been used particularly with respect to transfers of durable personal property such as machinery. Several States prevent avoidance of the tax through this device by including this type of lease in the definition of taxable transactions.[9]

3. Services.

a. Taxable Services.

In general, State retail sales taxes apply only to the rendering of a few specified services. Most commonly taxed are the operation of places of amusement and selected public-utility services. In a few cases, however, the tax also applies to such services as advertising, hotel, and auto storage.[10]

Ten States[11] specifically include sales of admissions to places of amusement in the definition of retail sales,[12] and all except eight States tax some types of public-utility services. Table 2 and table 3 indicate the extent to which the various types of public-utility services are taxed under State sales taxes. Of the retail sales taxes, the West Virginia tax probably has the broadest service coverage, applying to all types except professional, personal, and certain public-utility services.[13] Colorado levies a special tax on service charges and, although imposed under a separate Act, it in effect serves as a supplement to the sales tax. Identical rates are imposed, similar deductions are allowed, and a combined sales- and service-tax return is employed. The service tax is of broad scope, covering amusements, hotels, contractors, professional,[14] technical, and scientific services rendered on a fee basis, advertising, banks (except as to interest on money loaned), barber shops, beauty shops, laundries, credit bureaus, finance companies, parking lots, and specified repair and fabrication services.

b. Nontaxable Services.

Generally, the State retail-sales taxes do not apply to personal and professional services. With limited exception, it is only in those few

[9]The Colorado law, for example, includes lease or rental considerations where "right to continuous possession or use of any article of tangible personal property is granted under a lease or contract, and such transfer of possession would be taxable if outright sale were made." (Colorado Laws of 1937, chap. 230, art. I, sec. 2 q.)

[10]Meals served in restaurants are taxable in all States as sales of tangible personal property.

[11]Alabama, Arkansas, Iowa, Kansas, Missouri, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming.

[12]In addition, the gross receipts or gross income of amusement operators is subject to tax in six States (Arizona, Indiana, New Mexico, North Carolina, Washington, and West Virginia).

[13]Services which are taxable include amusements, blacksmithing, hotels, restaurants, laundries, cleaning and dyeing, shoe repairing, photographers, garages, machinery repair shops, paper hanging, painting, plumbing, roofers, moving vans, and all other service business not specifically exempted by law or regulations.

[14]Certain professional services are exempt, *e. g.*, physicians, dentists, nurses.

States which levy the broader scope taxes that these services are reached.[15]

c. Special Problems Relating to Sales of Property and Services.

Difficulties arise in the case of sales which include both the rendering of services and the transfer of property, but in which a lump sum is charged for the whole. The States generally have classified the various occupations and professions and indicated the tax liability of each.[16]

(1) Businesses primarily engaged in rendering services: Businesses primarily engaged in rendering services but incidentally selling tangible goods (such as barber shops and beauty shops) usually are exempt on their principal activity but are liable for the tax on sales of tangible personal property.[17] Ordinarily, sales of tangible personal property to such persons for use in connection with the performance of services (for example, shaving soap used by the barber) are considered sales for final consumption and are taxable. Anomalous situations may exist in certain cases, however, as illustrated by Illinois' treatment of glasses furnished by optometrists prior to the amendment of the tax Act in 1941. In this case, the Illinois Supreme Court, after holding that an optometrist was not liable for tax on glasses furnished to his patient since the sale was merely incidental to the rendering of a professional service, ruled that sales of glasses by an optical supply house to the optometrist were sales for resale and nontaxable, since the optometrist did not use or consume the glasses.[18]

(2) Businesses primarily engaged in selling goods—Businesses primarily engaged in selling tangible goods but incidentally rendering some services (for example, florists and photographers) usually are subject to tax on their total receipts even though a part of their charges may be for services.

(3) Businesses in which both services and sale of property are important—Businesses in which both the rendering of service and the sale of property are important present the difficult problem of separating charges for services from those for sales of property. Repair trades fall in this group. Generally, if separate charges are made and separate records kept, the service charges are not taxable under State sales taxes.[19] In the case of automobile repairs where material costs are a relatively high portion of the entire cost of a repair job, and where trade practice in billing has been to itemize labor and material

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[15]Indiana, Mississippi, New Mexico, Washington, and West Virginia.

[16]See B. U. Ratchford, The Measure of Consumption Taxes, Law and Contemporary Problems, Summer 1941, pp. 574–575; Sherman P. Cohen, The Taxable Transaction in Consumers' Taxes, Law and Contemporary Problems, Summer 1941, pp. 530–535.

[17]State experience appears to indicate that careful records are not kept of articles used in the performance of services and those sold as a side line, and that this procedure provides possibilities for evasion of the tax.

[18]Babcock v. Nudelman, 367 Ill. 626, 12 N. E. (2d) 635 (1937); American Optical Co. v. Nudelman, 370 Ill. 627, 19 N. E. (2d) 582 (1939). Cited by Wahrhaftig, Felix S., Meaning of Retail Sale and Storage, Use, or Other Consumption, Law and Contemporary Problems, Summer 1941, p. 553.

[19]The Washington retail sales tax, unlike State sales taxes, provides specifically for the inclusion in retail sales of charges for "the installation, cleaning, decorating, beautifying, repairing, or otherwise altering or improving real or personal property of consumers."

costs, serious problems do not exist. Shoe repairing, however, presents a real problem because of the difficulty of determining the value of leather used in each repair job and the trade practice of lump-sum billing. Since many of the business units are small and have poor accounting systems, the States often permit an arbitrary apportionment of receipts to services and to goods. The apportionment varies from State to State. Shoe repairmen, for example, are taxed on proportions of total charges ranging from 25 to 50 percent.[20]

d. Transportation, Installation, Interest and Carrying Charges.

Certain other services rendered in connection with the sale of tangible personal property generally are exempt if separately billed. These include transportation, installation, interest, and carrying charges, and insurance.[21] The Washington retail sales-tax law, unlike most State sales-tax laws, provides specifically for the inclusion in retail sales of installation charges. In Illinois, if the seller is required to install the property in order to complete the sales contract, the installation charges are taxable.

TABLE 3. TAXATION OF PUBLIC-UTILITY SERVICES UNDER STATE GENERAL SALES TAXES

(Asterisks Denote Services Which Are Taxed)

State	Gas	Electricity	Water	Transportation of—Freight	Transportation of—Persons	Telegraph and telephone
Alabama	----	----	----	----	----	----
Arizona	*	*	*	*	*	*
Arkansas	*	*	*	----	----	*
California	----	----	----	----	----	----
Colorado	*	*	----	----	----	*
Connecticut	----	----	----	----	----	----
Illinois[1]	*	*	----	----	----	*
Indiana	*	*	*	*	*	*
Iowa	*	*	*	----	----	*
Kansas	*	*	*	----	----	*
Louisiana	----	----	----	----	----	----
Maryland	*	*	----	----	----	----
Michigan	*	*	----	----	----	----
Mississippi	*	*	*	*	*	*
Missouri	*	*	*	----	*	*
New Mexico	*	*	----	*	*	*
North Carolina	----	----	----	----	----	----
North Dakota	*	*	*	----	----	*
Ohio	----	----	----	----	----	----
Oklahoma	*	*	----	----	*	*
Rhode Island	*	*	*	----	----	*
South Dakota	*	*	*	----	----	*
Tennessee	----	----	----	----	----	----
Utah	*	*	----	*	*	*
Washington	----	----	----	----	----	----
West Virginia (Gross income tax only)	*	*	*	----	----	----
Wyoming	*	*	----	*	*	*

[1]The taxes on utilities are imposed under a separate Act.

B. EXCLUSIONS AND EXEMPTIONS

Certain types of property and sales are outside the scope of State sales taxes. These sales either may be excluded from the definition of retail sales or they may be specifically exempted from the taxable

[20]Ratchford, B. U., op. cit., p. 575.

[21]For a more detailed discussion of the treatment of such charges, see the section on measure of the tax.

class. The exclusions and exemptions fall into four major categories: (1) Articles which enter into the cost of production and distribution. (2) necessities, (3) articles and services already taxed, and (4) administrative exemptions.[22] The bases of these exclusions and exemptions are avoidance of multiple taxation, equity considerations (applying either to producers or to consumers), administrative expediency, and political pressures.

1. Articles Which Enter Into Cost of Production.

a. Physical—Ingredient or Component—Part Rule.

All the State retail-sales taxes exclude from the tax-base sales of goods for resale, but the definition of a sale for resale has been restricted in most States by the physical-ingredient or component-part test. In other words, property is not sold for resale unless it becomes a constituent part of other tangible personal property which ultimately is to be sold at retail. The ingredient or component-part test first appeared as a matter of administrative construction, but is now set forth in the tax Acts of several States.[23]

b. Machinery and Other Articles Used Directly in Production.

Sales of machinery or materials for use in carrying on the business of production and distribution, but which do not become a component part of the finished product, usually are taxable. A few States, however, have gone beyond the physical-ingredient rule and exclude (or exempt) from tax the materials and machinery which are used in industrial processing and in distribution.

Alabama restricts the exemption to machinery used in mining, quarrying, compounding, processing, and manufacturing.

Michigan's definition of retail sale excludes sales of tangible personal property for consumption or use in industrial processing or in agricultural production. Sales of both machinery and materials for use directly in production are thus not taxable. The regulations interpret the industrial processing exclusion to cover sales of tools, dies, patterns, and machinery used in manufacturing or processing; oil, grease, waste, wiping cloths, and cleaning compounds used in connection with such tools and machinery; and substances used to create a chemical reaction in manufacturing or processing. Materials for use in administrative and distributive departments, however, are subject to tax as are also sales of items used only incidentally in production, such as clocks, janitors' supplies, and fire extinguishers.

Ohio's definition of retail sales excludes not only sales of tangible personal property for consumption or use directly in manufacturing, processing, refining, mining, production of crude oil and natural gas, and farming, but also those for consumption or use directly in making retail sales. Thus, sales of trade fixtures, such as shelves, showcases,

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[22]For a discussion of these various classes of exemptions, See George T. Frampton and Numa L. Smith, Commodities and Transactions Exempt from Consumption Taxes, Law and Contemporary Problems, Summer 1941, p. 579.

[23]For a discussion of the application of the ingredient or component-part test, see Wahrhaftig, Felix S., Meaning of Retail Sale and Storage, Use or Other Consumption, Law and Contemporary Problems, Summer 1941, p. 543.

cash registers, and other equipment used by a retailer in his business, are not taxable.

TABLE 4. EXEMPTION OR EXCLUSION OF FUEL FROM STATE SALES TAXATION

State	Method of exclusion or exemption	Scope of exemption
Alabama	Specific exemption	Sales of coal or coke to manufacturers, electric power companies and transportation companies.
Colorado	Defined as wholesale sale	Sales of electricity, coal, gas, fuel oil, and coke for industrial uses.
Indiana	Defined as wholesale sale	Fuel, except electricity and gas, directly consumed in direct production in manufacturing, processing, refining, repairing, mining, agriculture, or horticulture, or directly consumed in industrial cleaning, or rendering public-utility service.
Iowa	By definition of retail sale	Fuel used in creating heat, power, or steam for processing or for generating electric current.
Kansas	Specific exemption	Sales of electricity and fuel[1] for industrial purposes[2] and to persons engaged in furnishing taxable services.[3]
Michigan	By definition of retail sale	Fuel used directly for manufacturing or processing.[4]
Missouri	Specific exemption	Fuel[5] used in producing taxable utility services.[6]
Ohio	By definition of retail sale	Fuel used in industrial processing.
Wyoming	Defined as wholesale sale	Sales of power or fuel for consumption directly in manufacturing, agriculture, or in generating motive power for transportation.

[1]Coal, gas, fuel oil, or other petroleum products.
[2]Manufacturing, processing, mining, drilling, refining, irrigation, building, construction.
[3]Taxable services include: Telephone and telegraph, gas, water, electricity, heat, sales of meals or drinks, and sales of admissions.
[4]The exemption applies when fuel is used directly in manufacturing or processing. Fuel used for the heating of buildings is not exempt.
[5]Coal, coke, fuel oil, gas, or other combustibles.
[6]Power, electricity, artificial gas, or steam. Sales of fuel for other types of processing, for example, sales to bakeries and to foundries or steel mills when used in heating ore, or to railroads, are subject to tax.

Four States exclude certain sales which otherwise would be taxable by defining them as wholesale sales rather than retail sales. West Virginia defines as a wholesale dealer (and, therefore, exempt from the retail-sales tax) a person who sells "machinery, supplies and material" to persons engaged in the business of manufacturing, transportation, transmission, communication, or in the production of natural resources. Under the North Carolina tax, sales of mill machinery or mill-machinery parts and accessories to manufacturers are classified as wholesale sales and are subject only to the wholesale rate of tax (one-twentieth of 1 percent in comparison with the retail rate of 3 percent). Under a 1942 amendment to the Mississippi sales-tax law, sales of machinery, machine parts, and supplies to manufacturers within the State are construed to be wholesale sales and are taxable at the wholesale rate, which is only one-eighth of 1 percent, whereas the retail tax is 2 percent. The Indiana gross-income-tax Act excludes from the retail-sales category a limited number of transactions by defining them to be wholesale sales.[24] Under the regulations, there have been excluded from the retail-sales category such transactions as sales of explosives to coal mines, gasoline for tractors used in cultivating crops, cleaning fluids and soap to dry cleaners and laundries.

c. Fuel.

Materials which are consumed in the production of another commodity without becoming a part of it (such as coal used as fuel by a manufacturer) are not excluded from tax by the physical-ingredient rule. Fuel used for manufacturing purposes, however, is not taxable in several States either because it is considered a sale for resale or because it is specifically exempted. Table 4 indicates the method of exemption or exclusion employed in the various States.

d. Feed, Seed, and Fertilizer.

In the majority of States, sales of feed, seed, and fertilizer to persons engaged in the commercial production of livestock and agricultural products have not been taxed as retail sales either because of statutory definitions or exemptions or because of administrative interpretations that such sales are sales for resale.[25] Nine States have specific statutory exemptions relating to products entering into agricultural production. The nature of these exemptions is indicated in Table 5.

Administrative difficulties arise in the determination of whether livestock or agricultural products are to be sold, consumed by the producer, or both, for if the products are consumed by the producer, the sales of feed, seed, and fertilizer usually are taxable. Ohio avoids these administrative problems by exempting feeds and seeds as classes of commodities, irrespective of whether the buyer is a farmer and regardless of their intended use. Kansas seeks to simplify administration by taxing feed and seed according to predominant use; that is, feed is tax-free when used primarily for purposes of producing for resale and taxable when used primarily for consumption.

Missouri attempts to draw fine lines of distinction between taxable and nontaxable sales. According to the regulations, sales of feed for feeding brood sows are taxable, but feed purchased to fatten the pigs, if the pigs are to be fattened for market, is not taxable. The burden is placed upon the seller of feed to determine at the time of the sale whether or not the sale is taxable. Therefore, the seller is directed to take from the purchaser, in proper cases, a blanket certificate[26]

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[24] "* * * Sales of any tangible personal property as a material which is to be directly consumed in direct production by the purchaser in the business of producing tangible personal property by manufacturing, processing, refining, repairing, mining, agriculture, or horticulture; * * * Sales of tangible personal property to be directly consumed by the purchaser in the business of industrial cleaning; and/or * * * Sales of any tangible personal property to be directly consumed by the purchaser directly in the business of rendering public-utility service; Provided, however, * * * That the term "consumed" as used herein shall refer only to the immediate dissipation or expenditure by combustion, use, or application, and shall not mean or include, the obsolescence, discarding, disuse, depreciation damage, wear, or breakage, of tools, dies, equipment, rolling stock or its accessories, machinery or furnishing."

[25] Wahrhaftig, Felix S., op. cit., p. 544.

[26] The blanket certificates are not furnished by the State Auditor, but the regulations indicate the form to be used.

which states that grain purchased by him will be used for purposes of feeding livestock or poultry for market. The purchaser agrees that if he should at any time purchase feed for other than the above-mentioned purpose he will notify the merchant and pay the tax.

TABLE 5. SPECIFIC STATUTORY EXEMPTION OF FEED, SEED, AND FERTILIZER UNDER STATE SALES TAXES

State	Specific exemption
Alabama	Seeds for planting purposes and fertilizer.
California	Feed, seeds, annual plants, and fertilizer, the products of which are to be used as food for human consumption or sold in the regular course of business.
Iowa	Fertilizer.
Louisiana	Fertilizer when sold directly to farmers.
Mississippi	Fertilizer and seed used in growing agricultural products for market.
Missouri	Feed for livestock or poultry to be sold ultimately in processed form or at retail; seeds, limestone, and fertilizer used in creating foodstuffs to be sold at retail.
North Carolina	Commercial fertilizer on which the inspection tax has been paid, and lime and land plaster used for agricultural purposes.
Ohio	Feed and seed.
Wyoming	Seed and fertilizer, the products from which are to be sold; and feeds for use in feeding livestock or poultry for marketing purposes.

Michigan's definition of retail sales excludes sales of goods used in agricultural production. As interpreted by regulation, the tax does not apply to sales of materials to persons regularly engaged in business as farmers which are to be used in the production of crops or raising of livestock and poultry to be sold for ultimate consumption.[27] Goods sold to the farmer to be used in the production of products for his own consumption are subject to the tax. A number of complexities have arisen in the administration of this exemption. In order to determine his tax liability, the farmer must keep an account of the amount of produce he consumes himself, the amount he sells for resale, and the amount he sells to the ultimate consumer. As a result, it is difficult to collect the tax on sales to farmers for home consumption and sales by farmers direct to consumers.

2. Other Exemptions.

In addition to exclusions from the retail-sales tax of sales for resale and sales of certain goods which enter into the cost of products ultimately to be sold at retail, there are specific exemptions from tax of certain commodities.

State tax administrators indicate that the exemption of specific commodities or classes of commodities, or of sales to specified classes of buyers, make it difficult if not impossible to collect the entire amount of taxes for which taxpayers are liable. These difficulties arise in large part from the failure of retailers to keep accounting records or where records are kept, failure to segregate sales on the basis of classes of goods or buyers.

[27] Sales of fertilizer, for example, to be used on lawns and home or private gardens, or used by landscape gardeners, are presumed to be for use other than agricultural production and are subject to tax.

a. Necessities.

When objections are raised to sales taxes on the ground of their regressiveness, the proponents may counter with the suggestion that the exemption of necessities (essential foods, low-priced clothing, fuel, and medicine) will reduce the regressiveness. Because of the administrative difficulties involved and because of the loss of revenue that would result, few States have extended exemption to the so-called necessities.[28] At present, three States, California, North Carolina, and Ohio, have general food exemptions (food for human consumption off the premises where sold);[29] and West Virginia allows taxpayers an exemption of 50 cents from the purchase price of food products.[30] Other States which at one time had limited food exemptions have repealed them.[31] Only one State, North Carolina, exempts medicine, and it restricts the exemption to medicine sold on prescription of physicians or compounded by druggists.[32]

The administration of a general food exemption has required not only the listing of the general classes of food items exempt, but also the detailing by trade-mark name of certain items which are to be regarded as food and certain ones which are not. Examination of the California regulations, for example, reveals lengthy supplements to the regulations composed of trade-mark names which have been added to the original list of general classes of items which are to be included in or excluded from food products. For instance, the Battle Creek Food Company's "Spinach Concentrate" is not considered a food, while it's "Zo Flakes" is so considered. The Ohio Department of Taxation declares that as a general guide it has followed the average person's definition and the meaning this average person attributes to the term "food." The experience of the department, however, indicates that persons are not agreed as to the definition of food and that many questions have arisen which required the expansion of the regulations.

Prior to the 1943 revision, West Virginia's food exemption was limited to a few specified food items: Bread, butter, eggs, flour, and

[28]Louisiana's first sales tax (luxury sales tax of 1936) exempted from tax a large number of "necessities," including foods, farm implements, common household utilities, and shoes and clothing selling for less than $3. The Act proved difficult to enforce and was repealed in 1938. (Neil H. Jacoby, Retail Sales Taxation, p. 197.)

[29]New York City also has a broad food exemption. The Illinois electorate defeated at the November 1942 election a proposed constitutional amendment which would have permitted the Legislature to exempt food sales from the sales tax.

[30]The present exemption was adopted in 1943. It applies to sales of bread, pastries, eggs, butter, flour, milk, coffee, tea, chocolate, cocoa, nuts, fruits, groceries, vegetables, and meats as food products for human consumption when the total retail price of any or all of such food products does not exceed 50 cents when purchased as any one continuing transaction. It does not apply to sales of these products by hotels and restaurants. The previous law excluded from tax sales of specified food items: bread, butter, eggs, flour, and milk.

[31]Among these are: Alabama, Arkansas, and Washington. North Carolina shifted from a specific exemption to a blanket exemption in 1941.

[32]New York City exempts medicine (and eyeglasses) sold upon a physician's prescription.

milk. At first gance this exemption appears to be so specific that few difficulties would arise in connection with its administration. Upon closer observation, however, this is found not to be true. Bread, for example, was defined in the law to mean "all bakery products made from wheat flour, whole wheat flour, and rye flour with a sugar content of less than 10 percent." An interpretative bulletin issued by the tax commission stated that loaf bread, pan rolls, and buns were exempt when made from the ingredients mentioned in the law.[33] A supplement to this bulletin stated that the list of tax-exempt commodities did not include "quite a number of yeast raised bakery products such as cinnamon rolls, cinnamon buns, coffee cakes, doughnuts, etc."[34] It is clear that bakers would not always find it easy to distinguish between taxable and nontaxable items under such a definition, and that they would have the additional problems of keeping their records so as to disclose separate accounting for sales of taxable and nontaxable goods.[35]

b. Articles and Services Already Taxed.

Articles already subject to special excise taxes are frequently exempted from the general sales tax. A few States (Iowa, Kansas, North Dakota, and Utah) have blanket exemptions of sales already subject to special excises.[36] These exemptions are effective only when the general sales taxes are less than the special excises; if the excises are less, the buyer must pay the difference.

In some cases the exemption from sales tax applies only to articles which are subject to excise taxes above certain rates. Colorado exempts commodities subject to State excise or on which the Federal excise exceeds 12½ percent of the sale price;[37] and Wyoming exempts articles subject to a State excise in excess of 5 percent or to a Federal excise of more than 20 percent.[38]

Gasoline is exempt from the sales taxes in all but a few States. Other commodities commonly exempted on this basis are tobacco and alcoholic beverages.[39] At least three States (Illinois, Indiana, and Michigan) make no provision for exemption of articles already taxed.

c. Casual Sales.

Casual and occasional sales not a part of or not in the course of one's trade or business are not taxable in most States either because they

[33] Bulletin 9, issued June 14, 1941.

[34] Supplement A to bulletin 9, issued June 25, 1941.

[35] An amendment adopted in 1943 substituted for this exemption a flat 50 cents exemption from the purchase price of food products. (See footnote 30 on preceding page.)

[36] Iowa does not confine the credit to cases in which the other tax is an excise, but permits a credit for any special tax whether in the form of a license tax, stamp tax, or otherwise. In Utah, the sale of beer is specifically excluded from the blanket exemption.

[37] These include gasoline, cigarettes, tobacco, liquor, and beer. Cigars are not exempt.

[38] These include gasoline, cigarettes, and tobacco.

[39] States in which both tobacco products and alcoholic beverages are exempt include: Alabama, Arkansas, Colorado, Iowa, Kansas, Ohio, South Dakota, and Utah.

have been excluded from the definition of retail sales or have been specifically exempted. State administrative rulings have set up as a test of engaging in business whether there is a "systematic recurrence and continuity of such sales." This exemption is justified on the basis that the costs involved in collecting a tax on isolated transactions would be disproportionate to the amount of revenue raised.

d. Sales to or by Specified Groups.

(1) Sales to or by governments: Approximately half the States exempt sales to themselves and most of these also exempt sales to their local subdivisions.[40]

Sales made directly to the United States Government are at present generally exempt from State sales taxes when payment is made direct from the United States Treasury. It appears that under the retail privilege form of sales tax in which the tax is technically levied upon the retailer, the States could constitutionally tax sales to the Federal Government. In fact, both California and Illinois (which employ the retailers' privilege type of sales tax) at one time provided by regulation for the taxation of sales to the United States Government.[41] California subsequently amended the sales tax law to provide specifically for exemption of receipts from sales to the United States or any agency or instrumentality thereof except a corporate agency or a corporate instrumentality.[42] Under an amendment adopted in 1943 the exemption was further extended to include sales to an incorporated agency or intrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.[43] Illinois revised its regulations in November 1941 to provide that sales of tangible personal property directly to the United States Government,

[40]Kansas specifies that the exemption applies only when sales to the political unit are for use in a governmental capacity. Sales are taxable when made to a department engaged in the business of selling tangible personal property at retail, or in furnishing any services subject to the sales tax.

[41]California's regulations provided: The tax applies to receipts from sales of tangible personal property to the United States Government. Sales to such departments as the Treasury, Interior, Agriculture, War, Navy, Post Office, are sales to the United States Government" (Regulations 74, adopted January 24, 1939, effective April 1, 1939).

Illinois regulations issued July 1, 1941, provided that sales to the United States Government or any of its instrumentalities were subject to the sales tax. Receipts from sales by the United States Government were exempt. According to one authority, Illinois had taxed sales to the Federal Government since February 1, 1938. (Robert S. Ford and E. Fenton Shepard, The Michigan Retail Sales and Use Taxes, p. 59.)

[42]Secs. 5 (f) and 5.1 of the Retail Sales Tax Act, as amended in 1939. Sec. 5 (f) provided that the exemption should be retroactive. Regulations subsequently issued indicated taxable transactions by a detailed listing of the corporate agencies and corporate instrumentalities.

[43]Examples of such corporations are the Reconstruction Finance Corporation, the Defense Supplies Corporation, Metals Reserve Company, and the Rubber Reserve Company. "The tax applies to receipts from sales to corporate agencies and corporate instrumentalities of the United States not wholly owned by the United States or by a corporation (not) wholly by the United States. Examples of such corporations are: National banks, joint stock land banks, Federal Reserve banks, Federal savings and loan associations, Federal credit unions, and Federal land banks." (Ruling 74.)

its departments, agencies, and instrumentalities, do not fall within the measure of the tax.[44]

Most of the States now tax sales to contractors operating under Federal cost-plus-fixed-fee contracts.[45] The constitutional authority of the States to tax such sales was upheld by the United States Supreme Court in Alabama v. King and Boozer.[46]

With respect to the taxability of sales by the Federal Government or its instrumentalities under States sales taxes, it may be noted that the Buck Act, passed in 1940, removed the territorial immunity of transactions taking place on Federal reservations, but did not waive immunity so far as sales by the Federal Government or its instrumentalities are concerned.[47]

(2) Sales to or by charitable and other nonprofit organizations—Twelve States grant exemption to religious, charitable, and in some cases other types of nonprofit organizations.[48] The exemption is restricted in five cases to sales by such agencies and in the same number of instances to sales to such agencies. In two cases the exemption covers both sales by and sales to these groups.[49]

(3) Sales by farmers—Farmers selling their own produce are specifically exempt in about half of the States.[50] This exemption is

[44]Illinois Rule No. 40, revised November 1, 1941. The Director of the Department of Finance explained the reason for this revision as follows: "The State of Illinois cooperated with the Federal Government in seeking a legal justification for permitting this exception because, despite the financial loss which would be involved to the State of Illinois, it preferred to pursue a course which would enable the Federal Government to utilize the money involved for the purchase of additional planes, tanks, guns, and other implements of war." (Wartime Fiscal Problems in Illinois, State Government, November 1942, p. 221.)

[45]As of April 1942, only eight States allowed exemption to such sales (Arizona, New Mexico, Ohio, Oklahoma, South Dakota, Washington, West Virginia, Wyoming). Commerce Clearing House, State Tax Review, April 16, 1942, p. 1.

[46]314 U. S. 1, November 10, 1941: The court held that the contractor in cost-plus contracts was not an agent of the government and consequently as purchaser of the materials used in such contracts was subject to the tax. The court emphasized, however, that its decision was made in the absence of congressional legislation "immunizing from State taxation" the contractors in question. Bills were subsequently introduced in the Seventy-seventh Congress which provided for the exemption of war contracts from State and local sales taxes (by making contractors agents or instrumentalities of the United States) but these bills did not reach the point of being considered on the floor of either House. Hearings were held and two bills (H. R. 6995 and H. R. 6750) were reported favorable by the House Ways and Means Committee, but no further action was taken.

[47]"The provisions of * * * this Act shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser," 54 Stat. 1060, 4 U. S. C. A., par. 15, 1940.

[48]There is a lack of uniformity in the various States as to exemptions of the respective types of organizations. For example, in a particular State, sales to charitable institutions may be exempt while sales to religious and educational institutions may be taxable.

[49]The exemption is usually contingent upon the entire proceeds of such sales being used exclusive for religious, charitable, or educational purposes.

[50]These include: Alabama, Arizona, Arkansas, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, and Utah.

largely one of administrative expediency based on the difficulties involved in collecting the tax from numerous vendors whose sales are small and whose records are poor or nonexistent. In most cases, however, the exemption does not cover sales from an "established business" or a regular route even though made by the producer.[51]

In some States sales by farmers are exempt only if they fall in the category of casual sales. In South Dakota, a farmer may sell a horse or cow without securing a license and remitting the tax, but the exemption does not apply to "persons who are regularly engaged in the business of selling tangible personal property at retail such as a farmer who at regular intervals delivers his milk, cream, eggs, and poultry to city customers."[52] Under Utah's regulations, a farmer is not required to take out a license merely because he sells a portion of his crops, but if he establishes a place of business for the sale of his crops, such as a roadside stand, market, stall, or other store, and if, in addition to the sale of crops which he has produced, he sells products which he has purchased or otherwise acquired from a third party, he becomes a retailer and is subject to tax.[53] West Virginia's regulations also exempt farmers who market their products through isolated sales, but if farmers market their own products or those of others to regular customers or market regularly to the extent that they are in competition with retail stores or markets, or display farm products on public or curb markets or any fixed place of business, they must collect the tax on their sales.[54]

e. Size-of-Sale Exemptions.

(1) Exemption of small businesses: Lump-sum exemptions of gross sales or gross receipts from State retail-sales taxes are very exceptional. Of the States with single-stage taxes only Michigan has such an exemption, amounting to $600 annually. All retailers, however, are required to file returns regardless of whether their sales are under or over $50 a month. The Indiana gross income tax allows retailers a lump-sum exemption of $3,000 per year and returns are required only of those who have gross sales in excess of this amount.[55] Under Washington's gross income tax, persons whose gross operating income is less than $600 for a bimonthly period are exempt.[56] If gross income exceeds the minimum exemption, however, the entire income is subject to tax. Persons claiming exemption under this provision may be required to file returns even though no tax is due.

(2) Exemption of small purchases: Small purchases (purchases below a fixed amount) are often exempt from State retail-sales taxes insofar as the consumer is concerned, but usually the retailer is required to pay the tax on the total amount of sales including those on

[51]Arkansas and Oklahoma provide that the exemption shall not apply to sales from an "established business." However, the farmer's sales are not taxable when he sells commodities produced on his farm through an "established business" located on the same farm.

[52]South Dakota Regulations, art. IV (6).

[53]Utah regulations, par. 38, September 1, 1939.

[54]West Virginia Supplement to Bulletin No. 5.

[55]Persons other than retailers are allowed an annual exemption of $1,000.

[56]Prior to the 1941 amendment, the bimonthly exemption was $1,000 for retailers and $400 for others.

which he was not allowed to collect the tax. Louisiana is an exception to this rule. Under the present 1-percent tax, the bracket system provides for the exemption of sales of 24 cents or less, and the retailer is allowed to deduct receipts from such sales if he can substantiate the deduction by written records.[57]

New York City and Wyoming, which allow exemptions of small purchases, follow a different practice. Under Wyoming's law, consumers are not required to pay tax on purchases of 24 cents or less, and retailers are permitted a choice of either keeping detailed sales records of such sales in which case they return only 1-percent tax on them, or of not keeping such records and paying the regular 2-percent tax on total sales. New York City's schedule (under the present 1-percent tax) provides for the return of no tax on transactions involving less than 25 cents, but the vendor may separately state and collect the tax on these sales from consumers "if he finds it feasible to collect the tax at the rate of exactly 1 percent." A ruling interprets the provision as follows: for example, a vendor who has established a selling price of 24¾ cents may collect a tax of 1 percent, or approximately one-quarter cent, thus receiving from the customer an aggregate of price plus tax of 25 cents.[58] When the vendor establishes a fractional price on sales less than 25 cents, his bills, advertising, placards, or other records must show clearly a separate billing and collection of the tax. Furthermore, to avail themselves of the benefit of this ruling, taxpayers must notify the tax administrator in order that complications on future tax audits may be avoided.

IV. MEASURE OF THE TAX OR COMPUTATION OF TAXABLE RECEIPTS

A. GROSS SALES OR GROSS RECEIPTS

The measure of the State retail sales taxes is either the retailer's gross sales or his gross receipts. Gross receipts, as used in the sales tax laws, generally do not include the total sale price of credit sales but include only the actual amount of money collected by the retailer. Gross sales, on the other hand, include the total sale price of all sales made by the retailer, regardless of whether or not he receives full payments.[59]

In the majority of the States the gross sales basis is employed. The taxpayer reports the entire amount of sales, including credit sales, in the return for the period within which the sale is actually made. In seven States the use of this basis is mandatory.[60] In five States the gross sales basis is used unless special permission is obtained from the administrator to defer payment of tax on credit sales.[61] Three

57The bracket schedule adopted by the city of New Orleans for collecting the combined State and city tax (amounting to a 3 percent) exempts sales of 12 cents or less and receipts from such sales are deductible if segregated in the records.

58Ruling of Special Deputy Comptroller, January 22, 1942.

59Adjustments are made in some States for bad debt losses, however.

60California, Louisiana, Michigan, Ohio, Oklahoma, Utah, and Wyoming.

61Arizona, Arkansas, Kansas, Mississippi, and North Carolina.

other States which employ the gross sales basis also permit gross receipts reporting of sales under conditional contracts where the payment period exceeds 60 days.[62] In West Virginia, the tax on credit sales must be paid at the time of sale or within 30 days thereafter.

The gross receipts basis is the usual method of reporting in three States and permission must be obtained from the administrator to report on the gross sale basis.[63] Four States make it optional with the retailer as to whether he is to report on a gross receipts or gross sales basis.[64] The vendor must elect with his first return on which basis he will report. Having elected the method of making returns, all subsequent returns must be on the same basis until permission to change has been secured from the administrator.

A tendency has been noted on the part of the States to shift from a gross receipts to a gross sales basis. Of the seven States which now require that the tax be paid on a gross sales basis, three formerly allowed deferred payment of the tax on credit sales.[65] The tendency to limit the privilege of deferring payment of the tax on credit sales appears to indicate the States have had administrative difficulties with the gross receipts system of reporting. Gross receipts reporting, for example, complicates record keeping with respect to the classification of taxable and nontaxable sales. Conditional sales contracts (under which transfers of possession of property take place but title is retained as security for the purchase price) also present special problems, particularly when the seller transfers his interest in the contract to a third person. The seller in such cases must either pay the tax upon the full sale price of the goods or keep a record of payments made thereafter on the contract in such a manner that the tax administrator can determine whether the full tax has been paid.

B. ADJUSTMENTS OF GROSS SALES OR GROSS RECEIPTS

1. Returned Goods and Repossessed Property.

If articles sold are returned and the sale entirely rescinded by refunding the entire purchase price, adjustment must be made since, in effect, no sale took place. Almost without exception, State sales tax laws and regulations specifically permit a deduction for credits or refunds for returned goods. The deduction is usually limited to returned goods for which the full purchase price is refunded and a few States specify that the amount of the tax also must be refunded.

Articles repossessed under conditional sales contracts, however, are not necessarily treated as returned goods. Under the usual rule, if the retailer's records are kept on an accrual basis so that he has previously included in his reported sales the total selling price of the property, he will be permitted to deduct the unpaid balance from gross sales reported in his next tax return. If he has included in his reported gross receipts only the amount of cash actually received from time sales of this kind, no credit will be allowed for the return of

[62]Iowa, North Dakota, and South Dakota.

[63]Illinois, Indiana, and Missouri.

[64]Alabama, Colorado, New Mexico, and Wyoming.

[65]Furthermore, only one of these (Utah) allows adjustments for losses or bad debts. Ratchford, B. U., op. cit., p. 569.

repossessed property. There are exceptions to the general rule, however. In some States, which require retailers to report on a gross sales basis, no deductions are allowed for unpaid balances on repossessed property. California, Louisiana, Michigan, and Oklahoma are among the States which follow this practice.[66] The Michigan Supreme Court had held that the statutory provisions respecting refunds for returned goods do not apply to repossession of articles since there is no refund of the purchase price.[67] Following this ruling the Michigan regulations were amended to provide that *credits or refunds for returned goods * * * cover only such goods that are voluntarily returned for full exchange, refund of purchase price or full credit. * * * The term "returned goods" does not include repossession or recapture of merchandise by legal process * * **.[68]

California formerly permitted the seller to deduct from his gross receipts the unpaid amount of the sales price of a repossessed article, but under a recent opinion of the Attorney General it now is held that consideration paid by the purchaser is refunded to him.[69]

Missouri, which requires the payment of the sales tax on the full purchase price of articles sold under conditional sales contracts, does not allow the seller to deduct from his sales tax return the unpaid balance due on repossessed property. However, at the end of the calendar year, if the seller's records are properly kept, he may determine his actual loss on such a transaction by subtracting the retail value of repossessed property from the balance due from the purchaser (excluding from the balance the unpaid interest, finance charges, insurance charges, and any other amount added to the original purchase price). Such loss may be deducted in the same manner as charged-off accounts.

2. Discounts.

In arriving at the measure of the tax, credit usually may be taken under State sales taxes for readjustments in sales price, such as cash, trade, or quantity discounts, regardless of whether these discounts are taken at the time of purchase or subsequently. Utah, for example, permits the deduction of discounts even though readjustment of price has been made subsequent to the period in which the tax upon the sale is reported, but the credit is allowed only if a sworn statement is furnished that the readjustment actually has been made. In Ohio, however, only those discounts which are allowed at the time of the sale may be deducted; discounts which are allowed after the sale is made or upon the happening of an event at some future time, such as cash discounts, are not deductible.

[66]Louisiana's regulations, after providing that retailers shall not deduct from their gross sales unpaid amounts on repossessed property, adds this statement: "Any dealer that is required to repossess articles * * * will bear such losses himself." (Louisiana, Rule 56.)

[67]Montgomery Ward & Co. v. Fry, 277 Mich. 260, 269 N. W. 166 (1936); Rudolph Wurlitzer Co. v. State Board of Tax Administration, 281 Mich. 558, 275 N. W. 248 (1937).

[68]Michigan Regulations 16 (as amended March 1, 1940).

[69]Opinion of Attorney General, N. S. 4195, April 9, 1942.

3. Transportation, Installation, and Service Charges.

Charges for certain services rendered in connection with sales of taxable articles may be excluded from taxable receipts. Principal charges of this kind are those made for transportation, installation, interest, and insurance.

Where contract prices include charges for transportation, installation, and service for a specified period, State sales taxes generally apply to the full contract price. In some States the right to exclude transportation charges depends upon whether the charges are separately billed.[70] Separate billing, however, may not operate to exclude transportation if the price is the same both at the sending and receiving points.

Some States allow the exclusion of transportation charges if the seller contracts to sell property at retail for a price f.o.b. origin, the title to pass at that point and the buyer to pay the transportation costs. The Illinois regulations provide that *whether or not transportation charges may be deducted by the seller * * * does not depend upon the separate billing thereof, but depends on whether the seller assumes responsibility for payment of transportation to a designated place * * **.[71]

Installation charges are generally excluded if there is a separate billing of materials and services. In Illinois, however, if the seller is required to install the property in order to complete the sales contract, the installation charges must be included in taxable receipts.[72] This rule applies in all instances where the installation is an incident to the sale of the goods, as in the case of nursery products, radios, carpets, signs, storage batteries, and gas or electric stoves.

4. Interest and Carrying Charges.

In the majority of States, interest or finance charges on sales of tangible personal property under conditional sales contracts or other contracts providing for deferred payments of the purchase price are not considered a part of the selling price of such property if they are separately agreed upon and billed. However, distinction is made between interest charges and "penalties" such as amounts added to the selling price because of failure of the buyer to make an installment payment at the time specified in the agreement between the parties. Interest is deductible if separately billed, but "penalties" are considered a part of the selling price and are subject to tax.

A few States, for example, Louisiana and Mississippi, consider interest and carrying charges a part of the selling price and apply the tax to the entire credit price including such charges.[73]

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[70]States which specifically require separate billing include among others, California, Iowa, Kansas, and North Dakota.

[71]Illinois Rules and Regulations (revised July 1, 1941), art. 3.

[72]Ibid.

[73]Louisiana, rule 27; Mississippi, Opinion of the Attorney General, May 20, 1941.

5. Taxes.

In States imposing the tax on the consumer, the amount of tax collected by the seller from his purchasers is, of course, excluded from the measure of the tax. Furthermore, in most States imposing the tax on the seller, the amount of sales-tax reimbursement collected by the seller is excluded from gross receipts or gross sales for sales-tax purposes. In some cases taxpayers are required to keep their records so that sales receipts and tax receipts are segregated; otherwise tax must be paid on the combined amount.[74] Michigan and Illinois have formulas for computing the tax which in effect permit deduction of the approximate amount of tax reimbursement from gross sales. In Michigan, the formula used for obtaining the amount of sales tax payable to the State where the 3-percent tax is included in the purchase price and reported in gross sales is to consider gross receipts as 103 percent of taxable receipts and pay the tax on 100 percent. In Illinois, the 2-percent tax rate is applied to 98 percent of gross receipts.[75] Indiana, on the other hand, provides that any amount added and collected as tax must be considered an additional price received and must be included in taxable income.

With respect to specific excises levied by the Federal Government or by the States, some States provide that taxes shall not be deducted unless they are paid directly by the retailer. Federal manufacturers' excises, which attach at the time of sale by the manufacturer, are generally not deductible in computing gross sales or gross receipts for State sales-tax purposes. New York City and Arkansas appear to be the only jurisdictions which permit the deduction of these excises and they must be separately stated in order to be deductible.[76]

In some States, if the manufacturer sells directly to the consumer, the Federal manufacturers' excise tax may be excluded provided it is separately invoiced.[77] The theory of this exclusion is that Federal excises attach when the title to the article sold passes from the manufacturer to the purchaser, and where the first purchaser is the ultimate user, State sales taxes usually attach at the same instant. Consequently, the Federal tax is considered not to be a part of the sales tax measure. Other States require the Federal manufacturers' excise taxes to be included in the State retail-sales tax measure even though the sale is made to the ultimate user and the tax is listed separately.[78]

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[74]For example, New Mexico (ruling No. 39).

[75]Prior to a 1941 amendment of the Illinois sales-tax law, retailers were required to pay a tax measured by gross receipts which included the amount of sales tax collected. Thus, if a retailer added 3 cents (the rate imposed prior to the amendment) to a dollar article, his taxable receipts were $1.03.

[76]Subsequent to the imposition in 1941 of the Federal retail-sales taxes on cosmetics, furs, and jewelry, New York City amended its regulations to provide for the deduction of Federal excises (both retailers' and manufacturers') provided such taxes are separately listed. Under the manufacturers' taxes it will be difficult, if not impossible, in many cases, for the retailer to ascertain what portion of the manufacturer's price is attributable to the tax.

[77]Arkansas, Illinois, Kansas, Michigan, Missouri, New Mexico, North Carolina, North Dakota, Oklahoma, South Dakota, and Wyoming (also New Orleans and New York City). Commerce Clearing House, State Tax Review, October 13, 1941, p. 1.

[78]Alabama, Arkansas, California, Colorado, Indiana, Mississippi, Utah, and Washington. Commerce Clearing House, State Tax Review, October 13, 1941, p. 1.

In most States the Federal retailers' excises (on jewelry, furs, and toilet preparations) may be excluded from the selling price if they are separately billed or invoiced. Indiana, however, has held that these taxes must be included in the measure of the State tax.[79]

6. Bad Debts.

If retailers report on a cash basis, the tax on credit sales is paid as collections are received and no tax paid on uncollectible accounts. Several of the States which permit the retailer to pay taxes on the basis of gross sales allow adjustment for worthless accounts. Such allowances present administrative problems (as, for example, when an account represents both taxable and nontaxable sales) and constitute a loophole for evading the tax. Especially is this true in those States which merely require that the retailer shall have written off the losses on his books. In most cases the deduction is limited to accounts which have been charged off for income-tax purposes.[80] Of the seven States which require retailers to report on a gross sales basis, only one allows the deduction of bad-debt losses.

7. Trade-Ins.

State practices vary widely with respect to the treatment of sales involving trade-ins.[81] There are three methods of handling such sales. First, the value of the trade-ins may be allowed as a deduction from the sale price of the new article and the trade-in subjected to tax when sold. Second, the full sales price of the new article may be taxed and the trade-in exempted when sold.[82] Third, both the allowance credit and the sale of the trade-in may be taxed.

A few States employ the first method and tax only the difference in value between the new and used article but subject the second-hand article to tax when it is resold.[83] Kansas formerly employed the second method and exempted trade-ins when sold, but by a 1941 amendment shifted to the first method of permitting a deduction of the amount allowed for the trade-in.

In the rest of the States, practice is about equally divided between the second and the third methods. The Iowa law specifies that the deduction allowed for receipts from sales of trade-ins must not be in excess of the original value of such trade-ins. Special records must be kept, however, in order to take advantage of this exemption. The

[79]Prior to 1943 California also held that Federal Retailers' excises were not deductible, but a 1943 amendment provides that any tax (other than a manufacturers' or importers' excise tax) imposed by the Federal Government with respect to retail sales is deductible whether imposed upon the retailer or consumer.

[80]States which allow the deduction on this basis include: Colorado, Iowa, Missouri, North Carolina, North Dakota, South Dakota, and Utah.

[81]For a discussion of the treatment of trade-ins under State sales taxes, see B. U. Ratchford, Measure of Consumption Taxes, Law and Contemporary Problems, Summer 1941, pp. 571-573.

[82]The tax usually applies to new parts and accessories used in repairing or reconditioning the article traded-in but, in some cases, these also are exempt.

[83]Among these States are Colorado, Kansas, North Dakota, and West Virginia. North Dakota's regulations explain, however, that when property which is not subject to sales tax, such as livestock, is taken as part consideration of the purchase price of a taxable article, the purchaser will be required to pay sales tax on the full purchase price.

seller must keep a record of individual transactions showing the identity of the traded-in property, the date received and date sold, the names and addresses of the persons from whom acquired and to whom sold, and the exact trade-in and sale price. Perhaps because of the difficulties involved in administering such an exemption most States using the second method exclude the sale of the trade-in regardless of price. Frequently the exemption is allowed only when the trade-in has been accepted as part of the purchase price of new goods.[84] Thus, the tax applies to sales of used articles which have been accepted in trade for other used articles.

South Dakota follows the third method of taxing both the allowance credit and the sale of the trade-in, but a specific exemption is provided in the case of resale of used farm machinery taken in trade on the purchase of new farm machinery already taxed by the State.

A tendency has been noted for States to shift to the third method (which allows no exemption to trade-ins) probably as a result of unsatisfactory administrative experience with the others.[85] The courts have denied that such treatment imposes double taxation. A Pennsylvania court held that "the tax is imposed on the purchaser, computed on the amount he has agreed to pay" and "in each instance the tax has been levied upon the particular transaction with the respective purchaser.[86] The Colorado Supreme Court held that the tax covers each separate sale and that "there is no limit to the number of times a particular article of merchandise may be subject to a sales tax so long as it remains in the stream of commerce and goes through the regular channels of trade."[87]

V. TAX RATES

The rates which are applied to retail sales by the 27 sales-tax States are distributed as follows: 18 States, 2 percent;[88] 5 States, 3 percent;[89] 1 State, 2½ percent;[90] Louisiana and Rhode Island, 1 percent, and Indiana one-half of 1 percent.[91] North Carolina levies a 3-percent rate, but the maximum tax that may be imposed upon the sale of a single article is $15. Washington and West Virginia, which are included in the 3-percent and 2-percent groups, respectively, also impose on retailers business and occupational taxes based on gross receipts from retail sales.[92]

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[84]Mississippi's exemption of sales of trade-ins has been construed to apply only "when articles of like kind are traded-in on the purchase of a new similar article" (letter from Attorney General for the State Tax Commission to Commerce Clearing House, May 28, 1941).

[85]Ratchford, B. U., op. cit., p. 572.

[86]City of Philadelphia v. Heinel Motors, 16A. (2d) 761, 764 (P.A. Superior Court 1940).

[87]Bedford v. Hartman Bros., 104 Colo. 190, 194; 89 P. (2d) 584, 585.

[88]Alabama, Arizona, Arkansas, Colorado, Illinois, Iowa, Kansas, Maryland, Mississippi, Missouri, New Mexico, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, West Virginia, and Wyoming.

[89]Connecticut, Michigan, North Carolina, Ohio, and Washington.

[90]California. The rate was reduced in 1943 from 3 percent to 2½ percent for the period July 1, 1943, to June 30, 1935.

[91]Louisiana's rate is 1 percent, but in addition the city of New Orleans levies a 2-percent tax. Indiana, which imposes a gross income tax, reduced the rate applicable to retailers from 1 percent to ½ of 1 percent on January 1, 1942.

[92]The low-rate business and occupational tax becoming effective in Seattle in July 1943 also applies to gross receipts from retail sales.

With few exceptions, the 22 States imposing the single-stage form of sales tax apply a uniform rate to sales of all types of property.[93] Alabama applies a lower rate (one-half of 1 percent instead of the regular 2 percent) to sales of automobiles. The Wyoming law which provides that no tax is to be collected by the vendor from the purchaser on sales of 24 cents or less allows the retailer to pay a reduced rate (1-percent instead of the regular 2-percent rate) on all sales of 24 cents or less, provided he keeps detailed segregated records of all such sales. If he elects not to keep such records, he must pay a 2-percent tax on his total sales.

With a view to reducing the regressive effects of a sales tax, it has been suggested that lower rates be applied to sales of necessities such as "essential" foods and low-cost clothing, and higher rates to sales of "luxury" meals and clothing (defined as those selling for more than a minimum amount), theater tickets, liquor, etc. The States have levied special excises on "luxury" items, but little attempt has been made to introduce differentiation into the general sales tax. New York City has had some experience with differential rates under the sales tax. In 1938, the rate of tax was increased to 3 percent on restaurant meals selling for more than $1,[94] liquors, and public-utility services, while the regular rate remained at 2 percent. The existence of surplus revenues in 1941 made possible a reduction of the tax to 1 percent on all types of sales.

Under the multiple-stage taxes different rates apply at the manufacturing, wholesale, and retail levels, and differentiation also exists in rates applied to various types of transactions at the same level. Variations from the general rate at the retail level are indicated in Table 6.

TABLE 6. DIFFERENTIAL RETAIL RATES UNDER MULTIPLE-STAGE TAXES

State	General retail rate (percent)	Special rates at retail level (percent)
Arizona	2	Transportation, public-utility services, printing, advertising, contractors, sales by restaurants and similar establishments, 1 percent.
Indiana	1½	Display advertising, ¼ of 1 percent; admissions, personal and professional services, sales of capital assets (including real estate and intangibles), storage, and utility charges; sales of all tangible personal property which do not constitute wholesale sales or selling at retail by retail merchants, 1 percent.[1]
Mississippi	2	Automobiles, fluid milk, contractors, gas and electricity for industrial use, 1 percent.
New Mexico	2	Automobiles, 1 percent.
West Virginia (Gross income)	½	Public utilities, 1 to 4 percent; contractors, 2 percent.

[1]Prior to a 1941 amendment, effective January 1, 1942, Indiana's rate was 1 percent on all gross income, except that received from wholesale sales and from display advertising which was taxable at ½ of 1 percent. The amendment reduced the rate on retail sales by retail merchants to ¼ of 1 percent. The ¼ of 1 percent rate was retained on wholesale sales and display advertising, and industrial processing was classified under that rate. All other receipts are taxable at 1 percent.

[93]Multiple rates are subject to the objections mentioned in connection with exemptions (see p. 1146, sec. 2), namely, that they require sales records which separate sales by classes of goods.

[94]Included in the price of the meal were cover, minimum, entertainment, or other charges made to the patron.

VI. PROVISIONS RELATING TO SHIFTING

State retail-sales taxes are imposed either upon the privilege of engaging in the business of selling at retail or upon the retail sale transaction.[95] Practice in the States is about equally divided between these two forms of tax. Under the retail privilege tax, the retailer is primarily liable for payment of the tax, but in most cases either mandatory or permissive provisions for shifting the tax are found in the law or regulations. Of the 11 States[96] which impose retailers' privilege taxes, four (Alabama, Kansas, Mississippi, and West Virginia) specifically require that the tax be passed on, and at least two others (North Carolina and South Dakota) specifically permit the retailer to add the tax to price. California provides that the tax shall be collected by the retailer from the consumer "insofar as it can be done."

In the States which impose the tax upon the sale rather than upon the retailer, the retailer is directed to collect the tax from the consumer.[97] Methods of shifting the tax are the same regardless of whether the tax is levied on the retailer or on the consumer.

The States have attempted to frame methods of collection whereby retailers will recover approximately the amount they must pay the State. On many individual sales it is difficult, if not impossible, to collect the exact percentage specified in the law. In order to facilitate the collection of the tax, most of the States have adopted a bracket system for adding the tax to prices. The schedule is prescribed by statute in Ohio and West Virginia;[98] in 15 States it has been prescribed by

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[95]Prior to passage of the Revenue Act of 1942, the Bureau of Internal Revenue distinguished for purposes of the computation of the Federal income tax between State sales taxes which were levied on the retailer and those which were levied directly on the consumer. In general, if the legal incidence of the tax was upon the retailer, the consumer was not permitted to deduct the amount of the tax from gross income in computing net income, even though reimbursement for the tax was separately stated and collected from him. The Revenue Act of 1942, however, provides that all State retail-sales taxes, if separately stated, are deductible.

[96]Alabama, Arizona, California, Illinois, Kansas, Michigan, Mississippi, New Mexico, North Carolina, South Dakota, and West Virginia.

[97]Arkansas regulations state that failure for any reason to collect the tax from the consumer will forfeit the seller's permit and make him liable for tax (Arkansas regulations, art. 1). Colorado regulations declare "the tax is in reality imposed upon the purchaser, and the duty is imposed directly upon the one making the sale, under penalty of misdemeanor, to add the tax * * * insofar as practicable, to the sale price (Colorado regulations 1).

[98]The West Virginia statute provides that the retailer shall collect a tax of 2 percent of gross receipts, but the tax payable by the purchaser is to be computed under the following schedule (also set up by statute): On sales below 6 cents, no tax; from 6 cents to 50 cents, 1 cent tax; from 51 cents to $1, 2 cents tax; on each 50 cents or fraction thereof in excess of $1, 1 cent. It may be noted that under this schedule the purchaser will be paying in excess of 2 percent. The statute requires the retailer to remit to the State the entire amount collected even though it is in excess of 2 percent of gross proceeds. Ohio's statute sets up a bracket schedule under which the tax is collected by means of prepaid tax receipts. If the amount of tax collected from purchasers by means of prepaid tax receipts does not equal 3 percent of his gross receipts from retail sales, the retailer must pay the difference. Furthermore, if the retailer has collected tax in excess of 3 percent of such gross receipts and has not cancelled receipts in the proper amount, the excess must be remitted.

administrative authority;[99] in at least four of the remaining States, retailers associations have voluntarily adopted a schedule.[100]

The bracket system involves the specifying of the amount to be collected on sales of various sizes. While the system is simple enough in its operation, it does not provide for collection of the exact amount of tax. Underpayment or overpayment of the tax results. Under low tax rates, it is common practice to exempt small sales in order to avoid collection of a tax far in excess of the rate provided by law. These exemptions sometimes extend as far as all transactions involving 25 cents. Since most States collect the tax on total sales (allowing the retailer no deduction for small sales), the retailer may be forced to absorb the tax on some portion of his receipts derived from small sales, but through the operation of the bracket system he may be able to compensate himself by collecting more than the amount of tax on other sales.

Nine of the States[101] minimize tax-rate variations by the use of tokens in fractional-cent denominations of 1, 2 or 5 mills. Under low rates, such as those imposed by the States, tokens serve to eliminate inequity in applying the sales tax to small purchases. The use of tokens generally has been favored by merchants whose business is made up in large part of small sales.[102] Consumers in some cases have objected to the nuisance aspects of tokens. A few States which once used tokens have discontinued them. Illinois issued tokens during the first year the sales tax was in effect (1933–1934), but took no action to enforce their use. Consumers and retailers did not become accustomed to them and a few months after their introduction they fell into disuse.[103] Kansas repealed its statutory provision for tokens in 1939. Louisiana employed tokens under the former sales tax (which was repealed in 1940), but the sales-tax law enacted in 1942 provides for collection of the tax in accordance with a bracket schedule adopted by the administrative agency.[104]

[99]Alabama, Arizona, Arkansas, Colorado, Kansas, Louisiana, Mississippi, Missouri, North Carolina, North Dakota, Oklahoma, South Dakota, Utah, Washington, and Wyoming.

[100]California, Illinois, Iowa, and Michigan.

[101]Alabama, Arizona, Colorado, Mississippi, Missouri, New Mexico, Oklahoma, Utah, and Washington. The administrative agency in at least four other States (Arkansas, North Carolina, South Dakota, and Wyoming) has statutory authorization to issue tokens, but has not made use of this authority.

[102]For a discussion of the attitude of tax administrators and consumers toward the use of tokens, see Joseph W. Huston and John R. Berryman, Collection and Enforcement of State Consumption Excise Taxes, Law and Contemporary Problems, Summer 1941, p. 520.

[103]Jacoby, Neil H., Retail Sales Taxation, p. 312.

[104]Subsequent to the enactment of the State sales tax of 1 percent, the city of New Orleans (which imposes a 2-percent tax) adopted an integrated bracket system which applies to sales that are taxed by both the city and the State. Of the total amount collected under the integrated method two-thirds is remitted to the city and one-third to the State. In the event that a sale is taxed by the city of New Orleans and not by the State, the tax is collected under a schedule applicable only to the New Orleans tax.

VII. ADMINISTRATIVE PROVISIONS

A. ALLOWANCES TO RETAILERS FOR COLLECTING THE TAX

Retailers act as sales-tax collecting agents for the State either as a matter of law or of practice. The work of collecting, recording, and paying the tax imposes a considerable burden upon the retailers.[105] Eight States reimburse the retailer by permitting him to retain a certain percentage of the tax. In some cases the retailer receives the allowance only if the tax is paid promptly. Table 7 indicates allowances granted in the various States.

TABLE 7. ALLOWANCES FOR COLLECTING THE TAX

	Allowance—percent of tax
Alabama	3
Arkansas	2
Colorado	5
Louisiana	2
Missouri	3
North Carolina	3
Ohio	3[106]
Oklahoma	3

In other States retailers are not compensated for the cost of collecting the tax except insofar as they are able to collect more than the legal rate of tax as a result of the operation of the bracket system. Some States, however, have specific provisions requiring that any such excess be paid to the State.[107]

B. RETURNS

The States require frequent reports and payments of the retail-sales tax. State practice with respect to frequency of filing returns is indicated in Table 8.

Fourteen States require monthly returns, but six of these permit quarterly returns if tax liability is less than an indicated amount per month. Three States require bimonthly returns and four require quarterly returns. Ohio, which uses a system of prepaid tax receipts, requires a semiannual return. In addition to periodical returns, accompanied by tax payments, six States require an annual return which recapitulates tax liability.

In a recent study the Illinois Department of Finance examined the advantages and disadvantages of various filing periods for the purpose of determining the desirability of changing from a monthly to a

[105]See Shoup, Carl, The Experience of Retailers Under New York City's Sales Tax, National Tax Association Bulletin 30, 110 (1936). Shoup found that every store investigated reported an increase in accounting costs because of the tax and many estimated the extra cost at from 5 to 10 percent of the tax collected.

[106]Ohio's reimbursement is in the form of a 3 percent discount on the purchase of prepaid tax receipts. The retailer is required to give the consumer a stamp which is torn in half so as to cancel it. In order to encourage the consumer to demand his tax receipts, an amendment adopted in 1939 provided that the State would redeem canceled stamps at 3 percent of their face value when presented by charitable and certain other organizations in amounts representing taxes of $100 or more. Under an amendment adopted in 1943, agents appointed by the Treasurer of the State for the sale of prepaid tax receipts receive an amount not to exceed 1 percent of the proceeds of sales, and the County Treasurer may retain for use of the General Fund of the county 1 percent of the proceeds of sales.

[107]See section on Provisions Relating to Shifting.

quarterly sales tax return period.[108] It found no overwhelming advantage favoring either particular period of return. The longer periods of return afford greater opportunities to decrease administrative office expenses or to divert these potential savings into expenditures on field auditing. On the other hand, infrequent return periods make it more difficult to collect the tax in case of bankruptcies and removal of businesses to other States. Also, the longer a taxing agency allows liability to run, the more difficult it is to enforce payment.

California and Iowa have attempted to combine the advantages of quarterly returns and those of monthly returns by requiring quarterly returns but permitting the sales-tax administrator to require monthly returns of individual taxpayers if necessary. It was noted in this connection by the Illinois study that of the 202,852 active permits in California as of January 31, 1942, as many as 38,398 (or 18.9 percent) were required to file on a monthly basis.[109]

TABLE 8. FREQUENCY OF FILING RETURNS

Monthly	Monthly; quarterly if tax small[110]	Bimonthly
Arizona	Alabama ($10)	South Dakota
Arkansas	Colorado ($20)	Utah
Illinois	Mississippi ($10)	Washington
Kansas	Oklahoma ($5)	
Louisiana	West Virginia ($10)	
Michigan	Wyoming ($10)	
Missouri		
New Mexico		
North Carolina		

Quarterly	Semiannual	Annual, in addition to monthly or quarterly
California[111]	Ohio	Alabama
Indiana[112]		Arizona
Iowa[111]		Indiana
North Dakota		Michigan
		Mississippi
		Missouri

C. LICENSES

To facilitate administration, most States license all taxpayers. Three States require that the license be renewed annually, one requiring no fee, one a fee of $1, and the other $2.50. Seventeen States issue permanent licenses, six requiring no fee and the others requiring fees ranging from 50 cents to $2. No license is required in three States. License requirements in the various States are indicated in Table 9.

The licensing device is used as an instrument of enforcing tax compliance and is particularly effective if the administrator has authority to revoke licenses in cases of noncompliance. Approximately two-thirds of the State sales-tax laws contain a revocation provision. The typical provision states that the administrator "may, on a reasonable notice and after full hearing, revoke the license of any person found

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[108] Criz, Maurice, Quarterly Retailers' Occupation Tax Returns for Illinois, National Tax Association Bulletin, November 1942, pp. 38–42.

[109] Reported in a letter from DeWitt W. Kreuger, Chief, Division of Research and Statistics, California State Board of Equalization, dated March 3, 1942, to Maurice Criz.

[110] Minimum liabilities to be reported monthly shown in parenthesis.

[111] Administrator may require returns on other than a quarterly basis.

[112] When tax is not in excess of $10 for a quarter, taxpayer may file annual return.

to have violated any provision of the Act."[113] Some administrators have found the threat of license revocation a very effective means of enforcing payment of delinquencies.[114]

D. BONDS

The requirement of a bond to guarantee payment of the tax is a protective device found in many State motor fuel and liquor tax and in some tobacco tax Acts. A recent study of methods of collecting and enforcing consumer taxes indicates, however, that none of the State retail sales-tax laws contains a mandatory provision for posting security, although some of them have discretionary bonding provisions under which the administrator may require the posting of a bond or other security when he has reason to believe that such action is necessary to avoid default.[115]

TABLE 9. LICENSE REQUIREMENTS UNDER STATE RETAIL-SALES TAXES

No license	No fee	Annual $1	$2.50
Indiana Missouri West Virginia	Utah	Michigan	Colorado

PERMANENT

No fee	50 cents	$1	$2
Alabama Arkansas Illinois Kansas Louisiana Oklahoma	Iowa North Dakota South Dakota	Arizona California Mississippi New Mexico North Carolina Ohio Washington	Wyoming

VIII. REVENUE IMPORTANCE

As of the years 1944–1947, general sales taxes are the largest source of State revenues, and are closely followed by motor-fuel taxes. However, as shown by Table 11, general sales taxes ranked second in importance to motor-fuel taxes during the years 1940–1943, inclusive. Except for the years 1944 and 1945, general sales taxes exceeded the aggregate collections from both corporate and individual income taxes. In the fiscal year 1947, sales-tax collections amounted to $1,178,671,000,

[113]The Ohio Law specifically provides that an appeal may be taken to the Common Pleas Court of the county and the judgment of the Common Pleas Court may be reviewed upon proceedings in error in the Court of Appeals. Either court may suspend the order of revocation pending hearings in the courts.

[114]The Utah Tax Commission, for example, cites delinquent taxpayers to appear and show reason why their license should not be revoked. Those who fail to reply are notified that their license will be revoked 10 days after the receipt of the notice. If at the end of this period they have not made payment, they are visited by a member of the field force. It is estimated that 60 percent of the delinquent accounts are paid upon receipt of the first notice, 90 percent of those remaining pay upon receipt of second notice that revocation will follow; and practically all the remainder pay at the time of the field contact. (Fifth Biennial Report of the State Tax Commission of Utah, 1939–1940.)

[115]Huston, Joseph W. and John R. Berryman, "Collection and Enforcement of State Consumption Excise Taxes," Law and Contemporary Problems, Summer 1941, pp. 508, 509.

which represented one-fifth of total State tax revenues (excluding unemployment compensation revenues), and one-third of the tax revenues of the States which have sales taxes. The relative importance of the sales tax in the tax structure of individual States is indicated in Table 10. The proportion of total revenues derived from the retail-sales tax ranges from 13 percent in Louisiana to 61 percent in West Virginia. Some of the States with broader-scope taxes, such as Washington and West Virginia, received particularly large portions of their revenues from sales taxes.

Table 11 shows collections from State general sales and use taxes as compared to other sources of revenue for the fiscal years 1940–1947. The Bureau of the Census estimates State sales-tax collections as $1,179,000,000 in 1947, as compared to $900,000,000 in 1946, and $629,000,000 in 1942.

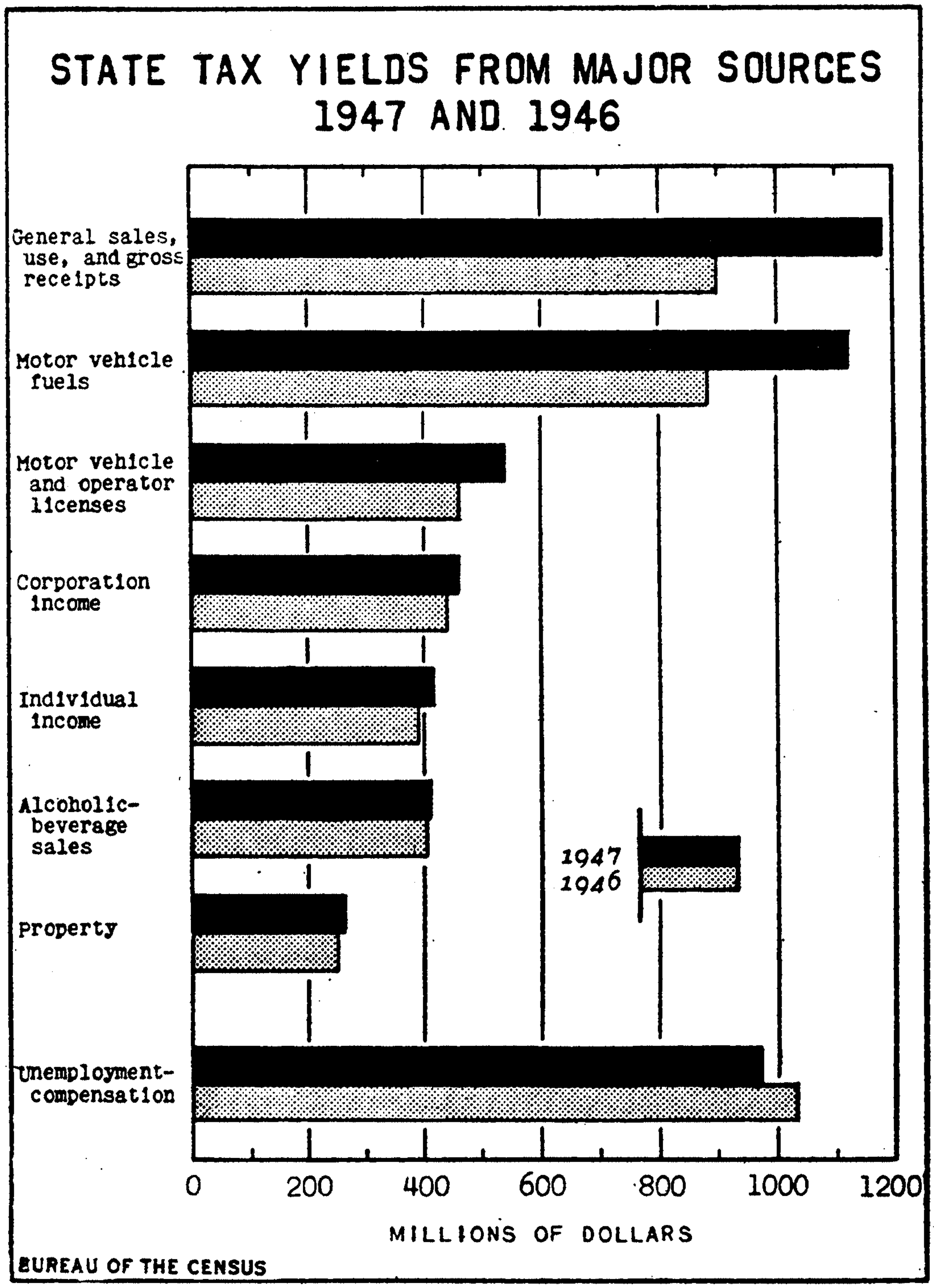
STATE TAX YIELDS FROM MAJOR SOURCES
1947 AND 1946
General sales, use, and gross receipts
Motor vehicle fuels
Motor vehicle and operator licenses
Corporation income
Individual income
Alcoholic-beverage sales
Property
Unemployment-compensation
1947
1946
0
200
400
600
800
1000
1200
MILLIONS OF DOLLARS
BUREAU OF THE CENSUS

TABLE 10. REVENUE IMPORTANCE OF STATE SALES TAXES, FISCAL YEAR 1947

State	Tax Collections (In Thousands of Dollars): Sales tax	Total Taxes: Including unemployment compensation	Total Taxes: Excluding unemployment compensation	Sales Tax as a Percent of Total Taxes: Including unemployment compensation (Percent)	Sales Tax as a Percent of Total Taxes: Excluding unemployment compensation (Percent)
Alabama	$22,304	$87,411*	$81,490	26	27
Arizona	13,494	40,594	37,118	33	36
Arkansas	17,190	71,605	66,248	24	26
California	241,373	699,032	582,446	35	41
Colorado	20,993	66,374	60,718	32	35
Illinois	142,514	361,564	318,521	39	45
Indiana	53,919	149,855	135,849	36	40
Iowa	40,603	116,102	107,712	35	38
Kansas	28,808	81,803	75,333	35	38
Louisiana	16,734	138,848	128,375	12	13
Michigan	160,567	336,307	292,681	48	55
Mississippi	20,434	72,401*	65,053	28	31
Missouri	58,227	139,493	121,173	42	48
New Mexico	12,041	35,324	32,609	34	37
North Carolina	35,482	193,549	176,875	18	20
North Dakota	8,591	26,979	25,995	32	33
Ohio	104,245	359,825	307,247	29	34
Oklahoma	29,901	124,291	118,885	24	25
South Dakota	7,988	24,796*	24,012	32	33
Utah	11,162	36,359	30,315	31	37
Washington	83,997	189,462	160,570	44	52
West Virginia	44,210	83,147	72,880	53	61
Wyoming	3,894	12,674	11,507	31	34
Totals	$1,178,671	$3,447,795	$3,033,612	34	39

*Not complete. Source—Bureau of the Census, State Tax Collections in 1947. Percentages computed.

TABLE 11. STATE TAX COLLECTIONS, BY MAJOR SOURCE: 1940–1947*

(IN MILLIONS OF DOLLARS)

Tax source	1947† (Preliminary)	1946	1945	1944	1943	1942	1941	1940
Total tax collections—								
Including unemployment compensation	$6,767	$6,014	$5,603	$5,425‡	$5,131	$5,011	$4,507	$4,157
Excluding unemployment compensation	5,798	4,980	4,350‡	4,106‡	3,959	3,935	3,606	3,313
General sales, use, or gross receipts	1,179	900	776	721	671	633	575	499
Motor vehicle fuel sales	1,124	887	696	685	776	942	913	839
Alcoholic beverage sales	412	402	310	267	280	256	216	193
Tobacco product sales	245	199	145	160	141	131	106	97
Motor vehicle and operator licenses	540	461	414	413‡	414	451	434	387
Alcoholic beverage licenses	70	67	58	55	55	56	56	62
Individual income	418	389	357‡	316	293	249	225	206
Corporation income	461	442	453‡	446	340	269‡	197	155
Property	262	253	276	247	258	271	268	260
Death and gift	166	146	136	114	109	112	118	113
Severance	94	90	83	71	75	62	53	53
Other, except unemployment compensation§	827	744	643	608	547	503‡	445	449
Unemployment compensation tax	969	1,034	1,254	1,319	1,172	1,076	901	844

Note—Because of rounding to nearest million, detail does not always add to total.

*The amounts for 1947 through 1942 consist of collections for the fiscal years of the respective States ended within the twelve months prior to July 1; for prior years the data pertain to fiscal years ended within the respective calendar years.

†Amounts consist of actual collections and estimates.

‡Revised.

§Includes revenues from the following sources: Sales and gross receipts taxes on insurance companies, public utilities, pari-mutuels, admissions and amusements, and soft drinks; licenses for corporations in general, alcoholic beverages, hunting and fishing, occupations, chain stores, and amusements and race tracks; poll, documentary and stock transfers, and miscellaneous taxes.

CHAPTER SIX

CANADIAN FEDERAL SALES TAX

I. INTRODUCTION

A. THE TURN-OVER TAX, 1920–1923

Canada first enacted a sales tax in May 1920. A rate of 1 percent was applied to the sales of wholesalers and manufacturers, and to imports. The tax was essentially a turn-over tax in that it was applied at successive stages of production and distribution. For example, the tax was payable on the sale of leather by a tanner to a shoe manufacturer, on the sale of shoes by a shoe manufacturer to a wholesaler, and again when a wholesaler sold the shoes to a retailer.

The 1920 Act made no distinction between sales of articles domestically produced and sales of those imported. Moreover, no distinction was made between manufacturers' sales to wholesalers and those made directly to retailers. As a consequence, considerable opposition to the tax developed. Protests were made that the tax afforded an incentive for manufacturers to "bypass" middle-men, and that manufacturers and wholesalers were placed at a disadvantage with retailers in respect to imports. Since the tax was of the turn-over type, manufacturers and wholesalers paid a 1-percent tax upon importation and also a 1-percent tax on resale, while retailers paid only the 1-percent tax on imports. As a result of the protests the law was amended (June 17, 1920) and sales of manufacturers made directly to retailers were taxed at 2 percent. A similar change was also made in the sales tax on imports; the tax on importations by retailers was increased to 2 percent in order to place them on an equal basis with manufacturers and wholesalers who paid a 1-percent tax upon the sale of imported goods as well as a 1-percent tax upon their import.

On May 10, 1921, the tax on sales of domestic goods by manufacturers and wholesalers was increased to 1½ percent. The tax on sales by manufacturers was raised to 3 percent. The rate on importations by manufacturers and wholesalers was increased to 2½ percent, and on importations by retailers to 4 percent. Thus, the rates applicable to imported goods were 1 percent greater than the rates on goods produced in Canada. On May 24, 1922, when the sales-tax rates were again increased, this differential was raised to 1½ percent.

These changes, however, did not silence the critics. One of the most important criticisms of the tax was that it applied not only to the same article at each of the various stages of production, but that it also was pyramided through the application of rigid mark-ups to the sales price which included the tax. The critics also pointed out that since the tax was levied at several points of transfer there was an incentive for business to integrate and thereby limit the multiple effects of the tax.

B. THE SINGLE-STAGE TAX, 1924–1942

To meet these criticisms the law was amended January 1, 1924. Under the revised law, the tax was imposed on imports and manufacturers' sales of finished articles.[1] That is, the tax was to apply only at one stage in the processes of production and distribution; generally, upon the finished merchandise when it passed from the manufacturer to the wholesaler. This aim was achieved by imposing the tax only when the goods were transferred from a licensed to an unlicensed purchaser. All manufacturers were licensed, while wholesalers were permitted to obtain a license only under certain conditions. The tax was not imposed on goods imported by a licensee, or on sales of partly manufactured goods, except on sales to unlicensed purchasers. The rate under the 1924 law was 6 percent.

There was and has continued to be a long list of exemptions from the tax. In recent years the need for additional revenue has made it necessary to remove from the list of exemptions items such as electricity, gas, and building materials.

There have also been frequent changes in the rates but the general principles of the 1924 law are still in effect. The present tax rate of 8 percent has been in effect since 1936.[2] This is significant insofar as it shows that a nation which has had a relatively long experience with a well-established sales tax did not choose to increase the rates during a war emergency but sought additional revenue from increased income and excess-profits taxes and excises.

Although the scope of the sales tax has been extended, its relative importance in the Canadian federal tax structure declined during the war period. In the fiscal year 1939–1940, more than 29 percent of the total federal tax revenue was produced by the sales tax, while for the fiscal years 1942–1943 and 1943–1944 only about 10.8 and 9.3 percent, respectively, of the total tax revenue came from the sales tax.

C. GENERAL ACCEPTANCE OF THE TAX

Opposition to the tax diminished after it was changed to the single-stage form. Today there does not appear to be any great pressure for repeal of the tax. Consumers are passive, and although manufacturers desire the eventual repeal of the sales tax, they are not demanding any major changes.

The pre-war attitude of manufacturers toward the tax is illustrated by a brief prepared by the Canadian Manufacturers' Association in connection with the hearing of the Royal Commission on the Dominion Provincial Relations, in which they pointed out some of the demerits of the tax. Some of the principal arguments against the tax were that

[1]Sales or imports of partly manufactured goods by a licensed manufacturer or wholesaler to another licensee were exempted from tax. See Office Consolidation, The Special War Revenue Act and amendments to date, June 1943, published by the Department of National Revenue, Excise Division, Ottawa, Canada; sec. 86 (2).

[2]Although prior to June 23, 1942, fur skins and pelts were taxed under the sales tax at the rate of 12 percent of the current market value of the dressed and dyed furs, they were removed from the general sales tax and are now subject to a 25-percent excise.

it (1) increased prices to consumers; (2) increased manufacturing costs, selling costs, and overhead; (3) made the manufacturers tax collectors; (4) discriminated against manufacturers who produce and sell a complete product;[3] (5) discriminated between one section of an industry and another section of the same industry;[4] and (6) that it increased the costs of government.

D. EXTENSION OF ADMINISTRATIVE AUTHORITY

Three factors that have contributed a great deal to the success of the Canadian sales tax are: (1) The capacity of the majority party to obtain changes in taxation as contained in the Finance Minister's budget speech, (2) the extent of the authority delegated to the administrators of the sales tax, and (3) the good sense with which discretion is exercised by the sales-tax administration. This combination of factors has enabled Canada successfully to cope with and to avoid many of the difficulties usually associated with a general sales tax.

II. STRUCTURE OF THE TAX

A. TAXPAYERS

The Canadian federal sales tax is essentially a manufacturers' sales tax. Section 2(c) of the Act contains an omnibus definition of "manufacturer or producer." This section is fortified by section 85(f) which includes among other things "any packer of olives and any commercial artist," and section 86(3) which is designed to cover business transactions by fiduciaries, etc. Coupled with section 85(a) (definition of sales price) and section 98 (power to determine fair price), the definition of manufacturer prohibits anyone from avoiding tax as determined by the Minister of Revenue, in spite of corsplit-ups or dummy organizations and the absence of arm's-length transactions.

All manufacturers are required to be licensed and certain wholesalers may be licensed. Active taxpayer accounts are between 28,000 and 29,000, of which about 800 are wholesalers.

Although the Canadian federal sales tax is a manufacturers' sales tax, certain wholesalers may be granted a license in order to enable

[3]"In addition to having to pay the tax on the sales of his taxable product a manufacturer is compelled by law to keep proper books and records of all transactions, which necessitates additional clerical staff, and he must pay the tax to the Government in many cases long before he is paid by his customer. The cost of keeping the records, of making monthly returns, the carrying charges on the amount of tax paid to the government, and the loss on bad debts is a burden imposed on those manufacturers who manufacture and sell completed taxable products.

"The manufacturer of a semimanufactured product which is the raw material of another licensed manufacturer, for example, the manufacturer of pig iron, leather, etc., does not have to pay the government any tax on his sales as the customer of such a manufacturer buys these articles free of tax because these materials are for further manufacture."

[4]For example, vegetables canned by the farmer, whether the farmer sells them himself or disposes of them through a commission house, are not subject to the sales tax when production is not in excess of 10,000 1-pound cans or their equivalent per annum. Canning factories, however, must operate under license and pay tax on their entire output.

them to resell partly manufactured goods tax-free. The policy is to license only wholesalers primarily engaged in the resale of raw materials or partly manufactured goods. If a wholesaler was not in possession of a license on September 1, 1938, no license will be issued to him unless 50 percent of his sales for the 3 months immediately preceding his application were exempt from the sales tax. "A licensed wholesaler or jobber does not pay sales tax on goods imported or purchased by him where the goods are for resale, provided he quotes his license and certifies that the goods are for resale. But on the goods for his own use, tax is payable at the time of entry at customs or at the time of purchase as in such cases he is not permitted to use his license." The licensed wholesaler is also liable for sales tax when he delivers taxable goods to unlicensed firms or to licensees for their own use.

These taxable sales by licensed wholesalers are valued for tax purposes not at sales price but at cost to the wholesaler, to put them on the same basis as manufacturers' sale. There are two alternative methods by which licensed wholesalers may state the cost: (1) They may show on the duplicate of each sales invoice the actual cost or duty-paid value of each taxable item on the invoice and recapitulate these costs and values at the end of each month and pay the tax at the current rate on the total; or (2) they may deduct a percentage[5] from their taxable sales to determine their taxable cost or duty-paid value of the merchandise sold.

Each taxpayer must file a monthly return for the taxable sales of the preceding month. The return must be filed and the tax paid not later than the last day of the first month succeeding that in which the sales were made.

B. TAX BASE AND TAX RATES

1. Tax Base.

Under the Canadian sales tax it is intended to tax all sales of finished goods on the basis of manufacturers' sales prices. For tax-base purposes the law is inclusive rather than exclusive in that all sales by manufacturers of finished articles are taxed unless exempted by law or by regulation.

In general, the manufacturers' sales price is the price for which the manufacturer regularly sells taxable goods to bona fide wholesalers in the ordinary course of business.

a. Sales Price.

More specifically, the sales price for purposes of calculating the amount of sales tax is the manufacturers' sales price exclusive of the

[5]The percentage is arrived at in the following manner: A reconstructed trading account statement is prepared covering the entire wholesale business for the 2 preceding years by adding to the inventory, at the commencement of the period, the 2 years' purchases at cost and the duty-paid value of imported goods and deducting the inventory at the close of the period, thus determining the taxable cost of goods sold; this figure is deducted from the gross sales of the 2-year period and there is determined the percentage necessary to apply to sales to reduce them to taxable cost. At the close of each wholesaler's fiscal year he is required to recalculate the percentage by omitting the oldest year's business and substituting results of his business for the year just closed to determine the percentage to be used for the ensuing year.

sales tax but inclusive of any charge for advertising, financing, servicing, or warranty. When goods are sold in bond the sale price also includes excise duties. For some items, the sales price also includes any excise tax levied thereon.

With respect to installment or conditional sales, the tax is computed on the basis of the sales price and is payable at the end of the month following that in which the sale is made. This rule is followed even though the manufacturer's terms specify payment in 60, 90, or more days. Delay in payment of the tax is granted, however, in certain cases. For example, where installments are paid as the work progresses, as in the building of a power plant or a paper mill, or in contracts where the ownership of the merchandise sold does not pass to the purchaser until completion of the contract.

b. Valuations Determined by the Minister.

There are many cases, however, where it is difficult to determine the manufacturers' sales price because no actual market transactions occur at that level. For example, when goods are leased there is no sales price which can be used in computing the sales tax. When goods are produced for use and not for resale a valuation must be made. Sales by manufacturers direct to retailers and consumers also require tax-base determinations.

To cope with these situations the Minister of National Revenue is empowered to determine valuations for purposes of the sales tax when goods are leased, when goods have a royalty imposed on them, when "goods are manufactured by contract for labor only" and do not include "the value of materials that enter into the same or under any other unusual or peculiar manner or conditions," and when "goods are manufactured for use by the manufacturer or producer and not for sale." Where a manufacturer sells similar articles both to wholesalers and retailers, no valuation problem arises since the sales to wholesalers in the normal course of business establishes the base price for tax purposes. However, where a manufacturer sells exclusively to retailers it is necessary to determine the "wholesale price" for purposes of calculating the sales tax. To cope with this situation, manufacturers selling only to retailers apply a discount to their sales price. The discount is determined by the Minister, and is based on industry-wide studies of prices of manufacturers selling similar articles to wholesalers. In all cases where the manufacturer has not established the "wholesale price" for his taxable goods the Minister may determine the value on which the tax may be calculated. For instance, in the case of chain-store outlets, mark-ups on similar articles not manufactured by a chain-store organization are determined by the Minister and these mark-ups are used to discount the retail selling prices of articles manufactured by the chain. A number of special regulations covering unusual industries also have been issued. For example, the sales price of ice cream for tax-computation purposes is $1.10 per imperial gallon.

The Minister also has the power to determine the fair price for tax purposes whenever in his "judgment" the sales price is less than the fair price and "the taxpayer shall pay the tax on the price so determined." In this connection, it also should be noted that the law precludes dividing of price and attempts to avoid tax by providing that the sales price "shall include any charges for advertising, financing, servicing, warranty or any other charges of a similar nature contracted for at the time of sale whether these items be charged for separately or not."

c. Valuation in the Case of Imports.

A further problem of valuation arises in connection with imported goods. The Canadian sales tax is imposed on the sale price of goods imported into Canada as well as on goods produced in Canada. The tax is "payable by the importer or transferee * * * at the time when the goods are imported or taken out of warehouse for consumption," except where the goods are imported by a licensed manufacturer or licensed wholesaler free of tax. Consequently, no market price is obtainable for purposes of computing the sales tax on imported goods. As a result, the tax is computed upon the duty-paid value of the article. Duty-paid value is the value determined for the purpose of calculating an ad valorem duty and it includes the amount of the customs duty. For some items, like cigarette papers and tubes, matches, playing cards, and wines, the duty-paid value includes the excise tax levied thereon.

2. Taxable Goods and Tax Rates.

All sales by licensed manufacturers are taxed at 8 percent, except articles produced by the blind and the deaf and dumb in Canadian institutions established for their care or under the control or direction of such institutions which pay only a 4-percent tax.

The tax applies to finished goods imported into or manufactured in Canada, but the finished goods of one manufacturer may be used as cost goods in the production process of another; hence, the Canadian sales tax does not apply to finished consumers' goods only. For example, building materials, fuel oil, lubricating oil, dies, abrasives, cutting tools, and certain plant machinery and equipment are taxable.

3. Exemptions.

a. Articles Specifically Exempted.

A large number of specified articles are exempted from the sales tax. It is impractical to list all of them but some of the most important may be classified as follows:

(1) Foods, with certain exceptions (see Appendix I).

(2) Products of the primary industries: farming, mining, and fishing; also, the equipment used in these industries.

(3) Materials used by religious, charitable, and health organizations.

(4) Printed matter and articles used for educational purposes.

(5) Articles used by the diplomatic corps.

(6) Coverings and processing materials, with certain exceptions (see Appendix I).

(7) Miscellaneous items.

b. Partly Manufactured Goods and Consumables.

Under the Canadian sales tax, partly manufactured goods and materials consumed in the process of manufacturing are exempted. Permanent and semipermanent equipment, however, are taxed.

The law provides that the "Minister shall be the sole judge as to whether or not goods are 'partly manufactured goods' within the meaning of this section." It is not clear that this authority is also extended to the determination of what materials are exempted under section 89(1), Schedule III, wherein exemption is provided for "materials (not to include abrasives, lubricating oils, fuel oils, or non-permanent plant equipment) consumed, otherwise than by waste or wear in the process of * * * production of taxable goods." Apparently, a great deal of discretion is used by the Minister in determining such tax exemption. The administrative bench mark is that the materials must actually be destroyed in use before coming within the classification of "consumed."

Section 97(1) of the Act gives the Minister additional authority to enforce his determinations with respect to partly manufactured goods and materials consumed. It provides that "if it appears to the Minister" that a licensee is evading tax, "the Minister may require" that the tax apply to "any material specified by the Minister" when sold to any licensee or any class of licensees he specifies, whether the materials are domestically produced or imported. Later "a deduction may be made" if the licensee proves such materials have been used in the manufacture of an article which is subject to the tax and on which the tax has been paid.

c. Articles Purchased by Governments and Their Agencies.

(1) Purchases by the Crown: Purchases by the Crown are not taxable under the Canadian federal sales tax unless specifically mentioned in the statute.

(2) Dominion Government: When taxable goods are sold to or imported by the Dominion Government or a department thereof, the sales tax applies. Furthermore, taxable goods sold to any commission or board appointed by or operating under the authority of the Federal government are subject to sales tax.

(3) Provincial Governments and Municipalities: The sales of taxable goods to Provincial governments or a department thereof are taxable if the goods are for resale. There are two basic reasons why these transactions are taxable: First, they are taxable by reason of State monopoly, such as liquor and public utilities; and, second, by reason of competition with private industry. However, sales to or imports by the Provincial governments or departments thereof for their own use are exempt from the sales tax.

Where taxable goods are sold to or imported by Provincial railways, commissions, universities, boards, and public utilities, the sales tax applies except in specific instances where the Department of National Revenue has ruled otherwise. The untaxed exceptions are commissions and boards operated entirely by Provincial governments such as civil-service commissions and old-age pension boards.

In order to prevent discrimination against unlicensed wholesalers or other dealers who have purchased goods from licensed manufacturers or wholesalers, the law permits the departments of Provinces and certified public hospitals to make tax-free purchases through unlicensed wholesalers or dealers, provided certain procedural requirements are followed.

Taxable goods sold to or imported by a municipality are subject to the sales tax.

d. War Materiel.

Various rulings have been made with respect to the application of the sales tax on war materiel. For example, a refund of the sales tax is granted on permanent and nonpermanent plant equipment imported into or manufactured in Canada, if the purchase has been approved by the Department of Munitions and Supply on behalf of the British Government or the governments of Allied Nations and which has been or is to be paid for by these governments; provided, further, that the equipment is to be actually used directly in the manufacture of munitions of war covered by contracts placed through the Department of Munitions and Supply for the accounts of these governments.

Military stores, munitions of war, and other articles owned by the government of any of the Allied countries and which are to remain the property of such government are exempted from the sales tax. Also exempted are articles consigned directly to officers and men of His Majesty's Imperial Navy for their own personal use or consumption on board their own ships.

Contractors may manufacture or purchase permanent and nonpermanent[6] plant equipment to be used in the production of aircraft or parts thereof for the Government of the United Kingdom without payment of the sales tax when ownership in the equipment is vested in the United Kingdom Government, provided a certificate is completed on the shop order showing such information as the government requires.

Contracts for munitions of war placed in Canada by the British or Allied Governments are exempt from sales tax. Military, naval, and air force uniforms manufactured for the United Kingdom or any Allied Government also are exempt from sales tax. Sales of uniforms to the Canadian Government, however, are taxable.

For a complete coverage of all exemptions, reference must be made to the law and to the list of regulations issued by the Minister of National Revenue.

e. Ships' Stores.

Under the Act, sales-tax refunds "may be granted to a manufacturer, producer, wholesaler, jobber, or other dealer on goods sold hereafter as ships' stores."

f. Exports.

The sales tax is not payable on goods exported except that the sales tax is "payable on the sale of spirituous and fermented liquors, other than wine, unless such goods are exported in bond by the manufacturer thereof and foreign landing certificates satisfactory to the Minister are produced as proof that said goods have landed at the place designated in the export entry."

[6]"Permanent or nonpermanent plant equipment" is held to mean machinery and nonmechanical equipment of a permanent character, and patterns, jigs, dies, machines, and hand tools and similar equipment of a nonpermanent character, to be used in the production of aircraft and parts thereof.

In cases where sales tax has been paid on domestic goods that subsequently are exported under regulations prescribed by the Minister a refund may be granted.

A refund of the sales tax may be granted "when imported goods which are free of customs duty and which are found not to be according to order, are exported under customs supervision within three months from the date of the customs entry." A refund of the sales tax may also be granted "when, in the case of imported goods, customs duty has been refunded on exportation."

g. Imported Goods That Compete With Goods Produced in Canada.

The Act allows a refund or a reduction not to exceed 25 percent of the sales tax paid on goods manufactured or produced in Canada, when similar goods may be imported into Canada free of customs duty and evidence satisfactory to the Minister is produced that the Canadian goods are at a disadvantage in competition with the imported goods.

This section, however, has little, if any, practical significance since it has been applied in only one or two cases.

h. Articles Produced by Certain Individuals.

All articles manufactured or produced by the labor of the blind or the deaf and dumb in institutions in Canada established for their care are subject to only 50 percent of the tax.

i. Exemption of Small Manufacturers.

The Act grants the Minister of National Revenue authority to exempt "any class of small manufacturer * * * selling his product exclusively by retail." Articles purchased by such exempt manufacturers are taxable. The Minister also has authority to withdraw this exemption privilege.

The 1924 Act provided exemption from tax of manufacturers with sales of less than $10,000. This flat statutory exemption was effective for about six months. Ever since, however, the small-manufacturer exemption has been within the discretion of the Minister. The notable fact of the use of this authority is that the administrators draw a line of exemption to fit the particular industry. Thus, lumber manufacturers selling less than $3,000 per year are exempted, whereas retailers of lumber who operate woodworking plants are exempted only if the annual sales of goods of their own manufacture do not exceed $1,000. Merchant tailors are exempted without a sales limit.

Administrative control is exercised by listing the type of manufactures exempted; by restricting the privilege to those who do not use certain forms of business organization or methods of sale; by listing the nature and use of the articles exempted; by exempting firms whose sales are below a specified level; and by limiting the privilege to manufacturers "when selling exclusively by retail." This is an important administrative authority, the use of which has limited the number of active taxpayer accounts to about 28,000 or 29,000.

III. ADMINISTRATION OF THE TAX

A. ADMINISTRATIVE ORGANIZATION

The Canadian federal sales tax is administered by the Department of National Revenue, which is headed by the Minister of National Revenue. Under the Minister of National Revenue are the Commissioner and Assistant Commissioner of Excise. The characteristics of the system of administration are peculiar to the Canadian law and the customs machinery as established in Canada, and the plan of organization probably is not suitable for the United States.

B. AUDITING

Canada maintains a relatively large staff of auditors to check collections and prevent evasion of the tax. These auditors also check on excise-tax payments but the sales-tax audit provides by far the greater part of the work. In the course of time every licensee is audited. There are about 225 members on the auditing staff or about one auditor for every 125 or 130 taxpayers.

C. COST OF COLLECTION

The cost of administering the sales tax is estimated to be about 2½ or 3 percent when yield is about $100 million. Costs are minimized by using existing customs or port offices personnel and equipment. Collection costs of customs, excises, and sales taxes in fiscal year 1941 were 1.76 percent of collections; and for the first 10 months of fiscal year 1942 collection costs for the three groups were about 1.3 percent.

D. INVOICES

A licensed manufacturer or wholesaler "when selling to retailers or consumers is not required to show the tax as a separate item on the invoice." However, when a licensee sells to an unlicensed wholesaler or jobber, the purchaser must be furnished with a written invoice which shows the sales tax as a separate item. Where licensed sellers charge their customers a separate amount on their invoices as "sales tax" (or use any wording which suggests that the item represents tax or a percentage equivalent to the rate of tax in effect) and the amount charged exceeds the tax paid, the difference is required to be paid to the government by the licensed seller.

E. MOST DIFFICULT ADMINISTRATIVE PROBLEMS

The Canadian tax officials are of the opinion that the most difficult administrative problems are those associated with (1) determination of value for tax purposes, (2) whether or not an article is taxable, and (3) freight allowances, where taxpayers get their freight-in and freight-out records confused, whereas only outgoing freight is deductible from sales price.

IV. INCIDENCE AND TAX BURDEN

A. SHIFTING OF THE TAX

In the absence of special studies, the discussion of tax shifting and its effects on costs and prices of Canadian manufacturers necessarily must be general and based on theoretical considerations. At the time the tax was introduced the costs of manufacturers were raised by the amount of the tax. It is reasonable to assume that the selling prices of manufacturers also were raised in accordance with the increased costs. In addition, it is likely that wholesalers and retailers applied their ordinary mark-up percentages to their higher purchase prices and, as a result, their final selling prices were raised by an amount greater than the tax. It would appear, therefore, that prior to the great price disturbances consequent to the war, the general level of prices in Canada probably was higher by the amount of the tax and its pyramiding than it otherwise would have been. It is probable, however, that there are notable exceptions to this general statement.

At present, all prices are subject to over-all price ceilings. Accordingly, should the tax be increased, shifting of the increase to consumers could occur only with the approval of the Wartime Prices and Trade Board. The effects of any increase in tax, therefore, would depend on the board's policies.

B. MULTIPLE TAXATION

The intent of the law is to delimit multiple taxation. This is accomplished by exempting partly manufactured goods and many other cost goods used in commerce, industry, and agriculture. Not all producers' goods, however, have been excluded from the scope of the tax. For example, abrasives, certain plant equipment and machinery, lubricating oil, and building materials are taxable. Insofar as producers' goods are taxed, the final sales prices of taxed articles tend to be increased by more than the amount of tax imposed directly on the sale of such articles, and there is also a tendency to raise the price of finished articles that are exempted from the tax. Moreover, the taxation of plant equipment and similar types of producers' goods tends to encourage manufacturers to use methods of production requiring relatively less taxable capital equipment. However, since the tax rate is only 8 percent and important classes of machinery and equipment are exempt, the effect of the tax upon production methods probably is not important.

C. TAX BURDEN

Notwithstanding the exemption of certain necessities of life, such as bread, butter, eggs, etc., the low-income groups bear a substantial share of the sales-tax burden. The need for additional revenue during the war made it necessary to extend the tax to articles and services, such as gas and electricity when used in the home. The extension of the tax to such items tends to make the tax more regressive than it had been theretofore. Although some foods are exempt, the tax is imposed on many foods after they have been processed. For example, canned vegetables, canned fish, meats, and poultry, unless fresh, are subject to the sales tax. Clothing and shoes also are taxable.

No data are available which show specifically the effects of the sales tax upon the cost-of-living index, but a comparison of the articles exempted under the sales tax with the items included in the Canadian cost-of-living index indicates that a small percentage (perhaps less than 25 percent) of the cost-of-living items are exempt from the sales tax. In view of the above circumstances, a substantial amount of the sales tax burden falls upon the low-income groups.

Exemptions

Some of the most important articles exempted from the Canadian federal sales tax may be classified as follows:

Foodstuffs—Bread, butter, cheese, cream, eggs, honey, ice, lard, sugar, apples, baker cakes and pies, fish and fish products, flour, fresh meats and poultry, maple syrup, milk, and fruits and vegetables in their natural state.

Products and equipment of the primary industries; farming, mining, and fishing—Hay, hops, straw, animals (live), poultry, logs, hides, wool, fertilizer, poultry and stock feeds, farm and forest products produced and sold by the individual settler or farmer but not including lumber.

Farm machinery and equipment, such as engines, tractors, milking machines, cultivators, harrows, rakes, seeders, ploughs, harvesters, orchard equipment, wagons, windmills, etc.

Equipment and products of mines and quarries, such as cars and appliances used in mines, crushed stone and gravel, gold and silver, ores of metals of all kinds, sand, gravel, and field stone.

Marine and fisheries supplies, such as boats and materials used in their manufacture and repair; cotton duck; sail twine; manila fiber; ships used in Canadian coasting trade; sinkers, gloats, and travel kegs when used exclusively in fisheries, not including these articles for sportsmen's purposes.

Materials used by religious, charitable, and health organizations—Insulin; radium; artificial limbs; Braille; donations of clothing and books for charitable purposes; memories and monuments erected in memory of soldiers who fell in the Great War; and articles and materials used by any bona fide public hospital.

Printed matter and articles used for educational purposes—Printing and educational matter, such as manuscripts, newspapers, books used for instructional purposes, magazine and literary papers regularly issued; printing paper and ink used in producing magazines; photographs, paintings, pastels when used for nonadvertising purposes; textbooks authorized by the Department of Education; and phonograph records used for instructional purposes.

Government and diplomatic corps—Articles used by the Governor General; articles imported for the personal or official use by Ministers and consuls of foreign countries; and official stationery imported from England.

Coverings and processing materials—Coverings used exclusively for covering goods not subject to sales tax and materials to be used exclusively in the manufacture of such coverings; fire brick, plastic refractories, high temperative cement, fire clay, and other refractory materials used in the repair or construction of a furnace or kiln, and materials used or consumed exclusively in the manufacture of fire brick or refractory materials; materials (not to include abrasives, lubricating oil, fuel oils, or nonpermanent plant equipment) consumed otherwise than by waste or wear in the process of manufacture or production of taxable goods.

Miscellaneous items—British and Canadian coins; foreign gold coins; electricity except when used in dwellings; fuel other than in liquid form; patterns, and dies for boots and shoes; natural gas and gas manufactured from coal or oil for illuminating or heating purposes except when used in dwellings.

CHAPTER SEVEN

THE AUSTRALIAN WHOLESALE SALES TAX

I. INTRODUCTION

A. ORIGIN

The Australian wholesale sales tax was introduced in 1930, primarily as a source of revenue to offset declines in customs receipts caused by the depression. Although excises on liquor, tobacco, and gasoline had been important sources of revenue for many years, no sales tax had previously been used in the Commonwealth, and very little consideration had been given to the possibility of the use of one. The legislation was drawn up by the Government without cooperation of the business groups that became the taxpayers. Almost immediately after the tax became effective, serious criticism arose, primarily because of difficulties arising from administrative interpretations of the Act. As uncertainties have been cleared up by legislative amendments and administrative rulings and as taxpayers have become accustomed to the law, much of the criticism has disappeared. The seriousness of the war situation confronting Australia apparently quieted the criticism that did remain.

In contrast to the situation in other countries, little opposition has been manifested by labor groups. The exemption of many necessities and the adjustment of the basic wage level by the wage-fixing tribunals to cover higher cost of living caused by the tax would seem to have been responsible for acceptance of the tax by labor groups.

B. DEVELOPMENT OF RATE STRUCTURE

The rate structure has undergone a number of changes in the past; changes have been made nine times in the years that the law has been in operation. Prior to November 1940 all taxable transactions were subject to a uniform rate which ranged as follows:

	Percent
1930–1931	2½
1931–1933	6
1933–1936	5
1936–1938	4
1938–May 1940	5
May–November 1940	8½

The low initial rate was found to yield too little revenue and was raised to 6 percent. The rate was then gradually reduced to 4-percent in 1936 because of the improved financial position of the Commonwealth Government. The increases since 1938 were made to provide more revenue for war purposes.

In November 1940 a three-rate system, with rates of 5, 10, and 15 percent, was introduced to allow more revenue to be obtained from "luxuries" without raising the rate on other goods, especially semi-necessities, too heavily, and to check consumption of goods requiring resources needed for war purposes. In October of 1941, the 15-percent rate was raised to 20 percent. In May of 1942, the 10-percent rate was raised to 12½ percent and the 20-percent rate to 25 percent. The 5-percent rate group was eliminated, and most of the articles were transferred to the exempt classes. An amendment to the National Security Supplementary Regulations, effective July 21, 1943, provided for a 7½-percent rate of tax on sales of rationed clothing, linens, and soft furnishings. The purpose of this reduction in rate was to help keep living costs at the April 1943 level.

In general, the use of differentiated rates has been designed to lessen the regressiveness of the tax by placing heavier rates on those articles generally considered to be luxuries.

II. STRUCTURE

A. TAXPAYERS

All firms making sales at wholesale and all manufacturers are required by law to register. Tax payments must be made by the registered firms on a monthly basis. "Sales at wholesale" are defined as sales by one merchant to another for purposes of resale by the latter, and sales to manufacturers of materials for use in manufacturing.[1] The term "manufacturer" is defined very broadly to include all types of processors and assemblers as well as manufacturers in the usual sense of the term.[2] Most payments are made by the wholesale firms, since the tax does not ordinarily attach at the point of sale by manufacturer to wholesaler. Retailers who make any wholesale sales are required to register even though they do most of their business at the retail level.

B. TAXABLE GOODS AND TAX RATES

In general, the tax is intended to apply to the wholesale price of taxable goods at the point of the last wholesale sale. Normally, the tax attaches when the goods are sold by a wholesaler to a retailer, or by a manufacturer to a retailer when the manufacturer sells directly to retail stores. When a manufacturer sells directly to consumers or industrial and commercial users, the tax attaches at the time the manufacturer transfers the goods to his retail outlets or, when this is not done, at the time of sale. The tax attaches also to the sale of goods to wholesalers when the latter intend to sell the goods at retail, and to sales at retail by wholesalers of goods which were originally purchased for the purpose of sale at wholesale. Goods imported into Australia by retailers and consumers are also subject to the tax.

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[1]As indicated below, not all wholesale sales are taxable but, in general, only those made to retailers and to final users.

[2]Primary producers, such as farmers and mining companies, would also be subject were it not for the fact that their products are exempt.

The tax does not apply to sales of goods by manufacturers to wholesalers or others intending to resell the goods at wholesale, to sales made by wholesalers to other wholesalers,[3] to sales by retailers of goods taxed at a previous sale, or to sales of materials to be used in manufacture. The intent is that the tax apply only once to any goods passing through the distribution channels.

All goods[4] are subject to tax unless specifically exempted.[5] The present rate structure consists of three rates—a 25-percent rate applying to a specified group of luxuries and durable necessities, a reduced rate of 7½ percent applying to a select group of rationed goods, principally clothing and household linens, and a 12½-percent basic rate applying to all other taxable articles. The principal goods included in each rate group are indicated below.

1. Reduced Rate Group.

The 7½-percent rate group consists of rationed commodities included in the definition of coupon goods, other than goods covered by any item in the third schedule to the sales tax.

The commodities in the group are—

(a) Clothing.
(b) Piece goods.
(c) Household linens.
(d) Soft furnishings.
(e) Yarns.

2. Basic Rate Group.

The 12½-percent group, by far the most important, includes all items neither exempt nor specified in the 7½- or 25-percent groups.

The principal commodities in the group are—

(a) Almost all industrial, mining, and commercial equipment and machinery.
(b) Automobiles, tires, and accessories.
(c) Most durable consumption goods, such as furniture.
(d) Nonrationed clothing (with very few exceptions).
(e) Building materials.
(f) Taxable foods and household articles. Most basic essential foods are exempt; food articles taxable include pastry, canned vegetables, canned soups, sauces, relishes, desserts of all types, canned meat, canned fish, and numerous miscellaneous items.
(g) A great many miscellaneous articles not falling into any specified group.

This group includes the largest number of sales transactions. In 1940, before the list was greatly increased by the transfer of items from the eliminated 5-percent group, 75 percent of taxable sales were

[3]Unless the purchaser intends to resell the goods at retail.

[4]Services are not taxable.

[5]This feature is in direct contrast to the British purchase tax, under which only those goods specified as taxable are subject to the levy. The Australian sales tax is similar to the Canadian in this regard.

included in this group. Figures are not available for the current situation.

3. High Rate Group.

The 25-percent rate group (third schedule in the law) is composed of goods considered to be luxuries, or goods the purchase of which can easily be postponed. The principal classes are—

(a) Jewelry and fancy goods.
(b) Watches and clocks.
(c) Cosmetics and women's toilet articles.
(d) Men's toilet articles.
(e) Fancy ornamental goods of all types.
(f) Cutlery.
(g) Luggage.
(h) Musical instruments and radios.
(i) Motion picture and photographic equipment.
(j) Furs—except rationed fur garments.
(k) Sporting equipment, toys and games.
(l) Candy and ice cream.
(m) Household electrical appliances (refrigerators, vacuum cleaners, washing machines, lamps, etc.).
(n) Office machines.
(o) Garden equipment.
(p) Many paper products.
(q) Cooking and heating appliances.
(r) Floor coverings.

It should be noted that in the past year production of most of the articles in this group has been stopped in order to free material and men for war purposes.

C. EXEMPTIONS

1. Goods Specifically Exempted.

(A) Certain basic necessities, such as—

(1) Specified essential foods: Bread, fresh meat and fish, dairy products, dried vegetables, dried and canned fruits, sugar, molasses and jam, certain cereals, flour, nuts, tea, and prepared baby foods.

(2) Drugs, medicines, and surgical goods.
(3) Fuel, power, and light.
(4) Footwear.

(B) A limited number of goods used in production, consisting of—

(1) Agricultural machinery, equipment, and supplies.
(2) Commercial fishing machinery and equipment.
(3) Materials for use in making exempt goods.
(4) Nondurable aids to manufacture, for use by unregistered manufacturers, such as belt dressing, dyes, bleaching powder.
(5) Containers, other than those which can be returned to the seller.
(6) Industrial fuel and power.

These articles are exempted in order to lessen multiple taxation. However, industrial and commercial equipment, and building materials are taxable. It is difficult to understand the distinction drawn between nondurable aids to manufacture and durable capital equipment, as both enter into cost of production.

(C) Unprocessed primary products of Australian agriculture, mining, logging, and fishing. Imported primary products are not exempt whether they are processed or not.

The exemption of this group is made primarily for administrative reasons. Most of the products would not be taxed anyway. Some would be exempt as materials for manufacture (logs, ore, wool, cotton, wheat); others as fuel (coal); others as necessary foods (fresh fruits, vegetables, etc.). By exempting them directly as primary products much administrative expense and difficulty is avoided; yet little or no tax revenue is lost. If these goods were not exempt, registration of thousands of additional enterprises, including small farms, would be necessary.

(D) Goods subject to heavy excises: tobacco, liquor, and gasoline.

(E) Goods of educational and religious nature—

(1) Books and periodicals.

(2) Articles for use in churches.

(3) Certain works of art.

(4) Certain articles for use in schools and universities, such as scientific instruments and apparatus.

(f) Second-hand goods. These are exempted to avoid administrative difficulties.

2. Goods Sold to Government Agencies.

Includes materials sold for construction of private buildings for manufacture of goods for war purposes under government contract, and machinery used for the same purpose.

3. Goods Sold by Registered Wholesalers and Manufacturers to Other Registered Firms.

Exemption of these transactions has the effect of excluding from the tax all wholesale sales made to those intending to resell the goods at wholesale, and all sales of materials which become physical ingredients of taxable articles, when resellers quote their certificates of registration. The law specifies that certificates are to be quoted in the following instances:

(a) Purchase or importation by manufacturers of materials to be used in, wrought into, or attached to goods being produced, in such a way as to form an integral part of the goods.

(b) Purchase or importation by manufacturers of aids to manufacture. These articles consist of nondurable goods used in any way in production other than as actual material.

(c) Purchase or importation by wholesalers of goods intended to be resold at wholesale.

These sales are exempted to avoid multiple taxation. The intent is that the tax shall be a single-stage levy and not a form of multiple or turn-over tax.

4. Goods Exported or Sold for Export.

Refund can be obtained if tax has already been paid on the goods.

The exporter can get the refund whether he has actually paid the tax to the government or has borne it through higher purchase price of goods bought. To impose the tax upon exports would place Australian commodities at a relative price disadvantage in foreign markets and make it more difficult for Australia to maintain her export trade.

5. Sales by Small Manufacturers.

(a) Sales of goods manufactured and sold at retail by firms having annual total sales volume of less than 700 pounds.

(b) Sales of goods manufactured by a person in his own home, if sales volume is less than 500 pounds per year.

(c) Sales of goods by manufacturers whose sales tax would amount to less than 5 pounds per year.

These exemptions are made primarily for administrative reasons.

The extent of the present exemptions is comparable to that of the original law and is greatly restricted in comparison to the exemption list of the period from 1936 to 1940. The original law exempted only primary products, fuel and power, a few basic foods, sales of goods for use as materials for manufacture or for resale at wholesale sales to government agencies, and sales for export. As recovery from depression improved the financial position of the government, a wide range of goods was added. The principal classes were:

(1) A great many foods not previously exempt.

(2) Drugs and medicines.

(3) Many goods used in production, especially (a) farm, mining, irrigation, and fishing machinery and equipment, (b) building materials, (c) nondurable aids to manufacture.

(4) Educational and scientific articles, including books and periodicals.

By 1939 the exemptions had been increased to the point at which only one-third of all sales transactions were subject to tax. With the coming of the war and the greater need for revenue and for reduced personal consumption, the exemption list was curtailed substantially. In 1940 and 1941 all machinery (except that for farm use) and building materials were made taxable, the list of exempt foods curtailed somewhat, and the number of drugs and medicines and educational and scientific goods exempted was reduced very drastically. In May of 1942, the trend was reversed slightly when fishing machinery, most drugs, medicines, and surgical appliances, and certain educational and scientific goods, formerly taxed at 5 percent, were exempted entirely. The rate reduction to 7½ percent, in July 1943, on certain rationed articles, in order to help maintain the April 1943 level of living costs, also deviates from the previous trend.

D. WHOLESALE VALUE

The intent of the law is that wholesale sales price, at the point of sale to the retailer, shall be the price for tax-base purposes. When there is no actual wholesale-to-retail price or the actual price does not appear to the Commissioner of Taxation to represent a normal price, the wholesale price is determined by the commissioner.

The entire charge made to the buyer in the transaction is considered to be the price, even though some items, such as freight, may be invoiced separately by the seller. However, only actual charges are included. If the goods are sold on an f.o.b. basis, freight charges are not added. This is in contrast to the British purchase tax, which requires addition of delivery charges even though the seller does not deliver. The Australian method is simpler from an administrative standpoint; the British method is more equitable and less likely to disturb existing trade practices.

In the case of credit transactions, the actual price, not the cash price, must be used. This likewise is in contrast to the British law, which allows adjustment of credit prices to a cash basis. Cash discounts allowed in the case of cash transactions may be deducted from the tax base. The discount, however, must be figured on the price net of the tax.

E. ADMINISTRATION

The administration of the law is vested in the Commissioner of Taxation. The commissioner has ample power to—

1. Determine liability for registration.
2. Make price readjustments for tax-base purposes when necessary.
3. Determine whether or not articles fall into exempt or taxable groups.
4. Determine the proper rate group in which an article belongs.
5. Interpret provisions of the law dealing with quotation of certificates.

The returns made by the taxpayers are audited by the commissioner's auditors, usually on the premises of the taxpayers. If any question arises as to amount of tax due, the commissioner may set the amount and the taxpayer must pay this amount unless he can disprove its correctness. The commissioner has wide powers to insure collection; he can sue the taxpayer, a debtor of the taxpayer, or even the bank holding a taxpayer's account, to collect taxes due. A taxpayer leaving the country must get a certificate that all taxes due have been paid or arranged for before he can leave Australia.

The actions of the commissioner in many cases have been carried to the courts; although in some cases the latter have overruled the decisions of the administrative body, the commissioner has been upheld in most cases, and litigation apparently has decreased as the tax has become more firmly established.

III. ADMINISTRATIVE PROBLEMS

The Australian sales tax has been the source of considerable difficulty to the administrators of the law and to the taxpayers. Criticism has quieted somewhat as time has gone on, and extremely serious war conditions increased cooperation of the taxpayers. Prior to December 1941, the position of Australia was relatively secure; the entry of Japan into the war and the successful Japanese conquest of Singapore and the Dutch East Indies almost overnight placed Australia in a very dangerous position. War efforts greatly increased; prices and wages rigidly set; manpower conscripted for army and industry; and the whole attention of the country turned to defense against invasion. In such circumstances, administrative problems of the sales tax seemed of little consequence. However, the problems of the tax have been important in the past and may well be again in the future. The principal sources of difficulty are discussed below.

A. DETERMINATION OF LAST SALE AT WHOLESALE

The intent of the law is that the tax shall apply at the last wholesale through which the article passes. Difficulty arises in carrying out this principle since determination of whether or not a particular sale is the last wholesale sale depends upon the intent of the buyer as to disposition of the article. If he intends to sell the article at retail, the previous transaction is the last wholesale sale and is taxable; if he intends to sell the article at wholesale, the previous transaction is obviously not the last wholesale sale, and the tax attaches at time of subsequent sale. If wholesalers and retailers did solely wholesale and retail business, respectively, there would be no difficulty, but such is not the case. Wholesalers sometimes sell at retail; if they buy goods for this purpose, they must so indicate to the manufacturer and the latter must pay the tax. The manufacturer must pay the tax when he sells to a retailer. A retailer may sell at wholesale; to the extent that he does, he can buy tax-free and pay the tax at time of sale. As a result of these complexities, all wholesalers, most manufacturers, and some retailers must pay the tax on part but not on all of their sales. Thus, accounts and inventory records are complicated and danger of evasion is increased.

B. DETERMINATION OF THE STATUS OF A FIRM AS A MANUFACTURER WITHIN THE COMPASS OF THE LAW

The problem of whether or not a firm is a manufacturer is significant only in the case of firms making sales at retail, since in the case of firms making sales to other firms the sales properly taxable are taxable as wholesale sales regardless of whether or not the seller is classified as a manufacturer. In the case of firms selling at retail, however, the problem is important since in some cases tax evasion would occur if the firm selling at retail is not classified as a manufacturer. For example, a person canning fish purchased from a fishing enterprise and selling the product at retail would not be taxed unless he were classified as a manufacturer.

The law specifies that a manufacturer is one who engages in the manufacture of goods, including printers, publishers, lithographers, or engravers. Manufacture is defined to mean production, including any act whereby an article commercially distinct from the parts or ingredients is formed. In practice, the definition has been construed very broadly to include all types of processing and assembling. In earlier years many cases of dispute arose; for example, questions were raised as to whether or not public stenographers and motorcycle assemblers were manufacturers. As the administrator and the courts have acted on the border-line cases, most firms have come to understand their status.

Difficulty has also arisen in regard to the position of firms making goods under contract for other firms. As the law stands at present, the contractors are not manufacturers if the firm with whom the contract is made supplies at least part of the materials and intends to sell the finished product. If all materials are supplied by the contracting firm and the goods are intended for use and not for resale by the other firm, the contracting firm is held to be the manufacturer.

C. DETERMINATION OF MATERIALS FOR AND AIDS TO MANUFACTURE

Prior to 1936 aids to manufacture were not exempted and many problems arose as to whether a certain article became an essential constituent part of a product or was merely an aid to the manufacture of the product. Exemption of aids to manufacture, in 1936, simplified the problem somewhat. Many problems remain, however, in regard to accessories and parts, especially as to whether they constitute essential parts of the product. Likewise, borderline cases arise in regard to aids to manufacture. The intent is that only those aids consumed directly in manufacture, and thus not durable ones, should be exempt. But, in practice, it is not always easy to decide whether a certain article is consumed directly and uncertainty and necessarily arbitrary decisions result. Thus steel wool is held to be exempt; molds and photographic plates are not. Likewise, articles that are exempt when purchased for use as "aids in manufacture" are not exempt when purchased for other purposes. For example, sponges bought to be used to apply dressing to shoes being manufactured are exempt; identical sponges bought to be used to clean the windows of the shoe factory would be taxable.

D. DETERMINATION OF TAXABLE GOODS

One of the greatest difficulties, especially in earlier years, has been that of eliminating uncertainty as to whether certain goods properly belonged in exempt or taxable groups. Numerous administrative rulings and increased detail in the law have been necessary. For example, 117 separate foods for infants and invalids are listed by brand name in the law itself. The exemption section of the 1938 sales tax volume containing the law and administrative rulings occupies 341 pages.

During the first few years of operation there was no single cumulative volume giving complete information on exemption rulings, and taxpayers often had difficulty in finding out the decisions on particular goods. In 1936 and 1938, complete indexed lists of all rulings were published. Monthly bulletins of current rulings are also provided.

Although uncertainty has been reduced as more and more cases have been ruled upon, it has not been eliminated. New products are constantly being developed and firms frequently must seek administrative rulings on these. Likewise, constant changes have been made in the scope of the exempt class.

Apart from uncertainty is the time and expense to business firms that is involved in segregating taxable and nontaxable transactions, keeping stock records, and quoting sales prices.

Finally, complications are introduced by the fact that exemption of goods imported is not the same as exemption of domestic goods.

E. DETERMINATION OF PROPER RATE GROUP

Closely related to the problem of exemption is that of determination of the proper rate group in which an article belongs. This problem arose only with the establishment of the differential rate system in 1940. The problems of uncertainty, accurate record-keeping, and evasion are similar to those created by the exemption of certain goods. From reports available, administration of the law apparently has been rendered much more difficult by the establishment of the differential rate system, despite war conditions which led to increased willingness of taxpayers to cooperate.

F. DETERMINATION OF WHOLESALE VALUE

When goods are sold by wholesalers to retailers or by manufacturers to retailers at regular wholesale-retail prices and the sale is at arm's length, with no control exercised by either party over the other, the actual sale price can be used for tax-base purposes. In the great majority of transactions this situation is to be found. In the following cases, however, price adjustment is necessary.

(1) Sale of goods at retail by the manufacturer. The price used is:

(a) The wholesale price charged by the manufacturer, if the latter sells the same goods at wholesale.

(b) The price at which the manufacturer could buy similar goods from another manufacturer, if the former does not sell these goods at wholesale.

2. Sale of goods at retail by a wholesaler. The usual wholesale price is used.

3. Sale involving quotation by the manufacturer of two prices, one for materials, the other for labor. The sum of the two charges is taxable, even though services are not normally subject to the tax.

4. Transfer into stock to be sold at retail of goods not previously taxed. Manufacturers or wholesalers may produce goods, or buy goods tax-free on the basis of intended resale at wholesale, and then later transfer the goods to retail outlets owned by the firms, or into stocks of goods out of which retail sales are made. The tax applies at time of such transfer. The usual wholesale price of the goods is used for tax purposes. If the manufacturer has paid tax on all materials used, the tax base applicable when goods are transferred to retail stock is the wage cost plus 20 percent.

5. Application by wholesalers or manufacturers of goods for their own use. In the case of wholesalers, the tax is applied to the purchase price of the articles used. In the case of manufacturers, the usual wholesale sales price is used.

6. Import transactions. In the case of import transactions which

are taxable at time of importation,[6] the value for duty purposes plus 20 percent is the tax base.[7] The 20-percent adjustment is made to allow for usual wholesale margin.

7. Sales to controlled firms. The commissioner has power to alter the sale price, when it appears to be lower than reasonable, to the usual wholesale level for similar goods.

IV. INCIDENCE

A. CONSUMPTION GOODS

1. Shifting to Retailers.

As explained above, the tax is paid ordinarily by the wholesaler on the basis of his sales to retail firms, or by the manufacturer who sells directly to retailers. The tax represents a substantial increase in cost to the taxpayer and almost certainly will be passed on to the retailer. The taxpayer is required to quote the tax separately to the retailer rather than to include the tax in the selling price. The seller is not required, however, to add the tax at all if he does not wish to. In earlier years, complaints by businessmen that some firms were absorbing the tax developed. This occurrence would seem to be the exception, however, especially under wartime conditions.

In cases in which the price increase causes substantial loss in sales volume and thus raises average cost of manufacturers and wholesalers, further price increases to cover the latter are likely. To the extent that these increases have been made in the past, they remain today. However, at present, if the tax were to be increased above current levels, price increases beyond the amount of the tax probably would be limited, if not prevented, by rigid price control.

2. Shifting to Consumers.

a. Prior to Present Price-Control System.

The incidence of the tax has been altered somewhat by introduction of rigid price control. Shifting in the situation prior to the establishment of control will be considered first. As indicated above, if wholesalers added the tax to the selling prices, under usual retail pricing methods, the retailers probably would apply their relatively constant mark-up percentage figures to the new purchase prices. Accordingly, retail prices probably were increased by an amount somewhat greater than the amount of the tax. The excess of price increase over the amount of the tax would serve to compensate the retailers for reduced sales volume and eliminate the failure of some of the firms, which otherwise would result if sales volume fell appreciably.

The sales tax law did not prevent firms from raising prices by an amount greater than the tax; it did specify, however, that a firm could

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[6]Goods imported by unregistered firms, by any firms for resale at retail, or by manufacturers or other firms for use as equipment. In other cases the tax is paid when the goods are sold to retailers.

[7]If the goods are customs free, the Commissioner of Taxation determines what their value for customs purposes would have been.

not collect more than the amount of the tax by claiming it to be greater than it actually was. There is no requirement as to separate quotation of the tax by retailers.

Under the Australian wage-control system, however, further shifting was likely. The basic wage, upon which the actual wage of most workers depends, is adjusted automatically on a quarterly basis according to changes in the cost-of-living index. While many items, such as food, rent, fuel, and power, which enter into the cost-of-living index, are tax-exempt, there are some taxable goods, such as clothing, household hardware, supplies, and drapery that are included in the index. Accordingly, any tax on these items would cause sufficient increase in wages to pass off the burden of the tax to others. Thus, low-income workers probably bore the sales tax only to the extent that they purchased taxable goods not included in the wage-fixing regimens. The burden probably was shifted to nonwage earners by reduction in profit earned and by higher prices caused by wage increases.

b. Under Present Price-Wage Control System.

In September of 1939, limited price control was introduced, designed primarily to prevent profiteering. Attempt was made to keep margins of firms at the same levels as existed prior to 1939. In the case of commodities subject to control, price increases due to increased tax were limited to the amount of the tax, and any higher operating cost due to loss in sales had to be borne by the firm. In the spring of 1942, the limited control was replaced by a much more complete control involving freezing of most prices at current levels. Thus, if the tax were to be increased again, price increases on all taxable goods would probably be limited strictly to the amount of the tax.

In regard to wage readjustments resulting from the tax, in February 1942, wages were also frozen at current levels subject to readjustments to cover cost-of-living changes. Because of the readjustments still made for cost-of-living changes, any tax increase on goods entering into the cost-of-living index would result in higher wages. Prices, however, would not necessarily be readjusted to cover higher wage costs and the inflationary tendencies would accordingly be checked. Furthermore, relatively few taxable items actually enter into the cost-of-living index.

B. CAPITAL EQUIPMENT; MULTIPLE TAXATION

Although the law exempts materials for and aids to manufacture, industrial machinery, and store and office equipment of all types are taxed. Some of these goods, such as office machines, are taxed at the 25-percent rate; most are included in the basic 12½-percent rate group. These goods are sold usually from manufacturer to user; it is to be expected that the manufacturer will pass on the full amount of the tax to the purchaser. The cost of these goods, of course, enters into the costs and prices of the consumption goods produced. Accordingly, the purchasers of the consumption goods tend to bear not only the tax levied on such goods directly but also upon the equipment which has been used to produce them. Even buyers of tax-exempt goods may pay somewhat higher prices to cover taxes on equipment used to make these goods.

The inclusion of capital equipment within the scope of the tax may have been due to the administrative problems that would be encountered if they were exempted. An equal amount of revenue, however, could be obtained by a slightly higher rate on consumers' goods; the burden of the part of the tax on capital equipment tends to be borne by consumers anyway, and the application of the tax to capital goods tends to discourage the use of such goods in production and might interfere with optimum utilization of resources. It is true that exclusion of all goods entering into cost of production is difficult because some articles may be used for either production or consumption purposes, and the final use cannot be determined at time of wholesale sale. But similar problems exist in the case of aids to manufacture, which are exempt.

C. TAX BURDEN

The intent of the law prior to the war was to exempt, so far as possible, basic necessities. As a result, a substantial part of the expenditures of the lower income groups bore no direct sales-tax burden. Further, in the case of those taxable goods purchased by the working classes that enter into the wage-adjusting regimens, the basic wage rate is adjusted to cover price increases caused by the tax. Thus, in practice, the wage earners probably bore the direct burden of the tax only to the extent that they purchased taxable goods not included in the wage-fixing regimens. However, other low-income groups, such as farmers and retired persons living on relatively small investments, did not benefit from wage readjustments and probably bore a relatively heavier burden. Thus most of the tax burden probably was borne by the higher-income groups with some burden on low-income groups other than wage earners.

With the coming of the war, exemptions were curtailed and an increased burden was placed on the low-income classes. It must be remembered, however, that even yet utility services, rent, and basic foods are not taxed, and thus very low income groups could not be burdened seriously by the sales tax. More recently, reduction in the tax has been used as a means of helping to stabilize living costs at the April 1943 level.

CHAPTER EIGHT
BRITISH PURCHASE TAX
I. INTRODUCTION
A. ORIGIN

In April 1940, Sir John Simon, then Chancellor of the Exchequer, in his budget message to the House, recommended the establishment of a tax entirely new to English experience—a levy which he called the purchase tax. Essentially this proposal was a form of sales tax, imposed at the wholesale level, on a wide range of specified commodities, at uniform rate. However, at the time, no specific rate was recommended. The purposes of the levy, as outlined by Simon, were (1) to add to government revenue, and (2) to check consumer spending as a means of lessening inflation dangers.

The wholesale level was chosen in preference to the retail level in the belief that the latter "would involve the recording of and accounting for an enormous number of transactions, many of them very small, and would interfere in many ways with the ordinary carrying on of busy retail trade." A general turn-over tax was rejected because of the unequal number of sales among various business organizations and industries in the transfer of goods from point of initial production to final users and consumers. No particular mention was given to a manufacturers' sales tax in discussions by the House of Commons.

B. OPPOSITION AND REVISION

Very considerable opposition developed immediately upon the presentation of the suggestion. The center of the opposition was the Labor group in the House of Commons. Opposition was based primarily on the inclusion of many necessities, such as clothing. Unsympathetic comment also came from other sources. The London Economist, for example, characterized the proposal as interesting and ingenious, but maintained that the relatively small yield would not justify the supposedly extreme administrative difficulties. Others attacked the proposal as a tax measure that would aid inflation rather than check it.

Early in July 1940 the proposal was submitted in bill form, without details as to rate schedule or date of commencement, but with a list of exemptions. Fear of Labor opposition caused postponement of consideration of the bill and subsequently the bill was withdrawn. The new Chancellor, Sir Kingsley Wood, however, revised the proposal and resubmitted it as a part of the supplementary budget on July 23, 1940. The basic modification was the replacement of the uniform rate principle by a differential rate schedule, the rates being lower on "necessities" than on "luxuries." The basic rate in the new bill was 33⅓ percent, with a reduced rate of 16⅔ percent on certain articles considered to be virtual necessities.

C. ENACTMENT AND INTRODUCTION

Substitution of the differential rate schedule for the uniform rate eliminated most of the effective opposition and the bill was enacted in August 1940. The Treasury, after conducting the registration of those subject to the law, set the effective date as October 21, 1940. In general, the tax was introduced without serious administrative difficulty despite many misgivings. Due to the lapse in time between its adoption and the date it became effective, however, a large amount of forward buying was done in order to avoid the tax. Wholesalers were not sympathetic to the levy. The Association of British Chambers of Commerce urged revision to provide collection from the retailer. The Trades Union Congress sought exemption of additional "essentials," especially clothing. In addition, claims that the tax led to profiteering were occasionally raised.

D. MODIFICATIONS

In order to lessen the burden of the purchase tax on the low-income groups, further exemptions were made during 1942 and 1943. The Finance Act of 1942 provided for the exemption of utility clothing and, later in the year, treasury orders further exempted utility boots, utility shoes, and utility furniture. The Finance Act of 1943 also exempted all utility cloth as well as utility textile articles of a kind used for domestic purposes, soft furnishings, and haberdashery. To make up part of the revenue lost from these exemptions and to discourage consumer expenditures on luxuries, a number of articles formerly taxed at 33⅓ percent were placed in a new 66⅔ percent rate group in 1942, and subsequently raised to 100 percent in 1943.

E. PRESENT POSITION OF THE TAX

The British appear to have accepted the purchase tax in part because of war psychology and willingness to sacrifice. However, the direct impacts of war, including substantial decreases in the standard of living, rationing, and price controls, have dominated the British economy to such an extent that the purchase tax apparently has been a relatively unimportant additional war factor either in trade or in the life of civilians.

Although the range of taxable goods is great and the rates of tax are high, the expected yield in the 1943–1944 fiscal year was only 3.1 percent of the total estimated tax revenue, including customs receipts. With the extension of the number of exemptions and the decrease in the volume of sales of taxable items, the tax is likely to become an even less significant part of the tax structure.

II. STRUCTURE

A. TAXPAYERS

The liability for the tax rests on those concerns which are registered under the law. Registration is required of all manufacturers and wholesalers selling taxable goods in amounts greater than 500 pounds per year. The figure was originally 2,000 pounds; the reduction to 500 pounds was made in November of 1941 because of competitive difficulties between registered and nonregistered firms. For example, in some cases small wholesalers could not buy tax-free and thus had to advance the money for the tax until the articles were sold, while their larger competitors bought tax-free and paid tax only after the time of sale. In other cases, small manufacturers gained an advantage over their competitors since they could sell tax-free, having paid tax only upon materials. When the materials were of such nature as not to be taxable at all, the small firms escaped tax entirely.

There were about 40,000 registered firms when the exemption was 200 pounds. Available information does not yet indicate the number of additional registrants consequent to the decrease in exemption to 500 pounds.

Collections are made on a monthly basis.

B. TAX BASE AND TAX RATES

1. Tax Base.

The tax applies normally to the sales price of specified goods sold by wholesalers and manufacturers to retailers for resale or to anyone for final use or consumption. Deviation from this general principle is to be found in certain instances:

(a) Some large retailers are registered and thus enabled to buy tax-free. Tax apparently applies when the goods are transferred to the retail units.

(b) Goods imported into the country for use of the importer are taxed at time of importation.

The tax normally does not apply to sales of articles which are to be resold at wholesale, nor to sales of materials used in further manufacture. The tax does not apply to used merchandise, when records are properly kept, unless their repair and reconditioning has made them virtually new articles.

2. Taxable Goods and Tax Rates.

The tax applies only to sales of goods specified in the Act as taxable rather than to sales of all goods except those specifically exempted, as is true in the case of the Australian wholesale sales tax and the Canadian manufacturers' sales tax. The taxable articles are listed in general groups of related commodities. The coverage is very broad; only a limited number of classes of commodities, such as food, are not mentioned at all. Some items falling within the taxable classes are specifically exempted.

At present, there are three rates. The basic rate of 33⅓ percent applies to articles considered to be neither seminecessities nor obvious luxuries. A second group of articles, considered to be virtual necessities, is taxed at a reduced rate of 16⅔ percent. The maximum rate of 100 percent introduced in the April 1943 revision of the tax, applies to articles considered to be luxuries. All articles not falling within any of the groups are not subject to the tax. The following section indicates the nature of articles specifically exempted, those exempted by nonreference, and those exempted by administrative regulation.

3. Exemptions.

(a) Goods not falling within the compass of the taxable groups are exempt. The principal groups of goods thus excluded consist of—

(1) Those considered to be absolute necessities, including food, coal, and utility services.

(2) Those already bearing high taxes, such as gasoline, tobacco, and drinks.

(3) Most industrial machinery and equipment and materials.

(b) Within the general groups of taxable goods some specific articles are exempted by provision of the schedule of the Act or by administrative regulation.

(c) Sales of goods by registered manufacturers or wholesalers to registered wholesalers for resale, or to manufacturers as materials for further manufacture are not taxable.

(d) Also exempted are goods sold for export by registered manufacturers and wholesalers. When goods are exported after tax has been paid, a rebate is allowed subject to certain conditions.

(e) Sales by manufacturers or wholesalers whose total sales of taxable goods are less than 500 pounds per year are exempted.

(f) Purchase by certain government departments from registered sellers are not taxable. In addition, registered contractors and subcontractors who are the agents of registered contractors engaged directly in supplying such departments may purchase tax-free otherwise taxable articles. However, unregistered contractors are not extended this privilege.

The commissioners have power to determine whether particular articles are taxable or not. Already several lists of taxable and exempt goods have been issued to lessen the number of questions and the amount of uncertainty respecting individual items. These lists become effective if not rejected by the House of Commons within 28 days after issue.

4. Valuation.

The tax is intended to apply to the wholesale selling price of taxable goods. When goods are sold by wholesalers to independent retailers, the actual sale price is used for tax purposes. When goods are transferred without sale, or the treasury believe that the price is not a normal one, the commissioners can determine the proper price for tax purposes. For example, when a retail store is controlled by a manufacturer, the price at which goods are sold by the manufacturer to the retail store may be far below the normal wholesale price, and the price must be raised for tax purposes to prevent evasion. In case of dispute, a referee selected by the Chancellor renders a decision, which is final.

III. ADMINISTRATIVE PROBLEMS

The introduction of a general sales tax into the tax system of any country necessarily requires increase in administrative personnel and creates administrative problems which require solution. In the case of the British purchase tax, the position of the chartered accountants and certain factors arising out of the war situation apparently lessened the number and seriousness of these problems. The chartered accountants in Great Britain consider themselves to be servants of the government as well as agents of the firm employing them. Accordingly, their work increases greatly the amount of taxpayer cooperation. The very serious war situation apparently greatly increased the willingness of taxpayers to cooperate with the commissioners in the desire to avoid controversy and litigation with regard to interpretation of the tax. The scarcity of goods, the bombings of stores and houses, and the limitations on transport were problems so much more important than technicalities of the purchase tax that possible controversies, which in peacetime would attract serious attention, were largely forgotten. Extensive price-fixing and the limitations on travel of individuals served to limit price competition and to lessen the significance of such competitive inequalities as may be created by the tax. Finally, standardization and price and margin controls in themselves tended to simplify administrative determinations respecting tax base.

Although the foregoing factors facilitated the introduction and operation of the new tax, the basic administrative problems outlined below remain.

A. DETERMINATION OF SALES AT WHOLESALE

The basic principle is that only sales by registered firms (wholesalers and manufacturers) to unregistered firms (retailers) are taxable. But while in general this principle is satisfactory, it is not without qualification. Two types of transactions require exception from the general rule:

1. Sales by registered firms to other registered firms for use by the buyer are subject to tax. The administrative provisions designed to insure this inclusion require that buyers must show at time of purchase that goods are being bought for resale or for use as materials for manufacture; otherwise the tax is applied.
2. Transfers of goods to retail stores owned and operated by wholesalers or manufacturers are taxed at the time of transfer of goods to the retail unit, even though there is no bona fide sale, in order to avoid placing at a competitive disadvantage the independent retailers who must supply the working capital to cover the tax.

B. DETERMINATION OF GOODS SUBJECT TO TAX

The law specifies the generic classes of goods subject to the levy. Consequently, it has been necessary for the commissioners to issue detailed lists enumerating exactly which articles within the classes are subject to tax and which are exempt. For example, watch fobs are listed as included in the "clock" class subject to the levy; time clocks to record arrival and departure of employees are not. Some of the regulations are very detailed. For drugs and medicines, about 300 items are specified as exempt. In some cases, exemption is controlled by the intended use of the article. Thus, fishing nets to be used for commercial fishing are exempt; those to be used for sport are taxed.

The principal difficulties created by the problem of determining taxable goods are:

1. The time required for administrative decisions.

2. The arbitrary distinctions that must be drawn between closely related goods at the same time that attempts are being made to avoid competitive disturbances in industry.

3. The uncertainty as to whether specific articles are taxable or exempt and the difficulty to taxpayers in keeping track of goods subject to different rates of tax and goods exempt.

C. DETERMINATION OF WHOLESALE VALUE

The law specifies wholesale value as the tax measure. However, varying business practices introduce difficulties in regard to the administrative determinations of proper wholesale value.

1. In the case of transfer without sale, the proper wholesale sales value must be determined. Determination of tax measure in this case is not difficult when articles are standardized or when similar goods are actually selling at wholesale. If these conditions do not obtain, the determinations are difficult.

2. In the case of sales to retail outlets controlled by registered wholesalers and manufacturers, the prices may not represent true wholesale value. Accordingly, adjustments are necessary.

3. In the case of sales by registered wholesalers or manufacturers directly to consumers, the sale price may be at the retail level rather than the wholesale level. To use the actual price in such a case would impose undue tax burden. The attempt is made to adjust the retail price to the customary wholesale price for the same goods. When this kind of determination is impractical, a percentage figure equal to customary retail mark-up is subtracted.

4. Even in the case of arm's-length sales to retailers, adjustment of sales prices is often necessary. This is true in the cases of—

(a) Sales by registered manufacturers to retailers or commercial users made at the same prices at which sales are made to registered wholesalers. Here, the prices for tax purposes, according to the regulations, must be raised to the usual wholesale-retail sales level.

(b) Quantity discount prices. Usually high quantity discounts may not be deducted for tax-base purposes, although normal quantity discounts are deductible.

(c) Sales at cash discount. Ordinary cash discounts may be deducted whether the buyer takes advantage of them or not.

(d) Sales at prices which do not include delivery costs. Delivery expenses must be added to the sales price for tax-base purposes, whether such charges are included in the sales price or not, and whether the seller actually delivers or not. In the latter case, either a normal delivered price is used or an amount is added equal to normal delivery charges.

IV. INCIDENCE AND TAX BURDEN

A. SHIFTING TO THE RETAILER

The levy normally can be expected to be passed on to the retailer immediately by the addition of the amount of the tax to the wholesaler's price. There is no provision in the law which attempts to force this shifting, but since the tax constitutes a substantial cost increase, the sellers cannot be expected to absorb it in whole or to any substantial extent.

It is possible that in some cases the tax may cause loss in sales and secondary readjustments in prices to offset higher costs and lower sales volume. But with the situation one of post-wartime scarcity of goods, it is unlikely that the tax could be responsible for additional serious contraction in sales volume.

There is some opinion, however, that the high luxury tax has the effect of either forestalling or absorbing abnormal profits on luxury articles in very short supply. The reasoning is that in the absence of rationing and effective price control, the prices of luxury articles would inevitably rise to what the market would bear. Thus, producers and distributors of the scarce goods would make abnormal profits per unit of sale. The 100-percent luxury tax, however, tends to absorb the abnormal profits since selling prices to consumers probably are no higher under the tax than they would be without it.

B. SHIFTING TO CONSUMERS

The retailer can normally be expected to pass on to the consumer both the tax and any secondary price increase. Under the law the wholesaler is required to show separately on the invoice to the retailer the amount of tax on each transaction, so that the retailer may himself add the tax only to the retail prices of taxable goods. Failure to do this would tend to defeat the intent of the law to tax only certain goods. Although diffusion of tax burden to untaxed goods is still possible with such provisions, it is less likely than would be the case if the tax were only indicated to the retailer as a lump sum. The retailer may quote the tax separately to the consumer but is not required to do so. In practice, retail prices apparently are quoted inclusive of tax.

C. PYRAMIDING

Although the law says nothing about the action of the retailer in regard to the tax, it was apparently the intent of the government not to permit retailers to make their margin on the tax. The separate quotation provision was designed in part to check such pyramiding. In addition, immediately after the tax went into operation the Central Price Regulation Committee issued a regulation designed to prevent the application of the old retail mark-up percentages to the tax. The retailers were required to lower their mark-up figures on the basis of a table supplied in the regulations. This table was constructed in such a way that the new mark-up figure applied to purchase price including tax would raise retail prices only by the amount of the tax. Thus a retailer formerly using a 20-percent mark-up must now use one of 16 percent on goods subject to the 33⅓-percent rate. Enforcement was left to users and consumers who have the privilege of reporting pyramiding violations to local price control bodies.

However, the committee did authorize retailers to readjust mark-ups to cover higher cost from lower sales volume caused by the tax. The need for this was indicated by the Secretary of the Retail Distributors Association at the time the tax went into operation. The importance of tax-induced loss in sales, however, seems to be remote under present British supply conditions. In ordinary times, such mark-up adjustments, under high tax rates, could raise prices significantly more than the amount of the tax.

D. MULTIPLE TAXATION

The intent of the law is to avoid multiple taxation. This largely is accomplished (1) by excluding from the scope of the tax such articles as industrial machinery and equipment, (2) by exempting materials for manufacture (that is, materials wrought in and attached to articles in the process of manufacture), and (3) by exempting many articles used in commerce and industry when they come within the scope of the taxable classes of goods. However, office furniture, business machinery, and office supplies (with exceptions) generally are taxed. To the extent, therefore, that such articles are taxed, the costs of producers and distributors are increased and the final sales prices of taxed and untaxed articles also tend to be increased. The extent of the exemptions is so broad that multiple taxation under the purchase tax appears to be relatively unimportant.

E. TAX BURDEN

Because of the inclusion of some necessities, low-income groups bear a small portion of the purchase tax burden. It must be remembered, however, that almost all of the articles and services that bulk large in low-income budgets are excluded. Even before the exemption of utility clothing, utility cloth, utility furniture, and certain utility textile articles, it was estimated by the treasury that 80 percent of total consumers' expenditures were made for tax-exempt goods and services, with an additional 12 percent for articles subject to the 16⅔-percent rate. According to an independent study based on the 1941–1942 law, the estimated burden of the tax on a family of four varied from about 2 percent of earned income for those having incomes of 100 pounds to 0.1 percent on incomes of 50,000 pounds.

Under present exemptions, a larger percentage of consumer expenditures will be made for tax-exempt goods. Moreover, with the further increase in the tax to 100 percent on luxury articles, a greater part of the tax load probably is shifted to upper-income consumers.

Government subsidies along with price control of food and other essential commodities have succeeded in effectively stabilizing the cost of living at about 125 to 130 percent of the prewar level. The benefits accorded to the low-income groups by this price stabilization policy must be recalled when considering the burden, usually slight, imposed on them by the purchase tax. As a matter of fact, purchase tax collections in the fiscal year 1942–1943 are expected to be only about half the cost of subsidy payments needed to stabilize prices.

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EXAMPLE OF A RETAIL SALES-TAX ACT APPLICABLE TO NEVADA

AN ACT

To provide revenue for the State of Nevada; providing for sales and use taxes; providing for the manner of collection; defining certain terms; providing penalties for violation, and other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

CHAPTER 1

DEFINITIONS

SECTION 1. This act is known and may be cited as the "Sales and Use Tax Act."

SEC. 2. Except where the context otherwise requires, the definitions given in this article govern the construction of this act.

SEC. 3. "Person" includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit, but shall not include the United States, this state or any agency thereof, or any city, county, district, or other political subdivision of this state.

SEC. 4. "Taxpayer" means any person liable for tax hereunder.

SEC. 5. "Sale" means any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration, or any withdrawal, except a withdrawal pursuant to a transaction in foreign or interstate commerce, of tangible personal property from the place where it is located for delivery to a point in this state for the purpose of the transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of the property for a consideration.

"Transfer of possession," "lease," or "rental" includes only transactions found by the commission to be in lieu of a transfer of title, exchange, or barter.

"Sale" includes:

(a) The producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.

(b) The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others.

(c) The furnishing, preparing, or serving for a consideration of food, meals, or drinks.

(d) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(e) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

SEC. 6. A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business of tangible personal property.

The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor, if the delivery is to a consumer pursuant to a retail sale made by a retailer not engaged in business in this state, is a retail sale in this state by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

SEC. 7. "Storage" includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

SEC. 8. "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of that property in the regular course of business.

SEC. 9. "Storage" and "use" do not include the keeping, retaining, or exercising any right or power over tangible personal property shipped or brought into this state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

SEC. 10. "Purchase" means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price is a purchase. A transfer for a consideration of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication, is also a purchase.

SEC. 11. "Sales price" means the total amount for which tangible property is sold, without any deduction on account of any of the following:

(a) The cost of the property sold.

(b) The cost of materials used, labor or service cost, interest charged, losses, or any other expenses.

(c) The cost of transportation of the property prior to its purchase.

The total amount for which property is sold includes all of the following:

(a) Any services that are a part of the sale, valued in money, whether paid in money or otherwise.

(b) Any amount for which credit is given to the purchaser by the seller.

"Sales price" does not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) The amount charged for property returned by customers upon rescission of the contract of sale when the entire amount charged therefor is refunded either in cash or credit.

(c) The amount charged for labor or services rendered in installing or applying the property sold.

(d) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(e) Transportation charges separately stated, if the transportation occurs after the purchase of the property is made.

SEC. 12. "Gross receipts" mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, without any deduction on account of any of the following:

(a) The cost of the property sold. However, in accordance with such rules and regulations as the tax commission may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business.

(b) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.

(c) The cost of transportation of the property prior to its sale to the purchaser.

The total amount of the sale or lease or rental price includes all of the following:

(a) Any services that are a part of the sale, valued in money, whether received in money or otherwise.

(b) All receipts, cash, credits, and property of any kind.

(c) Any amount for which credit is allowed by the seller to the purchaser.

"Gross receipts" do not include any of the following:

(a) Cash discounts allowed and taken on sales.

(b) Sale price of property returned by customers upon rescission of the contract of sale when the full sale price is refunded either in cash or credit.

(c) The price received for labor or services used in installing or applying the property sold.

(d) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(e) Transportation charges separately stated, if the transportation occurs after the sale of the property is made to the purchaser.

For purposes of the sales tax, if the retailers establish to the satisfaction of the tax commission that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

SEC. 13. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect, including mere solicitation.

SEC. 14. "Seller" includes every person engaged in the business of selling tangible personal property the gross receipts from the retail sale of which are required to be included in the measure of the sales tax.

SEC. 15. "Retailer" includes:

(a) Every person engaged in the business of making sales at retail or in the business of making retail sales at auction of tangible personal property owned by the person or others.

(b) Every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.

When the tax commission determines that it is necessary for the efficient administration of this act to regard any salesmen, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, or employers the board may so regard them and may regard the dealers, distributors, supervisors, or employers as retailers for purposes of this act.

SEC. 16. "Tangible personal property" means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.

SEC. 17. "In this state" or "in the state" means within the exterior limits of the State of Nevada and includes all territory within these limits owned by or ceded to the United States of America.

SEC. 18. "Tax commission" means the Nevada tax commission.

CHAPTER 2

IMPOSITION AND BURDEN OF THE SALES TAX

SEC. 19. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 1 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state on or after July 1, 1949.

SEC. 20. The tax hereby imposed shall be collected by the retailer from the consumer insofar as it can be done.

SEC. 21. It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded. Any person violating any provisions of this section is guilty of a misdemeanor.

SEC. 22. The tax commission may by regulation provide that the amount collected by the retailer from the consumer in reimbursement of the tax be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale.

CHAPTER 3

PERMITS

SEC. 23. Every person desiring to engage in or conduct business as a seller within this state shall file with the tax commission an application for a permit for each place of business. Every application for a permit shall be made upon a form prescribed by the tax commission and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the tax commission may require. The application shall be signed by the owner if he is a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of his authority.

SEC. 24. At the time of making an application, the applicant shall pay to the tax commission a permit fee of one dollars ($1) for each permit.

SEC. 25. After compliance with sections 23, 24, and 92 by the applicant, the tax commission shall grant and issue to each applicant a separate permit for each place of business within the state. A permit shall not be assignable, and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

SEC. 26. A seller whose permit has been previously suspended or revoked shall pay the tax commission a fee of one dollar ($1) for the renewal or issuance of a permit.

SEC. 27. Whenever any person fails to comply with any provision of this act relating to the sales tax or any rules or regulation of the tax commission relating to the sales tax prescribed and adopted under this act, the tax commission, upon hearing, after giving the person 10 days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The notice may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. The tax commission shall not issue a new permit after the revocation of a permit unless it is satisfied that the former holder of the permit will comply with the provisions of this act relating to the sales tax and the regulations of the tax commission.

SEC. 28. A person who engages in business as a seller in this state without a permit or permits or after a permit has been suspended, and each officer of any corporation which so engages in business, is guilty of a misdemeanor.

SEC. 29. For the purpose of the proper administration of this act and to prevent evasion of the sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

SEC. 30. The certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided for in chapter 3 of this act and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

SEC. 31. The certificate shall be signed by and bear the name and address of the purchaser, shall indicate the number of the permit issued to the purchaser, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the tax commission may prescribe.

SEC. 32. If a purchaser who gives a certificate makes any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the use shall be deemed a retail sale by the purchaser as of the time the property is first used by him, and the cost of the property to him shall be deemed the gross receipts from such retail sale. If the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale, the purchaser may elect to include in his gross receipts the amount of the rental charged rather than the cost of the property to him.

SEC. 33. If a purchaser gives a certificate with respect to the purchaser of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods, shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

CHAPTER 4

IMPOSITION AND BURDEN OF THE USE TAX

SEC. 34. An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer on or after July 1, 1949, for storage, use, or other consumption in this state at the rate of 1 percent of the sales price of the property.

SEC. 35. Every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or from a retailer who is authorized by the tax commission, under such rules and regulations as it may prescribe, to collect the tax and who is, for the purposes of this act relating to the use tax, regarded as a retailer maintaining a place of business in this state, given to the purchaser pursuant to section 36 is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

SEC. 36. Every retailer maintaining a place of business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not exempted under chapter 5 of this act, shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the tax commission.

SEC. 37. The tax required to be collected by the retailer constitutes a debt owed by the retailer to this state.

SEC. 38. It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded.

SEC. 39. The tax required to be collected by the retailer from the purchaser shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales.

SEC. 40. Any person violating sections 36, 38, or 39, is guilty of a misdemeanor.

SEC. 41. Every retailer selling tangible personal property for storage, use, or other consumption in this state shall register with the tax commission and give the name and address of all agents operating in this state, the location of all distribution or sales houses or offices or other places of business in this state, and such other information as the tax commission may require.

SEC. 42. For the purpose of the proper administration of this act and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

SEC. 43. The certificate relieves the person selling the property from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property and who holds the permit provided for by chapter 3 of this act and who, at the time of purchasing the tangible personal property, intends to sell it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose.

SEC. 44. The certificate shall be signed and bear the name and address of the purchaser, shall indicate the number of the permit issued to the purchaser, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the tax commission may prescribe.

SEC. 45. If a purchaser who gives a certificate makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used. If the sole use of the property, other than retention, demonstration, or display in the regular course of business, is the rental of the property while holding it for sale, the purchaser may elect to pay the tax on the use measured by the amount of the rental charged rather than the sales price of the property to him.

SEC. 46. If a purchaser gives a certificate with respect to the purchase of fungible goods and thereafter commingles those goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.

SEC. 47. It shall be further presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer on or after July 1, 1949, for storage, use, or other consumption in this state.

CHAPTER 5

EXEMPTIONS

SEC. 48. "Exempted from the taxes imposed by this act," as used in this chapter, means, in the case of the sales tax, exempted from the computation of the amount of tax imposed.

SEC. 49. There are exempted from the taxes imposed by this act the gross receipts from the sale of and the storage, use, or other consumption in this state of tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state.

SEC. 50. There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of any tangible personal property to:

(a) The United States, its unincorporated agencies and instrumentalities.

(b) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

(c) The State of Nevada, its unincorporated agencies and instrumentalities.

(d) Any county, city, district, or other political subdivision of this state.

SEC. 51. Notwithstanding any other provision of law the tax imposed under this act shall apply to the gross receipts from the sale of any tangible personal property to contractors purchasing such property either as the agents of the United States or for their own account and subsequent resale to the United States for use in the performance of contracts with the United States for the construction of improvements on or to real property.

SEC. 52. There are exempted from the taxes imposed by this act the gross receipts from the sale of gold bullion, gold concentrates, or gold precipitates by the producer or refiner and the storage, use, or other consumption in this state of gold bullion, gold concentrates, or gold precipitates when sold by the producer or refiner for storage, use, or other consumption in this state.

SEC. 53. There are exempted from the computation of the amount of the sales tax the gross receipts from the sales of silver bullion by the producer or refiner.

SEC. 54. There are exempted from the taxes imposed by this act the gross receipts from the sale and distribution of, and the storage, use, or other consumption in this state of motor vehicle fuel, the distribution of which in this state are subject to the tax imposed by the motor vehicle fuel tax act of 1935, as amended, or the use fuel tax act of 1939, as amended, and not subject to refund.

SEC. 55. There are exempted from the taxes imposed by this act the gross receipts from the sale and distribution of, and the storage, use, or other consumption in this state of wines, beers, and intoxicating liquors, the distribution of which in this state are subject to the tax imposed by the liquor revenue act of 1935, as amended, and not subject to refund.

SEC. 56. There are exempted from the taxes imposed by this act the gross receipts from the sale and distribution of, and the storage, use, or other consumption in this state of cigarettes, the distributions of which in this state are subject to the tax imposed by the cigarette revenue act of 1947, or as it may be thereafter amended, and not subject to refund.

SEC. 57. There are exempted from the taxes imposed by this act the gross receipts from sales of and the storage, use, or other consumption of:

(a) Livestock and poultry of a kind the products of which ordinarily constitute food for human consumption.

(b) Feed for livestock and poultry of a kind the products of which ordinarily constitute food for human consumption, or are to be sold in the regular course of business.

(c) Seeds and annual plants the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

(d) Fertilizer to be applied to land the products of which are to be used as food for human consumption or sold in the regular course of business.

SEC. 58. There are exempted from the taxes imposed by this act the gross receipts from the sale of, and the storage, use, or other consumption in this state of, meals served by public or private schools, school districts, student organizations, and parent-teacher associations, to the students or teachers of a school, and meals served by employers or employee organizations to the employees engaged in work upon a particular project or undertaking.

SEC. 59. There are exempted from the taxes imposed by this act, the gross receipts from sales of and the storage, use, or other consumption in this state of:

(a) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

(b) Containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this act.

(c) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

As used herein the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "nonreturnable containers."

SEC. 60. There are exempted from the computation of the amount of the sales tax the gross receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

SEC. 61. There are exempted from the computation of the amount of the sales tax the gross receipts from any sale of tangible personal property which is shipped to a point outside this state pursuant to the contract of sale by delivery by the vendor to such point by means of (a) facilities operated by the vendor, (b) delivery by the vendor to a carrier for shipment to a consignee at such point, or (c) delivery by the vendor to a customs broker or forwarding agent for shipment outside this state.

SEC. 62. The storage, use, or other consumption in this state of property, the gross receipts from the sale of which are required to be included in the measure of the sales tax, is exempted from the use tax.

CHAPTER 6

RETURNS AND PAYMENTS

SEC. 63. The taxes imposed by this act are due and payable to the tax commission quarterly on or before the last day of the month next succeeding each quarterly period.

SEC. 64. On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed with the tax commission in such form as the tax commission may prescribe.

For purposes of the sales tax a return shall be filed by every seller. For purposes of the use tax a return shall be filed by every retailer maintaining a place of business in the state and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed by the person required to file the return or by his duly authorized agent but need not be verified by oath.

SEC. 65. For purposes of the sales tax, the return shall show the gross receipts of the seller during the preceding reporting period. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him, the storage, use, or consumption of which property became subject to the use tax during the preceding reporting period; in case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use, or consumption of which became subject to the use tax during the preceding reporting period.

The return shall also show the amount of the taxes for the period covered by the return and such other information as the tax commission deems necessary for the proper administration of this act.

SEC. 66. The person required to file the return shall deliver the return together with a remittance of the amount of the tax due to the office of the tax commission.

SEC. 67. The tax commission, if it deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of taxes, may require returns and payment of the amount of taxes for quarterly periods other than calendar quarters depending upon the principal place of business of the seller, retailer or purchaser as the case may be, or for other than quarterly periods.

SEC. 68. For the purposes of the sales tax gross receipts from rentals or leases of tangible personal property shall be reported and the tax paid in accordance with such rules and regulations as the tax commission may prescribe.

SEC. 69. The tax commission, if it deems it necessary to insure the collection of the taxes, may provide by rule and regulation for the collection of the taxes by the affixing and canceling of revenue stamps and may prescribe the form and method of the affixing and canceling.

SEC. 70. The tax commission for good cause may extend for not to exceed one month the time for making any return or paying any amount required to be paid under this act.

Any person to whom an extension is granted and who pays the tax within the period for which the extension is granted shall pay, in addition to the tax, interest at the rate of 6 percent per annum from the date on which the tax would have been due without the extension, until the date of payment.

CHAPTER 7

DEFICIENCY DETERMINATIONS

SEC. 71. If the tax commission is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount due for one or for more than one period.

SEC. 72. The amount of the determination, exclusive of penalties, shall bear interest at the rate of one-half of 1 percent per month, or fraction thereof, from the last day of the month following the quarterly period for which the amount or any portion thereof should have been returned until the date of payment.

SEC. 73. In making a determination the tax commission may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in sections 91 and 122.

SEC. 74. If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of this act or authorized rules and regulations, a penalty of 10 percent of the amount of the determination shall be added thereto.

SEC. 75. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade this act or authorized rules and regulations, a penalty of 25 percent of the amount of the determination shall be added thereto.

SEC. 76. The tax commission shall give to the retailer or person storing, using, or consuming tangible personal property written notice of its determination. The notice may be served personally or by mail; if by mail, the notice shall be addressed to the retailer or person storing, using, or consuming tangible personal property at his address as it appears in the records of the tax commission. In case of service by mail of any notice required by this act, the service is complete at the time of deposit in the United States post office.

SEC. 77. Except in the case of fraud, intent to evade this act, or authorized rules and regulations issued thereunder, failure to make a return, or claim for additional amount pursuant to section 87 of this act, every notice of a deficiency determination shall be personally served or mailed within three years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later.

The limitation specified in this section does not apply in case of a sales tax proposed to be determined with respect to sales of property for the storage, use, or other consumption of which notice of a deficiency determination has been or is given pursuant to sections 76, 81, and 83, and to the first paragraph of this section. The limitation specified in this section does not apply in case of an amount of use tax proposed to be determined with respect to storage, use, or other consumption of property for the sale of which notice of a deficiency determination has been or is given pursuant to sections 76, 81, and 83, and to the first paragraph of this section.

If, before the expiration of the time prescribed in this section for the mailing of a notice of deficiency determination, the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon.

SEC. 78. If any person fails to make a return, the tax commission shall make an estimate of the amount of the gross receipts of the person, or, as the case may be, of the amount of the total sales price of tangible personal property sold or purchased by the person, the storage, use, or other consumption of which in this state is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the tax commission's possession or may come into its possession. Upon the basis of this estimate, the tax commission shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to 10 percent thereof. One or more determinations may be made for one or for more than one period.

SEC. 78. In making a determination, the tax commission may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in sections 91 and 122.

SEC. 79. The amount of the determination, exclusive of penalties, shall bear interest at the rate of one-half of 1 percent per month, or fraction thereof, from the last day of the month following the quarterly period for which the amount, or any portion thereof, should have been returned until the date of payment.

SEC. 80. If the failure of any person to file a return is due to fraud or an intent to evade this act or rules and regulations, a penalty of 25 percent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the 10 percent penalty provided in section 10.

SEC. 81. Promptly after making its determination the tax commission shall give to the person written notice of the estimate, determination, and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

CHAPTER 8

JEOPARDY DETERMINATIONS

SEC. 82. If the tax commission believes that the collection of any tax or any amount of tax required to be collected and paid to the state or of any determination will be jeopardized by delay, it shall thereupon make a determination of the tax or amount of tax required to be collected, noting that fact upon the determination. The amount determined is immediately due and payable.

SEC. 83. If the amount specified in the determination is not paid within 10 days after service of notice thereof upon the person against whom the determination is made, the amount becomes final at the expiration of the 10 days, unless a petition for redetermination is filed within the 10 days, and the delinquency penalty and the interest provided in section 91 shall attach to the amount of the tax or the amount of the tax required to be collected.

SEC. 84. The person against whom a jeopardy determination is made may petition for the redetermination thereof. He shall, however, file the petition for redetermination with the tax commission within 10 days after the service upon him of notice of determination. The person shall also within the 10-day period deposit with the tax commission such security as it may deem necessary to insure compliance with this act. The security may be sold by the commission in the manner prescribed by section 92.

CHAPTER 9

REDETERMINATIONS

SEC. 85. Any person against whom a determination is made, or any person directly interested, may petition for a redetermination within 30 days after service upon the person of notice thereof. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the period.

SEC. 86. If a petition for redetermination is filed within the 30-day period, the tax commission shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him 10 days' notice of the time and place of the hearing. The tax commission may continue the hearing from time to time as may be necessary.

SEC. 87. The tax commission may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the tax commission at or before the hearing.

SEC. 88. The order or decision of the tax commission upon a petition for redetermination becomes final 30 days after service upon the petitioner of notice thereof.

SEC. 89. All determinations made by the tax commission are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

SEC. 90. Any notice required by this article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

SEC. 91. Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the tax commission within the time required shall pay a penalty of 10 percent of the tax or amount of the tax, in addition to the tax or amount of tax, plus interest at the rate of one-half of 1 percent per month, or fraction thereof, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.

CHAPTER 10

SECURITY FOR THE TAX

SEC. 92. The tax commission, to insure compliance with this act, shall require every person subject thereto to secure the faithful fulfillment of his obligations in the manner prescribed by this section. The amount of security shall be fixed by the tax commission but shall not be greater than twice the estimated average quarterly tax liability of such person, determined in such manner as the tax commission deems proper, or ten thousand dollars ($10,000), whichever amount is the lesser. The amount of the security may be increased or decreased by the tax commission subject to the limitations herein provided. The tax commission may sell the security at public auction if it becomes necessary so to do in order to recover any tax or any amount required to be collected, interest, or penalty due. Notice of the sale may be served upon the person who deposited the security, personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination and shall be addressed to the person at his address as it appears in the records of the tax commission. Upon any sale any surplus above the amounts due shall be returned to the person who deposited the security.

SEC. 93. If any person is delinquent in the payment of the amount required to be paid by him or in the event a determination has been made against him which remains unpaid, the tax commission may, not later than three years after the payment became delinquent, or within three years after the last recording of an abstract under section 101, or of a certificate under section 104, give notice thereof by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent. After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they received the notice until the tax commission consents to a transfer or disposition, or until 20 days elapse after the receipt of the notice. All persons so notified shall, within five days after receipt of the notice, advise the tax commission of all such credits, other personal property, or debts in their possession, under their control, or owing by them.

Chapter 11

SUIT FOR THE TAX

Sec. 94. At any time within three years after any tax or any amount of tax required to be collected becomes due and payable, and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, or within three years after the last recording of an abstract under section 101, or of a certificate under section 104, the tax commission may bring an action in the courts of this state, or any other state, or of the United States, in the name of the people of the State of Nevada, to collect the amount delinquent together with penalties and interest.

Sec. 95. The attorney general shall prosecute the action, and the provisions of the civil practice act relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings.

Sec. 96. In the action a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment is required.

Sec. 97. In the action a certificate by the tax commission showing the delinquency shall be prima-facie evidence of the determination of the tax or the amount of the tax, of the delinquency of the amounts set forth, and of the compliance by the tax commission with all the provisions of this act in relation to the computation and determination of the amounts.

Sec. 98. In any action relating to the use tax brought under this act, process may be served according to the civil practice act or may be served upon any agent or clerk in this state employed by any retailer in a place of business maintained by the retailer in this state. In the latter case a copy of the process shall forthwith be sent by registered mail to the retailer at his principal or home office.

Chapter 12

JUDGMENT FOR THE TAX

Sec. 99. If any amount required to be paid to the state under this act is not paid when due, the tax commission may, within three years after the amount is due, file in the office of the county clerk of any county a certificate specifying the amount required to be paid, interest and penalty due, the name and address as it appears on the records of the tax commission of the person liable, the compliance of the tax commission with this act in relation to the determination of the amount required to be paid, and a request that judgment be entered against the person in the amount required to be paid, together with interest and penalty as set forth in the certificate.

SEC. 100. The county clerk immediately upon the filing of the certificate shall enter a judgment for the people of the State of Nevada against the person in the amount required to be paid, together with interest and penalty as set forth in this certificate.

SEC. 101. An abstract of the judgment or a copy may be filed for record with the county recorder of any county. From the time of the filing, the amount required to be paid, together with interest and penalty set forth, constitutes a lien upon all the real property in the county owned by the person liable or afterwards and before the lien expires, acquired by him. The lien has the force, effect, and priority of a judgment lien and shall continue for five years from the date of the judgment so entered by the county clerk unless sooner released or otherwise discharged. The lien may, within five years from the date of the judgment or within five years from the date of the last extension of the lien in the manner herein provided, be extended by filing for record in the office of the county recorder of any county, an abstract or copy of the judgment, and from the time of such filing, the lien shall be extended to the real property in such county for five years, unless sooner released or otherwise discharged.

SEC. 102. Execution shall issue upon the judgment upon request of the tax commission in the same manner as execution may issue upon other judgments, and sales shall be held under such execution as prescribed in the civil practice act.

CHAPTER 13

PRIORITY AND LIEN OF THE TAX

SEC. 103. The amounts required to be paid by any person under this act together with interest and penalties shall be satisfied first in any of the following cases:

(a) Whenever the person is insolvent.

(b) Whenever the person makes a voluntary assignment of his assets.

(c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.

(d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this act are levied upon by process of law.

This section does not give the state a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien.

SEC. 104. If any amount required to be paid to the state under this act is not paid when due, the tax commission may, within three years after the amount is due, file for record in the office of any county recorder a certificate specifying the amount, interest, and penalty due, the name and address as it appears on the records of the tax commission of the person liable for the same, and the fact that the tax commission has complied with all provisions of this act in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid, together with interest and penalty, constitutes a lien upon all real property in the county owned by the person or afterwards and before the lien expires acquired by him. The lien has the force, effect, and priority of a judgment lien and shall continue for five years from the time of the filing of the certificate unless sooner released or otherwise discharged. The lien may, within five years from the date of the filing of the certificate or within five years from the date of the last extension of the lien in the manner herein provided, be extended by filing for record a new certificate in the office of the county recorder of any county, and from the time of such filing, the lien shall be extended to the real property in such county for five years unless sooner released or otherwise discharged.

SEC. 105. The tax commission may at any time release all or any portion of the property subject to any lien provided for in this act from the lien or subordinate the lien to other liens and encumbrances if it determines that the amount, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest, and penalties.

SEC. 106. A certificate by the tax commission to the effect that any property has been released from the lien, or that the lien has been subordinated to other liens and encumbrances, shall be conclusive evidence that the property has been released, or that the lien has been subordinated as provided in the certificate.

CHAPTER 14

WARRANT FOR COLLECTION OF THE TAX

SEC. 107. At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within three years after the last recording of an abstract under section 101, or of a certificate under section 104, the tax commission or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this act. The warrant shall be directed to any sheriff or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

SEC. 108. The tax commission shall pay the sheriff or constable, upon the completion of his services pursuant to a warrant, the same fees, commissions, and expenses for his services as are provided by law for similar services pursuant to a writ of execution. The commission, and not the court, shall approve the fees for publication in a newspaper.

SEC. 109. The fees, commissions, and expenses are the obligation of the person required to pay any amount under this act and may be collected from him by virtue of the warrant or in any other manner provided in this act for the collection of the tax.

CHAPTER 15

SEIZURE AND SALE

SEC. 110. At any time within three years after any person is delinquent in the payment of any amount, the tax commission may forthwith collect the amount in the following manner: The tax commission shall seize any property, real or personal, of the person and sell the property, or a sufficient part of it, at public auction to pay the amount due, together with any interest or penalties imposed for the delinquency and any costs incurred on account of the seizure and sale.

Any seizure made to collect a sales tax due shall be only of the property of the retailer not exempt from execution under the provisions of the civil practice act.

SEC. 111. Notice of the sale and the time and place thereof shall be given to the delinquent person in writing at least 10 days before the date set for the sale in the following manner: The notice shall be enclosed in an envelope addressed to the person, in case of a sale for use taxes due, at his last known address or place of business, and, in case of a sale for sales taxes due, at his last known residence or place of business in this state. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published for at least 10 days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county 10 days prior to the date set for the sale. The notice shall contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

SEC. 112. At the sale the tax commission shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

SEC. 113. If, upon the sale, the moneys received exceed the total of all amounts, including interest, penalties, and costs due the state, the tax commission shall return the excess to the person liable for the amounts and obtain his receipt. If any person having an interest in or lien upon the property files with the tax commission, prior to the sale, notice of his interest or lien, the tax commission shall withhold any excess, pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the tax commission shall deposit the excess moneys with the state treasurer, as trustee for the owner, subject to the order of the person liable for the amount, his heirs, successors, or assigns.

SEC. 114. If any retailer liable for any amount under this act sells out his business or stock of goods, or quits the business, his successors or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the tax commission showing that it has been paid or a certificate stating that no amount is due.

SEC. 115. If the purchaser of a business or stock of goods fails to withhold purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, or within 60 days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than 90 days after receiving the request, the tax commission shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the tax commission, of the amount that must be paid as a condition of issuing the certificate. Failure of the tax commission to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of a successor may be enforced shall start to run at the time the retailer sells out his business or stock of goods or at the time that the determination against the retailer becomes final, whichever event occurs the later.

CHAPTER 16

OVERPAYMENTS AND REFUNDS

SEC. 116. If the tax commission determines that any amount, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the tax commission shall set forth that fact in the records of the commission and shall certify to the state board of examiners the amount collected in excess of the amount legally due and the person from whom it was collected or by whom paid. If approved by the state board of examiners, the excess amount collected or paid shall be credited on any amounts then due from the person under this act, and the balance shall be refunded to the person, or his successors, administrators, or executors.

Any overpayment of the use tax by a purchaser to a retailer who is required to collect the tax and who gives the purchaser a receipt therefor pursuant to chapter 4 of this act shall be credited or refunded by the state to the purchaser.

SEC. 117. No refund shall be allowed unless a claim therefor is filed with the tax commission within three years from the last day of the month following the close of the quarterly period for which the overpayment was made, or, with respect to determinations made under chapter 7 of this act, within six months after the determinations become final, or within 60 days from the date of overpayment, whichever period expires the later. No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the tax commission within such period.

SEC. 118. No credit or refund of any amount paid pursuant to chapter 4 of this act shall be allowed on the ground that the storage, use, or other consumption of the property is exempted under section 62, unless in addition to the overpayment for which the claim is filed the claimant also reimburses his vendor for the amount of the sales tax imposed upon his vendor with respect to the sale of the property and paid by the vendor to the state.

SEC. 119. Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

SEC. 120. Failure to file a claim within the time prescribed in section 117 constitutes a waiver of any demand against the state on account of overpayment.

SEC. 121. Within 30 days after disallowing any claim in whole or in part, the tax commission shall serve notice of its action on the claimant in the manner prescribed for service of notice of a deficiency determination.

SEC. 122. Interest shall be paid upon any overpayment of any amount of tax at the rate of one-half of 1 percent per month from the last day of the calendar month following the quarterly period for which the overpayment was made; but no refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the claimant is notified by the commission that a claim may be filed or the date upon which the claim is certified to the state board of examiners, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

SEC. 123. If the tax commission determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

SEC. 124. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this act of any tax or any amount of tax required to be collected.

SEC. 125. No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

SEC. 126. Within 90 days after the mailing of the notice of the tax commission's action upon a claim filed pursuant to this act, the claimant may bring an action against the tax commission on the grounds set forth in the claim in a court of competent jurisdiction in the county of Ormsby for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

Failure to bring action within the time specified constitutes a waiver of any demand against the state on account of alleged overpayments.

SEC. 127. If the tax commission fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the tax commission of its action on the claim, consider the claim disallowed and bring an action against the tax commission on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

SEC. 128. If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited as follows:

(a) If the judgment is for a refund of sales taxes, it shall be credited on any sales or use tax or amount of use tax due from the plaintiff.

(b) If the judgment is for a refund of use taxes, it shall be credited on any use tax or amount of use tax due from the plaintiff under chapter 4 of this act.

The balance of the judgment shall be refunded to the plaintiff.

SEC. 129. In any judgment, interest shall be allowed at the rate of 6 percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the tax commission.

SEC. 130. A judgment shall not be rendered in favor of the plaintiff in any action brought against the tax commission to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

SEC. 131. The tax commission may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought in a court of competent jurisdiction in the county of Ormsby in the name of the State of Nevada.

SEC. 132. The action shall be tried in the county of Ormsby unless the court with the consent of the attorney general orders a change of place of trial.

SEC. 133. The attorney general shall prosecute the action, and the provisions of the civil practice act relating to service of summons, pleadings, proof, trials, and appeals are applicable to the proceedings.

SEC. 134. If any amount has been illegally determined, the tax commission shall certify this fact to the state board of examiners, and the latter shall authorize the cancellation of the amount upon the records of the tax commission.

CHAPTER 17

ADMINISTRATION

SEC. 135. The tax commission shall enforce the provisions of this act and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this act. The tax commission may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

SEC. 136. The tax commission may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of this act, and may delegate authority to its representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by this act.

SEC. 137. Every seller, every retailer, and every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the tax commission may require.

SEC. 138. The tax commission, or any person authorized in writing by it, may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

SEC. 139. In administration of the use tax, the tax commission may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property the storage, use, or other consumption of which is subject to the tax. The reports shall be filed when the tax commission requires and shall set forth the names and addresses of purchasers of the tangible personal property, the sales price of the property, the date of sale, and such other information as the tax commission may require.

SEC. 140. It shall be a misdemeanor for any member or official or employee of the tax commission to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof, to be seen or examined by any person not connected with the tax commission. However, the governor may, by general or special order, authorize examination of the returns by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person. The legislative counsel or his authorized representatives may examine returns, and successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

CHAPTER 18

PENALTIES

SEC. 141. Any retailer or other person who willfully fails or refuses to furnish any return required to be made, or who willfully fails or refuses to furnish a supplemental return or other data required by the tax commission, shall be guilty of a misdemeanor and subject to a fine of not exceeding five hundred dollars ($500) for each offense.

SEC. 142. Any person required to make, render, sign, or verify any report who willfully makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due required by law to be made shall be guilty of a misdemeanor. He shall for each offense be fined not less than three hundred dollars ($300), and not more than five thousand dollars ($5,000), or be imprisoned for not exceeding one year in the county jail, or be subject to both the fine and imprisonment at the discretion of the court.

SEC. 143. Any other violation of this act is a misdemeanor. Any person found guilty of any misdemeanor created by this law, not punishable as indicated in sections 141 and 142, shall be subject to a fine of not exceeding five hundred ($500) for each offense.

SEC. 144. In the determination of any case arising under this act, the rule of res judicata is applicable only if the liability involved is for the same quarterly period as was involved in another case previously determined.

Chapter 19

MISCELLANEOUS

Sec. 145. All fees, taxes, interest, and penalties imposed and all amounts of tax required to be paid to the state under this act shall be paid to the tax commission in the form of remittances payable to the Nevada tax commission of the State of Nevada. The tax commission shall transmit the payments to the state treasurer to be deposited in the state treasury to the credit of the retail-sales tax fund.

Sec. 146. The money in the retail-sales tax fund shall, upon order of the controller, be drawn therefrom for refunds under this act, and all money in the fund in excess of ten thousand dollars ($10,000) shall be transferred to the general fund of the state on or before the last day of the month following each quarterly period of three months.

Sec. 147. To carry out the provisions of this act there is hereby appropriated from the general fund for the biennium ending June 30, 1951, the sum of two hundred fifty thousand dollars ($250,000) to be paid out on claims as other claims against the state are paid.

Sec. 148. Every part of this act shall be considered separable, and any holding that one part is unconstitutional shall not invalidate the remainder thereof.

Sec. 149. This act shall be in full force and effect from and after July 1, 1949.