

January 2004

A History of the Wyoming Sales Tax and How Lawmakers Chose It from among Severance Taxes, an Income Tax, Gambling, and a Lottery

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Recommended Citation

Roberts, Phil (2004) "A History of the Wyoming Sales Tax and How Lawmakers Chose It from among Severance Taxes, an Income Tax, Gambling, and a Lottery," *Wyoming Law Review*. Vol. 4: No. 1, Article 4. Available at: <https://scholarship.law.uwyo.edu/wlr/vol4/iss1/4>

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WYOMING LAW REVIEW

VOLUME 4

2004

NUMBER 1

A HISTORY OF THE WYOMING SALES TAX AND HOW LAWMAKERS CHOSE IT FROM AMONG SEVERANCE TAXES, AN INCOME TAX, GAMBLING, AND A LOTTERY

*Phil Roberts**

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For the first 45 years of statehood, Wyoming state and local governments depended almost entirely on funding from property taxes. During that time, however, Wyoming decision-makers considered various other methods of taxation ranging from severance taxes on minerals (1889 and 1924), a lottery, taxation of legalized gambling, and even an income tax (1933). Finally, in 1935, when funding of government services was strained

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nearly to the breaking point, the legislature adopted the sales tax. This article describes the politics of the tax questions and how, but for unusual circumstances, any of the alternatives might have predated the sales tax and, indeed, might have made the sales tax unnecessary. The article concludes with an analysis of the adoption of the sales tax and what implications that decision had on Wyoming government funding for the twentieth century and for the future.

Structural changes in a tax system may have the most long-lasting impact on a state's financial situation of any legislative action. During the 1920s and 1930s, nearly every Western state moved away from tax systems relying on property to either a sales tax or an income tax. The impact of the choice remains with these states today. Most states in the West opted for a state income tax. At least two, Washington and Wyoming, adopted a sales tax instead. In Wyoming, the income tax never gained voter or legislative approval. In the early 1930s, the state's economy was suffering and revenues were in short supply. After protracted discussions over means of financing government at all levels, the legislature passed the sales tax in Wyoming as a "temporary emergency measure" in 1935.¹ The sales tax became a part of the state's revenue picture only after various forms of taxation were debated in two regular sessions and a special session of the Wyoming legislature.

I. CONSTITUTIONAL CONVENTION PROPOSAL FOR A SEVERANCE TAX, 1889

Before the legislature chose a sales tax, Wyomingites debated the merits of a severance tax on minerals. During the constitutional convention in 1889, a delegate introduced a "coal tonnage tax."² The delegate was Laramie lawyer Melville C. Brown who served as President of the twenty-five-day session drafting the formulating document for state government.³

1. The sales tax provisions in Wyoming law are found in Wyoming Statutes, Title 39, Chapter 15. See WYO. STAT. ANN. § 39-15-101 *et seq.* (LexisNexis 2002). Even with the extensive revisions made in 2001, much of the language replicates that from the "Temporary Emergency Sales Tax Act of 1935," although the direct origins are in the 1937 act that made the sales tax permanent. The issue of constitutionality was raised in *Walgreen Co. v. State Board of Equalization*, 62 Wyo. 288, 166 P.2d 960 (Wyo. 1946), *rehearing denied*, 62 Wyo. 336, 169 P.2d 76 (Wyo. 1946). Wyoming is unique in the West for having the sales tax adopted by the legislature and not through an initiative or constitutional amendment. Through an initiative measure in 1932, the first choice by Washington voters was for an income tax, but the Washington State Supreme Court declared it unconstitutional. Only then did the legislature adopt the sales tax. See PHIL ROBERTS, A PENNY FOR THE GOVERNOR, A DOLLAR FOR UNCLE SAM: INCOME TAXATION IN WASHINGTON (2002).

2. JOURNAL AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF WYOMING 637 (1893) [hereinafter JOURNAL AND DEBATES].

3. MARIE ERWIN, WYOMING BLUE BOOK 541 (Virginia Trenholm ed., vol. I, 1974).

On the twentieth day of the convention, Brown introduced an article that would have established a “coal tonnage” tax.⁴ Brown pointed out that the coal industry was making substantial profits as the companies (primarily the Union Pacific Coal Company) removed more and more coal from the territory.⁵ Little of mined coal was used within the borders of Wyoming. Brown argued that the state would be financially sound for years to come if a modest tax were assessed against every ton of coal shipped out of Wyoming.⁶ “Can they afford to pay out of that 75 cents (of clean profit) two and a half cents per ton?” he asked.⁷ Without such a tax, “our new state shall be depleted of its wealth in coal, the coal taken and carried to other states and territories around us, to be used for their purposes, and we get no benefit”⁸

The measure passed initially during an afternoon session on the twentieth day of the convention, but that evening and throughout the next morning’s debates, the delegates reconsidered their earlier action.⁹ The tax was amended out of the measure after delegates heard the impassioned arguments of C. D. Clark, a delegate from coal-producing Uinta County who, at the time he was elected a delegate, was working as the Union Pacific Railroad’s legal counsel in that area.¹⁰ The Uinta delegate/railroad lawyer argued that such a tax ought to be left for consideration by a future legislature.¹¹ Another delegate, John L. Russell, (like Clark, from Uinta County) questioned what would happen if the state were to have revenues from every ton of coal mined.¹² He argued that the result would be waste, inefficiency and corruption—such a tax would “create such a surplus as to make it a great temptation for unnecessary extravagances and steals”¹³

Brown made a fatal, but not deliberate arithmetic miscalculation and, after he admitted the mistake, Clark pounced on the error.¹⁴ He argued that Brown’s figures on mining costs and profits were probably inaccurate as well. “Let us have an opportunity to be correct in this matter,” Clark said, “I believe in leaving all this to the wisdom of the legislature, because I believe

4. See JOURNAL AND DEBATES, *supra* note 2, at 637-74, 681-98, for debate over provisions. The proposal was amended and, eventually, the tax was ultimately eliminated. *Id.* at 697.

5. *Id.* at 640-41.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* Clark later was elected as the first United States Representative from Wyoming, serving from 1890-1893, and two years later, elected by the Wyoming legislature to the United States Senate, serving from 1895 to 1917. For a brief biography, see ERWIN, *supra* note 3, at 464.

11. JOURNAL AND DEBATES, *supra* note 2, at 693.

12. ERWIN, *supra* note 3, at 551 (vol. I).

13. JOURNAL AND DEBATES, *supra* note 2, at 690.

14. *Id.* at 693.

... that the future legislatures of Wyoming will be as good a body of men as sits here today, I believe they will know better than we do what will be the necessities of this territory"¹⁵

When the Constitutional Convention wrapped up their work three days later, the mineral tax no longer appeared in the document. Wyoming voters overwhelmingly approved the Constitution, with the article on taxation and revenue referring to taxes on property—including assessed valuation on minerals as property, but not on the production of the mineral after removal from the mine.¹⁶ The severance tax would not be proposed again for more than thirty years.

II. WYOMING AND THE FEDERAL INCOME TAX AMENDMENT

In the early 1920s Wyomingites, dependent on a natural-resource economy, entered the "Great Depression" much earlier than the rest of America.¹⁷ State government, cities, and counties managed to weather the hard times for nearly a decade, but by 1933, all levels of government had reached a funding crisis.¹⁸ Property taxes proved insufficient; new revenue sources were essential for state government survival as well as for the maintenance of local government and the school systems. Several legislators suggested adoption of an income tax.

An income tax was not an alien concept to Wyomingites or their legislators. In January 1891, the first convention of the short-lived Populist Party in Wyoming incorporated the call for an income tax in its platform.¹⁹ Wyoming played a key role in the adoption of the "Income Tax Amendment" to the United States Constitution in 1913. By most accounts, the state provided the thirty-sixth and deciding ratification for the amendment.²⁰ The measure gained broad bipartisan backing even though no ground swell of support for passage seemed to occur in Wyoming.

At the time the amendment was ratified, Joseph M. Carey served as the Democratic governor of Wyoming.²¹ Elected in 1911, he had no public

15. *Id.* at 693-94.

16. WYO. CONST. art. XV.

17. See T. A. LARSON, HISTORY OF WYOMING, 443-45, 463-65 (rev. ed. 1978) (giving the condition of Wyoming's economy during the "Great Depression").

18. *Id.* The state's estimated population in 1934 was just 232,000. Of the 48 states, only Nevada was less populated. WYOMING EAGLE, Sept. 7, 1934, at 1.

19. Thomas Krueger, Populism in Wyoming 72-73 (1960) (unpublished M. A. thesis, University of Wyoming) (on file with Coe Library, University of Wyoming).

20. *Wyoming and Delaware Both in 36th Count*, CHEYENNE STATE LEADER, Feb. 5, 1913, at 1.

21. Carey, a life-long Republican, had been denied his party's nomination in 1910, largely through the efforts of Senator Francis E. Warren, his former friend. Undeterred by the Republican Party's refusal to give him the gubernatorial nomination, Carey sought and received the nomination from the Democrats. See LARSON, *supra* note 17, at 320-21.

record of support for the income tax. Carey's constituents seemed little interested in the issue. The only letter Governor Carey received about the income tax question had been sent the previous March by a San Francisco-based member of the "Ethic Association."²² The form letter hardly could have influenced the governor. The writer pointed out the strength of the Socialist Party and how its support for an income tax would lead inevitably to election of their members to majorities the next election cycle.²³

Nonetheless, as the legislative session opened, Governor Carey, in his "state-of-the-state" address, flatly stated his support in a single paragraph:

One of the amendments is known as the 'income tax amendment.' . . . This amendment has been much discussed by the people of the United States and has been ratified by nearly the number of states necessary to make it a part of the Constitution of the United States, and I ask action by your honorable body on the proposed amendment.²⁴

The support, not exactly enthusiastic, might have been expected from Carey, the Republican elected as a Democrat who perhaps was the wealthiest man in the state. He had been identified throughout his long career as a "standpat Republican," but in 1912, he had spurned endorsing either Taft or Wilson, instead flirting with the Progressivism of Theodore Roosevelt.²⁵

Democrat John B. Kendrick (later governor and U. S. Senator) represented Sheridan County in the State Senate in 1913. Kendrick introduced Senate Joint Resolution Number Two, the ratification of the federal income tax, which was routinely referred to committee.²⁶ Eight days later, on Janu-

Republican Party's refusal to give him the gubernatorial nomination, Carey sought and received the nomination from the Democrats. See LARSON, *supra* note 17, at 320-21.

22. Letter from Walter V. Bowns to J. M. Carey (Mar. 16, 1912) (Carey Governor's Papers on file with the Wyoming State Archives).

23. *Id.*

24. *Message of Joseph M. Carey, Governor of Wyoming, to the Twelfth State Legislature, 1913*, H.R., 12th Leg., Reg. Sess., at 43 (Wyo. 1913); *Carey's Message to the Legislature*, CHEYENNE STATE LEADER, Jan. 22, 1913, at 2.

25. LARSON, *supra* note 17, at 325. Carey's election in 1910 heralded one of the most progressive administrations in the state's history, according to historian T. A. Larson. The antagonism between Carey and the other "Grand Old Man of Wyoming Politics," Francis E. Warren, divided the state's Republican Party for the first three decades following statehood. *Id.* at 319-28.

26. *Resolutions*, S.J. Res. 2, 12th Leg., Reg. Sess., at 66 (Wyo. 1913). As the session began, Kendrick became the last Wyoming candidate to lose the U. S. Senate "race" in an indirect election—through legislative action. He introduced the income tax amendment bill two days after the pro forma reelection of the Republican incumbent Senator Francis E. Warren.

ary 31, the Federal Relations, Indian and Military Affairs committee reported the bill out with a "do pass" recommendation.²⁷ Suddenly, on February 3, the resolution began an unprecedented speedy move through both houses.²⁸

The House and Senate journals do not provide verbatim accounts of legislative actions, but from reading the local press and contemporary accounts of the session, it is clear that the resolution did not pass because of any strong legislative support for an income tax. It passed both houses in one day, almost without debate, because Wyoming stood the chance of becoming the thirty-sixth state—the deciding state—in to ratify the amendment!²⁹ Publicity, more than principle, seems to have guided the rapid passage of Senate Joint Resolution Number Two. "The Wyoming legislature, just the moment the journals were read yesterday morning promptly suspended the rules and passed the Kendrick resolution ratifying the income tax amendment to the U. S. Constitution," wrote the editor of the *Cheyenne State Leader*.³⁰ The article continues:

The house and senate convened at 10 a.m. The resolution was promptly passed by the senate and by 10:45 a.m., it had been ratified by the house, telephoned to *The Leader* and by 10:50, it was on the wires of the Associated Press and Washington had the news that Wyoming had supplied the one state lacking to make it a part of the constitution by 11 o'clock.³¹

Support for the measure was overwhelming in both houses. The Senate passed, by a vote of 25-2, a motion to suspend the rules and move toward second and third readings.³² Deliberations on third reading followed immediately and the measure was passed 24-3 on a roll call vote.³³ The measure shot over to the House that very hour where it was introduced by E. J. Sullivan (a Republican from Big Horn County).³⁴ Just as in the Senate,

27. *Reports of Standing Committees*, S.J. Res. 2, 12th Leg., Reg. Sess., at 113 (Wyo. 1913).

28. CHEYENNE STATE LEADER, Feb. 4, 1913, at 1.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Bills on Third Reading*, S.J. Res. 2, 12th Leg., Reg. Sess., at 116-17 (Wyo. 1913).

33. *Id.*

34. *Committee of the Whole*, H.R., 12th Leg., Reg. Sess., at 144-45 (Wyo. 1913). Almost a dozen years later, Sullivan, who had moved to Casper, won reelection to the legislature, and been elected House Speaker in 1923, gained the distinction of being the first male candidate for governor ever to lose the election to a woman, Nellie Tayloe Ross. Ironically, Sullivan's son-in-law, Democrat Ernest Wilkerson, based his unsuccessful gubernatorial campaign on the severance tax in the 1966 general election. Three years later, the man who defeated Wilkerson, Stan Hathaway, urged passage of the first severance tax passed in Wyoming history. See Sarah Gorin, *Wyoming's Wealth for Wyoming's People: Ernest Wilkerson and the*

the House suspended the rules and rushed the bill through. The margin on final passage in the House was 48-7 with two absent.³⁵

The *Leader* proudly pointed out that Wyoming had snatched the honor from two other states:

Just when only one more state's approving vote was needed to ratify . . . when the entire country was watching the action of the legislatures of New Mexico and New Jersey to see which would be the thirty-sixth and deciding state to clinch the innovation, and when President-elect Wilson in Trenton, was urging the senate of New Jersey to act tonight in order to beat New Mexico to it—what happens? Why, little old Wyoming, away out west, wholly unexpectedly hops into the situation, suspends the rules of both houses, unanimously passes a joint resolution ratifying the income tax amendment and thus acquires the honor of forming the missing link in the new scheme And now New Mexico and New Jersey are peeved.³⁶

But Wyoming's honor was questioned when it was revealed that the Delaware legislature had ratified the amendment at 10:55 a.m., Eastern Standard Time, thus beating Wyoming by two hours. The *Leader* editor disregarded the claim: "However this may be, it is certain that Washington was notified of the action of the Wyoming legislature before Delaware was heard from, thus giving this state the honor of fixing the amendment."³⁷

Curiously, little was mentioned about how the amendment would be applied even though the next day, the *Leader* editor had to concede that Delaware's claim might be strong. "Wyoming won the honor, lost it, then saw a chance of winning it back, of being the deciding state to ratify the income tax amendment," the editor noted.³⁸ "Little old Delaware holds the prize. There is a question of the legality of Kentucky's action, however, and if her endorsement is thrown out, Wyoming will be Number 36."³⁹

Wyoming's ratification, however, did not translate into any significant change in the state's tax structure. The bulwark was still the property tax. A state income tax seemed not to have occurred to legislators, at least in public pronouncements. A sales tax was an alien concept.

Severance Tax--A Study in Wyoming Political History, ANNALS OF WYOMING, Winter 1991, at 14-27.

35. *Committee of the Whole*, *supra* note 34, at 144-45.

36. CHEYENNE STATE LEADER, Feb. 4, 1913, at 1.

37. *Id.*

38. CHEYENNE STATE LEADER, Feb. 5, 1913, at 1.

39. *Id.*

III. SEVERANCE TAX PROPOSED AGAIN, 1923-1924

After the Constitutional Convention voted against including Brown's "coal tonnage tax" as part of the Constitution, the question of a severance tax remained in the background for the next three decades. In 1922, the Wyoming economy was spiraling downward. Agricultural prices, buoyed by World War I demand, brought homesteaders to marginal Wyoming lands in record numbers.⁴⁰ Just as the homesteading boom was getting underway, however, the weather cycle turned from abundant rainfall to drought. Farmers, confronted with the hardships of weather, faced a downward shift in national agricultural prices. Even without the drought, crops grown on marginal lands hardly returned the costs of planting.⁴¹

Small rural banks failed at a record rate as drought added to the economic downturn.⁴² With the agricultural economy and declining property tax revenues from farm and ranch lands, Wyoming voters retaliated against the incumbent. In the 1922 Republican primary, Governor Robert Carey lost to Sweetwater County banker John Hay. Hay then lost the general election to the Democratic nominee, William Ross, a Cheyenne lawyer.⁴³

Despite the depression in agriculture, the mineral industry appeared to be avoiding the economic troubles.⁴⁴ Oil companies, anxious to gain additional investors, trumpeted the potential for huge profits.⁴⁵ The Wyoming electorate seemed to believe the industry was flush with money and, at the same time, privileged when it came to paying taxes.⁴⁶ The time was ripe for

40. LARSON, *supra* note 17, at 414-15. Larson writes: "The greatest boom years [for homesteading], however, proved to be 1919, 1920, and 1921, despite the devastating drought of 1919, which should have given pause to even the most land hungry and speculation prone."*Id.*

41. *Id.* at 416-18.

42. Peter Huntoon, *National Bank Failures in Wyoming*, ANNALS OF WYOMING, Fall 1982, at 34-44; LARSON, *supra* note 17, at 413.

43. ERWIN, *supra* note 3, at 604-05 (vol. II).

44. LARSON, *supra* note 17, at 433.

45. Headline stories carried by the *Inland Oil Index* for 1922 reveal this seeming prosperity. Typical is the photograph on page one of the paper showing the gusher at Lost Soldier oil field. *Lost Soldier Gusher*, INLAND OIL INDEX, Sept. 30, 1922, at 1. The next week, the paper ran the headline story, *Teapot Boils and Mammoth Oil Company Strikes Big Gusher*. INLAND OIL INDEX, Oct. 7, 1922, at 1. See also *id.* at 5 (full page ad for the "Teapot Development Co").

46. LARSON, *supra* note 17, at 432. See also *Exaggeration in Oil Reports*, INLAND OIL INDEX, Sept. 16, 1922, at 4. The recognized industry paper warned companies: "Exaggerated reports of oil production does the industry great harm, as it creates in the mind of the public an idea that nearly all oil companies are mints of wealth. This is one reason why federal and state officials always regard the oil companies as legitimate prey for all kinds of high taxes." *Id.*

considering another severance tax even though many officials in both political parties had close relationships with the industry.⁴⁷

Little love was lost between the oil industry and agriculture. The editor of the *Inland Oil Index* articulated his industry's prevalent view that ranchers and farmers were more prosperous than they were letting on and, yet, asking the government for help:

If the farmers of Wyoming want the grasshoppers destroyed, let them raise turkeys, they are more profitable than sheep. Plenty of instances may be cited in Wyoming where ranchers and farmers have made good money this year by raising turkeys and fattening them wholly on grasshoppers. Farmers are always asking for something.⁴⁸

County assessors, meeting in Cheyenne, discussed ways to bring in additional revenues. The group finally voted unanimously to ask the state legislature to enact a sales tax on gasoline sold in the state, gaining the wrath of the petroleum industry. The *Inland Oil Index*, grudgingly admitting such a tax was likely, nonetheless observed, "[T]he politicians dare not make it too high as there are quite a few automobile drivers in this country and they can nearly all vote."⁴⁹

In Governor Ross' first message to the legislature on January 11, 1923, he emphasized the need for tax reform and a new tax base.⁵⁰ "The people of Wyoming with the exception of those who reside in a few favored localities are in great financial distress," he told the legislature.⁵¹ "Their

47. *Oil Men in Politics*, INLAND OIL INDEX, Sept. 22, 1922, at 4. Listed were Charles A. Guenther, treasurer of the Republican State Committee, who was an officer in the Derrick Petroleum Company, Douglas; P. J. Quealy, treasurer of the Democratic State Committee, who was a director of the Producers and Refiners Company (PARCO); and Dr. J. R. Hylton, Democratic State chairman, who "is largely interested in a number of more important oil companies operating in Wyoming." *Id.*

48. *Grasshopper Legislation in Wyoming*, INLAND OIL INDEX, Dec. 9, 1922, at 4.

When times are good he kicks about the wages he has to pay for hired help. On top of everything else, he wants the government to loan him money to buy farms and loan him more money to stock the farms. The farmer blames most of his troubles on labor unions. Considering what the farmer has already secured in the way of class legislation in his disorganized state, should he ever become thoroughly unionized the rest of the people might just as well get off the earth.

Id. See also *What's the Matter with the Farmer*, INLAND OIL INDEX, July 28, 1923, at 6 ("If farmers would put in more time working and less time running around in their Fords they would not have so much cause for complaining about hard times.").

49. *Tax on Gasoline in America*, INLAND OIL INDEX, Dec. 30, 1922, at 4.

50. *Message of Gov. William Ross to the 17th Legislature*, H.R., 17th Leg., Reg. Sess., at 14-25 (Wyo. 1923).

51. *Id.* at 15.

livestock and other ranch and farm products are selling below the cost of production."⁵² He said that the state general fund was facing a serious shortfall.⁵³ From the \$1,325,773.72 gained from property taxes in 1921, the figure dropped to \$715,931 just one year later in 1922.⁵⁴ The shape of the state budget was awful but the situation was even worse for local governments, Ross said, pointing out that only one-seventh of the tax revenues came to the state—six-sevenths to counties, schools, and towns.⁵⁵

The sole sector of the economy above the financial distress was the minerals industry. Coal and oil prices seemed stable and Ross told the legislature that the owners of mineral interests escaped the tax burdens faced by other residents. "The lands of the people of Wyoming are too heavily taxed. Under the law a large percent of the property of this state goes absolutely free from taxation—the great coal fields, iron mines, oil fields, gas wells and other products of the state, worth millions of dollars, pay no taxes . . ." ⁵⁶ He pointed out that hundreds of millions in property were not taxed, "probably ninety percent of it owned by non-residents."⁵⁷ After referring to the workings of the Louisiana "severance license tax," Ross urged legislators to pass a constitutional amendment allowing for similar taxation in Wyoming.⁵⁸

The oil industry responded by declaring Ross' message as "open season for oil companies."⁵⁹ The industry newspaper predicted that if the governor's proposed taxes were implemented, the result would be huge decreases in oil employment and production.⁶⁰ The *Inland Oil Index* editorialized that

[i]t would be short-sighted policy for the State now to burden the oil industry with unfair taxation when it is just beginning to get rightly underway in Wyoming. . . . If the lawmakers are wise they will wait until the industry gets firmly established and then if it appears that the state needs more revenue there will be more oil investments to tax. To our way of looking at it, the state is not in need of additional revenue.⁶¹

52. *Id.* Ross also advocated setting a ceiling on the interest rates charged by banks at seven to nine percent. *Id.* at 19. "Twelve percent has the same impoverishing effect as hard winters, dry summers, high taxes or low prices of products." *Id.*

53. *Id.* at 15.

54. *Id.* Ross quoted figures apparently provided to him by the State Treasurer.

55. *Id.*

56. *Id.* at 17.

57. *Id.* at 17-18.

58. *Id.* at 18.

59. *Open Season for Oil Companies*, INLAND OIL INDEX, Jan. 27, 1923, at 4.

60. *See, e.g., Governor Would Increase Taxes*, INLAND OIL INDEX, July 19, 1924, at 6.

61. *Id.* *See also State Oil and Gas Taxation*, INLAND OIL INDEX, Feb. 3, 1923, at 4.

On February 3, 1923, the twenty-first day of the forty-day session, and apparently at the governor's urging, State Senator Clarence Gardner, a Lincoln County Democrat, introduced Senate Joint Resolution Eight: "A joint resolution proposing to amend Section 3 of Article XV of the Constitution of Wyoming which relates to taxation of Mines, providing for the manner of taxing and for a severance tax."⁶² One week after introduction, the Senate passed the bill on third reading by a vote of twenty-two in favor, none opposed, and three members absent.⁶³ On February 12, the bill went to the House where, on suspension of the rules, it sailed through in just five days, passing on February 17 with just one amendment, by a unanimous 51-0 vote.⁶⁴ The proposed constitutional amendment called for authorization of severance taxes on "gold, silver, precious metals, copper, iron ore, soda, saline, coal, petroleum, and other crude and mineral oil, and natural gas, or other valuable deposit."⁶⁵ The minerals "may be taxed in addition to the surface improvements, and in lieu of taxes on the lands, on the gross output in proportion to the actual value thereof, as may be prescribed by law."⁶⁶

Despite the apparently strong support for the constitutional amendment in the legislature, Governor Ross knew that mineral interests would work hard to try to defeat the amendment.⁶⁷ Consequently, the governor took to the road throughout the summer and fall of 1923, making speeches in favor of the amendment and granting interviews to reporters about the need for taxes on minerals. Best publicized was the governor's speech to the Democratic State convention held in Casper where his position for a severance tax was challenged by State Senator Pat O'Connor of Casper.⁶⁸

An editorial in the Casper-based *Inland Oil Index* typified the petroleum industry opposition:

Governor W. B. Ross is running around the state of Wyoming advocating higher taxes for oil companies. The governor either does not know or does not want to know that the oil companies are already taxed in royalties and other forms

62. *Introduction, Reading and Reference of Bills*, S.J. Res. 8, 17th Leg., Reg. Sess., at 179 (Wyo. 1923).

63. *Senate Files on Third Reading*, S.J. Res. 8, 17th Leg., Reg. Sess., at 286 (Wyo. 1923).

64. *Senate Files*, H.R., 17th Leg., Reg. Sess., at 411 (Wyo. 1923). Five were absent; four excused. *Id.*

65. 1923 Wyo. Sess. Laws at 222-23 (Senate Joint Resolution No. 8).

66. *Id.*

67. This was clear from the text of the Governor's message to the legislature. *See Message of Gov. Ross*, *supra* note 50.

68. *Governor Advocates Severance Tax*, INLAND OIL INDEX, July 12, 1924, at 6.

of taxation three times what oil companies are in other states.⁶⁹

The newspaper pointed out the importance of oil employment in the state and how a severance tax would jeopardize those positions:

There are something like 35,000 people in Wyoming directly supported by the oil industry and more than 50 percent of the population of the state either directly or indirectly interested in Wyoming oil industry either as stockholders, producers, royalty owners or employees and they should not forget the attitude of the governor or any other candidates for state or county offices who are hostile to the oil companies—representing the greatest industry in our commonwealth.⁷⁰

Later, the paper said of oil companies,

They are taxed to death. There is no question but what the Legislature of Wyoming has the power to saddle all kinds of taxes on the oil companies as advocated by Gov. Ross when there will be only one of two things for the oil companies to do—either pay the taxes or get out of the state.⁷¹

Later, the *Inland Oil Index* editorialized against the constitutional amendment: "It is a pet of Governor Ross who would prefer to raise more taxes than reduce them."⁷² Other papers echoed concerns about not knowing enough about the effects of the tax, including the *Laramie Republican-*

69. *Governor Would Increase Taxes*, INLAND OIL INDEX, July 19, 1924, at 6. See also CODY ENTERPRISE, July 23, 1924, at 2.

70. *Id.*

71. *Immense Fortune Leaves Wyoming*, INLAND OIL INDEX, July 19, 1924, at 6. See also *Mounting Cost of Taxes*, INLAND OIL INDEX, Aug. 2, 1924, at 6. Another editorial advocated economy: "We either ought to economize in governmental supervision or else quit kicking about high taxes." *Cost of paternalism*, INLAND OIL INDEX, Aug. 16, 1924, at 6.

72. *Kill Both Constitutional Amendments*, INLAND OIL INDEX, Sept. 13, 1924, at 6. A similar editorial appeared just before the election. *Kill Constitutional Amendments*, INLAND OIL INDEX, Oct. 25, 1924, at 6. In another issue printed just before the election, the editorial was even more blunt:

If oil companies are to continue in the development of new oil field, if Wyoming is to continue to encourage the entrance of new capital into the state, if existing companies are to maintain large payrolls, giving work to thousands of men . . . then it is to the interest of every citizen to vote down the proposed constitutional amendment . . .

The Severance Tax Amendment, INLAND OIL INDEX, Nov. 1, 1924, at 6.

Boomerang: "Assuredly it is a radical change in our methods of taxation and should be considered as such."⁷³

Ross countered with speeches pointing out that Wyoming was one of the richest states in the Union "in point of natural resources, yet 51 percent of the state is bankrupt."⁷⁴ He asserted that oil company property was worth five times the cost of all other property in the state,

but it is taxed at less than one-sixteenth as much In time we will merely have a hole in the ground and the people who have exploited this state will be living in some other state with money in their pockets. We owe it to future generations to protect our resources.⁷⁵

Because the 1924 election campaign was an "off-year" for the five statewide offices including the governorship, the issue dominated the news until early October, a month before the election. Campaigning for the severance tax in Laramie and speaking before a large audience on September 23, Governor Ross returned to Cheyenne by auto that evening.⁷⁶ During the next morning, he suddenly became ill.⁷⁷ By the following Monday, his condition was "grave."⁷⁸ On October 2, 1924, he died at Memorial Hospital, barely a month before the November election.⁷⁹

To fulfill the terms of the Wyoming Constitution, both parties were faced with fielding candidates for the "special election" to complete the remaining two years of Ross' term.⁸⁰ The Democrats nominated his widow, Nellie Tayloe Ross, and for the month leading up to the election, the novelty of running a woman for governor practically erased the severance tax issue from the state press.⁸¹ Ross narrowly won the election against oil company

73. *The Severance Tax*, LARAMIE REPUBLICAN AND BOOMERANG, Sept. 24, 1924, at 2.

74. *Governor Ross Urges Severance Tax in Address at Forum Dinner*, LARAMIE REPUBLICAN AND BOOMERANG, Sept. 24, 1924, at 1.

75. *Id.* at 6.

76. *Id.* at 1.

77. *Governor Ross Operated Upon for Acute Appendicitis*, LARAMIE REPUBLICAN AND BOOMERANG, Sept. 25, 1924, at 1.

78. *Governor Fighting for Life: Condition Very Grave Says Bedside Bulletin at 3 P. M.*, LARAMIE REPUBLICAN AND BOOMERANG, Sept. 29, 1924, at 1.

79. *Governor William B. Ross is Dead*, LARAMIE REPUBLICAN AND BOOMERANG, Oct. 2, 1924, at 1.

80. WYO. CONST. art. IV, § 6.

81. *See Mrs. Nellie D. Ross and E. J. Sullivan Are Nominees*, LARAMIE REPUBLICAN AND BOOMERANG, Oct. 14, 1924, at 1 (Ross' nomination). Severance tax editorials did continue to appear on the editorial pages, but not as the central issue except in the pages of the *Inland Oil Index*, the oil industry newspaper published in Casper. The paper ran a front page photograph and story captioned *Next Governor of Wyoming*, featuring E. J. Sullivan, and with the sub-head: *You Can't Beat the Irish*. INLAND OIL INDEX, Oct. 18, 1924, at 1. The paper editorialized that voters needed to, "Be Loyal to Wyoming," by voting against the severance tax constitutional amendment. The editorial argued that the state did not need more money and

executive and House Speaker E. J. Sullivan of Casper.⁸² She began serving as the nation's first woman governor.⁸³ Meanwhile, the severance tax even more narrowly lost—gaining a majority but not the required fifty percent plus one of all voters casting ballots, a constitutional precondition for passage of such an amendment.⁸⁴

As Governor Nellie Tayloe Ross' two-year term began, the economy continued to decline.⁸⁵ In her first message to the legislature in January, 1925, Ross mentioned the defeat of the constitutional amendment "though endorsed by a large majority of those who voted upon it, did not receive a majority of all votes cast and accordingly, failed of adoption."⁸⁶ State Senator Gardner reintroduced the severance tax constitutional amendment.⁸⁷ Unlike in 1923, this time, the measure failed to gain the two-thirds vote necessary to pass the Senate. In a roll call vote on third reading in the Senate, the joint resolution went down by a vote of fifteen in favor and twelve against, three votes short of the two-thirds required for passage of a constitutional amendment.⁸⁸ This time, the opposition included virtually all of the Republican leadership in the Senate. Nine of the twelve opponents chaired important committees; another served as Senate President.⁸⁹

While the severance tax constitutional amendment went down in defeat, the legislature failed to consider any alternative to the property tax. Governor Ross, unlike her husband, seemed unwilling to stake political capital on such an amendment.⁹⁰ Her mention of the amendment's defeat, combined with her silence on Gardner's reintroduction in the State Senate, sug-

economy ought to be practiced. Further, if a tax were imposed, the industry would move elsewhere. *Be Loyal to Wyoming*, INLAND OIL INDEX, Oct. 18, 1924, at 6. *See The Things at Stake in This Election*, LARAMIE REPUBLICAN AND BOOMERANG, Oct. 25, 1924, at 2 (example of a long editorial opposing the severance tax because the measure required "more study").

82. ERWIN, *supra* note 3, at 610 (vol. II).

83. *Id.*

84. LARSON, *supra* note 17, at 457; Gorin, *supra* note 34, at 15. The vote on the amendment was 39,109 "for" and 27,795 "against." The favorable vote fell short by only a few hundred votes of getting the fifty percent plus one vote of all voters casting ballots in the election. *See* Official canvass of the 1924 election, Secretary of State's records (on file with the Wyoming State Archives).

85. LARSON, *supra* note 17, at 459.

86. *Message of Governor Nellie Tayloe Ross*, S., 18th Leg., Reg. Sess., at 26 (Wyo. 1925).

87. *Committee of the Whole*, S.J. Res. 3, 18th Leg., Reg. Sess., at 243 (Wyo. 1925).

88. *Bills on Third Reading*, S.J. Res. 3, 18th Leg., Reg. Sess. at 341-42 (Wyo. 1925).

89. *Id.*

90. This statement is based on close reading of Ross' official speeches and interviews during her term as governor. N. T. Ross, Governor's Papers (on file with the Wyoming State Archives); The Ross Papers (on file with The American Heritage Center, University of Wyoming).

gest she wished to look elsewhere for taxes as well as to trim government spending.⁹¹

After she was defeated for reelection by former state engineer Frank Emerson, the state's economy actually worsened, but just as in the case of Mrs. Ross' term, little change came in tax policy. Throughout the bad economic times of the 1920s, the state government, as well as cities, counties and school districts, continued to lurch along, depending heavily on property tax assessments.⁹²

Emerson, reelected in 1930, died just a month and a half later. The secretary of state, Republican Alonzo Clark, served nearly two years until again, for the second time in eight years, a gubernatorial election was held in the same year as the election for President.⁹³

During Clark's tenure, unemployment remained a serious problem. The state director of the United States Employment Bureau estimated in January 1932, that there were an average of fifteen needy families in every town in the state.⁹⁴ J. F. Minnick told reporters that "even Wyoming industries that are the hardest hit have a tendency to employ the men sufficiently so that they will not be in actual want."⁹⁵

The Hoover administration established the President's Agency on Unemployment Relief in 1932. The agency's purpose was to funnel federal funds to various state relief organizations who would then apply the federal monies to support local welfare programs. George E. Brimmer, acting chairman of the Wyoming organization in April 1932, wrote Wyoming mayors and county officers that the goal of the agency would be "Wyomingites First."⁹⁶ The first requirement, according to Brimmer, was that "each community is charged with the care of its own people."⁹⁷

Some communities sought to lessen the problem by ordering transients out of town. In the spring of 1932, the city of Laramie protested the

91. *Message of Governor Nellie Tayloe Ross, supra* note 86, at 26.

92. Per capita state debt in 1930 was \$7.12, down from \$10.89 in 1925, but considerably higher than in 1915 when the per capita state debt was just \$.66. The aggregate debt of all state government obligations was \$1,587,000, the fifth lowest in the United States, according to the census bureau report. *See State Ranks 17th in Net Debt with \$7.13 per Capita*, GREEN RIVER STAR, Jan. 1, 1931, at 1.

93. ERWIN, *supra* note 3, at 613 (vol. II).

94. *Average Town in Wyoming Has 15 Needy Families*, GREEN RIVER STAR, Jan. 8, 1932, at 1.

95. *Id.* The *Green River Star* noted some weeks later that local community people helped the unemployed by raising ninety-five dollars at a benefit Public Card party. *Town Residents Aid Unemployed*, GREEN RIVER STAR, Jan. 22, 1932, at 8.

96. *'Wyomingites First' Will Slogan State Relief Work Announced by Committee*," GREEN RIVER STAR, Apr. 15, 1932, at 3.

97. *Id.*

practice conducted by a number of Rocky Mountain communities.⁹⁸ Laramie mayor and county commissioners wrote letters to area mayors saying they would strictly observe Wyoming law by not caring for any paupers found in Laramie but, instead, “ship them back” to where their last destination was.⁹⁹

In 1932, county governments spent \$455,335 on “poor relief,” mostly for families of unemployed men.¹⁰⁰ The total was \$128,455 more than in the previous year. “Most of this was spent in counties where distress was most pronounced,” a columnist wrote.¹⁰¹ Albany, Natrona, Sheridan, Sweetwater, and Hot Springs counties were particularly singled out.¹⁰²

In many communities, non-profit organizations banded together to provide the assistance that the county could not afford. For example, in Powell in September 1932, the mayor called a meeting to form a private relief agency.¹⁰³ The Methodist minister chaired the group, which was dedicated to helping alleviate the “impoverished conditions among some of the Mexican and American population in the region.”¹⁰⁴

Wyoming towns could not afford welfare for residents, let alone the destitute from elsewhere. More than 450 “bonus marchers” came through Wyoming in the spring of 1932.¹⁰⁵ The men occupied twelve freight cars that had originated in Portland, Oregon.¹⁰⁶ They stopped in Green River where local veterans’ organizations furnished their Sunday night supper.¹⁰⁷ The *Green River Star* reported, “[A]lmost the whole town’s citizenry turned out to view the arriving army, their parade of the streets and their mess call.”¹⁰⁸

Agricultural prices, down throughout most of the 1920s, remained low in the early 1930s.¹⁰⁹ With little state action to alleviate the problems, farmers tried to take direct action. In September 1932, potato growers near

98. *Laramie Protests Needy Dumping*, GREEN RIVER STAR, Apr. 8, 1932, at 4.

99. *Id.*

100. Charles A. Cooney, *News Notes from Wyoming Capitol*, WYOMING STATE TRIBUNE, Sept. 14, 1933, at 5.

101. *Id.*

102. *Id.*

103. *Powell Organizes to Take Care of Needy*, POWELL TRIBUNE, Sept. 29, 1932, at 1.

104. *Id.*

105. *Army of 450 On March to Washington are Fed Here*, GREEN RIVER STAR, May 20, 1932, at 1.

106. *Id.*

107. *Id.*

108. *Id.*

109. LARSON, *supra* note 17, at 443.

Powell held a mass meeting. They agreed they would “quit digging potatoes until such time as the market improves.”¹¹⁰

Municipalities, too, were in desperate condition. Even Torrington, long admired by taxpayers for being the only municipality in the state not having any tax assessments at all, finally had to institute a property tax in the spring of 1933.¹¹¹ Previously, the town’s sole source of revenue came in the form of utility fees from the city-owned electric plant.¹¹² Utility rates were lowered as property tax assessments provided the differential.¹¹³

IV. CONSIDERING NEW TAXES

Many citizens braced for new taxes in various forms or other means of raising revenues. During the summer of 1932, rumblings were being heard that Congress might consider a national sales tax.¹¹⁴ Certainly, many states were considering sales tax proposals. Wyoming labor groups opposed sales taxes. “Interests who desire to impose more taxation on the underpaid masses of our people persist in bombarding the U. S. Senate with propaganda in favor of the most iniquitous of all taxes, the sales tax,” the *Labor Journal* editorialized in early June.¹¹⁵

Other taxes were under discussion. A Sheridan newspaper commented on income tax talk: “Certain agricultural interests in this county imply by their questionnaire to the candidates for the legislature that they would like them to approve a state tax on income.”¹¹⁶ The editor argued it was “an impractical time to institute such legislation,” pointing out that incomes “even in the industrial world are practically non-existent at the present time.”¹¹⁷

The Wyoming Socialist Party, meeting in convention in the summer of 1932 in Chugwater, advocated state ownership of all oil wells, thus making all tax sources unnecessary.¹¹⁸ The sentiment among farmers was strong for property tax relief. An “agriculture man,” A. O. Blow, manager of the Chugwater Farmers’ Cooperative association, was nominated as the Socialist

110. *Farm Strike Reaches Powell*, POWELL TRIBUNE, Sept. 8, 1932, at 1. The paper pointed out that on top of poor prices, the crop was only about half of normal. *Id.*

111. *Torrington Gives Up Tax-Less State*, WYOMING STATE TRIBUNE, May 16, 1933, at 3.

112. *Id.*

113. *Id.*

114. *Sales Tax Propaganda*, WYOMING LABOR JOURNAL, June 3, 1932, at 4.

115. *Id.*

116. *State Income Tax*, SHERIDAN PRESS, Oct. 30, 1932, at 4.

117. *Id.*

118. *Wyoming Socialists Advocate State-Owned Mines and Farms to Provide Work for Jobless*, WYOMING EAGLE, July 8, 1932, at 4. The leadership, and probably the party membership, was localized in southeastern Wyoming. *Id.* Central committee members were: W. W. Wolf, Wheatland; Roy and Vera Nicodemus, Joseph Lunn, Harry and Irene Barrett, W. O. Sayers, C. M. Voudy, all of Cheyenne; and H. H. Harry and Louis Sky of Chugwater. *Id.*

candidate for governor; W. W. Wolf of Wheatland, also employed in agriculture, was the party's candidate for United States House.¹¹⁹

Other Wyomingites, many in agricultural pursuits, recognized that relief from one form of taxation likely would bring additional tax through other means. One group organized to work for cuts in spending rather than increases in revenue. The Wyoming Taxpayers Association was formed in Casper on March 20, 1932, "under the sponsorship of the Wyoming Stock Growers Association."¹²⁰ WSGA President, J. Elmer Brock, drafted the articles of incorporation, constitution, and by-laws.¹²¹ His proposed by-laws contained language providing that "the state association not submit or recommend any new law for a new form of raising public revenues until the per capita expense of government shall have been reduced 50 percent below the 1931 cost."¹²²

An association representing cities and towns held a different view of tax policy. During the winter of 1932, G. R. McConnell, executive secretary of the Wyoming League of Municipalities, announced from his Laramie office that cities and towns in Wyoming intended to battle for a share of the gasoline tax and, at the same time, demand exemption from having to pay it.¹²³

A New Governor Faces Old Challenges

During the gubernatorial campaign that fall, Democrat Leslie A. Miller, who had lost to Emerson in 1930, ran for the two years remaining in Emerson's term. Like the Democratic presidential nominee Franklin D.

119. *Id.*

120. *Taxpayers in State Form League with Economy Aim*, GREEN RIVER STAR, Apr. 1, 1932, at 1. Elected the first president was James Lee of Sheridan, "a coal man" and president of the Sheridan County Taxpayers' Association. *Id.* Casper banker R. C. Cather was named treasurer. *Id.* Leslie Miller was among the sixteen founding directors that also included J. Elmer Brock, prominent Buffalo-area cattleman, and E. V. Robertson, Cody, later a United States Senator. *Id.*

121. *Id.* The League was incorporated on August 3, 1932. The stated purpose was:

studying taxation and public expenditures and through non-partisan and non-political means, to aid in bringing about the greatest economies in government consistent with efficiency and good administration; to devise and suggest changes in our public revenue system and to do any and all such things as may be necessary or beneficial in bringing about economies in state, county, municipal and school administration.

Articles of Incorporation Filed for Wyoming Taxpayers League, ROCK SPRINGS ROCKET, Aug. 4, 1932, at 8.

122. *State Taxpayers Plan Association to Get Reduction*, GREEN RIVER STAR, Mar. 18, 1932, at 1.

123. *Wyoming League of Cities and Towns Again to Ask for Share in State Gasoline Tax-Claim*, WYOMING EAGLE, Dec. 9, 1932, at 4. The tax at the time was four cents. *Id.*

Roosevelt, Miller ran on a platform advocating economy, cutting the expenses of government in order to outlast the bad economy.¹²⁴ He received endorsements from organized labor as well as from the Citizens' League.¹²⁵

Miller repeated three important campaign promises to address problems with Wyoming's economy: To lower gasoline prices to Wyoming drivers, to "cut government costs not less than 25 percent," and to reduce taxes by a similar amount.¹²⁶ Republicans criticized him as an oil distributor, inferring that the high cost of gasoline was tied to his business.¹²⁷ Miller countered by opposing the "Tulsa-plus" system and pledging he would force a change once he was in office.¹²⁸ Late in the campaign, Republican candidate Harry Weston admitted he did not believe a governor could make much difference in gasoline prices.¹²⁹

Cautious about the diversity of opinions, neither gubernatorial candidate embraced a tax proposal. Weston promised to "study" the tax system, but told supporters that the solution to the economic problems would come with a reduction in the state's expenditures.¹³⁰ "There will be no overdrafts in state funds," he promised, noting that after he was elected, he would appoint three legislators from each house to help him deal with budget cuts.¹³¹ Democrat Miller also promised economic parsimony.¹³²

The voters of Wyoming, apparently as dissatisfied as voters nationally who had elected Franklin D. Roosevelt that year, turned to the Demo-

124. He ran unopposed in the 1930 primary but for the 1932 nomination he faced Thomas D. O'Neil, a Big Piney rancher. ERWIN, *supra* note 3, at 628 (vol. II). Miller prevailed by a vote of 13,997 to 11,100. *Id.* The Democratic vote in the primary was substantially less than the totals for Republicans, but Miller received unconditional campaign help from his defeated opponent. *Id.* Meanwhile, Acting Governor Clark was edged out by State Treasurer H. R. Weston in a three-way race by 275 votes out of nearly 40,000 votes cast. *Id.* Miller needed to draw substantial Republican votes in order to prevail, but Weston's opponents waited until just before the election to sign on—and then without enthusiasm. *Id.*

125. WYOMING LABOR JOURNAL, Oct. 7, 1932, at 2. See also WYOMING LABOR JOURNAL, Oct. 21, 1932, at 1.

126. See, e.g., *Miller Paves the Way for Lower Gasoline Prices*, WYOMING LABOR JOURNAL, Oct. 21, 1932, at 3 (Miller campaign ad).

127. SHERIDAN PRESS, Oct. 13, 1932, at 2.

128. *Id.* The Tulsa-plus system, agreed to by major oil producers, established the transport costs for gasoline at the cost such shipping would be from Tulsa, Oklahoma, regardless of where the fuel was refined. For the Depression-era problems in the oil industry, see DANIEL YERGIN, *THE PRIZE: THE EPIC QUEST FOR OIL, MONEY AND POWER* ch. 12 (1991).

129. SHERIDAN PRESS, Oct. 31, 1932, at 1.

130. *Economy Budget is Need of State, Weston Tells Republican Rally Here*, SHERIDAN PRESS, Oct. 9, 1932, at 1.

131. *Id.*

132. *Id.*

cratic nominee to help solve the problems with the economy.¹³³ Along with Miller, the Democrats captured control of the House of Representatives with a 42-20 majority.¹³⁴ It was a sea-change. Just a dozen years earlier, only one Democrat served in the House—Thurman Arnold, a Laramie attorney.¹³⁵

At the opening of the legislative session of 1933, Miller addressed the Democratic-controlled House and a State Senate of fifteen Republicans and twelve Democrats.¹³⁶ Miller provided what one editor called, “friendly advice to the legislature.”¹³⁷ He told them that “finding that source of taxation and using it to make the property tax burden more reasonable or equal is what people really want.”¹³⁸ (Miller had pledged at one point in the campaign to “lower government costs by 25 percent,” as a means of “pulling ourselves out of a hole”).¹³⁹

Miller also suggested major modifications in the structure of state government. After the speech, *Wyoming Eagle* columnist Julian Snow predicted that the legislature would be forced to so completely “remodel the governmental structure” that an “outside firm” would have to be hired to

133. Miller defeated Weston by a vote of 48,130 to 44,692; A. O. Blow, the Socialist candidate, polled 1,647, while Communist Party candidate Merton Willer gained a mere 180 votes. ERWIN, *supra* note 3, at 630.

134. *Id.* at 350-53.

135. Arnold later became dean of Yale Law School and, in the 1930s, went on to serve President Franklin Roosevelt as head of the United States Department of Justice anti-trust division. See THURMAN ARNOLD, *FAIR FIGHTS AND FOUL: A DISSENTING LAWYER'S LIFE* (1965) (an amusing account of his experience as the only Democrat in the Wyoming legislature in 1921).

136. WYOMING LABOR JOURNAL, Feb. 3, 1933, at 4. “I had no professional training,” Miller told an interviewer in his later years. “Memoirs,” LARAMIE BOOMERANG, Aug. 18, 1957. “I was brought up working as a clerk around mercantile stores, starting out with my father in Laramie, where my family first landed in 1902. I only went through the eighth grade in primary school.” *Id.* Miller’s father was mayor of Laramie. “Leslie A. Miller, 84, Former Governor, Dies,” WYOMING STATE TRIBUNE, Sept. 29, 1970, at 1. Leslie Miller ran for the legislature at a young age, losing in 1908 in Albany County. *Id.* Employed as a railroad brakeman in the Laramie yards, he was elected two years later (on the same ticket with Mary Bellamy, the first woman ever elected to the Wyoming legislature). *Id.* In 1913, he was appointed chief clerk in the office of the Commissioner of Public Lands in Cheyenne. *Id.* After four years in that position, he left to start an oil business, going into partnership with two other men in the Kinney Oil Company with leases on the Big Muddy near Glenrock. *Id.* Politically, he continued to be active in the Democratic Party, first assistant state chairman for Kendrick’s Senate race in 1916 and then in his own successful legislative race in Laramie County in 1922. *Id.* In 1926, he tried for the State Senate, but lost. *Id.* He won a State Senate seat two years later, resigning after two years to run for governor, losing to Frank Emerson in 1930. *Id.*

137. WYOMING LABOR JOURNAL, Feb. 3, 1933, at 4.

138. *Id.*

139. See, e.g., WYOMING LABOR JOURNAL, Oct. 7, 1932, at 3. (Miller campaign ad). See also Miller, in *Announcing His Platform of Economy, Declares Plan Whereby Big Slash Can Be Made in State's Budget*, GREEN RIVER STAR, June 24, 1932, at 6. “There is only one answer to a demand for lower taxes and that answer is lower government expenditures.” *Id.* In the campaign, he also proposed consolidation of several state agencies. *Id.*

help.¹⁴⁰ “The revision job is too big to put across at the present regular session, hence the request of the governor. The new program [to reorganize state government] is being backed by the State Taxpayers League.”¹⁴¹

As a means of balancing the budget and still providing necessary relief, most legislators, along with a majority of editors, favored cutting wages to public employees.¹⁴² The editor of the *Wyoming Labor Journal* disagreed: “Economy and efficiency in government are necessary and essential things that should be ever present, however, the matter of taxation should not be confused with the more important matter of income.”¹⁴³ As the legislative session opened, many labor union representatives wanted to eliminate the property tax and add an income tax. The editor of the *Wyoming Labor Journal* summarized the point: “If we must be taxed, income is the best guide.”¹⁴⁴ After all, the editor of the *Wyoming Labor Journal* wrote, an income tax would only be applied “on businesses that are profitable.”¹⁴⁵

140. Julian Snow, WYOMING EAGLE, Jan. 20, 1933, at 3.

141. *Id.*

142. WYOMING LABOR JOURNAL, Mar. 17, 1933, at 4.

143. *Id.* Many communities already had reduced the size of their municipal workforces. For instance, in December, 1931, the town of Kemmerer slashed salaries of town marshals, eliminated the office of city health officer, and combined the jobs of city treasurer and police justice. *Kemmerer Slashes Salaries of Officers*, GREEN RIVER STAR, Jan. 1, 1932, at 1. Rock Springs followed suit in January, 1932, by reducing all city employee wages by ten percent. *Rock Springs Cuts Wages of Employees*, GREEN RIVER STAR, Jan. 29, 1932, at 1. Green River also cut the salaries ten percent across the board. *Town Employees Cut 10 Per Cent*, GREEN RIVER STAR, Feb. 12, 1932, at 1. Wage cuts were not restricted to public employees, however. The Union Pacific Coal Company reduced salaries of all “unorganized workers” by ten percent, effective February 1, 1932. *UP Coal Co. cuts Pay 10 Per Cent*, GREEN RIVER STAR, Feb. 12, 1932, at 8. School districts were quick to reduce salaries, too. *See, e.g., School Board Here Cuts All Salaries Ten Per Cent*, GREEN RIVER STAR, Apr. 1, 1932, at 1. The Wyoming State Legislature passed a bill in 1933 to reduce the salary of University of Wyoming President Arthur G. Crane from \$11,000 per year to \$8,000. *Cut for Crane Still Unsigned*, WYOMING STATE TRIBUNE, Feb. 13, 1933, at 1. With the budget cuts, the University of Wyoming reduced faculty and staff. *10 Members of U of W Staff Are Dropped*, WYOMING STATE TRIBUNE, Apr. 27, 1933, at 1. State agencies also made cuts. *See, e.g., State Education Board Slashes Budget \$30,000 to Meet Funds*, WYOMING EAGLE, Mar. 24, 1933, at 1. In the spring of 1933, Cheyenne authorized payments in scrip to unemployed men doing day work for the city. *Scrip is Not for Regular Employees*, WYOMING STATE TRIBUNE, Mar. 31, 1933, at 1. Regular city employees, however, were not paid in scrip. *Id.*

144. *Equalizing Taxes*, WYOMING LABOR JOURNAL, June 2, 1933, at 4.

145. *Thoughtless Taxation*, WYOMING LABOR JOURNAL, Feb. 3, 1933, at 4. *See WYOMING LABOR JOURNAL*, Mar. 24, 1933, at 3 (commenting on taxes on profitable business).

Many national agricultural organizations favored an income tax.¹⁴⁶ In Wyoming, farmers advocated changes away from the land-based taxes that provided most revenue for state and county governments. Their representatives argued that they wished to “broaden the tax base” by shifting away from an “over-reliance on property taxes.”¹⁴⁷ Not coincidentally, property taxes were most heavy on farm and ranch lands. As one agriculture representative wrote in 1932: “Wyoming can no longer rely on property owners [agriculturists] to pay the greatest share of costs for government services.”¹⁴⁸ He asserted that the tax system had to be spread more broadly.¹⁴⁹

Oddly, no mention of a severance tax on minerals was made in 1932 even though just nine years earlier, the constitutional amendment for such a tax nearly passed.¹⁵⁰ A Democratic state committeeman had introduced a severance tax proposal in the State Democratic Convention of 1932.¹⁵¹ H. J. Hunt of Laramie sought the backing in the May 9 convention of the party, but it gained little attention.¹⁵²

146. The leading national organization favoring state graduated income taxes was the National Grange. See ROBERTS, *supra* note 1 (detailing how important the Grange was to tax debates in individual states). The Wyoming State Grange held its first state meeting in 1939 although individual Grange chapters existed prior to that time, mostly in Fremont County, but with some chapters in Johnson, Laramie, and Platte counties. There is no evidence the Wyoming Grange participated in the tax debates of the early 1930s. See Wyoming State Grange *Journal of Proceedings, Fourth Annual Session*, Oct. 25-27, 1943 (on file with the Wyoming State Archives).

147. *Brock Offers Taxpayers' Associations Solution to Problem of Mounting Taxes*, GREEN RIVER STAR, Jan. 29, 1932, at 7 (comments of J. Elmer Brock, president of Wyoming Stock Growers Association, to the Rock Springs Stock Growers). Brock argued that land valuations were too high as were assessments on cattle. *Id.* He urged no new taxes but, instead, “rigid economy.” *Id.* Curiously, the sentiment was not expressed in an agricultural publication but in the *Wyoming Labor Journal*. Mar. 17, 1933, at 4. The writer pointed out that in the “current economic climate of the state, farmers’ taxes are 50-100 percent of income.” *Id.* The average wages for various industry groups showed the following for 1929: Meatpacking plants: salaries, \$4,268; Petroleum refining: salaries, \$2,849 and wages of \$1,981; Railroad shops: salaries, \$3,011; and wages of \$1,627; Printers: wages, \$2,031. *Meat Packers of Wyoming Lead in Salaried Class*, GREEN RIVER STAR, Jan. 1, 1932, at 1. A total of \$2,288,632 was paid by industries in salaries in 1929 and the total in wages was \$10,255,365. *Id.* In September 1933, the school board in Sheridan considered wholesale firing of all married women teachers in order to balance the budget and yet not “adversely harm” families. *Dismissal Imminent for Married Teachers*, WYOMING STATE TRIBUNE, Sept. 13, 1933, at 3.

148. WYOMING LABOR JOURNAL, Mar. 17, 1933, at 4.

149. *Id.*

150. No severance tax measure of any kind was introduced into the House of Representatives during the session. See H.R., 22nd Leg., Reg. Sess. (Wyo. 1933) (index of bills by title).

151. *Severance Tax to Come Up Before Demos in Casper*, GREEN RIVER STAR, Apr. 8, 1932, at 1.

152. *Id.* In 1949, a bill was introduced in the House to place a two percent severance tax on oil, but the measure failed to pass the State Senate. See Gorin, *supra* note 34. The issue was raised again in legislative sessions of 1951, 1953, and 1955, but all efforts for passage failed. *Id.* Wyoming lawmakers finally authorized a severance tax in 1969. *Id.*

Although ranchers appeared to favor an income tax, others were opposed to it. In any event, wrote the editor of the *Sheridan Press*, an income tax is not the alternative: "Incomes are conspicuous for being the most uncertain source of revenue ever adopted by a government. When tax revenues are most needed that form of taxation dries up."¹⁵³

A few Wyoming politicians were on record as favoring an income tax. One was former Governor Fenimore Chatterton.¹⁵⁴ Just one week after his term on the State Board of Equalization expired, Chatterton told a Cheyenne Rotary Club that the Wyoming Constitution should be amended "to authorize the levying of a state income tax and to clothe the state legislature with power to classify various kinds of property for a graduated mill levy which would equalize taxation in consideration of the income-producing potentialities of the property."¹⁵⁵ He pointed out that only twenty-five percent of all income in Wyoming was taxed in any way and the remaining seventy-five percent was "not touched."¹⁵⁶ He concluded, "That is not fair."¹⁵⁷ He continued to speak throughout the state during 1933 to civic groups about the financial problems with the state and the need for an income tax. "An income tax need not and should not be an additional tax," he argued, "properly applied, it should be an equalization tax . . ."¹⁵⁸

But there were other proposals being floated for tax changes. The *Wyoming Eagle* reported on a proposal by E. V. Robertson, a Park County Republican who had substantial influence in the party:

[Robertson] talks readily on what he sees as the need for "privilege" and "retail sales" taxes to ease the tax burden on owners of real property. In Cheyenne this week, he said that if such taxes were enacted, each real estate owner in Wyoming would have a \$5,000 exemption from real estate taxes. He claims such a change would put Wyoming on a cash basis and would attract many to this state because of the lightened real estate tax. By a "privilege" tax he explained he meant a tax to do any kind of business, including even the right to practice law or medicine. "Why shouldn't a lawyer

153. *State Income Tax*, SHERIDAN PRESS, Oct. 30, 1932, at 4.

154. ERWIN, *supra* note 3, at 129 (vol. II) (giving a brief Chatterton biography).

155. *Chatterton Lists Increases in State Government Costs*, WYOMING STATE TRIBUNE, Mar. 1, 1933, at 1. He also urged cuts in salaries of University of Wyoming administrators and other cost-cutting measures in state government. *Id.*

156. *Id.*

157. *Id.*

158. *Chatterton Demands Cut in Government Cost, Activities*, WYOMING STATE TRIBUNE, Sept. 28, 1933, at 10 (reporting on his speech to the annual convention of the Wyoming Federation of Women's Clubs). He also advocated extensive cost-cutting measures, including reducing the number of counties to fourteen and repealing the direct primary law as a means of saving money. *Id.*

pay a yearly tax for the right to practice law. If a merchant also has to pay?" Robertson asked. His "retail sales tax" is a general sales tax.¹⁵⁹

Support existed for a sales tax without the complications Robertson proposed. State Senator B. C. Rumsey spoke to about fifty people at a meeting in Powell. Those in attendance unanimously passed a resolution calling for a state sales tax "of sufficient scope to relieve the present tax burden now resting on property."¹⁶⁰ Opponents pointed out that sales tax proposals had been proposed, but defeated in other Western states.¹⁶¹ Apparently, the mood was different in Wyoming, sales tax proponents argued.¹⁶² Voters wanted no new taxes of any kind, but if necessity required, a sales tax was least objectionable. The *Wyoming Eagle*, observing that Oregon voters opposed the sales tax by a four to one margin, predicted that such a tax had support in Wyoming: "A similar proposal has been made at numerous times in Wyoming and is being given considerable consideration by state leaders at the present time."¹⁶³

A bill to establish a state sales tax was filed in the legislature by Representative William G. Johnson, a Fremont County Democrat.¹⁶⁴ As the *Wyoming Eagle* observed, "[It] is another measure that is likely to be in for some tough sledding. At the present there is quite a feeling against new taxes."¹⁶⁵ With all of the talk of dire conditions, the legislature did not pass a tax bill. Press accounts showed that many Wyomingites still preferred "economy" to new revenue sources.¹⁶⁶ Governor Miller recommended deep cuts to state appropriations and when the legislature complied, cutting even more than the governor thought possible, he complimented them on the

159. *Miller Ready to Call Extra Legislative Session if Survey Warrants*, WYOMING EAGLE, June 30, 1933, at 12.

160. *Powell Taxpayers Favor Sales Tax*, WYOMING STATE TRIBUNE, Sept. 19, 1933, at 3.

161. *Id.*

162. *Id.*

163. *Oregon Vote on Sales Tax May Halt Move Here*, WYOMING EAGLE, July 28, 1933, at 10.

164. *Introduction of Bills*, H.R.B. 224, 22nd Leg., Reg. Sess., at 351 (Wyo. 1933).

165. J. B. SNOW, *From Out of the Statehouse*, WYOMING EAGLE, Jan. 20, 1933, at 2.

166. This was the message from many state newspapers, but there were exceptions. For instance, the *Wyoming Eagle* published an article saluting the Cheyenne Unemployment League's efforts in running an "appeal for aid" the previous week and urging greater local involvement. *Unemployed Here Need More Help*, WYOMING EAGLE, Nov. 3, 1933, at 3.

feat.¹⁶⁷ One measure, however, called for deep cuts in salaries of state employees and, also, cuts in the salaries of state officials.¹⁶⁸

Meanwhile, state needs mounted. In Thermopolis in the spring of 1933, more than 300 unemployed miners from Gebo and Crosby filed into town demanding either work or immediate relief assistance.¹⁶⁹ Governor Miller “dispatched” sufficient money to buy them groceries after George B. Short, the county relief chairman, wired the state relief director that the situation was “desperate.”¹⁷⁰

As the session wound down in 1933, it was apparent that even the very deep cuts would not be enough to sustain the state budget through the next biennium. New income would be necessary. Clearly, a special session would have to be called because, at that time, the Wyoming legislature met every other year for just forty days.¹⁷¹ The crisis appeared too great to wait two years for action.

The Special Committee

Absent passage of a specific bill addressing the problem, legislative bodies often commission a study. At the end of the 1933 regular session, the legislature passed House Joint Resolution Number Three,

[P]roviding for the appointment of a special joint committee of the Senate and the House, to study all governmental functions in Wyoming, with a view to recommending to a special session of the Legislature reforms which will tend to simplify and reduce the cost of such governmental functions

167. LARSON, *supra* note 17, at 464. See also DEBORAH HARDY, WYOMING UNIVERSITY: THE FIRST HUNDRED YEARS, 1886-1986, 105-06 (1986). Discussing the impact on the University of Wyoming, the author noted, “As it turned out, 1933 was the worst year in the history of the University as far as funding was concerned.” *Id.* at 105.

168. H.R.B. 230, 22nd Leg., Reg. Sess. (Wyo. 1933). House Bill 230, the general appropriations bill, passed the House by a vote of 40-18 (one excused, three absent), on February 14, 1933, the thirty-sixth day of the forty-day session. *Bills on Third Reading*, H.R.B. 230, 22nd Leg., Reg. Sess., at 646 (Wyo. 1933). The Senate amended the totals, reducing many salaries even further. *House Bills on Third Reading*, H.R.B. 230, 22nd Leg., Reg. Sess., at 626 (Wyo. 1933); see also *Message No. 237, Senate to House*, H.R., 22nd Leg., Reg. Sess., at 805-07 (Wyo. 1933). Governor Miller was criticized for making appointments under the earlier salary schedules. See *Defeat of the Legislature’s Intent*, WYOMING STATE TRIBUNE, May 5, 1933, at 4.

169. *Rush Fund to Thermopolis*, WYOMING STATE TRIBUNE, June 7, 1933, at 1.

170. *Id.*

171. As the result of a constitutional amendment passed in 1972, the legislature now meets annually during the two-year life of a legislature—a maximum of forty days during a regular session (odd numbered years) and a maximum of twenty days in the “budget session” (even numbered years). See WYO. CONST. art. III, § 7.

. . . and the employment of necessary assistants to carry out the provisions herein set forth.¹⁷²

The resolution called for a strictly bi-partisan committee of six members.¹⁷³

The legislative leadership from both parties appointed three members of each House to a special Committee on Taxation.¹⁷⁴ State Senators Roy Cameron of Sundance, Thomas Hunter of Cheyenne, and Clifford A. Miller of Casper were tapped along with three colleagues in the House—Representatives Max Russell of Douglas, Pat Norris of Cheyenne, and William Jack of Casper.¹⁷⁵ Russell was a businessman, Jack worked for a Casper-based oil company, and Norris was a Cheyenne highway contractor.¹⁷⁶ The resolution establishing the committee and setting forth its charge made no mention that an outside consulting firm would be hired to handle the details, although the language did imply that the committee would have “agents or employees.”¹⁷⁷

Representative Jack, traveling for the company for which he worked (Texaco), stopped in Lusk in early April. He told the *Herald* reporter that tax relief, not increased tax revenues, was the commission’s goal.¹⁷⁸ “The purpose is to lay a basic foundation for an equitable system of taxation in Wyoming and then it will be up to the Governor to decide whether or not a special session of the legislature will be called to act upon the findings of the commission.”¹⁷⁹

172. 1933 Wyo. Sess. Laws at 185 (House Joint Resolution No. 3).

173. *Id.*

174. *See Special Committee Appointed*, S., 22nd Leg., Reg. Sess., at 606 (Wyo. 1933) (appointment of Miller and Hunter). *See also Appointment of Members of Special Joint Committee*, H.R., 22nd Leg., Reg. Sess., at 773 (Wyo. 1933) (appointment of Norris and Russell). Cameron was nominated by the Senate and he appointed Hunter and Miller. *Special Committee Appointed*, *supra*, at 606. Speaker Jack was appointed by the House and he, in turn, appointed the other House members. The appointments were made on the morning of the final day of the regular session in the House and that afternoon by the Senate. *See id.*; *Consideration of Appointment of Member of Special Committee*, H.R., 22nd Leg., Reg. Sess., at 731 (Wyo. 1933).

175. *Senator Cameron Named on Committee to Study Governmental Structure*, SUNDANCE TIMES, Feb. 23, 1933, at 1. Hunter died in late 1936 while still serving in the State Senate. *Message of Gov. Leslie A. Miller to the 24th Legislature*, S., 24th Leg., Reg. Sess., at 28 (Wyo. 1937).

176. *Presenting Laramie County’s New Representatives in Legislature*, WYOMING EAGLE, Nov. 9, 1934, at 4.

177. *Public Asked to Aid Tax Revision Plans*, THERMOPOLIS INDEPENDENT RECORD, Apr. 7, 1933, at 1 (text of resolution); *see also* 1933 Wyo. Sess. Laws at 184-86 (House Joint Resolution No. 3).

178. *No Definite Date Set for Meeting Tax Commission*, LUSK HERALD, Apr. 6, 1933, at 5.

179. *Id.*

The commission was to hold the first of several hearings in Lusk on March 10.¹⁸⁰ However, the illness of Senator Cameron prevented the commission from meeting.¹⁸¹ The commission finally convened in Cheyenne on April 26, where it heard addresses by Governor Miller and former Governor Fenimore Chatterton.¹⁸² Cameron was elected permanent chairman of the commission; Pat Norris, the permanent secretary after the commission rejected a proposal to hire a paid executive secretary.¹⁸³

The tax study group interviewed several tax experts in Cheyenne following its organization. Along with the tax commissioner of Colorado, the group “interviewed” T. E. Madsen of the J. L. Jacobs Company, Chicago, on Friday afternoon.¹⁸⁴ The next day, the group met with E. O. Griffenhagen, representing his firm, also from Chicago.¹⁸⁵ As the *Wyoming Eagle* noted, Griffenhagen was “conceded to be one of the best known governmental experts in the nation.”¹⁸⁶ His firm’s good reputation was justified. It had done reorganization studies for the Canadian government in the 1920s and for the states of Utah, Texas, and Nevada in the early 1930s.¹⁸⁷

180. *Early Meeting to Study Government Costs and Remedies*, THERMOPOLIS INDEPENDENT-RECORD, Apr. 28, 1933, at 5.

181. *Tax Commission to Hold Session March 10 in Lusk*, SUNDANCE TIMES, Mar. 9, 1933, at 1. The article quotes the *Lusk Herald* extensively: “It is expected that they will secure the advice of some of the outstanding technical men in the country to aid them in arriving at definite plans to be recommended to the Governor . . .” *Id.* The notice of postponement is described in *Tax Commission Meeting Again is Postponed*. LUSK HERALD, Mar. 23, 1933, at 1. The *Herald* reported on April 6 that the new date had not been set. *No Definite Date Set for Meeting Tax Commission*, LUSK HERALD, Apr. 6, 1933, at 5.

182. *Tax Study Group from Legislature Begins Work Here*, WYOMING STATE TRIBUNE, Apr. 26, 1933, at 1.

183. *Id.*; see also *Commission on Tax Meets in Cheyenne*, LUSK HERALD, Apr. 27, 1933, at 1.

184. *Tax Group to Interview Expert Here*, WYOMING STATE TRIBUNE, Apr. 28, 1933, at 1.

185. *Id.* Edwin Oscar Griffenhagen, born in Chicago in 1886, held a B.S. degree in civil engineering from Armor Institute of Technology (1906). ALBERT NELSON MARQUIS, WHO’S WHO IN CHICAGO AND VICINITY: A BIOGRAPHICAL DICTIONARY OF LEADING AND LIVING MEN AND WOMEN OF THE CITY OF CHICAGO AND ENVIRONS COMPRISING COOK AND DUPAGE COUNTIES (1936). A licensed professional engineer, he worked in Alaska mining before being named office engineer for the Chicago, Milwaukee, St. Paul, and Pacific Railway. *Id.* In 1909, he became architectural engineer for the City of Chicago, organizing the technical work for the city’s Civil Service Commission in 1910. *Id.* From 1911 to 1919, he was head of the engineering department at Arthur Young and Company, where he began reorganizing corporations, banks and various government entities. *Id.* Forming his own firm, from 1918 to 1921, he reorganized the agencies of the Canadian government. *Id.* His company made similar government reorganization contracts with Texas, Nevada, and Utah in the early 1930s. *Id.* Griffenhagen died in February, 1982. WHO WAS WHO IN AMERICA 164 (Chicago: Marquis Co., vol. 8, 1982-85).

186. *Tax Commission to Hear Experts*, WYOMING EAGLE, Apr. 28, 1933, at 1. The Jacobs company had been employed by Mayor Anton Cermack in Chicago to assist in reorganizing city government.

187. J. HORACE BASS, HANDBOOK OF TEXAS ONLINE (Griffenhagen Report) (Austin: Texas State Historical Commission, 2002), available at www.tsha.utexas.edu/handbook/online/

Charged with increasing government efficiency, decreasing governmental costs, and producing a more equal distribution of the tax burden, the tax committee voted to hire the Griffenhagen Company of Chicago to do a cost analysis of state government and recommend places where cuts could be made and where revenues could be put.¹⁸⁸ The company was given access to an office in the state capitol.¹⁸⁹ They were to begin studying the problems of finance and budget by May 15 and, on the second Tuesday of each month, the legislative tax group would meet with them and monitor their progress.¹⁹⁰ The firm was given until September 15 to produce its final report, giving the tax group until November 1 to make its final recommendations to the legislature.¹⁹¹ The editor of the *Wyoming State Tribune* congratulated the tax group for seeking to examine all aspects of government—state, county, municipal, and school district—and making funding recommendations accordingly.¹⁹²

The decision to hire the out of state firm drew considerable criticism. One newspaper reported feelings at a local meeting:

Especially was sharp criticism directed against the legislative committee for employing tax expert [sic] from Chicago at a reported salary of \$10,000 to make recommendations for Wyoming tax laws. One speaker suggested that experts from any other place than Chicago might have been more acceptable, as it is a notorious fact that Chicago's tax muddle is the worst on record.¹⁹³

An editor in northeast Wyoming commented, "Similar proposals have been made in Wyoming for years, but it is costing taxpayers of the state some \$15,000 to have their memories refreshed by the Chicago firm of accountants who were awarded the contract for the audit by the governor and the committee."¹⁹⁴

articles/view/GG/mkg1 (last visited on Sept. 17, 2003). In Texas two years earlier, "[t]he Griffenhagen staff made comprehensive examination of all phases of state administration and incorporated its report in thirteen separately printed and bound parts, aggregating well over 2000 pages. The volumes covered fiscal and administrative agencies, highways, law enforcement, the judiciary, welfare programs, prisons, health, and education." *Id.*

188. *Chicago Firm Will Analyze State Set Up*, WYOMING STATE TRIBUNE, May 1, 1933, at 1.

189. *Id.*

190. *Id.*

191. *Id.*

192. *On the Right Track*, WYOMING STATE TRIBUNE, May 2, 1933, at 4.

193. *Tax Meeting Wants Special Tax Session*, THERMOPOLIS INDEPENDENT RECORD, May 2, 1933, at 1. The meeting of Big Horn Development Association ended with a resolution condemning the hiring of an out-of-state firm to do the study. *Id.*

194. *Propose Changes in Governmental Structure in State*, SUNDANCE TIMES, Aug. 10, 1933, at 1.

The Committee on Taxation appointed local county committees and solicited advice from the general public through newspaper press releases.¹⁹⁵ Individual members of the committee spoke to various groups around the state throughout the late spring and early summer.¹⁹⁶ When the tax group met in June, they decided to leave to the Griffenhagen company the responsibility of delving into county, municipal, and school district issues. "The commission . . . will devote attention to study of the income, corporation and sales taxes of other states and to weighing the feasibility and advisability of adoption by Wyoming of these sources of public revenue."¹⁹⁷ Committee chairman Roy Cameron, however, was quick to point out that, if there were a state income tax, it would not be a supplemental source of income.¹⁹⁸ Real and personal property taxes would be shifted, he contended.¹⁹⁹ He also noted the interest in "efficiency."²⁰⁰

By this time, "poor relief," administered by counties and towns, had reached crisis levels. In 1933, one in five Wyoming residents was on relief.²⁰¹ School boards continued to demand "voluntary cuts" in wages by teachers.²⁰² Cameron, who also served as president of the Senate, told a Cheyenne reporter that the commission had discussed the need for a "temporary sales tax" to obtain funds for relief, although the commission made no recommendation on the matter.²⁰³

Members of the legislative committee and others who attended the recent meetings are understood to have been sworn to secrecy, and it has been difficult and almost impossible to obtain specific information about its deliberations. Why secrecy should enshroud the work of public officials has not been explained, but such appears to be the case.

Id.

195. See, e.g., *Public Asked to Aid Tax Revision Plans*, THERMOPOLIS INDEPENDENT-RECORD, Apr. 7, 1933, at 1. Thornton, the state legislator from Hot Springs County, also served on the local committee. *Id.* With him on the local committee were State Senators Dora McGrath, Mike McCarthy, Charles Sheffer, and Henry Cottle. *Id.* "This is too important a matter to all substantial citizens to be given snap judgment, hence, the *Independent Record* is devoting much valuable space to the matter, that all citizens may be informed." *Id.*

196. See, e.g., *Miller and Jack of Tax Committee Here Soon*, THERMOPOLIS INDEPENDENT RECORD, May 5, 1933, at 1. The two members of the committee were to speak to the annual meeting of the Big Horn Development Association, chaired by Paul Greever of Cody. *Id.*

197. *Supplemental Taxing Source Is Sought Here*, WYOMING STATE TRIBUNE, May 12, 1933, at 1.

198. *Id.*

199. *Id.*

200. *Id.*

201. LARSON, *supra* note 17, at 444.

202. See, e.g., *Teachers Asked to Take Voluntary Cut in Wages*, LUSK HERALD, June 29, 1933, at 1. The amount requested was fifteen percent. *Id.*

203. Julian Snow, *Proposed Five-Point State Tax Reform Program Center of Interest*, WYOMING EAGLE, Oct. 13, 1933, at 12.

Tax questions were a common topic throughout Wyoming in the spring and summer. When the Big Horn Basin Development Association met in Thermopolis in May 1933, the group favored change in the state's tax system.²⁰⁴ The association passed a resolution endorsing either an income tax or a sales tax to help alleviate the property tax burden.²⁰⁵ Also included in the resolution was condemnation of the selection of an out-of-state firm to do the study and failure of the tax committee to send a representative to the association's meeting.²⁰⁶

Despite the fact that the legislative tax committee had but six members, many were absent during the six meetings in 1933. "One member, Sen. Thomas Hunter of Cheyenne, has attended but one of the five or six meetings held."²⁰⁷ Members received a per diem of twelve dollars per day plus mileage for the sessions.²⁰⁸ Nonetheless, when the Griffenhagen report was due to be released, the press pointed out that members of the commission had spent "much of the month" in deliberations in Cheyenne with the various Griffenhagen firm employees and drafting possible bills for the special legislative session.²⁰⁹

The committee met in Cheyenne throughout the summer and into the fall, but some members also presided over public meetings around the state.²¹⁰ Two commission members, Representatives Jack and Miller, held town meetings in Greybull and Thermopolis in August, 1933.²¹¹ C. W. Axtell, a Thermopolis attorney, seemed to represent the prevailing opinion at both meetings. He said the present system of reliance on property taxes was wholly unacceptable and that if it continued, "counties will own all of the property within their boundaries."²¹² Nonetheless, he dismissed one possible alternative: "Income taxes cost more to collect than the revenue raised The sales tax is easy to collect, it is just and equitable; if the heavy tax burden is taken off industry and labor, the present deplorable condition will be remedied."²¹³

204. *Favor Change in State Tax Laws*, WYOMING STATE TRIBUNE, May 17, 1933, at 9.

205. *Id.*

206. *Id.*

207. Charles A. Cooney, *News Notes from Wyoming Capitol*, WYOMING STATE TRIBUNE, Sept. 21, 1933, at 6.

208. *Id.*

209. *Committee on Tax System in Session Here*, WYOMING STATE TRIBUNE, Oct. 4, 1933, at 1. The *Wyoming Eagle* identified Cooney as someone who writes "GOP'ish news for Republican papers." *With Wyoming's Editors*, WYOMING EAGLE, July 21, 1933, at 9. The names of the Griffenhagen employees assigned to the Wyoming contract are not given in the official report or in any newspaper article about the firm's activities.

210. *Tax Commission to Meet Here Oct. 4*, WYOMING STATE TRIBUNE, Sept. 26, 1933, at 7.

211. *Tax Committee Meets Here to Discuss Changes*, THERMOPOLIS INDEPENDENT RECORD, Aug. 11, 1933, at 1.

212. *Id.*

213. *Id.*

Throughout the summer, speculation continued as to whether the governor would call a special session. He is "ready to call a special session in the fall IF the tax commission and its experts now at work can convince him the session would be worthwhile to Wyoming. That has been his position from start to finish," the *Wyoming Eagle* noted.²¹⁴

The Griffenhagen group was to finish its report prior to the tax committee's meeting in September.²¹⁵ After the firm presented a preliminary report to the taxation committee's September meeting focusing on highways and schools, eighty percent of state expenditures, the committee asked the governor to call the special session.²¹⁶ "We gave the governor to understand that more than \$1,000,000 per year can be saved by putting the program into effect," State Senator Cameron told the *Wyoming Eagle*.²¹⁷ "We feel that the saving would offset the cost of the special session many times."²¹⁸

The Committee Deliberates and Reports

The economy remained weak throughout the fall. When the national relief administrator released a report on families in the United States receiving relief from public funds during November, 1933, Wyoming had the lowest percentage of any state—two percent.²¹⁹ Conditions seemed not to coincide with the report, however. The *Thermopolis Journal* reported that by September 1933, 357 families consisting of 1310 individuals were registered in Hot Springs County as "unemployed."²²⁰ A syndicated columnist, in the fall of 1933, pointed out that the state labor commissioner had applications for employment from 11,675 men.²²¹ The columnist wrote that this number was expected to increase as winter set in.²²² Wyomingites seeking work were so numerous that just before the special legislative session opened the

214. *Miller Ready to Call Extra Legislative Session if Survey Warrants*, WYOMING EAGLE, June 30, 1933, at 12.

215. *Tax Commission Will Meet Here Tuesday to Hear Survey Report*, WYOMING EAGLE, Aug. 4, 1933, at 12; Charles A. Cooney, *News Notes from Wyoming Capitol*, WYOMING STATE TRIBUNE, Sept. 7, 1933, at 5.

216. *Extra Session Merited, Miller Told*, WYOMING EAGLE, Aug. 11, 1933, at 1.

217. *Id.*

218. *Id.*

219. *Relief Percentage in State Smallest in Entire Country*, POWELL TRIBUNE, Feb. 8, 1934, at 1.

220. Charles A. Cooney, *News Notes from Wyoming Capitol*, WYOMING STATE TRIBUNE, Sept. 28, 1933, at 3 (quoting Ralph Noble, editor of the *Thermopolis Journal*).

221. Charles A. Cooney, *News Notes from Wyoming Capitol*, WYOMING STATE TRIBUNE, Sept. 14, 1933, at 5. The number did not include Teton County's total, unavailable at the time of compilation. *Id.*

222. *Id.*

next month, a group in Casper established an association of the unemployed, calling it the "Workers' Brotherhood of America."²²³

Although it acknowledged the increases in unemployment and relief applicants, the board of equalization reported in September that the state tax burden was down eleven percent from 1932 to 1933.²²⁴ More than a million dollars in savings was noted, mostly from school district expenditures.²²⁵ Schools statewide spent \$4.2 million in 1932; \$3,684,000 in 1933.²²⁶ The estimate was that 44.44 cents of every tax dollar went to schools and 24.96 to county taxes; 16.44 for state government and 14.14 to municipalities.²²⁷ For municipalities, costs had to be reduced. All but two towns had decreased evaluations.²²⁸

In a meeting in Cheyenne on October 4, the tax committee received the final report from the Griffenhagen company.²²⁹ According to press accounts, the report contained 450,000 words "while an ordinary novel contains 50,000 to 60,000 words."²³⁰ The legislature had allocated only \$1000 for publication and distribution of the report to all members of the legislature.²³¹ While the company's report filled two published volumes, the major criticism was not made over the length—it was the content. In the name of efficiency and economy, the Griffenhagen planners advocated a statewide police force, a single-house legislature, reduction in the number of counties, an appointed state administrator to head the executive branch, and total consolidation of the 399 school districts in the state into one statewide district.²³²

223. Carl Thomason, *Casper Unemployed Form Organization*, WYOMING LABOR JOURNAL, Dec. 1, 1933, at 1. The Reverend Charles S. Bream gave a "labor talk" and officers were elected: E. P. Beard, president; Barney Price, vice president; Alvah Todd, secretary. *Id.*

224. *State Tax Burden Cut 11 Per Cent in 1933, Final Compilation Shows*, WYOMING EAGLE, Sept. 8, 1933, at 12.

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.* The report showed that only Jackson and Newcastle had valuation increases and they were miniscule. *Id.* For the portion under state control, 20.94 cents per dollar was for education; 27.36 for institutions; 8.62 for general administration; capital outlay, 5.5; judiciary, 7.5; livestock, 3; military, 1.95; engineering, 2.44; state land and farm board, 3.96; state coal mine inspections, .98; capitol building commission, 4.27; highway bond issue, 3.4; soldiers tax exemption, 5.94; legislature, 1.63; state overdraft, 3.8; all other activities, 6.49. *Id.*

229. *Tax Report Before Miller*, SHERIDAN PRESS, Oct. 6, 1933, at 1. For the contents of the report, see GRIFFENHAGEN ASSOCIATES, REPORT MADE TO THE SPECIAL LEGISLATIVE COMMITTEE ON ORGANIZATION AND REVENUE (1933) (2 vols.) [hereinafter GRIFFENHAGEN REPORT].

230. *Tax Report Has 450,000 Words; Something to Read*, THERMOPOLIS INDEPENDENT RECORD, Oct. 20, 1933, at 5.

231. *Id.*

232. GRIFFENHAGEN REPORT, *supra* note 229.

Much to the surprise of the press, the commission declined to accept many of the company's recommendations to economize. As one columnist noted,

The report of the special commission does not appear to be as completely revolutionary as a survey of the complete Griffenhagen report led us to fear it might be. A large number of the reforms as recommended by the experts who made the survey, are not included in the report which the commission is making to the governor and to the members of the legislature along about Nov. 1st.²³³

The committee, meeting during the following week, "rejected recommendations of the Chicago auditing firm to abolish all state elective offices."²³⁴ Clearly, the Griffenhagen study contained politically impossible proposals. "Members . . . indicated Thursday that they were not entirely in sympathy with some of the sweeping recommendations suggested for other state departments. One of those recommendations calls for consolidation of all state institutions with the exception of the state university at one central point."²³⁵ The commission settled on a "five-point" proposal, allowing the rest of the report to be shelved, possibly to be considered at a later time.²³⁶ Abandoned were Griffenhagen recommendations for a statewide centralized police force, a single-house legislature, and elimination of election of state officials, including the governor.²³⁷

The commission did adopt some points from the Griffenhagen suggestions. One was to centralize all road building within the State Highway Department.²³⁸ Another was to consolidate all school districts into one statewide district.²³⁹ Savings from both plans were estimated at approximately two million dollars annually.²⁴⁰ Further, the committee wanted to

233. Julian Snow, *Proposed Five-Point State Tax Reform Program Center of Interest*, WYOMING EAGLE, Oct. 13, 1933, at 12.

234. Charles A. Cooney, *News Notes from Wyoming Capitol*, WYOMING STATE TRIBUNE, Oct. 12, 1933, at 5.

235. *Taxation Problem Up to Commission*, WYOMING STATE TRIBUNE, Oct. 5, 1933, at 7.

236. *Id.*

237. *Id.* GRIFFENHAGEN REPORT, vol. 1, parts II and III (relating to education and highways); *id.* vol. II, part XI (covering state organization).

238. REPORT OF THE LEGISLATIVE COMMITTEE ON ORGANIZATION AND REVENUE TO THE GOVERNOR 71 (Nov. 1, 1933) (on file with the Wyoming State Archives) [hereinafter COMMITTEE REPORT].

239. *Id.* at 47. *Proposed School Law Would Give State Full Control of Education*, WHEATLAND TIMES, Oct. 19, 1933, at 1. The proposal was unveiled by State Superintendent of Public Instruction Katherine Morton to the Southeastern Wyoming Education association conference on October 14, 1933. *Id.*; see also *Wyoming May Have State Control of All Schools*, THERMOPOLIS INDEPENDENT RECORD, Oct. 20, 1933, at 1.

240. WYOMING LABOR JOURNAL, Nov. 10, 1933, at 2; COMMITTEE REPORT, *supra* note 238, at 70, 72 (detailing education savings and highway savings).

create a "finance board" and eliminate county assessors, treasurers and their state counterparts.²⁴¹ The commission claimed this would lead to more equalized taxation.²⁴² Pointing out that the committee did not adopt all that Griffenhagen proposed, the *Wyoming Eagle's* Julian Snow wrote: "The commission, wisely we believe, refrained from okeying a program so completely revolutionary in scope that it would throw a contemplated short session of a legislature into turmoil and perhaps kill all chances of getting anything passed."²⁴³

The Griffenhagen report contained numerous tax-raising suggestions. On the revenue-raising side, the press indicated that the members were particularly inclined to favor the state income taxation proposals.²⁴⁴ Snow, the *Wyoming Eagle* writer, questioned whether or not the discussions over taxes ought to have waited until the special session:

Without distinguishing between news reports as to what the Griffenhagen people had recommended and what the commission is preparing to recommend to the governor, a lot of earnest minded folk over the state have been mixing one with the other, commending some reform proposals that the commission has never believed it will accept and condemning others which, likewise, have been pigeon-holed by the commission²⁴⁵

Snow added that as the special session approaches:

Some large and well organized lobbies are expected to go into action The elimination of all tax on personal property may be expected to send the powerful livestock interests to the side of the small farmer, for not only will the stockmen benefit by the fact that their herds and flocks will be exempted from taxation, but the tax burden upon their lands would be lessened by means of revenue from the income taxes.²⁴⁶

Soon after the report was released, Miller told reporters, "I believe that the committee has presented enough information to warrant calling of a

241. COMMITTEE REPORT, *supra* note 238, at 29.

242. WYOMING LABOR JOURNAL, Nov. 10, 1933, at 2. This was the second installment of the committee's four-part series designed to gain support for their plan.

243. Julian Snow, *Proposed Five-Point State Tax Reform Program Center of Interest*, WYOMING EAGLE, Oct. 13, 1933, at 12.

244. See, e.g., *State Tax System Due for Change*, SHERIDAN PRESS, Oct. 9, 1933, at 1.

245. Julian B. Snow, *Wyoming is Tower of Babel as Discussion of Tax Reforms Spreads*, WYOMING EAGLE, Oct. 27, 1933, at 12.

246. *Id.*

special session."²⁴⁷ He did caution, however, that the meeting of the committee was "merely a starter for the heavy study that must be made of the huge Griffenhagen report."²⁴⁸

The following Monday, the committee released what it called the five major points in the study, emphasizing that the proposed changes would save an estimated two million dollars per year.²⁴⁹ The first point was "broad changes in the tax structure to equalize the burden of taxation instead of the present system . . ."²⁵⁰ Under the proposal, the personal property tax would be eliminated and a personal income tax, a business tax, and a tax on real estate would be substituted.²⁵¹ The proposal, if adopted, would reduce property taxes by fifty percent by "proposing a business net income tax at the low flat rate of four percent; a personal net income tax with graduated rates, the highest of which is six percent, and the retention of the real property tax . . ."²⁵²

In a later column, Snow commented on the confusion people had between the Griffenhagen report and the committee's much less drastic recommendations.²⁵³ He insisted that the two were "not the same."²⁵⁴ The *Sheridan Press* editorialized, quoting from the *Wyoming Eagle* publisher Tracy McCracken, powerful Democratic party loyalist and Snow's boss: "There probably are some features of the Griffenhagen recommendations and the legislative commission's report that can advantageously be enacted into law, though we wonder how many."²⁵⁵

247. *Tax Report Before Governor*, SHERIDAN PRESS, Oct. 6, 1933, at 1.

248. *Id.*

249. *5 Big Changes in State Rule to be Advised*, WYOMING STATE TRIBUNE, Oct. 9, 1933, at 1.

250. *Id.*

251. *State Tax System Due for Change*, SHERIDAN PRESS, Oct. 9, 1933, at 1. *See also 5 Big Changes in State Rule to be Advised*, WYOMING STATE TRIBUNE, Oct. 9, 1933, at 1. The other points were: (1) reorganization of the tax collecting units, (2) creation of one broad plan for education to save about one million dollars per year, (3) placing all road and highway construction under control of the state highway department, and (4) a change in election laws so that all elections would be held on the same day. *Id.* The committee also recommended a "legislative reference bureau." *Id.* For tax specifics, *see* Cooney, *supra* note 234.; *see also Drastic Reform Program With Huge Tax Cut Goes to Governor*, WYOMING EAGLE, Oct. 6, 1933, at 5 (detailing the Griffenhagen report and the claim that possible savings would amount to more than two million dollars).

252. *New Tax Plan by Committee is Explained*, WYOMING EAGLE, Nov. 10, 1933, at 2.

253. Julian Snow, *Proposed Five-Point State Tax Reform Program Center of Interest*, WYOMING EAGLE, Oct. 13, 1933, at 12.

254. *Id.* Snow also observed that there was interest among ranchers for an income tax as an alternative to property taxes. *Id.*

255. *Special Legislative Session Imperative*, SHERIDAN PRESS, Nov. 7, 1933, at 4 (quoting *Special Legislative Session Imperative*, WYOMING EAGLE, Nov. 3, 1933, at 9). McCracken seemed to conflate the report and the recommendations. *Id.*

The committee filed its report with Governor Miller on November 1.²⁵⁶ By the time the report came to the governor, most of the Griffenhagen recommendations had been removed. A Sheridan newspaper quoted Miller: "It would be impossible . . . for the legislature to consider in a special session all the reforms approved by the committee" and, therefore, the "five-point program would have to serve as its recommendations to the special session."²⁵⁷

In an editorial a few days later, the Sheridan editor predicted that Wyoming would "become tax conscious" in the following weeks.²⁵⁸ "In making up the loss from reduced property taxes, the committee was forced to find a substitute—and it finally agreed upon a personal income tax."²⁵⁹ He predicted it would be controversial because "every resident who has an income, no matter how small, would be required to make a return and each return would be accompanied by a filing fee of \$3."²⁶⁰

A personal net income tax and a business net income tax would add two million dollars on the revenue side, the commission said.²⁶¹

Inasmuch as the total cost of all government in Wyoming, local and state, amounted this year to between eight and nine million dollars, it is apparent that if the estimated economies and new revenue are as they predict, real estate, which now must bear nearly the entire burden of the state, should have this tax burden slashed nearly in half.²⁶²

The tax base had to be broadened, it concluded, and an income tax would accomplish this feat.²⁶³

While the commission believed a flat four percent was appropriate for a business net income tax, gaining an estimated one million dollars per year, the personal income tax would be graduated.²⁶⁴ For those earning less than \$1000, there would be no tax except for payment of the mandatory eight dollar "filing fee," required for income earners at all other levels as well.²⁶⁵ Those earning from \$1000-\$2000 would pay one percent; \$2000-\$4000, two percent; \$4000-\$6000, three percent; \$6000-\$8000, four percent;

256. COMMITTEE REPORT, *supra* note 238.

257. *Committee's Report Given Miller*, SHERIDAN PRESS, Nov. 1, 1933, at 1.

258. *Taxation*, SHERIDAN PRESS, Nov. 13, 1933, at 4.

259. *Id.*

260. *Id.*

261. COMMITTEE REPORT, *supra* at 238, at 17.

262. *Id.*

263. *Id.* at 16.

264. *Id.* See also Julian Snow, *Proposed Five-Point State Tax Reform Program Center of Interest*, WYOMING EAGLE, Oct. 13, 1933, at 12.

265. COMMITTEE REPORT, *supra* note 238, at 17.

\$8000-\$10,000, five percent; and six percent on all those making more than \$10,000 annually.²⁶⁶

The Special Session of 1933

Governor Miller issued his formal call for a special session on November 13, 1933.²⁶⁷ In it, he lined out eight important items for consideration. Among them were banking and liquor. The third one listed was: "To consider the report of the Special Legislative Tax Committee."²⁶⁸

The commission began a series of newspaper articles, arguing for their proposals, in November 1933. The first installment claimed that much of the waste and inefficiency in state government could be eliminated by centralizing roads and schools.²⁶⁹ In one district, the commission argued,

[T]he trustees purchased enough floor varnish to last 100 years. In one county the commissioners purchased \$90,000 worth of road machinery in the last three years. Less than \$30,000 (new value) worth of machinery could be located when the new board of county commissioners took over the affairs of the county last January 1st.²⁷⁰

266. *Id.* See also Julian Snow, *Proposed Five-Point State Tax Reform Program Center of Interest*, WYOMING EAGLE, Oct. 13, 1933, at 12. The article stated:

Sen. Roy Cameron, president of the last session of the state legislature and chairman of the special tax reform commission, only this week admitted that the subject of a 'temporary' sales tax to obtain funds for relief, had been discussed by the special commission, though no recommendation has been made It is estimated by experts that the personal net income tax will bring \$1,250,000, and that the business net income tax will yield, under present economic conditions, \$1 million.

Id. He added that the commission did not favor a sales tax "other than retaining the gasoline tax." *Id.*; see also *Here is First of Articles by State Commission Explaining Proposed Tax Reform Program*, WYOMING EAGLE, Nov. 3, 1933, at 2.

267. *Special Session of Legislature Called for Dec. 4*, WYOMING EAGLE, Oct. 27, 1933, at 1; *Gov. Miller Calls Special Session of Legislature Dec. 4th*, WHEATLAND TIMES, Nov. 2, 1933, at 1; *Miller Issues Call for Legislature to Meet Dec. 4th*, THERMOPOLIS INDEPENDENT RECORD, Dec. 1, 1933, at 1.

268. *Special Session of Legislature Called for Dec. 4*, WYOMING EAGLE, Oct. 27, 1933, at 1; *Gov. Miller Calls Special Session of Legislature Dec. 4th*, WHEATLAND TIMES, Nov. 2, 1933, at 1; *Miller Issues Call for Legislature to Meet Dec. 4th*, THERMOPOLIS INDEPENDENT RECORD, Dec. 1, 1933, at 1.

269. *Committee Explains Tax Raising Problems, Ideas*, WHEATLAND TIMES, Nov. 16, 1933, at 4.

270. *Id.* see also *Here is First of Articles by State Commission Explaining Proposed Tax Reform Program*, WYOMING EAGLE, Nov. 3, 1933, at 2. The committee's installment on the tax issues was not published in the *Thermopolis Independent Record* until December 22, 1933, after the special session had already ended! THERMOPOLIS INDEPENDENT RECORD, Dec. 22, 1933, at 5.

The *Sheridan Press* editor asserted that "consolidation of government" was a national trend—away from "expensive, cumbersome and over-lapping governments."²⁷¹

The commission article pointed out that voters should not fear loss of local control. "The people should not be misled by false appeals to local pride and prejudice and to fear of weakening popular control. Such appeals will undoubtedly be advanced by those whose selfish interests lie in the continuation of the present waste, inefficiencies and injustices."²⁷² The second installment, published statewide during the week of November 10, 1933, argued for new tax proposals.²⁷³ The third, on school reform, also appeared in early November.²⁷⁴

Meanwhile, newspapers throughout Wyoming tried to gauge the public view. The *Gillette News-Record* conducted a poll on the Griffenhagen proposals and the select committee's choices from the report. The results were published by other papers statewide because the poll showed little support for most of the plan: "Centralization of schools: Yes 0, No 68; State income tax to supplant personal property tax: Yes 28, No 38; All road construction under the State Highway Department: For 4, Against 64; Creation of state retail sales tax: For 9, Against 58."²⁷⁵ The editor of the *Douglas Budget* summed up the cynicism of some Wyomingites:

It is possible that there can be an equitable division of that [tax] load, but it is altogether improbable that this will ever be done. More money is needed now by the state and we have the sales tax, the income tax and other taxes proposed in order to bring the money in. None of them will be satisfactory probably because all taxes are unpopular.²⁷⁶

The editor of the *Powell Tribune* was critical of the tax commission's plans as well as the decision to employ the Griffenhagen firm: "They employed some Chicago tax experts to show them what was wrong, and now these Chicago experts are about as popular in Wyoming as a polecat at a picnic As a matter of fact, the people of Wyoming do not crave any revolutionary changes in their tax structure."²⁷⁷ A front-page article in the

271. *Consolidation of Government*, SHERIDAN PRESS, Nov. 16, 1933, at 4.

272. *Id.*

273. *See, e.g.*, WYOMING LABOR JOURNAL, Nov. 10, 1933, at 2. The third installment focused on schools. WYOMING LABOR JOURNAL, Nov. 24, 1933, at 3. The fourth discussed highway proposals. WYOMING LABOR JOURNAL, Dec. 1, 1933, at 2.

274. *Here is School Reform Plan of Tax Commission*, WYOMING EAGLE, Nov. 17, 1933, at 2.

275. LUSK HERALD, Nov. 30, 1933, at 2.

276. *With Wyoming's Editors*, WYOMING EAGLE, Nov. 10, 1933, at 9 (quoting *The Committee Reports*, DOUGLAS BUDGET).

277. *This and That*, POWELL TRIBUNE, Nov. 16, 1933, at 4.

Wyoming State Journal was even more critical. Titled "Shelve Capable Wyoming Men in Favor of Chicago Experts," the article pointed out that the Griffenhagen firm received "\$8,750," adding that the Chicago representative of the firm "will be given additional pay, depending upon the extra time spent on this work."²⁷⁸ Why weren't Wyoming people hired to do this, the writer wondered. "W. B. Haselmire, Casper certified public accountant, offered to do the same job for a sum not to exceed \$5,000. And C. H. Reimorth, another Casper CPA, withdrew his bid after learning of the arrangement whereby the contract went to the Chicago auditors."²⁷⁹ Former Governor Fenimore Chatterton, the article asserted, offered to do the same job for \$3500 and "also offered to draft all proposed legislation and present written arguments in support of it."²⁸⁰ As the article concluded, all proposals were rejected.²⁸¹

When the chairman of the legislative committee, Senator Roy Cameron, met with an audience in Sheridan soon after the report was released, he "faced an antagonistic audience."²⁸² According to the *Sheridan Press*, Cameron was "unruffled by flurries of opposition from a large number of 'school people' in the audience."²⁸³ Cameron spoke in favor of the committee's five points at the meeting, organized by the Sheridan County Taxpayers' League, held in the American Legion Hall.²⁸⁴ According to the news account, "The audience listened in comparative silence until near the end of the meeting when Herbert Brooks, chairman of the meeting, expressed the fear that the tax program tended to create 'a bureaucratic form of government with powers centered at Cheyenne.' This statement brought applause."²⁸⁵ Brooks introduced sectionalism into the dispute by adding that he hoped that the south would not "get the cream and northern Wyoming the skimmed milk."²⁸⁶

Cameron tried to address the problems of inefficiency and inequality in the school systems by providing a lengthy list of specific cost savings by

The sales tax was thought to be popular here at Powell a few months ago, but an income tax to relieve in part the present property tax now seems more likely. A general lack of agreement is the obstacle to tax reform, and such will continue to be the obstacle when the legislature meets.

Id.

278. Charles A. Cooney, *Shelve Capable Wyoming Men in Favor of Chicago Experts*, WYOMING STATE JOURNAL, Oct. 26, 1933, at 1.

279. *Id.*

280. *Id.*

281. *Id.*

282. *Cameron Claims Program to Reduce State Taxes*, SHERIDAN PRESS, Nov. 17, 1933, at 1.

283. *Id.*

284. *Id.*

285. *Id.*

286. *Id.*

combining districts.²⁸⁷ One audience member, rancher George Geier, responded: "Let the little red schoolhouse stand where it is, let the people surrounding it run it and tell the legislature to mind its own business."²⁸⁸ Cameron apparently did not respond to Geier's popularly held sentiment. Instead, he noted that property taxes would be reduced by introducing an income tax or a sales tax but not eliminated.²⁸⁹ "As state expenses run about the same, we must have some source of income, like the property tax, that is stable, because other taxes, like an income tax or a sales tax, move up and down with existing economic conditions."²⁹⁰ The audience apparently was not convinced.²⁹¹

The school issue and not the tax plan gained the most public attention after the Sheridan meeting. The editor of the *Sheridan Press* pointed out that changes were necessary, but he concluded that the "plan is too drastic a pill to be swallowed by the ailing taxpayer at one time—especially when he has no assurance that it is not just as liable to kill him as to cure him."²⁹²

As the special session was getting underway, the Wyoming Taxpayers League met in Cheyenne on December 3, to discuss the tax proposals.²⁹³ The organization passed a resolution urging delay.²⁹⁴ "The proposed laws . . . were of such far-reaching importance that they should have further consideration," the League resolved.²⁹⁵ The Wyoming Taxpayers' League met in Cheyenne while the legislature was in session.²⁹⁶ The group passed a resolution that no definite action be taken on major proposals of the legislative committee on organization and revenue at the special session.²⁹⁷ "The league took the stand that the proposed laws on income tax, business tax,

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.* On the same page was a story noting the election of officers of the county taxpayers' league. *Diefenderfer Again to Head Tax Body Here*, SHERIDAN PRESS, Nov. 15, 1933, at 1. Merchant Alf Diefenderfer was elected president; R. H. Walsh, president of the First National Bank, was chosen vice president; and Herbert Brooks was elected secretary of the organization numbering about thirty-five members, although the organization hoped "to increase its membership to 300 this fall by means of a quiet campaign." *Id.* Five days later, the Sheridan paper editorialized about the importance of a large taxpayers' league, urging every citizen of the county to join. *The Tax League*, SHERIDAN PRESS, Nov. 20, 1933, at 4.

292. *The School Question*, SHERIDAN PRESS, Nov. 19, 1933, at 4. The editor mentioned that when Cameron was describing the committee's education plan, he did so "amid whispers of 'Dictator.'" *Id.*

293. *Taxpayers League Urges Delay for Big Law Proposals*, THERMOPOLIS INDEPENDENT RECORD, Dec. 8, 1933, at 1.

294. *Id.*

295. *Id.*

296. *Id.*

297. *Id.*

department of finance, education, and highways were of such far-reaching importance that they should have further consideration.”²⁹⁸

Members of the Wyoming Stockgrowers Association weighed in on the tax proposals. A letter to the editor of *Cow Country* complained that while a few items of personal property would be exempt from the tax, “these do not include livestock.”²⁹⁹ The letter added that “if the time again comes when ranchmen make any profit, they will be taxed on their real estate, livestock and their profit.”³⁰⁰ The writer concluded that “[t]he committee was appointed to devise ways for reducing tax expenditures and not to make plans for new forms of taxation.”³⁰¹

The *Sheridan Press* predicted that the tax measures would

have a hard row to hoe if the final bill retains the present theory of ‘setting up new forms of taxation to relieve existing taxation.’ The property owners will want definite assurance that their taxes will be reduced, and opponents of the proposed bills declare that they are devoid of any such guarantee.³⁰²

The editor concluded that the legislature’s biggest task would be “to separate the worthwhile grain from the chaff of that legislative report.”³⁰³

When Governor Miller addressed the special session on the opening day (December 3, 1933), he reminded legislators that the special six-member taxation committee had not been appointed by him, but by the legislature.³⁰⁴ He praised the committee’s diligence and singled out Senators Roy H. Cam-

298. *The Middle Ground*, SHERIDAN PRESS, Dec. 6, 1933, at 4.

299. *What A Cattleman Thinks*, SHERIDAN PRESS, Nov. 26, 1933, at 4 (quoting D. R. Whitaker, WSGA President, COW COUNTRY, Nov. 18, 1933, n.p. (the bulletin of the Wyoming Stockgrowers Association)).

300. *Id.*

301. *Id.*

302. *The Special Session*, SHERIDAN PRESS, Dec. 1, 1933, at 4.

303. *Id.*

304. *Message of Governor Leslie A. Miller to the Special Session of the Wyoming State Legislature*, H.R., 22nd Leg., Spec. Sess., at 15 (Wyo. 1933) [hereinafter *Message of Governor Miller to Special Session*]. It was only the fourth special session in state history, the others being in 1920 to ratify the women’s suffrage amendment; in 1923 for a farm loan law and interstate streams legislation; and 1929 for a variety of endeavors, including creating two new state institutions and making changes to election laws. The complete text of Miller’s speech also was printed in newspapers around the state. See, e.g., *Governor Outlines Definite Relief Program to Special Session*, WYOMING EAGLE, Dec. 8, 1933, at 9-10.

eron (Republican from Crook County) and Clifford A. Miller (Republican from Natrona County) who led the committee's work.³⁰⁵

He said he would not comment extensively on the committee's report, leaving that to the committee through individual bills they might propose for the session.³⁰⁶ "I do, however, desire to comment briefly upon a few of the recommendations."³⁰⁷ After noting a few areas in which he had agreement (changes in inheritance taxes, for example), he said, "There is unquestionably a very considerable feeling in this State that we should adopt some form of an income tax. Personally, I believe the income tax to be the outstandingly just and fundamental method of taxation."³⁰⁸ He added:

I do not believe, however, that at this time we should give thought to any new taxes unless those taxes should be used to offset and reduce tax now paid on real property. It is, therefore, my recommendation that the Legislature give due consideration to the proposal for an income tax and if favorable consideration be given the committee's bill, the same be amended to the effect that any tax paid on property shall be a credit not upon gross income but upon income tax to be paid. Unless the workings of the income tax measure can be made to relieve the present burdens borne by owners of real property, the measure should be discarded at this time.³⁰⁹

As for the committee's recommendations for changes in education, he emphasized "local control" would not be affected.³¹⁰ "The act proposed to provide a state district for school tax purposes would not interfere with the present control over fundamental school district affairs," he asserted.³¹¹ He pointed out that his plan would contain safeguards in that area while providing the funding from the state:

The funds would be paid over by the State to the County Treasurers, and the local school boards would retain the power to request the County Commissioners to raise any sums necessary to pay interest on existing bonds, or to liquidate the same. It would equalize the opportunity for edu-

305. *Message of Governor Miller to the Special Session, supra* note 304, at 16. *See also* WYOMING EAGLE, Dec. 8, 1933, at 10 (quoting entire text of the governor's address).

306. *Message of Governor Miller to the Special Session, supra* note 304, at 16.

307. *Id.*

308. *Id.* at 17. *See also* Miller Address to Special Session, WYOMING STATE TRIBUNE, Dec. 4, 1933, at 2.

309. *Message of Governor Miller to the Special Session, supra* note 304, at 17. Years later, in 1974, Wyoming voters passed a constitutional amendment that follows Miller's logic. *See* WYO. CONST. art. XV, §18.

310. *Message of Governor Miller to the Special Session, supra* note 304, at 20.

311. *Id.*

cation as well as equalize the burdens on taxpayers, and it seems to me if we can arrive at this general wholesome effect and at the same time permit our people to retain the actual control of fundamental school affairs they now have, such a course would be altogether desirable.³¹²

The newspaper reaction to Miller's speech seemed generally positive. The *Sheridan Press* editor wrote that Miller "has plainly indicated that he prefers to travel the middle ground to economy and tax relief."³¹³ His view of the income tax was summarized by the paper.

Like the members of the Legislative Committee, the governor did declare himself personally in favor of an income tax—but added that "I do not believe, however, that at this time we should give thought to any taxes unless those taxes should be used to offset and reduce tax now paid on real property."³¹⁴

In order to take care of the increasing burden of "poor relief," Miller recommended a tax on beer (just recently legalized when Prohibition was repealed) of four cents per gallon.³¹⁵ "I believe it would be a tax at once productive of sufficient revenue and a tax popular in its purpose and conception."³¹⁶ He also proposed changes in educational finance, but would not concur with the committee's recommendation that the entire school system of the state be centralized into one district and under one board.³¹⁷ The same was true of the centralization of authority over highway spending.³¹⁸ He concluded, however, that reduction in state expenditures, which he had accomplished during the previous year, was a better budget solution than new taxes.³¹⁹

R. T. Baird, the editor of the *Powell Tribune*, disagreed:

What we need in Wyoming is more tax money coming in from untaxed sources and a reduced property tax. We want a 50 percent cut in the taxes levied on real estate and per-

312. *Id.*

313. *The Middle Ground*, SHERIDAN PRESS, Dec. 6, 1933, at 4.

314. *Id.*

315. *State Legislators Undertake More Equitable Tax Burden*, WYOMING STATE JOURNAL, Dec. 7, 1933, at 1.

316. *Id.*

317. *Message of Governor Miller to the Special Session*, *supra* note 304, at 18-19.

318. *Id.* at 21-22.

319. *Miller Address to Special Session*, WYOMING STATE TRIBUNE, Dec. 4, 1933, at 11. *See also Special Session Opens Here with Relief Program Ready*, WYOMING EAGLE, Dec. 8, 1933, at 14.

sonal property, and we will never get that reduction merely by talking measures of economy in government.³²⁰

He concluded that the legislature ought to "devise an entirely new scheme of taxation."³²¹ Baird described the newly formed Big Horn Taxpayers' League, a group that insisted its members would pay no more taxes until all property taxes were abolished.³²² He predicted this movement would spread statewide unless the legislature took action on the property tax reduction.³²³

Not all of Wyoming had a "considerable feeling" in favor of an income tax. The Lander Chamber of Commerce took a straw poll of its membership in November 1933.³²⁴ The group voted 10-1 for a sales tax and against an income tax.³²⁵ Main street businessmen clearly did not want an income tax, but representatives from their rural neighbors were to show more ambivalence. One editor observed that regardless of the Democratic majority, there would be "domination of the House by the 'farm bloc' composed of agrarian representatives and their sympathizers; extension of such domination to the Senate contemplated but uncertain."³²⁶ According to the *Powell Tribune*, "The farm bloc is already in control of the Democratic House and the Republican Senate. It is something new to have farmers and their interests controlling a legislature in this state."³²⁷

The editor of the *Sheridan Press* was extremely critical of the tax proposals, calling them "theoretical bills."³²⁸ "Many of the theoretical bills are based upon the rosy promise that the creation of new forms of taxation will relieve existing taxation. But those measures DO NOT GUARANTEE that that result will be achieved, nor does it seem possible that it can."³²⁹ He concluded that "Plain, old-fashioned economy, painful but practical, is what is needed at the present time."³³⁰

Partisan politics apparently had little to do with support for an income tax. Democrats had control of the House of Representatives by a mar-

320. R. T. Baird, *This and That*, POWELL TRIBUNE, Dec. 7, 1933, at 2.

321. *Id.*

322. *Id.*

323. *Id.*

324. WYOMING STATE TRIBUNE, Nov. 30, 1933, at 1.

325. *Id.*

326. *Special Session Met Monday: Farm Bloc Control House; Many Favor Sales Tax Law*, THERMOPOLIS INDEPENDENT RECORD, Dec. 8, 1933, at 1. The editor predicted that the income tax proposed by the committee would be rejected and a sales tax would be adopted. *Id.* The editor did point out, however, that "opposition to the proposed income tax was not so well defined." *Id.*

327. R. T. Baird, *This and That*, POWELL TRIBUNE, Dec. 7, 1933, at 2.

328. *Practical v. Theoretical Economy*, SHERIDAN PRESS, Dec. 15, 1933, at 4.

329. *Id.*

330. *Id.* Three days later, the *Sheridan Press* reported the defeat of a sales tax measure in Montana. *Montana Sales Tax Bill Loses*, SHERIDAN PRESS, Dec. 18, 1933, at 1.

gin of 42-20 while the Republicans held on to the Senate by 15-11.³³¹ Had the income tax been a purely partisan issue, the outcome would have been clear. Both parties were split on the issue, however. Support for the income tax in Wyoming (and nationally) cut across party lines. Many rural Republicans joined with their farm-ranch Democratic colleagues to support some type of income tax. Representative L. F. Thornton, a Hot Springs County Republican, and R. V. Allen, a Goshen County Democrat, announced jointly that "more than a majority of the House members had signed a call for a caucus to decide concerning the proposed bloc and politics which it will sponsor."³³² While, generally, farmers and ranchers, in Wyoming as well as nationally, seemed to favor an income tax, businessmen and industry representatives opposed it.³³³

Labor union representatives continued to speak out against adoption of a sales tax. "It places the tax burden on those least able to pay and paves the way for large savings by those who own large property buildings and should bear their fair share of the tax burden."³³⁴

On the second day of the special session, the Joint Committee on Organization and Revenue introduced House Bill Number One:

A Bill for An Act providing for the payment of an income tax by individuals, trusts, and estates; providing for certain exemptions and deductions therefrom; defining certain words and phrases; providing for the time and manner of filing returns, the fees to be paid therefor [sic], including a fee as a poll tax under the constitution, and the computation, determination, collection, and payment of taxes due hereunder

.....³³⁵

The bill also required cooperation with federal income tax officials along with the requirement for filing the federal form with the state form.³³⁶ The bill, along with a companion measure calling for a business franchise tax, was referred to the Revenue Committee and that group returned a "do not pass" recommendation on both bills on December 15, the twelfth day of the

331. ERWIN, *supra* note 3, at 350, 352-53.

332. R. T. Baird, *This and That*, POWELL TRIBUNE, Dec. 7, 1933, at 2.

333. *Id.* This is confirmed in the statement written by Powell editor R. T. Baird about farmer control over the House and Senate, even though each body was controlled by a different party. *Id.*

334. Lloyd Starkey and C. H. Chapman, *Sales Tax*, WYOMING LABOR JOURNAL, Dec. 22, 1933, at 2.

335. *Introduction of Bills*, H.R.B. 1, 22nd Leg., Spec. Sess., at 27-28 (Wyo. 1933).

336. *Id.*

special session.³³⁷ The statewide press pointed out how divisive the tax acts had become. "Prolonged controversy" was expected to continue.³³⁸

On the fourth day of the session, Democrat Allen and Republican Thornton introduced what the press called a privilege tax, House Bill Number Fifty-Nine.³³⁹ A group of twenty-three legislators from both parties supported the act that also was known as the "adjustment sales tax."³⁴⁰ The newspapers referred to the bipartisan group as the "farm bloc."³⁴¹

The privilege tax appears to have been a combination of sales and income tax. It featured a two percent tax on gross receipts of doctors, lawyers and other professionals, oil and gas, transport, and communication companies.³⁴² "Raw materials" were exempt from taxation, defined by the group as agricultural products but, curiously, not oil and gas.³⁴³ Allen and Thornton, the "farm bloc" leaders, spoke passionately in favor of the act, accusing the Democratic leadership of attempting to kill it before it could be considered.³⁴⁴

Amid complaints that the special session was paying too much attention to trivial matters such as a "beaver tag bill," the legislative leadership brought up the farm bloc's "privileges tax."³⁴⁵ Not only was the Democratic leadership against it, but opposition surfaced from members of both parties.

Democratic floor leader H. D. Watenpaugh argued strongly against it.³⁴⁶ The measure was before the committee of the whole for more than

337. *Standing Committee Reports*, H.R.B. 1, 2, 22nd Leg., Spec. Sess., at 201-02 (Wyo. 1933).

338. *Tax Revision Plans Causing Sharp Split in House as Report Framed*, WYOMING EAGLE, Dec. 15, 1933, at 1.

339. *Introduction of Bills*, H.R.B. 59, 22nd Leg., Spec. Sess., at 49 (Wyo. 1933). The bill was referred to the Revenue committee and reported out on December 15, the twelfth day of the session, with proposed amendments, but with a "do pass" recommendation. *Standing Committee Reports*, H.R.B. 59, 22nd Leg., Spec. Sess., at 212-13.

340. The phrase comes from the first line of the act: "A bill for an act to raise public revenue by imposing an adjustment tax . . ." *Introduction of Bills*, *supra* note 339, at 49.

341. WYOMING STATE TRIBUNE, Dec. 5, 1933, at 1. The *Wyoming Eagle* wrote that the group claimed support from twenty-five legislators. *Tax Revision Plans Causing Sharp Split in House as Report Framed*, WYOMING EAGLE, Dec. 15, 1933, at 1.

342. H.R.B. 59, 22nd Leg., Spec. Sess. (Wyo. 1933).

343. See R. T. Baird, *This and That*, POWELL TRIBUNE, Dec. 7, 1933, at 2 (describing the tax).

344. *Id.* See also *Extra Session Draws Near End of Two Weeks of Legislation*, WYOMING EAGLE, Dec. 15, 1933, at 3.

345. S.F. 24, 22nd Leg., Spec. Sess., at 164-65 (Wyo. 1933). The bill, Senate File 24, called for a fee to be charged to trappers for beaver tags. *Id.* Given the limited beaver population and minimal revenue to be gained from such a tag, the legislative efforts spent in debating the measure seem to have been a dubious use of limited time.

346. WYOMING STATE TRIBUNE, Dec. 19, 1933, at 2.

three and one-half hours late into the night of December 18.³⁴⁷ Scotty Jack, Casper Democrat, spoke against the bill as a “levy on human misery, a tax striking the unemployed as well as the employed, applying even to the clothing of the man in the bread line.”³⁴⁸ As a member of the special tax committee, he argued that an income tax would be more equitable.³⁴⁹

Despite the leadership opposition, the measure passed committee of the whole on the fifteenth day of the session.³⁵⁰ When the report on the committee of the whole was made to the house on December 19, however, the House leaders recommended that the bill be “indefinitely postponed.”³⁵¹ One of the “farm bloc” supporters, Park County Republican Ernest Goppert, requested a roll call vote on the adoption of the report.³⁵²

Goppert spoke for the “adjustment tax” in what newspaper reports claimed was the longest speech of the special session.³⁵³ “The present tax system,” he argued, “puts a penalty on the man who improves the community” by the erection of a home, a factory, etc.³⁵⁴ He pointed out that up to a tenth of all property in Wyoming had been sold for taxes and in the Powell area, he asserted, twenty-five percent of all property was sold for taxes in 1932 alone.³⁵⁵ He said the tax bill would reduce the pressure on property owners and “encourage thrift by taxing spending.”³⁵⁶ Extensive amendments were made in the bill.³⁵⁷ Despite the changes, the leadership prevailed when thirty-eight legislators voted to indefinitely postpone and twenty-two voted to consider the bill.³⁵⁸

The leadership preferred an income tax, or at the least, a constitutional amendment to make it possible. On December 8, the fifth day of the session, Allen and Thornton introduced a house joint resolution to propose a constitutional amendment permitting the legislature to levy an income tax.³⁵⁹ The measure went to the Judiciary committee and reported out with a “do

347. *Id.*

348. *Id.*

349. *Id.*

350. *Report of Committee of the Whole*, H.R.B. 59, 22nd Leg., Spec. Sess., at 265-66 (Wyo. 1933). Most of the amendments were left in place.

351. *Id.* at 270-71. Chairman Earl Despain signed the report. *Id.*

352. WYOMING STATE TRIBUNE, Dec. 19, 1933, at 1.

353. *Id.*

354. *Id.*

355. *Id.*

356. *Id.*

357. *Report of Committee of the Whole*, *supra* note 350, at 270-71.

358. *Id.* at 271. Voting “no” and, thus, wishing to consider the act were the following legislators: Allen, Chassell, Cross, Culbertson, Despain, Mrs. Fagan, Frison, Geddes, Goppert, Hanson, Hoge, Jenkins, Johnson, Keith, Krueger, Mitchell, McCann, Ray, Russell, Schloretd, Small, and Thornton. *Id.* There was one excused. *Id.*

359. *Introduction of Bills*, H.R.J. Res. 6, 22nd Leg., Spec. Sess., at 76 (Wyo. 1933).

pass" recommendation on December 12.³⁶⁰ From there, Speaker Watenpaugh sought suspension of the rules for consideration of the resolution on December 13.³⁶¹ It went immediately to second reading and then to consideration for third reading.³⁶² While the measure gained more "yes" than "no" votes, because it was a constitutional amendment, it required a two-thirds vote for passage. It failed on a vote of 36-21 with one excused and three absent.³⁶³

Proponents, including many of the "farm bloc" supporters of the defeated "privilege tax," did not give up. Immediately, Goppert demanded a call of the house in order to get the absent members present.³⁶⁴ The vote was taken again on reconsideration and, this time, the measure narrowly passed by a vote of 43-17 with one excused.³⁶⁵

Sheridan County Democrat Owen S. Hoge, who had his own income tax plan to support, explained his vote against the constitutional amendment:

[A]s a member of the Special Joint Legislative Committee which had studied this matter very thoroughly, and having had the benefit of advice from many eminent members of the legal profession, it was his opinion and the opinion of other members of the Joint Legislative Committee that no constitutional amendment was necessary to enable the legislature to levy and collect income taxes.³⁶⁶

360. *Standing Committee Reports*, H.R.J. Res. 6, 22nd Leg., Spec. Sess., at 137 (Wyo. 1933).

361. *Suspension of Rules*, H.R.J. Res. 6, 22nd Leg., Spec. Sess., at 169 (Wyo. 1933). Actually, the vote to suspend the rules was fifty-two "yes," not a single "no," but eight members absent, oddly enough, including Thornton. *Id.*

362. *Id.* at 169-72.

363. *Id.* at 172. Voting for the measure were: Allen, Armstrong, Baldwin, Bark, Binney, Bream, Buell, Carroll, Chassell, Connaghan, Cross, Culbertson, Fagan, Flannery, Goppert, Gose, Guyer, Hanson, Hoge, Jenkins, Johnson, Keith, Krueger, Mitchell, McCann, McPherson, Ray, Replogle, Reymore, Rochelle, Russell, Sanders, Schrader, Small, Watenpaugh, R. H. Wilson. *Id.* Voting against were: Birchby, Davis, Despain, Garetson, Geddes, Gilleard, Hammond, Hunt, Kunkle, Logan, Moore, Mullens, Norris, Rogan, Schloretd, Scott, Smith, Thornton, Wicks, Williamson, Hoge (as speaker pro tem). *Id.*

364. *Id.* at 172-73.

365. *Id.* at 173. Switching votes from "aye" to "nay" were: Democrats Carl Bark (Teton) and Lucile Connaghan (Fremont); but from "nay" to "aye" were: Democrats Earl Despain (Big Horn), and Henry W. Smith (Lincoln), and Republicans Allan H. Geddes (Albany), J. L. Wicks (Uinta), C. D. Williamson (Carbon), and Thornton. *Id.* Republican Paul Frison (Washakie), and Democrats Bryan Kemmer (Natrona) and Platt Wilson (Lincoln), absent on the earlier vote, voted "aye" on the reconsideration. *Id.*

366. *Id.*

The bill was sent to the Senate where it was indefinitely postponed on the sixteenth day of the session, December 19.³⁶⁷

After the failure of the “farm bloc’s privilege tax” plan, Democrat Herman F. Krueger (Park County) requested “early consideration” of House Bill Number One, the income tax act that apparently had Governor Miller’s support along with that of the House leadership.³⁶⁸ The speaker assured the legislators that it would come up promptly, but in fact, the measure finally came to the floor on the seventeenth day of the special session on December 20, 1933. By that point, the income tax law was weighted down with eighty-three proposed amendments in the twenty-one-page bill.³⁶⁹ Most of the farm bloc—the group losing the earlier privilege tax vote—nonetheless, backed the graduated income tax bill calling for a tax ranging from one percent on incomes below \$300 annually to six percent on incomes in excess of \$10,000 annually.³⁷⁰ The measure passed committee of the whole by voice vote.³⁷¹

On the next day, the eighteenth day of the session, Democratic House Leader Watenpaugh brought House Bill Number One, the income tax law, up for debate on third reading.³⁷² The Democratic leader apparently thought he was making the bill more palatable for doubters, perhaps some of the “farm bloc” members, by inserting a paragraph that would have allowed “[i]ncome received from any property paying property tax in the State of Wyoming” to be exempted from income taxes.³⁷³ The effort apparently boomeranged. Several legislators, who had favored the bill initially, argued against the Watenpaugh amendment, pointing out that it would leave the burden of the income tax virtually upon wage and salary earners.³⁷⁴ The effect was to cause a rift between the “farm bloc” and the legislators from the “labor wing” of the Democratic party. Even though Watenpaugh’s

367. H.R.J. Res. 6, 22nd Leg., Spec. Sess., at 209 (Wyo. 1933).

368. *Personal Privilege*, H.R.B. 1, 22nd Leg., Spec. Sess., at 271 (Wyo. 1933). At the same time, Representative Hunt urged early consideration of the “limited income tax bill.” *Personal Privilege*, H.R.B. 103, 22nd Leg., Spec. Sess., at 271 (Wyo. 1933). Krueger was a Park County farmer and World War I veteran, serving in his second term. *The Majority Floor Leader*, POWELL TRIBUNE, Jan. 10, 1935, at 2. In the next session, he was majority floor leader. *Id.*

369. *Report of Committee of the Whole*, H.R.B. 1, 22nd Leg., Spec. Sess. at 300-04 (Wyo. 1933). Many of the amendments called for word changes to allow for the “director of taxation” to be the principal official administering the tax rather than the state treasurer. *Id.* The poll tax provision was deleted as well. *Id.*

370. *Id.*

371. *Id.* The bill passed routinely on second reading. *Id.* at 313-14.

372. *Third Reading of Bills*, H.R.B. 1, 22nd Leg., Spec. Sess., at 317 (Wyo. 1933).

373. *Id.*

374. *House Kills Income Tax Law Bill*, SHERIDAN PRESS, Dec. 21, 1933, at 1.

amendment passed, it was not enough to gain support for the bill. On final passage, the income tax bill was defeated 24-36 with one excused.³⁷⁵

A second income tax bill (House Bill 103), sponsored by Representatives Herman Krueger and Owen S. Hoge, was introduced on the fifth day of the session.³⁷⁶ Dubbed the "limited income tax bill," it sought to simplify filing. It would have required payment of a state income tax in the same amount the taxpayer paid in federal income tax.³⁷⁷ Referred to the Revenue committee, it was reported back without recommendation on December 15.³⁷⁸ After passage on second reading through suspension of the rules on December 21, the bill came up for third reading, passing by a vote of 32-21 with four excused and four absent.³⁷⁹

The two income tax bills had been debated on December 20, 1933, the last day of the special session. Following the defeat of the first, the second proposal never reached a vote. Any additional form of taxation was dead until after the next biennial session. A new legislature, elected in November 1934, would have to consider any tax bills.³⁸⁰

During the time that the privilege tax and various other tax bills were winding their way through legislative committees, both houses ad-

375. *Third Reading of Bills*, *supra* note 372, at 317-18. Voting for the bill were: Allen, Bream, Carroll, Chassell, Fagan, Goppert, Gose, Hanson, Hoge, Jenkins, Johnson, Kemmer, Krueger, Kunkle, Mitchell, McCann, Norris, Ray, Sanders, Schloredt, Small, Thornton, Watenpaugh. *Id.* Voting against were: Armstrong, Baldwin, Bark, Binney, Birchby, Buell, Miss Connaghan, Cross, Culbertson, Davis, Despain, Flannery, Frison, Garetson, Geddes, Gilleard, Guyer, Hammond, Hunt, Keith, Logan, Moore, Mullens, McPherson, Replogle, Reymore, Mrs. Rochelle, Rogan, Russell, Schrader, Scott, Smith, Wicks, Williamson, P. Wilson, R. H. Wilson. *Id.* Taylor was excused. *Id.* For a description of debate on the bill, see *House Kills Income Tax Law Bill*, SHERIDAN PRESS, Dec. 21, 1933, at 1. Following the bill's defeat, five members rose to explain their votes—Democrats Platt Wilson, Krueger and L. G. Flannery (Goshen), and Republicans G. W. Small (Platte), and Thornton. *Third Reading of Bills*, *supra* note 372, at 318.

376. *Introduction of Bills*, H.R.B. 103, 22nd Leg., Spec. Sess., at 75 (Wyo. 1933).

377. H.R.B. 103, 22nd Leg., Spec. Sess. (Wyo. 1933).

378. *Standing Committee Reports*, H.R.B. 103, 22nd Leg., Spec. Sess., at 203 (Wyo. 1933). The bill passed second reading on suspension of the rules on December 21. *Second Reading of Bills*, H.R.B. 103, 22nd Leg., Spec. Sess., at 324 (Wyo. 1933).

379. *Third Reading of Bills*, H.R.B. 103, 22nd Leg., Spec. Sess., at 324 (Wyo. 1933). Voting for the bill were: Allen, Binney, Carroll, Miss Connaghan, Cross, Culbertson, Davis, Despain, Fagan, Flannery, Geddes, Goppert, Guyer, Hanson, Hammond, Hoge, Jenkins, Johnson, Kemmer, Krueger, McPherson, Ray, Replogle, Reymore, Mrs. Rochelle, Russell, Sanders, Schrader, Small, Thornton, R. H. Wilson, Mullens (who chaired the committee of the whole). *Id.* Voting against were: Armstrong, Birchby, Buell, Frison, Garetson, Gilleard, Hunt, Kunkle, Logan, Mitchell, Moore, Mullens, Norris, Rogan, Schloredt, Scott, Smith, Wicks, Williamson, P. Wilson, Keith. Absent: Baldwin, Bark, Chassell, Watenpaugh. *Id.* Excused were: Bream, Gose, McCann, Taylor. *Id.*

380. WYOMING STATE TRIBUNE, Dec. 21, 1933, at 1.

dressed expenditures.³⁸¹ The initial bill containing the Griffenhagen company's recommendations on school district consolidation, law enforcement, and county reduction failed in the House by a vote of 35-25.³⁸² Nineteen of the twenty Republicans voted against it, joined by fourteen Democrats.³⁸³ One of the few recommended actions from the company and committee adopted by the legislature was creation of the State Board of Equalization.³⁸⁴ With the exception of the tax applied to intoxicating liquors, the only major tax bill passed in the special session involved adjustments to the state gasoline tax, including raising it to four cents per gallon.³⁸⁵

The *Wyoming Eagle* editor tried to put a favorable light on the special session. "Although the special session of the Wyoming legislature will cost approximately \$80,000, including all expenses and the appropriations voted to date, direct benefits in revenue will total more than one and a quarter million dollars, it was estimated by state officials yesterday."³⁸⁶ Included in the total was a federal Reconstruction Finance Corporation (RFC) grant, requiring legislative approval, as well as several federal grants to the state in other areas.³⁸⁷

The editor of the *Powell Tribune* was more critical:

381. *House Kills Income Tax Law Bill*, SHERIDAN PRESS, Dec. 21, 1933, at 1, 3. On a bill calling for the state to be allowed to receive gifts and bequests, Representative Owen Hoge moved that the enactment clause be stricken from the bill. *Id.* Many House members viewed the motion as "humorous," but Hoge, quoting from an editorial in the *Wyoming State Tribune*, on December 9, 1933, questioned the emergency nature of the session: "[It is] more than absurd, it is grotesque," Hoge said, adding, "A close scrutiny of the bill fails to disclose any relation between it and an emergency." *Id.*

382. *Third Reading of Bills*, H.R.B. 94, 22nd Leg., Spec. Sess., at 315 (Wyo. 1933) (House Bill 94 was entitled *State as School District for Taxation Purposes*). The bill to create a Department of Finance failed on third reading 26-32 with three excused. *Bills on Third Reading*, H.R.B. 5, 22nd Leg., Spec. Sess., at 100 (Wyo 1933). The companion bill, House Bill Number 6, was also killed. *Bills on Third Reading*, H.R.B. 6, 22nd Leg., Spec. Sess., at 101 (Wyo 1933).

383. WYOMING STATE TRIBUNE, Dec. 11, 1933, at 1.

384. 1933 Wyo. Spec. Sess. Laws ch. 36, §§ 1-2. (Original Senate File No. 39, *State Board of Equalization*).

385. 1933 Wyo. Spec. Sess. Laws ch. 60, § 2 (Originally House Bill No. 8). For the liquor tax, see 1933 Wyo. Spec. Sess. Laws ch. 61, § 9 (Originally House Bill No. 82).

386. *Benefits of Special Session Are to Total Over \$1,225,000*, WYOMING EAGLE, Dec. 22, 1933, at 1.

387. *Id.* Among the funds counted were \$300,000 in Public Works Administration (PWA) funds going toward construction of the "liberal arts" building at the University of Wyoming. 1933 Wyo. Spec. Sess. Laws ch. 21, § 1 (House Bill No. 92, *University Liberal Arts Building*). A later article asserted that the "savings" amounted to \$1.5 million. *Special Session Netted Profit of \$1,500,000 to State, Survey Shows*, WYOMING EAGLE, Dec. 29, 1933, at 1. The RFC loan receipts were authorized by *State Board of Charities and Reform Grants and Loans*. 1933 Wyo. Spec. Sess. Laws ch. 23, § 2 (House Bill No. 67). Other federal funds went to establish employment offices. See 1933 Wyo. Spec. Sess. Laws ch. 24, § 2 (House Bill No. 24, *Public Employment Offices, Appropriation*).

The legislature did not enact what we favored and what the majority of Powell people favored in the way of a revision of the tax structure, but evidently Wyoming people do not think alike in these tax matters. We favored a general sales tax to relieve the overtaxed property owners. We thought our Park county delegation had simply a job of expounding their opinions, passing the bill with unanimous accord and returning home to receive the handshakes and applaudits [sic] of their farmer constituency. Not so.³⁸⁸

The *Sheridan Press*, in an editorial, referred to it as "The Session That Said 'No'":

No state income tax. No state liquor control program. No state school unit. No state school taxation system. Wyoming, it seems, is not ready for the far-reaching reforms recommended by the special legislative committee on organization and revenue. The proposed changes, the legislature seemed to feel, were too drastic and too theoretical to be approved upon the spur of the moment.³⁸⁹

The editor concluded that legislators felt that instead of finding ways to reduce taxes, the special committee had "returned instead with plans for still more taxation."³⁹⁰

Meanwhile, the unemployment situation in Wyoming was brightening with the hiring of 8214 Wyomingites by the Civil Works Administration (CWA) with a local payroll of some \$143,000 for Cheyenne alone.³⁹¹ A quota of 8250 was proposed by the federal government.³⁹² About 600 public works projects were underway in Wyoming. Of these, 705 people were employed in airport improvements and construction.³⁹³ An additional 300 Cheyenne residents went off relief in October, 1934, when the state emergency relief administration opened a new meat cannery.³⁹⁴ Meat was to come from cattle purchased in drought-stricken areas of Wyoming.³⁹⁵ A similar number were employed in a second meat cannery in Sheridan (although it closed permanently in January 1935, idling some 200 workers).³⁹⁶

388. R. T. Baird, *This and That*, POWELL TRIBUNE, Dec. 28, 1933, at 2.

389. *The Session That Said 'No,'* SHERIDAN PRESS, Dec. 22, 1933, at 4.

390. *Id.*

391. *8,214 Wyomingites Employed by CWA; Weekly Payroll is \$143,000*, WYOMING EAGLE, Jan. 5, 1934, at 1.

392. *Id.*

393. *Id.*

394. *Meat Cannery to Open Saturday Here; 300 on Relief to Get Jobs*, WYOMING EAGLE, Oct. 5, 1934, at 1.

395. *Id.*

396. *Large Relief Canning Plant Is Shut Down*, WYOMING EAGLE, Jan. 18, 1935, at 12.

In Jackson, a Federal Emergency Relief Administration (FERA) crew worked on constructing a ski jump.³⁹⁷ Eight men were assigned work on the 150-foot structure and directed to place heaps of firewood “conveniently along the route for the convenience of spectators.”³⁹⁸ The editor of the *Powell Tribune* pointed out that 2000 Wyoming farmers would be paid from a \$400,000 federal agricultural fund, raised through a processing tax on millers, in exchange for “an agreement to reduce the wheat acreage.”³⁹⁹

The total amount for all relief in the state was about \$250,000 in March 1934, with an additional \$150,000 allocated for April salaries of CWA workers who earned forty-five cents per hour if they were unskilled, seventy cents if they were “semi-skilled,” and ninety cents if they were skilled workers.⁴⁰⁰ Work began during the summer on the “Liberal Arts Building” at the University of Wyoming, paid for by PWA funds.⁴⁰¹

The *Wyoming State Journal* editor articulated the feeling of many Wyomingites:

If we would be willing to get along with less, content to do with simpler things, satisfied to have poorer schools, roads and less of public buildings, costs could be lower. The trend today as we see it is for greater efficiency and a better spending of the tax dollar.⁴⁰²

397. *FERA Will Spend Up to \$2200 in Construction of Modern Ski Jump and Toboggan Slide for Jackson Hole*, JACKSON'S HOLE COURIER, Dec. 27, 1934, at 1.

398. *Id.* See also *New Ski Jump Built by FERA*, WYOMING EAGLE, Jan. 4, 1934, at 12. FERA also built a skating rink in Jackson. *Additional FERA Projects Costing \$4,500 Given Approval of Cheyenne Office*, JACKSON'S HOLE COURIER, Nov. 1, 1934, at 1. The CWA built a fish hatchery near Jackson. *CWA Projects Underway*, JACKSON'S HOLE COURIER, Dec. 14, 1933, at 1. The CWA employed thirty-three men to build the airport and a hangar at Lander where “air travel to the world’s best hunting and fishing [was] virtually assured.” *Modern Airport With Hangar for Lander Is Approved*, WYOMING STATE JOURNAL, Dec. 28, 1933, at 1. Two weeks later, the paper announced that the CWA would be funding a new armory. *First Unit of \$40,000 Armory Authorized by CWA for Location at East End of Main*, WYOMING STATE JOURNAL, Jan. 11, 1933, at 1.

399. R. T. Baird, *This and That*, POWELL TRIBUNE, Dec. 14, 1933, at 4.

400. *Relief Work Reopens Next Monday*, WYOMING EAGLE, Apr. 6, 1934, at 1. The amount for May was \$229,000. *\$229,000 Spent in Wyoming for Relief Work During May*, WYOMING EAGLE, June 8, 1934, at 4.

401. *Public Works Projects Approved in State so Far Total \$627,000*, WYOMING EAGLE, Aug. 3, 1934, at 8. PWA funds paid for water projects in Medicine Bow and Lovell, a sewage project in Cody, and school improvements in Powell. *Id.*

402. *With Wyoming Editors*, WYOMING EAGLE, Jan. 5, 1934, at 12 (quoting L. L. Newton, *Make Each Pay His Share*, WYOMING STATE JOURNAL, Dec. 28, 1933, at 2). Newton added in another line on the editorial page: “For the government, as for the individual, there is but one way to reduce taxes—spend less money.” *Id.*

Two months later the editor preached that "the depression did us good."⁴⁰³ He argued that the depression brought to Americans a renewed "sense of values."⁴⁰⁴ He stated that "[t]hose who made an honest effort and applied intelligent judgment to their problems have come thru far and away better than those who threw up their hands and said 'It's no use. The depression's got us.'"⁴⁰⁵

By February 1934, the Wyoming economy continued to show signs of improvement, but not in agriculture. Cattle numbers reached their highest total since 1919, according to an agricultural statistician.⁴⁰⁶ Ranches had 930,000 head of cattle on hand along with 149,000 horses, and 3.6 million sheep.⁴⁰⁷ Unfortunately for the Wyoming rancher, cattle prices also were down to an average of \$16.20 per hundred.⁴⁰⁸ As the editor of the *Powell Tribune* put it, "Increasing employment has as yet brought but little signs of a returning farmer prosperity."⁴⁰⁹

In March 1934, Miller boasted that his administration had cut taxes by thirty-two percent in his first year of office.⁴¹⁰ He reduced state expenditures as well.⁴¹¹ For the year of 1932, the cost of state government averaged \$22.94 per resident.⁴¹² Because of the budget cuts by school districts, there were thirteen percent fewer teachers in Wyoming in 1934 than there had been in 1929—2700, or 400 less than in 1929.⁴¹³ Even with the infusion of some half million dollars from the school land income funds (amounting to \$7.17 per student) many districts remained in a terrible fiscal condition.⁴¹⁴

At the same time, the federal Internal Revenue Service reported that income tax returns for 1933 in Wyoming amounted to about \$765,000.⁴¹⁵ During the first three months of 1934, the amount collected already ex-

403. *Depression Did Us Good*, WYOMING STATE JOURNAL, Jan. 25, 1934, at 2.

404. *Id.*

405. *Id.*

406. *State Has Highest Cattle Call Total in 15 Years, but Prices Collapse*, WYOMING EAGLE, Feb. 23, 1934, at 2 (reprinting Press Release by George Knudsen, Agricultural Statistician, Wyoming Department of Agriculture).

407. *Id.*

408. *Id.*

409. R. T. Baird, *This and That*, POWELL TRIBUNE, Dec. 21, 1933, at 4.

410. *Gov. Miller Lays Economy Record of Administration Before Citizens*, WYOMING EAGLE, Mar. 9, 1934, at 1. See also *Gov. Miller Reviews Savings, Economies of First Year in Office*, POWELL TRIBUNE, Mar. 15, 1934, at 1.

411. *Gov. Miller Lays Economy Record of Administration Before Citizens*, WYOMING EAGLE, Mar. 9, 1934, at 1.

412. *Wyoming Government Costs Each Resident \$22.94 for Year 1932*, WYOMING EAGLE, July 30, 1934, at 2. Population was estimated at 229,000 and the total cost of general government was \$5.2 million. *Id.*

413. *13 Percent of Teachers Laid Off Since '29*, WYOMING EAGLE, May 25, 1934, at 4.

414. *Half Million Allocated to State Schools*, WYOMING EAGLE, Apr. 6, 1934, at 1.

415. *U. S. Income Tax Returns in Wyoming Half Million*, WYOMING EAGLE, Apr. 6, 1934, at 1.

ceeded a half million dollars.⁴¹⁶ As the editor of the *Wyoming Eagle* put it, "The phenomenal increase in income tax assessments indicate a marked improvement in general business conditions in Wyoming."⁴¹⁷

The Western Governors Conference, held in Salt Lake City in March 1934, proposed a uniform sales tax for the Western states.⁴¹⁸ Governor Henry H. Blood of Utah made the proposal and noted that he was meeting with officials of California and Arizona to see how practical it could be.⁴¹⁹ "Gov. Miller said he would be interested in hearing the discussion of the sales tax but felt that it should not be adopted in Wyoming at this time."⁴²⁰

V. PROPOSALS FOR TAXATION

By election day, 1934, economic conditions in Wyoming remained dire. Despite increases in federally funded work programs, not every Wyomingite had work and many remained on relief.⁴²¹ Carl Bingemer, the newly appointed State Director of Subsistence Gardens, said that every needy family seeking aid in Wyoming from the state emergency relief administration would be required to raise a garden, provided facilities were available.⁴²² The number of Wyomingites on relief actually increased in April 1934, to 5797, and by May, some 8530 were receiving relief in some form.⁴²³

The severe drought in several areas of the state was blamed for the increases.⁴²⁴ The case loads for relief agencies in Wyoming increased dramatically during the summer of 1934 as drought conditions worsened in much of the state.⁴²⁵ In fact, the short-term outlook just before the November election suggested that the state would need new revenue sources if it

416. *Id.*

417. *Id.* The total collected in fiscal 1933-34 was \$428,000, compared to \$333,000 the previous year. *Income Taxes in Wyoming Increase \$95,000 in Year*, WYOMING EAGLE, July 6, 1934, at 1.

418. *Western Governors to Discuss Uniform Sales Tax at Parley*, WYOMING EAGLE, Mar. 9, 1934, at 2.

419. *Id.*

420. *Id.*

421. LARSON, *supra* note 17, at 444-46.

422. *All Needy Families in Wyoming Required to Raise Own Gardens*, WYOMING EAGLE, Apr. 6, 1934, at 1. The federal surplus relief corporation also announced that it would hire Wyoming workers to make mattresses and operate food-canning centers in the state. *SERA Will Make Mattresses For Families in Need*, WYOMING EAGLE, Aug. 3, 1934, at 3. The plant opened in Casper where workers also tanned hides. *Casper SERA Tannery Will be Opened Soon*, WYOMING EAGLE, Sept. 7, 1934, at 2. Relief workers also constructed Wheatland Reservoir Number Three. *Modern Village at Reservoir Site*, WYOMING EAGLE, Mar. 15, 1935, at 1.

423. *State Relief Cases Mount 1,136 in May*, WYOMING EAGLE, June 22, 1934, at 2.

424. *Id.*

425. *Relief Case Load in Wyoming is Increased by 1,684 in 2 Months*, WYOMING EAGLE, Aug. 24, 1934, at 1.

hoped to have a balanced budget. Failure of proposals for an income tax in the special session of 1933 simply made the crisis even more severe.

Governor Miller, in 1933, had pledged he would not seek federal aid for Wyoming.⁴²⁶ He reluctantly changed his view by 1934.⁴²⁷ The New Deal programs would help ease some of the economic distress suffered by many state residents. But even with federal programs, Wyoming schools, counties, cities, and state agencies would need financial help in the following two years. Miller's administration continued to cut state funding. In July 1934, he announced that taxes for operation of state government had been reduced by more than one million dollars during the two years of his governorship, thirty percent lower than what was collected and spent in the last two years of the Clark administration.⁴²⁸ As the *Wyoming Eagle* noted, "The enormous reduction considerably more than fulfills Governor Miller's campaign pledge that if he were elected he would reduce state expenditures 20 to 25 percent."⁴²⁹ Miller also pointed out that Wyoming's four cents per gallon gasoline tax ranked in the middle of what other states charged, the range being from two cents per gallon to seven.⁴³⁰

No mention of Miller's views on taxation were offered in his newspaper advertisements during the campaign of 1934. Rather, the ads stressed that he had fulfilled the campaign promises of 1932 to "lower the costs of government" and to "bring business in state management."⁴³¹

In the general election in November 1934, Miller was reelected by a margin of 54,305 to 38,792.⁴³² He was joined by Democrats in all four of the other state offices—former Fremont County legislator Lester C. Hunt was Secretary of State; former Natrona County representative William "Scotty" Jack, who had co-chaired the special legislative committee in 1933, was the

426. LARSON, *supra* note 17, at 443.

427. Miller's view was already changing at the beginning of the 1933 special session. See *Message of Governor Miller to Special Session*, *supra* note 304. See also WYOMING EAGLE, Dec. 8, 1933, at 10 (quoting entire text of the governor's address) ("I have been wondering recently whether we were entitled to indulge in that feeling of pride [for not accepting federal assistance].").

428. *Nearly \$100,000 Chopped Off State Taxes*, WYOMING EAGLE, July 13, 1934, at 1.

429. *Id.*

430. *Here Are Gas Taxes You Will Pay This Year*, WYOMING EAGLE, Apr. 6, 1934, at 2.

431. See, e.g., WYOMING EAGLE, Aug. 10, 1934, at 7 (ad entitled "Let's Look at the Record" where, in the left column, the campaign promises are summarized and, in the right column, brief summaries are given of his "1933-1934 Performances").

432. ERWIN, *supra* note 3, at 634-35 (vol. II). He lost in only two counties—Niobrara and Sublette, with a tie in Johnson County. *Election Results Lead to Conclusion That Democrats Now Wyoming's Majority Party*, WYOMING EAGLE, Nov. 9, 1934, at 9. "Every Democratic state and national candidate beat his Republican opponent in that opponent's home county." *Id.* Challenged for the nomination in his own party, Miller won the primary handily over a Sublette County rancher. *Primary Election Outcome Provides Fascinating Study; Miller Wins in 20 Counties*, WYOMING EAGLE, Aug. 24, 1934, at 1. He won twenty of twenty-three counties, losing only in Natrona, Sublette, and Johnson. *Id.*

new State Auditor; J. Kirk Baldwin, state treasurer (the first and only Democrat ever elected to that post in the state's history); and Jack R. Gage, was superintendent of public instruction.⁴³³ Democrats occupied all three of Wyoming's seats in Congress.⁴³⁴ In the legislature, Democrats took a one-seat majority in the State Senate, 14-13, and held on to a margin of 38-18 in the House.⁴³⁵

Even before the legislative session, it was clear that raising revenue again would be one of the key issues in 1935. As the editor of the *Wyoming Eagle* put it: "Relief, taxation, liquor. That trio yesterday knotted the brows of legislators throughout the state . . ." ⁴³⁶ The *Eagle* editor noted that both a sales tax and an income tax had been suggested "as a means to lighten the property owners' burden."⁴³⁷ Soon after the November election, the Wyoming Education Association submitted a sales tax proposal. The teachers' group argued that without it, schools would continue to decay.⁴³⁸

Such a tax gained increasing support throughout the winter. As the *Wyoming Eagle* noted in an article titled "Sales Tax Would Provide Million Dollars Yearly," Governor Miller was endorsing the tax in a speech before a business group in Cheyenne.⁴³⁹ "The governor's estimate . . . agreed with that of William F. DeVere, secretary of the merchants trade committee."⁴⁴⁰ When asked about the impact on working people, the governor "denied that the small wage earner would bear the brunt of the tax."⁴⁴¹ He claimed that would "only happen if the sales tax were made the chief medium of taxation, which is not proposed at all. In my opinion, this is the only way to raise money for relief," Miller said.⁴⁴²

433. ERWIN, *supra* note 3, at 634-35 (vol. II). Baldwin, the son of a Cheyenne railroad engineer and union organizer, once owned a plumbing and heating firm in Casper. See WYOMING LABOR JOURNAL, Sept. 21, 1934, at 5. Later, he became a traveling advertising representative for a national plumbing trades journal, returning to Casper in 1927 to work as circulation manager for the *Casper Tribune-Herald*. *Id.*

434. ERWIN, *supra* note 3, at 634-35 (vol. II). Joseph C. O'Mahoney defeated Republican Vincent Carter for the United States Senate while Cody lawyer Paul Greever won the House seat over Charles E. Winter. *Id.*

435. The Democratic total dropped to thirty-seven, however, before the session began. *Legislators Hold Caucus Conferences*, WYOMING STATE TRIBUNE, Jan. 7, 1935, at 1. Raymond M. Davis of Green River resigned his legislative seat to become private secretary to Congressman Paul Greever. *Id.* No election was held to name his successor. *Id.*

436. *Three Major Problems Facing Legislature*, WYOMING EAGLE, Nov. 23, 1934, at 1.

437. *Id.*

438. *Id.* at 8.

439. *Sales Tax Would Provide Million Dollars Yearly*, WYOMING EAGLE, Jan. 4, 1934, at 3.

440. *Id.*

441. *Id.*

442. *Id.*

The Wyoming Farm Bureau held its annual meeting in Laramie in late January 1935.⁴⁴³ The group elected officers and passed numerous resolutions.⁴⁴⁴ One endorsed an income tax.⁴⁴⁵ "The delegates went on record favoring broadening of the state constitution to permit income tax legislation," the *Wyoming Eagle* reported, "with the provision that revenue thus provided would offset an equal or larger amount of property taxation."⁴⁴⁶

Miller expressed his view of an income tax in a letter to the legislature, transmitting his request for an increased appropriation for the University of Wyoming:

There has been considerable talk from time to time of the adoption by the legislature of an income tax. A study which has been made within the last month, would seem to indicate that possible revenues from income levies at this time would be so small as to warrant a statement that the imposition of such a tax by this legislature would be inadvisable.⁴⁴⁷

He contrasted such poor revenues with the substantial amount possible from a sales tax and concluded that a sales tax should be adopted: "[W]e could relieve the counties from collecting anything at all for state purposes by means of a tax on real property."⁴⁴⁸

Many legislators saw the potential for tax revenues from increasing the taxes on newly legalized beer and liquor. The editor of the *Gillette News-Record*, arguing against a five-cent per gallon tax on beer, assumed that the legislature would use that as a means of balancing the budget.⁴⁴⁹ He stated that "if, besides the ever present federal taxes, liquor is burdened with a multiplicity of city, county and state taxes, so that the price will be set a sky high figure, the bootlegger will continue to practice his business . . ."⁴⁵⁰

443. *King to Head Wyoming Farm Bureau in '35*, WYOMING EAGLE, Feb. 1, 1935, at 12. King, a Laramie area sheep breeder, was elected to his twelfth consecutive term at the fifteenth annual convention. *Id.* John Price of Powell was elected vice president; Roy Feusner, Greybull, secretary-treasurer; Earl Bowers, Worland, director at large; Mrs. C. Clyde Jones, Laramie, state home and community leader. *Id.*

444. *Id.*

445. *Id.*

446. *Id.*

447. *Governor Recommends Increase in University Funds in Budget; Reduces Total Expenditures*, WYOMING EAGLE, Jan. 4, 1935, at 1. One sub-headline is titled "Urges Consideration of Sales Tax." *Id.*

448. *Id.*

449. *Taxation of Liquor*, GILLETTE NEWS-RECORD, Nov. 2, 1934, at 6.

450. *Id.*

The state board of equalization, meanwhile, proposed a “joint income and sale tax” in order to “help landowners.”⁴⁵¹ The board declared that “the load carried by the property owner is ‘out of all proportion’ to the income derived from most property . . . the only solution is through a tax on intangibles.”⁴⁵² The report added that neither the sales tax nor the income tax “would be sufficiently high to cause any great hardship upon any class of citizen.”⁴⁵³

The state real estate board proposed an “over-all” limitation on real property taxes.⁴⁵⁴ Among the six points in the plan were proposals to create a new board, allow the board to “veto bond issues” and let it determine property tax by the property’s “income-producing” value.⁴⁵⁵

In addition, there was talk of a sales tax as a “temporary measure” to alleviate the looming budget shortfall.⁴⁵⁶ Governor Miller’s position on a sales tax was still unclear in the month prior to the 1935 legislative session. Before a Rotary club group in Cheyenne, Miller “outlined a sales tax plan which he said would meet all financial needs of state government during the next biennium and at the same time, would afford relief to property owners by eliminating a direct state tax on real estate.”⁴⁵⁷ He was quoted as telling the Rotary he did not believe “a state income tax would solve the taxation problem.”⁴⁵⁸

State newspapers responded with comments about the various types of taxation. The Democratic-leaning *Douglas Budget* editorialized that the sales tax “is a tax that reaches everyone. . . . At any rate, Wyoming, with the decreasing property valuation, is forced to raise extra revenue and if not by a sales tax then the tax rate on property must be raised.”⁴⁵⁹ Not one word was mentioned of a possible income tax.

J. B. Griffith, editor of the *Lusk Herald*, agreed with his Douglas counterpart. “If the sales tax will relieve property tax, well and good. If it is to be used as an additional tax, without relieving property tax, then it should

451. *Joint Income and Sales Tax To Help Land Owner Urged*, WYOMING EAGLE, Dec. 14, 1934, at 1.

452. *Id.*

453. *Id.* at 8.

454. *Drive for Tax Limitation Law is Launched by Real Estate Board*, WYOMING EAGLE, Jan. 4, 1935, at 1.

455. *Id.*

456. The temporary nature of the tax was reflected in the name: Temporary Emergency Sales Tax Act.

457. *Gov. Miller May Favor a Sales Tax*, CODY ENTERPRISE, Jan. 2, 1935, at 4.

458. *Id.*

459. *With Wyoming’s Editors*, WYOMING EAGLE, Jan. 4, 1935, at 9 (quoting DOUGLAS BUDGET, Dec. 27, 1934, at 4).

not be considered."⁴⁶⁰ The *Sheridan Press* applauded the governor's business-like approach to the relief issue, but noted that while he may have appeared to favor a sales tax, he "gave to the legislature the burden of making the final decision in regard to taxation."⁴⁶¹ In early January 1935, the *Sheridan Press* began a series of articles titled "Wyoming's Tax Problems," written by A. F. Vass, a professor in the University of Wyoming department of agronomy and agricultural economics. "The articles were not written with the idea of promoting any tax program," the introductory paragraph noted, "but were prepared for the purpose of stimulating intelligent thinking."⁴⁶² Both columns featured the sales tax with Vass seeming to endorse such a tax scheme.⁴⁶³

The sales tax always had been unpopular with labor groups.⁴⁶⁴ Martin Cahill, the head of the State Federation of Labor, voiced opposition to the sales tax.⁴⁶⁵ The *Wyoming Labor Journal* continued to publish editorials pointing out that the sales tax was "unfair to workers" and a "burden to the part-time worker."⁴⁶⁶ Sheridan area miners wrote to Cahill that "a sales tax, no matter how small," would detract from what Cahill called their "already small earnings [such] that it would make it impossible for them to support their families."⁴⁶⁷ R. E. Hicks, Casper, president of the Wyoming Education Association who was also superintendent of schools in Casper, said he was "personally opposed to a general sales tax except as an emergency measure."⁴⁶⁸ He did favor a sales tax on luxury items as well as "a personal in-

460. *Miller's Message*, LUSK HERALD, Jan. 10, 1935, at 2. The editorial was partially reprinted in *With Wyoming's Editors*, WYOMING EAGLE, Jan. 18, 1935, at 9. Griffith wrote that he opposed Governor Miller on this and "most Republicans" would support the position, too. *Id.* Griffith was a significant figure in the state Republican party.

461. *With Wyoming's Editors*, WYOMING EAGLE, Jan. 18, 1935, at 9 (quoting *The Governor's Message*, SHERIDAN PRESS, Jan. 10, 1935, at 4).

462. A. F. Vass, *Wyoming's Tax Problems—The Sales Tax*, SHERIDAN PRESS, Jan. 9, 1935, at 4. For the next installment, see *Wyoming's Tax Problems—The Gross Receipt Sales Tax*, SHERIDAN PRESS, Jan. 17, 1935, at 4. If other columns in the series were written, there is no record of them appearing in the *Sheridan Press*.

463. A.F. Vass, *Wyoming's Tax Problems—The Sales Tax*, SHERIDAN PRESS, Jan. 9, 1935, at 4.

464. The opposition applied to a national sales tax proposed in the last days of the Hoover administration. See, e.g., WYOMING LABOR JOURNAL, June 3, 1932, at 4 ("Interests who desire to impose more taxation on the underpaid masses of our people persist in bombarding the U. S. Senate with propandea in favor of the most iniquitous of all taxes, the sales tax . . .").

465. *Sales Tax Puts Burden on Wage Earner*, WYOMING LABOR JOURNAL, Jan. 11, 1935, at 4.

466. *Sales Tax Burden to Part-time Worker*, WYOMING LABOR JOURNAL, Jan. 25, 1935, at 4.

467. *Miners Oppose Levy on Sales*, WYOMING STATE TRIBUNE, Jan. 23, 1935, at 5.

468. *Equalization of Education is Leading State Problem*, WYOMING STATE TRIBUNE, Jan. 24, 1935, at 3.

come tax, a business income tax and the existing inheritance tax and general property taxes."⁴⁶⁹

The state board of equalization, cognizant of the opposition from various quarters to each form of taxation, recommended a "joint income and sales tax" to Governor Miller in December 1934.⁴⁷⁰ The board urged that all state and school revenues be raised through sales and income taxes, "rendering all property taxes to cities and counties."⁴⁷¹ According to C. H. McWhinnie, the chairman of the board, "This would not in any way be an additional tax but would be a more equal distribution of the tax burden."⁴⁷²

Meanwhile, critics of the income tax stepped up their opposition. The editor of the *Laramie Republican-Boomerang* pointed out that it was "doubtful if a state income tax could be passed without an amendment to the State Constitution."⁴⁷³ He added that "such a step would not be practicable for the immediate needs of the state."⁴⁷⁴ He suggested that "neither a sales tax nor an income tax exhaust all of the methods of raising revenues."⁴⁷⁵ Without providing any specifics, he advocated a "luxury tax."⁴⁷⁶

Even before the legislative session opened in January, 1935, it was clear that the governor, business, and agriculture preferred the sales tax. Gone, apparently, was the "farm bloc," the bipartisan legislative group favoring a "privilege tax" or an income tax in the 1933 session.⁴⁷⁷ Gone, too, were most references to the Griffenhagen study (although early in the session, a Wheatland legislator, 79-year-old freshman senator S. Manning, introduced a bill to change the Wyoming two-house legislature to unicameral—the bill was soundly defeated).⁴⁷⁸

469. *Id.*

470. *Joint Income and Sale Tax to Help Land Owner Urged*, WYOMING EAGLE, Dec. 14, 1934, at 1. Other members of the board of equalization were M. J. Foley and B. B. Morton. *Id.*

471. *Id.*

472. *Id.*

473. *The Problem of State Revenue*, LARAMIE REPUBLICAN-BOOMERANG, Dec. 28, 1934, at 2.

474. *Id.*

475. *Id.*

476. *Id.*

477. Representative Allen of Goshen County attempted to revive the farm bloc early in the session when he joined with Representative Paul Frison, Republican of Washakie County, in an effort to form a coalition. *Farm Bloc May Be Organized in Legislature by Allen and Frison*, WYOMING STATE TRIBUNE, Jan. 9, 1935, at 2. Their stated purpose, however, was to attempt reduction of the gasoline tax on agriculture. *Id.* No mention was made of an income tax. *Id.*

478. *Senate Kills Proposal for Single House Legislature*, WYOMING EAGLE, Jan. 25, 1935, at 1. About the only remaining voice of support for the Griffenhagen's proposal, or a variation of it, came from L. L. Newton, editor of the *Wyoming State Journal*:

Democrats held a one-seat advantage (14-13) in the State Senate.⁴⁷⁹ Democrat Nels A. Pearson of Sheridan held the Senate presidency.⁴⁸⁰ In the House, the Democratic margin had slipped a bit from 1933. The thirty-seven Democrats, led by House Speaker Henry D. Watenpaugh, Sheridan County, faced eighteen Republicans.⁴⁸¹ There was one vacancy, the seat in Sweetwater County.⁴⁸² Representative L. F. Thornton, the Hot Springs County Republican who was one of the "Farm Bloc" leaders in the 1933 session, was not present. He had tried to run for State Senate but lost in Hot Springs County to Democrat A. R. Zimmerman.⁴⁸³ Representative R. V. Allen, a Goshen County Democrat, the other leader of the farm group, remained the only Democrat in the three-member Goshen House delegation, re-elected by a narrow margin.⁴⁸⁴

Other supporters of the "privilege tax" in 1933 were gone as well. Republican Ernest Goppert in Park County lost, replaced by 26-year-old Democrat George T. Beck, Jr., who joined fellow Democrat Herman F. Krueger as the two legislators representing Park County.⁴⁸⁵ Neither Senators Roy H. Cameron (Republican from Crook County) nor Clifford A. Miller

Having reviewed some 17 of Wyoming legislatures, this writer is convinced that eight men employed the year around at a fair salary could become skilled by study and experience in the solving of Wyoming's problems and arrive at a more logical and sensible answer than the nearly a hundred milling around the capital for 40 days once in two years.

And the Mountain Gives Birth to a Mouse, WYOMING STATE JOURNAL, Feb. 21, 1935, at 6.

479. ERWIN, *supra* note 3, at 354-58 (vol. II).

480. *Senator Pearson Was First Elected To State Legislature Here in 1910*, WYOMING EAGLE, Jan. 18, 1935, at 2. Pearson, born in Sweden in 1872, completed an apprenticeship as a carpenter before coming to America in 1892, first settling in Omaha. *Id.* In 1899, he began service on the Omaha police force, resigning three years later to move to Sheridan. *Id.* A building contractor, he was father of four sons and a daughter. *Id.*

481. ERWIN, *supra* note 3, at 354-58 (vol. II). The 41-year-old Watenpaugh was a former homesteader and country schoolteacher. *Speaker of House Formerly Homesteader and Pedagogue*, WYOMING STATE TRIBUNE, Jan. 15, 1935, at 1. He homesteaded in 1919, just north of Sheridan inside Montana. *Id.* There, he built a log cabin and took a job four miles away teaching. *Id.* Not owning a car, he rode his horse, regardless of weather. *Id.* He developed a limp from riding in the deep snow. *Id.* A native of Nebraska, he came to the area from Omaha where he had worked for Carney Coal Company which later became Sheridan-Wyoming Coal Company. *Id.* After three years on the homestead, he returned to Sheridan in 1922 to work as traffic representative for Sheridan flouring mills. *Id.* In addition, he operated his own feed store that he established in 1926. *Id.* He was first elected to the House in 1928. *Id.* Married in 1915, he was father of three children. *Id.*

482. ERWIN, *supra* note 3, at 354-58 (vol. II).

483. *Election Extra*, THERMOPOLIS INDEPENDENT-RECORD, Nov. 7, 1934, at 1.

484. ERWIN, *supra* note 3, at 636 (vol. II). The results were: Zimmerman, 1299; Thornton, 813. *Id.* Allen barely hung on to second place; just eleven votes ahead of the Republican who also was elected. *Id.* The fourth place finisher, a Republican, lost out by just twenty-six votes. *Id.*

485. *Id.* at 637. Goppert had 1728 votes and ran third behind two Democrats, both elected. *Id.* Krueger outpolled Beck 2026-2001, but both won. *Id.* W. C. Wilkins, the other Republican in the race, had 1267 votes. *Id.*

(Republican from Natrona County), the two special taxation committee chairs, returned to the legislature in 1935.⁴⁸⁶

The Wyoming Taxpayers' League, active in opposing the income tax in 1933, seemed silent in early 1935. The *Powell Tribune* quoted League president J. E. Lee of Sheridan who said they would "not let grass grow under their feet when the Wyoming legislature convenes."⁴⁸⁷ "State relief for the unemployed, taxation legislation and liquor revenue" were three areas the League intended to follow closely.⁴⁸⁸

Legislators were mindful that in the year since the 1933 special session, cities, counties, and the state continued to suffer financial drains from welfare. Unemployment in the state remained high and drought was a serious problem.⁴⁸⁹ Teachers, a few organized by the American Federation of Labor in Cheyenne and at the University of Wyoming, lobbied for better pay.⁴⁹⁰

In his message to the legislature, Governor Miller voiced his opposition to the income tax:

[I]n my opinion an income tax imposed under existing economic conditions would not be sufficiently productive of revenue as to alleviate to any great extent tax burdens on real property. I am personally not enthusiastic about selective sales tax, although a study would indicate that a tax of two cents upon an ordinary package of cigarettes would produce revenue of \$125,000 to \$150,000 per annum, which probably could be collected very easily.⁴⁹¹

Later, he expressed ambivalence about the sales tax but not outright opposition, suggesting that the Utah sales tax perhaps be followed as a model.⁴⁹² He noted that the regressive nature of the tax would be offset by the fact that

486. *Id.* Cameron was succeeded by another Republican, but a Democrat gained the seat Miller vacated. *Id.*

487. *This and That*, POWELL TRIBUNE, Jan. 3, 1935, at 2.

488. *Id.*

489. *Leslie A. Miller, Governor's Message to the 23rd State Legislature*, H.R., 23rd Leg., Reg. Sess., at 16-29 (Wyo. 1935) [hereinafter *Miller's Message to the 23rd Legislature*].

490. *Teachers Ask for More Pay: Aided by Organized Labor in Drive on Wyoming Legislature*, WYOMING STATE TRIBUNE, Jan. 15, 1935, at 8.

491. *Miller's Message to the 23rd Legislature*, *supra* note 489, at 19-20.

492. *Id.* at 21. See the extensive coverage in *Governor Delivers His Message to Legislature*, WYOMING STATE TRIBUNE, Jan. 9, 1935, at 1. See *id.* at 6-7 for the text of his address, printed in its entirety.

low-income people would not pay property tax or very little in the way of federal income tax.⁴⁹³

Even though labor leaders and others protested the sales tax legislation, State Relief Administrator Metz told the relief workers that passage of the sales tax was essential in order for the state to continue to receive federal aid for the 10,000 or more families depending on federal relief programs.⁴⁹⁴ He said that in order for the state to continue to receive such funds, the legislature would have to provide at least \$750,000.⁴⁹⁵ "We've got to have something tangible that we can lay on the line or we will not receive the expected \$5 million under the new setup," he warned.⁴⁹⁶ "We'd be in nice shape . . . if we had the lottery and gambling revenue besides."⁴⁹⁷ On the other hand, "The sales tax would provide about \$400,000 for relief purposes. In addition, \$200,000 from the liquor tax bill has been earmarked for relief," the *Wyoming Eagle* noted.⁴⁹⁸

The House Revenue committee held open hearings in early February. Representatives from organized labor and other groups were called to testify. As the *Wyoming State Tribune* report indicated, "Most of the outright opponents of a sales tax advocated levies on incomes with particularly heavy mulct of the bigger incomes."⁴⁹⁹

In 1933 support for the income tax came from a coalition representing various occupational groups. The coalition had disappeared in 1935. Some observers quipped that only labor and "government employees" were in favor of an income tax this time around.⁵⁰⁰ "The state relief agencies are clamoring for the sales tax with an ear-marked \$500,000 to keep them in steady jobs," the *Cody Enterprise* editor sniffed.⁵⁰¹ "Others favor the sales

493. *Miller's Message to the 23rd Legislature, supra* note 489, at 20. In discussions over proposed increases in gasoline taxes, one legislator introduced a measure that would allow farmers and ranchers to exempt gasoline used for agricultural purposes from any gasoline tax by requiring that only gasoline colored black could be used for such purposes. *Fifteen Measures Introduced in House as Legislators Get Down to Work; 'Black Gas' Bill Up*, WYOMING EAGLE, Jan. 11, 1935, at 1. The bill failed as did the exemption proposal that had been introduced and failed for fifteen years. *Id.*

494. *Metz Fears Defeat of Sales Tax He Promised Washington*, WYOMING STATE TRIBUNE, Feb. 11, 1935, at 1 (repeating a telegram Metz sent to relief workers statewide, tying passage to the future of the "entire relief program").

495. *Metz Sees Relief Crisis if Sales Tax Fails*, WYOMING EAGLE, Feb. 8, 1935, at 1.

496. *Id.*

497. *Id.*

498. *Id.*

499. *Second Session of Legislature Now Prediction*, WYOMING STATE TRIBUNE, Feb. 8, 1935, at 1. The *Wyoming Eagle* blandly reported that "[t]he sales tax has been opposed by labor leaders at hearings held by the revenue committee." *Metz Sees Relief Crisis if Sales Tax Fails*, WYOMING EAGLE, Feb. 8, 1935, at 1.

500. CODY ENTERPRISE, Feb. 13, 1935, at 1.

501. *Id.*

tax but insist upon a general lowering of other taxes in lieu of the sales tax," the *Enterprise* editor concluded.⁵⁰²

The editor of the *Wyoming State Tribune*, opposed to an income tax, wrote,

Among those who yesterday voiced loudest and most emphatic disapproval of the sales tax plan were Martin Cahill, head of the state federation of labor; Secretary Nicodemus of the Unemployed Union and Roy Hines, Cheyenne representative of the Communist Party. They complained, in general, that the rich men and big corporations of Wyoming should be made to pay for relief.⁵⁰³

The *Tribune's* news story cleverly seemed to fasten organized labor and support of an income tax to two organizations that Wyomingites viewed with great skepticism—the Unemployed Union and the tiny Communist Party. Opponents of the income tax in the legislature apparently recognized this fact, too. Representatives of both groups were invited to testify before legislative committees.⁵⁰⁴

The Communists had virtually no support statewide.⁵⁰⁵ Four Communist candidates ran for statewide offices in 1934, with Don Wirth, their candidate for state treasurer, receiving more votes than the other Communist candidates, but only 195.⁵⁰⁶ Nonetheless, their representative spoke out strongly for an income tax.⁵⁰⁷ Such support from Communists frightened the more "mainstream" supporters of an income tax into silence. By subtly tying the income tax to Communists, opponents of the tax won the day.

502. *Id.*

503. *Communist, Unemployed and Labor Opposed to Sales Tax*, WYOMING STATE TRIBUNE, Feb. 7, 1935, at 14. Hines, as president of the Unemployed Workers, planned a march on the capitol for the opening session. *Radical Jobless Planning March on Statehouse*, WYOMING EAGLE, Jan. 25, 1935, at 2. When the membership did not go along, he was "ousted" as leader and left town briefly only to return and plan another march on the capitol. *Id.* Hines is listed in the *Eagle* article as "the Communist leader." *Id.*

504. *Communist, Unemployed and Labor Opposed to Sales Tax*, WYOMING STATE TRIBUNE, Feb. 7, 1935, at 1.

505. In fact, the Fred Coe Post No. 20, of the American Legion in Cody passed a resolution in 1934 demanding that the name "Communist" be barred from leading an election ticket in the State of Wyoming. See *Legion Post Would Outlaw Word Communist From Ballot*, CODY ENTERPRISE, Dec. 26, 1934, at 1. Later in the same meeting, the legion post, commanded by Milward Simpson, passed a resolution demanding that even the printing of the word be banned from the Wyoming ballot. *Id.*

506. ERWIN, *supra* note 3, at 634-35 (vol. II).

507. *Communist, Unemployed and Labor Opposed to Sales Tax*, WYOMING STATE TRIBUNE, Feb. 7, 1935, at 14.

A State Lottery

But an income tax had not been the only alternative to a sales tax. In December, 1934, Will Metz, the State Relief Administrator, proposed a state lottery, patterned after the Irish Sweepstakes, as a means of raising money for welfare programs.⁵⁰⁸ "I believe that nine out of ten businessmen will agree with me that a lottery would be the simplest and most effective means of raising relief money," Metz told a *Wyoming Eagle* reporter.⁵⁰⁹ Soon after, heads of federal recovery agencies in Wyoming endorsed his plan and asked State Senator Nels Pearson, head of the National Emergency Council, to appoint a committee to assist Metz in studying the plan.⁵¹⁰ Pearson named A. L. Kendig of Burns, head of the Regional Agricultural Credit Corporation, and John McDonald, assistant administrator for the federal housing program, to his committee.⁵¹¹ At the same time, pastors of nine Cheyenne churches condemned the proposal and asked that neither the governor, the relief director, nor the legislature "resort to . . . any unlawful and questionable means of securing the necessary funds for caring for those on public relief."⁵¹² Soon after the 1935 session began, seventeen House members co-sponsored a lottery bill.⁵¹³ The measure was endorsed by the president of the Wyoming Taxpayers' League.⁵¹⁴

Legislators weighed in on each side prior to the opening of the session. Thomas Hunter, State Senator from Laramie County said, "In my opinion, a lottery for relief funds is not at all objectionable. The moral objections are far exceeded by the worthwhile benefits that would arise."⁵¹⁵ But W. A. "Pat" Norris, Laramie County house member, disagreed, "Until more merit than has been already shown is shown, I am opposed to a lottery. A number of evils could arise out of one. If a lottery wasn't satisfactory in

508. *Metz Urges Lottery to Raise Relief Funds*, WYOMING EAGLE, Dec. 7, 1934, at 1.

509. *Id.*

510. *Recovery Heads Considering Lottery Plan*, WYOMING EAGLE, Dec. 14, 1934, at 1. Pearson later was named NRA administrator for Wyoming. *N. A. Pearson Dies*, WYOMING EAGLE, Sept. 21, 1943, at 1.

511. *Recovery Heads Considering Lottery Plan*, WYOMING EAGLE, Dec. 14, 1934, at 1.

512. *State Lottery to Procure Relief Funds is Condemned by Ministerial Association*, WYOMING STATE TRIBUNE, Dec. 13, 1934, at 7.

513. WYOMING EAGLE, Dec. 7, 1934, at 1 (explaining Metz' proposal). See *Introduction of Bills*, H.R.B. 181, 23rd Leg., Reg. Sess., at 277 (Wyo. 1935). Signing on as co-sponsors were Wilson, Nance, Gray, Nelson, Linn, Kunkle, Logan, Zeiher, McClelland, Scott, Armstrong, Baehr, Garetson, Cornell, Farthing, Fowler, and Chassell. *Id.* By the time it was considered in the Committee of the Whole, five more members had signed on as co-sponsors: Lewis, Schleicher, Keith, Replogle, and Terhune. *Report of Committee of the Whole*, H.R.B. 181, 23rd Leg., Reg. Sess., at 554 (Wyo. 1935).

514. WYOMING EAGLE, Jan. 18, 1935, at 5. Representatives John Kunkle, Harry Schleicher, and Craig Lewis, all three Laramie County representatives, introduced a bill that would tax slot machines twenty-five dollars per month. *Tax on Slot Machines is Aim of Bill*, WYOMING EAGLE, Feb. 1, 1935, at 5.

515. *Legislators Divided on Lottery Plan*, WYOMING EAGLE, Dec. 14, 1934, at 8.

normal times I certainly don't believe it will be satisfactory in an emergency."⁵¹⁶ The *Wyoming Eagle* announced it would conduct a poll to decide on sentiment about the lottery.⁵¹⁷ "People are beginning to realize that we are not advocating the starting of a big gambling game over the state, but are merely putting a tax on a thing which already exists," Metz declared on December 20.⁵¹⁸

Some observers were skeptical of a lottery. "How do we know that our citizens with a taste for gambling will prefer this particular game to other 'honest games of chance'?" wrote the editor of the *Sheridan Press*.⁵¹⁹ In a "man-on-the-street" column in the *Wyoming Eagle*, Tommy Caruso, "prize-fighter," said that "[g]ambling should take place in the open rather than on the sly . . . let the government get something out of it."⁵²⁰ Several others agreed.⁵²¹

Ferguson Mitchell, of the Wyoming Taxpayers League, favored the lottery (although he was careful to point out that it was his view and not that of the league itself).⁵²² The Wheatland man, a former legislator, told the *Wyoming Eagle* that "a properly conducted lottery does not encourage gambling and it does not open the way for abuses."⁵²³ He pointed out that "people from other states will send their money here."⁵²⁴

A. D. Shipp, Casper representative of the oil workers, told the House Revenue committee that a state-controlled lottery would solve the relief problem.⁵²⁵ "[A]rguments against conducting a state lottery and taxing gambling, which we all know goes on, have no weight when advanced by those who think the state's morals might be endangered," he told the committee.⁵²⁶ "If we can tax these things we not only can destroy them, if they are evil, but

516. *Id.*

517. *Wyoming Eagle to Conduct Poll on Sentiment Regarding Lottery*, WYOMING EAGLE, Dec. 21, 1934, at 1.

518. *Id.*

519. CODY ENTERPRISE, Jan. 2, 1935, at 2 (quoting SHERIDAN PRESS). As to gambling generally, the *Cody Enterprise* editor asserted that Cheyenne already collected twenty-five dollars each month from slot machines. *Id.* "Even in gambling's palmiest days, no 'rakeoff' was ever secured comparable to that which slot machines take from those who play them" *Id.*

520. *The Inquiring Reporter*, WYOMING EAGLE, Jan. 11, 1935, at 6.

521. *Id.*

522. *Representative of Tax League Lauds Lottery*, WYOMING EAGLE, Jan. 18, 1935, at 5.

523. *Id.*

524. *Id.*

525. *Communist, Unemployed and Labor Opposed to Sales Tax*, WYOMING STATE TRIBUNE, Feb. 7, 1935, at 14.

526. *Id.*

we can be raising a lot of money for the thousands in the state who are on relief while we are doing it," he concluded.⁵²⁷

The lottery measure was reported back to the full House by the Revenue committee on February 8, 1935, with no recommendation.⁵²⁸ Earlier, in an informal *Wyoming Eagle* poll taken in late December, 1934, Wyomingites said they favored the lottery act by 256 to forty.⁵²⁹ One person who wrote on the "ballot" told the *Eagle* that "Nebraska has voted in pari-mutuals and unless we adopt the lottery, a great deal of Wyoming money will go to Nebraska."⁵³⁰ But an opponent argued, "Did any nation or state progress by resorting to the gambling vice? The remedy is worse than the disease."⁵³¹

Legislature Authorizes Full Gambling and Governor Vetoes

Others still held out hope for full gambling. Early in the session, on January 17, the House Revenue Committee sponsored a "feeler bill" to determine sentiment for a full gambling law.⁵³² The bill was modeled after a bill passed a few years earlier in sparsely-populated Nevada. The resolution was "literally torn to pieces by amendments," according to the *Wyoming State Tribune*.⁵³³ Its future was "very much in doubt."⁵³⁴ It "finally was indefinitely postponed with no 'expression' gained."⁵³⁵ The action came on the second to last day of the session, effectively killing this, the first of two gambling measures.⁵³⁶

Another gambling bill was moving toward final passage. A few days before introduction of the "feeler bill," on January 31, John A. Kunkle and Harry C. Schleicher, both Laramie County Democrats, joined with Republican Craig Lewis from Laramie County, to introduce a bill to legalize most forms of gambling by amending the law to prohibit only "unlicensed" gambling and allowing for slot machines and card games "in any incorporated city or town, subject to regulation."⁵³⁷ The bill, House Bill Number

527. *Id.*

528. *Standing Committee Reports*, H.R.B. 181, 23rd Leg, Reg. Sess., at 417 (Wyo. 1935).

529. *Today Last Day for Vote on Relief Lottery Plan*, WYOMING EAGLE, Dec. 28, 1934, at 1.

530. *Id.*

531. *Id.*

532. *Seek Legislative Sentiment in Regard to Gambling Law*, WYOMING STATE TRIBUNE, Jan. 16, 1935, at 1.

533. *House Kills Gambling Resolution*, WYOMING STATE TRIBUNE, Jan. 17, 1935, at 1.

534. *Id.*

535. *Gambling Bill to Finance Relief Introduced*, WYOMING EAGLE, Jan. 18, 1935, at 1. The bill was introduced by W. A. "Pat" Norris in his capacity as chair of the Revenue Committee. *Id.*

536. *Introduction, Reading and Reference of Bills*, H.R.B. 181, 23rd Leg., Reg. Sess., at 277 (Wyo. 1935). For indefinite postponement, *see id.* at 554-55.

537. *Id.*

138, was introduced late in the session on the twenty-fourth day.⁵³⁸ The effect of the bill would have been to legalize nearly all forms of gambling and to allow for its licensing.

The Wyoming press weighed in on the various gambling proposals. The editor of a Thermopolis paper advocated "wide open gambling."⁵³⁹ So did the editor of the *Kemmerer Gazette*.⁵⁴⁰ Nonetheless, church groups came out against gambling on moral grounds.⁵⁴¹ Governor Miller, too, was opposed.⁵⁴² The editor of the *Cody Enterprise* strongly opposed it. "We always will be unalterably opposed to taxing vices of any kind," he wrote.⁵⁴³ He continued:

The state or government can ill afford to get into a business which when operated for profit, becomes a prey upon a people Far better that we take care of our needy in a straightforward and businesslike manner. Let all taxpayers bear the burden, and not just those who would gamble, drink and indulge in the various forms of recreation that always seem to attract the heaviest forms of taxation.⁵⁴⁴

His counterpart with the *Kemmerer* newspaper, however, suggested that the state take over all slot machines and apply the profits to relief work.⁵⁴⁵ "The great spirit of chance is predominant among American people and it is apparent in Wyoming that state laws cannot kill that spirit It is at least worth a try-out"⁵⁴⁶ More noncommittal was the editor of the *Casper Tribune-Herald*, who commented favorably on Miller's opposition to the lottery, but concluded, "What the legislature will do about it can only

538. *Introduction, Reading and Reference of Bills*, H.R.B. 138, 23rd Leg., Reg. Sess., at 256 (Wyo. 1935).

539. *With Wyoming's Editors*, WYOMING EAGLE, Jan. 25, 1935, at 9.

540. *Id.*

541. *Clergymen to Confer about Metz Lottery*, WYOMING STATE TRIBUNE, Dec. 8, 1934, at 1.

542. THERMOPOLIS JOURNAL, Jan. 4, 1933, at 4.

543. *Taxing Vices*, CODY ENTERPRISE, Dec. 19, 1934, at 2.

544. *Id.* Meanwhile, the *Wyoming Eagle* noted that Casper was considering the "elimination of slot machines." *Elimination of Slot Machines Is Considered*, WYOMING EAGLE, Dec. 28, 1934, at 12. Also noted were "rodent campaigns" held in various counties. *Rodent Drives Beneficial to State Farmers*, WYOMING EAGLE, Dec. 28, 1934, at 5.

545. *With Wyoming's Editors*, WYOMING EAGLE, Jan. 4, 1935, at 9 (quoting the KEMMERER GAZETTE).

546. *Id.* The editor of the *Thermopolis Journal* favored pari-mutual betting and a "return to horse-racing" in Wyoming. *With Wyoming's Editors*, WYOMING EAGLE, Jan. 11, 1935, at 9.

be surmised. One guess is as good as another in view of the more liberal trend of public opinion."⁵⁴⁷

The editor of the *Laramie Republican-Boomerang* applauded Governor Miller's opposition to legalized gambling.⁵⁴⁸ "As this paper sees it, this is one of the gravest evils which faces us as a commonwealth."⁵⁴⁹ The governor's opposition was "a sensible stand," according to the editor of the *Gillette News-Record*, "certainly one of the most courageous and sensible stands which any public official in Wyoming has ever taken."⁵⁵⁰ The *Powell Tribune* editor emphasized that Wyoming voters had not voted in the previous election to "license gambling and to outdo Reno in the matter of easy divorce laws."⁵⁵¹

J. B. Griffith of the *Lusk Herald* was ambivalent. "As a matter of principle, we do not believe in the state participating in the gambling racket," he noted, adding that "if the state intends to permit gambling to continue unbridled, as at present, it should at least see that a part of the immense revenue derived therefrom finds its way into the public treasury, thus affording some relief for the over-burdened property owner."⁵⁵² L. L. Newton pointed out that Governor Miller always had the power to crack down on gambling, if he so chose.⁵⁵³ "Why he has not used this prerogative is a question which may not have occurred to him. He merely pointed to the condition without supplying a remedy."⁵⁵⁴

The House was deeply split on the gambling measure. When the full gambling bill came up for a vote on third reading, the bill failed by a tie vote (26-26) with three members absent.⁵⁵⁵ The motion was made for reconsideration in the next day's session.⁵⁵⁶ After several amendments were accepted, including one prohibiting minors from gambling and another allowing for "an[other gambling device]" beyond slot machines and cards, the House passed the bill by a vote of 34-20 with one member absent.⁵⁵⁷ It ap-

547. *With Wyoming's Editors*, WYOMING EAGLE, Jan. 4, 1935, at 9 (quoting the CASPER TRIBUNE-HERALD).

548. *The Governor's Message*, LARAMIE REPUBLICAN-BOOMERANG, Jan. 10, 1935, at 2.

549. *Id.*

550. *A Sensible Stand*, GILLETTE NEWS-RECORD, Jan. 17, 1935, at 6.

551. *Out-Doing of Reno Not Sanctioned*, POWELL TRIBUNE, Jan. 31, 1935, at 4.

552. *With Wyoming's Editors*, WYOMING EAGLE, Jan. 25, 1935, at 9.

553. *Journal Jottings*, WYOMING STATE JOURNAL, Jan. 31, 1935, at 1, 8.

554. *Id.*

555. *Bills on Third Reading*, H.R.B. 138, 23rd Leg., Reg. Sess., at 512 (Wyo. 1935).

556. *Id.* at 514.

557. *Bill on Third Reading on Reconsideration*, H.R.B. 138, 23rd Leg., Reg. Sess., at 532-33 (Wyo. 1935). Curiously, both women in the House, Lucile Connaghan from Fremont County, and Mrs. Albert Rochelle from Natrona County, voted against legalizing gambling. *Id.* Passage of House Bill 138 is reported in *Measure to Legalize and Tax Slot Machines, Card Games in Wyoming is Approved by House*. WYOMING EAGLE, Feb. 15, 1935, at 1. For

peared that Wyoming finally would have full gambling, with the income-producing potential to balance the budget without relying on other taxes. The bill had passed the legislature on the very last day of the session.⁵⁵⁸

Newspaper editors wondered whether or not the governor would sign the bill. He had expressed continuing opposition to gambling.⁵⁵⁹ The governor didn't wait long. On the Friday following adjournment, he vetoed the gambling bill.⁵⁶⁰ "As I sense the situation, it was not really the wish of a majority of the members of the legislature to license gambling," he said, "but on the last day pressure was applied in behalf of a certain city of the state which was reported to be having difficulties in financing some of its activities."⁵⁶¹ Cheyenne was the city to which he made reference as the legislators introducing the act were all from Cheyenne.⁵⁶² John C. Thompson, editor of the *Wyoming State Tribune*, called the veto "a gubernatorial good deed."⁵⁶³ Not only would gambling "expose a large number of persons to folly arising from their own weaknesses," Thompson wrote, "it would have resulted, furthermore, in an influx of the riff-raff, some of it the very dregs of humanity, which gathers to prey on the gullible where gambling is permitted."⁵⁶⁴

Much to the distress of proponents, however, the legislature could do nothing—the veto was made after the session ended.⁵⁶⁵ In his veto message, Miller vowed to have his attorney general crack down on illegal gambling, the presence of which was mentioned frequently during legislative debates.⁵⁶⁶ State government's ability to enforce such a ban was problematic. As the editor of the *Jackson's Hole Courier* pointed out, no state law existed on gambling.⁵⁶⁷ The "attorney general merely informs county offi-

the bill's introduction and subsequent debate, see *Gambling Licensing Bill is Introduced in Wyoming House*, WYOMING STATE TRIBUNE, Jan. 18, 1935, at 5.

558. See *Bill on Third Reading*, supra note 557, at 532-33. See also *Gambling Bill Approved as Supporters Assert Distaste*, WYOMING STATE TRIBUNE, Feb. 16, 1935, at 10.

559. *Will He Sign Gambling Act?*, WYOMING STATE TRIBUNE, Feb. 16, 1935, at 3; *Lottery Plan Not Asked by State Leader*, WYOMING STATE TRIBUNE, Dec. 26, 1934, at 1.

560. *Act Legalizing Gambling is Given Ax by Governor Miller*, WYOMING STATE TRIBUNE, Feb. 20, 1935, at 1.

561. *Id.*

562. *Id.*

563. John C. Thompson, *A Gubernatorial Good Deed*, WYOMING STATE TRIBUNE, Feb. 20, 1935, at 4. Thompson also applauded the demise of pari-mutual betting and the lottery. *Id.*

564. *Id.*

565. *Act Legalizing Gambling is Given Ax by Governor Miller*, WYOMING STATE TRIBUNE, Feb. 20, 1935, at 1. For Miller's speech to the next session of the legislature in which he explained his veto, see *Governor Miller's Message to the 24th State Legislature*, H.R., 24th Leg., Reg. Sess., at 17-31 (Wyo. 1937) [hereinafter *Governor's Message to the 24th Legislature*]. "No act of mine since I have been in office brought to my desk such a flood of commendation," he said. *Id.* at 26. He warned of the type of people drawn to the state by gambling and urged the legislature not to pass a similar act in 1937. *Id.* at 26-27.

566. *Id.*

567. *No Gambling*, JACKSON'S HOLE COURIER, Mar. 7, 1935, at 4. The order took effect on March 1, 1935. *Id.*

ciala that where in the past they have winked at open gambling and passed on, they now must take action."⁵⁶⁸ The editor was skeptical about serious enforcement, however.⁵⁶⁹ "Such orders to close gambling have been issued before and they were effective for a while, then forgotten. It will be interesting to see how long this one lasts."⁵⁷⁰

Cheyenne police chief T. Joe Cahill indirectly confirmed the Jackson newspaper's assertions that gambling was condoned statewide in his report to the city council in January 1935.⁵⁷¹ "Slot machines and other forms of gambling swelled the Cheyenne police department's coffers by \$12,608.89, the last year," the *Wyoming Eagle* reported.⁵⁷² The article noted that the "tax" assessed by the city on each slot machine had been raised from ten to fifteen dollars to twenty-five dollars per month per machine.⁵⁷³ "Probable revenue to the city from this source this year will be about \$36,000," the paper estimated.⁵⁷⁴

The Sales Tax Passes

Most legislators had not pinned any hopes on gambling as a means of solving the revenue problem. The second week of the session began with a substantial number favoring a sales tax and a small group still advocating an income tax. It appeared to some observers that action would not be taken on either—the legislature would do nothing about revenue, just as it had done in 1933.

For a time, it appeared that no tax measure would be forthcoming during the session. Governor Miller, however, finally stepped in, making a personal plea for passage of the sales tax.⁵⁷⁵ The *Wyoming State Tribune* read:

Pointing out that money is needed for relief purposes and declaring it to be out of the question to increase the direct tax levy to raise it, the governor urged the adoption of the sales tax as a means of definitely assuring income so the

568. *Id.*

569. *Id.*

570. *Id.*

571. *Slot Machines Add Over \$10,000 to City Revenue*, WYOMING EAGLE, Feb. 1, 1935, at 1.

572. *Id.*

573. *Id.*

574. *Id.*

575. *Sales Tax Advocated in House by Governor and Relief Head*, WYOMING STATE TRIBUNE, Feb. 11, 1935, at 3.

state may cooperate with the federal government under terms of the economic security act.⁵⁷⁶

In the act, the sum of \$500,000 would be earmarked for relief.⁵⁷⁷

“The sales tax is the only way out,” the governor told legislators in an informal meeting.⁵⁷⁸ In an unprecedented appearance before the House, Relief Administrator Will Metz also pleaded for passage of the sales tax act.⁵⁷⁹

Opposition to a sales tax remained vocal—and bipartisan. Representative George Messick, a Republican from Sheridan, observed that “70 percent of the people do not want a sales tax.”⁵⁸⁰ Representative J. Reuel Armstrong, a Republican from Carbon County, pointed out that since the state had repealed Prohibition and opted to enter the wholesale liquor business, revenues from those operations, estimated at one million dollars annually, would mean “there is no need for a sales tax.”⁵⁸¹

Miller, the Democratic governor, recognized that the labor unions, part of his core base, were the primary opponents of the tax. “I know the chief opposition comes from organized labor,” Miller said, “but the laboring man does not pay a disproportionate share of taxes in Wyoming.”⁵⁸² The editor of the *Gillette News Record* made a similar argument:

We for one are unable to see the logic in organized labor’s fight against the sales tax . . . in that some manner of raising additional funds for relief purposes must be had, surely no means can be found that is more equitable and fair to everyone. After all, we spend in direct proportion to our income. Therefore that part of the sales tax which any of us will pay will be in direct ratio to our ability to pay.⁵⁸³

House Bill Number 124, calling for a sales tax, was introduced by the Revenue Committee on the twenty-fourth day of the session.⁵⁸⁴ The

576. *Id.*

577. *Id.*

578. *Plea by Governor and Metz Rescues Sales Tax Measure*, WYOMING STATE TRIBUNE, Feb. 12, 1935, at 12.

579. *Metz Fears Defeat of Sales Tax He Promised Washington*, WYOMING STATE TRIBUNE, Feb. 11, 1935, at 10. State newspapers criticized Miller for “pushing for a sales tax” rather than leaving the tax decision to the legislature. *Id.*

580. *Plea by Governor and Metz Rescues Sales Tax Measure*, WYOMING STATE TRIBUNE, Feb. 12, 1935, at 12.

581. *Id.*

582. *Id.*

583. *The Sales Tax*, GILLETTE NEWS-RECORD, Feb. 14, 1935, at 6.

584. *Introduction, Reading and Reference of Bills*, H.B. 124, 23rd Leg., Reg. Sess., at 248 (Wyo. 1935).

same day, it was referred back to that committee for consideration.⁵⁸⁵ It finally came out of the committee on the thirty-fifth day of the session, with several amendments attached.⁵⁸⁶ After debate by the entire House on the next day, and with the addition of several more amendments, the sales tax act passed by a vote of 35-19 with one member excused.⁵⁸⁷

As a means of ensuring passage, the sponsors of the sales tax bill added dozens of exemptions, including a crucial exemption on all services and on agricultural commodities.⁵⁸⁸ To sweeten the proposal, they argued that the measure would be "only temporary" and the entire tax question could be revisited once the economic conditions warranted. While there is no direct evidence as to support this fact, clearly the sales tax advocates seem to have cemented their position with these assurances.⁵⁸⁹

Meanwhile, the income tax proponents, tied indirectly to communism in the hearings, had lost momentum since the 1933 special session. Outnumbered, they tried to substitute an income tax for the sales tax late in the session.⁵⁹⁰ The effort failed by a substantial margin.⁵⁹¹

After considerable debate, including references to the "failure" of the Utah income tax law to raise sufficient revenues, the House passed the sales tax bill on February 12, 1935, by a vote of 35-19.⁵⁹² With but four days remaining in the session, the measure was sent to the Senate for consideration. Senators made additional amendments. Senator Frank Barrett of Niobrara County introduced an amendment excluding bread and milk from the sales tax.⁵⁹³ Another senator, Senator Dinsmore, got the Senate to exempt cigarettes and tobacco from the tax.⁵⁹⁴ Later, however, Dinsmore offered an amendment to leave such exemptions to the discretion of the state board of equalization.⁵⁹⁵

585. *Id.*

586. *Standing Committee Report*, H.B. 124, 23rd Leg., Reg. Sess., at 453 (Wyo. 1935).

587. *Bills on Third Reading*, H.B. 124, 23rd Leg., Reg. Sess., at 471-73 (Wyo. 1935).

588. *Id.*

589. *Id.* The title of the act was changed with a last-minute amendment before the vote on third reading in the House. *Id.* at 472. Revenue committee chair Burwell moved to change the title from "Sales Tax Act" to the "Emergency Sales Tax Act." *Id.*

590. *Senate Passes Sales Tax But Excepts Bread*, WYOMING STATE TRIBUNE, Feb. 15, 1935, at 1.

591. *Id.*

592. *Bills on Third Reading*, *supra* note 587, at 471-73.

593. *Id.* at 445 ("Provided, however, that individual sales of bread for less than 11 cents per loaf or milk for less than 14 cents per quart shall be exempt from the provisions of this Act.").

594. *Id.*

595. *General Appropriations and Sales Tax Bills Approved in Upper House of Legislature*, WYOMING STATE TRIBUNE, Feb. 15, 1935, at 10.

“Why shouldn’t everybody contribute something toward the support of the government from which they benefit?” asked Senator B. C. Rumsey, Park County Democrat, speaking in support of the sales tax.⁵⁹⁶ “You say this sales tax isn’t fair to everybody, that it would put a burden on some people,” Rumsey argued.⁵⁹⁷ “Twenty percent of the property owners now pay 80 percent of the cost of the government. Is that fair? Union labor wants everything from the government but doesn’t want to have to pay for any of it. Is that fair?”⁵⁹⁸ He asserted that the sales tax was more fair than the present system.⁵⁹⁹ “If he could select six members of the Senate and be given several weeks, he could draw up a tax system—a combination of the sales tax, income taxes supplemented by a property tax, which would be the one and only fair system.”⁶⁰⁰

Rumsey’s home-county newspaper, the *Powell Tribune*, backed his view.⁶⁰¹ “A large majority of the people up this way are favorable to a sales tax, but they want it to serve as a means of reducing the otherwise heavy property tax burden and not as a source of additional revenue for state spending.”⁶⁰² R. T. Baird concluded, however, “Despite all the cry, our taxes are now more than they have been, and the legislature is not headed in a determined program to cut them to any appreciable extent.”⁶⁰³

During debate on second reading, several senators were confused about what they were voting on. Senators R. H. Sanders of Rock Springs and Earl Wright of Farson both told the *Eagle* reporter that they thought vote on passage in second reading actually was on a minor amendment.⁶⁰⁴ They vowed to vote against the measure on third reading.⁶⁰⁵ One senator confidently predicted that the measure would lose the next day on a vote of 16-11.⁶⁰⁶ He was wrong. The next day, a majority did pass the bill with only token opposition.⁶⁰⁷ On February 18, 1935, the governor signed the bill that became the “Emergency Sales Tax Act of 1935.”⁶⁰⁸

596. *Senate Gives Initial Okay to Sales Tax Bill*, WYOMING EAGLE, Feb. 21, 1935, at 1, 12.

597. *Id.*

598. *Id.*

599. *Id.*

600. *Id.* Rumsey was the rarest of successful state senators—he was a Democrat from Wapiti, a heavily Republican community in overwhelmingly Republican Park County!

601. *The Closing Legislative Grind*, POWELL TRIBUNE, Feb. 14, 1935, at 4.

602. *Id.*

603. *Id.*

604. *Senate Gives Initial Okay to Sales Tax Bill*, WYOMING EAGLE, Feb. 21, 1935, at 1.

605. *Id.*

606. *Id.*

607. *House Bills on Third Reading in the Senate*, H.R.B. 124, 23rd Leg., Reg. Sess., at 445 (Wyo. 1935). Voting against were just five senators—Binney, Sanders, Thain, Wilson, and Wright. *Id.* See also WYOMING STATE TRIBUNE, Feb. 12, 1935, at 1.

608. 1935 Wyo. Sess. Laws ch. 74, § 1.

The law required that all retail firms purchase an annual sales tax license for a two dollar fee.⁶⁰⁹ License forms were distributed locally, often from banks.⁶¹⁰ Two percent was assessed on all retail sales, on carriers of telephone and telegraph services (exempting interstate services), public utilities, gas and electric companies.⁶¹¹ Two percent was assessed on all meals served in restaurants and two percent on admission to entertainment events.⁶¹² Sales under thirteen cents were exempted.⁶¹³

Numerous exemptions were built into the "Emergency Act." Commodities, sales to federal and state agencies, and charitable organizations were exempt.⁶¹⁴ Section sixteen made it unlawful to advertise that the tax was being "absorbed by the retailer."⁶¹⁵

The enabling clause indicated the nature of the act: "This is an emergency act and shall be self-repealing and shall expire on March 31, 1937."⁶¹⁶ Governor Miller signed the bill on the final day of the session, February 18, 1935.⁶¹⁷

Economic conditions, still serious, were somewhat better than earlier in the decade.⁶¹⁸ Wyoming newspapers commented on passage of the sales tax law. The editor of the *Greybull Standard* wrote, "In slightly more than a month, the sales tax will be upon us and with it the train of chaffing annoyances."⁶¹⁹ While the editor agreed that passage did not result from a "sinister motive" and, instead, was done through necessity, he thought that the "relief" help promised from passage of the act ought to be extended to building irrigation projects for farmers.⁶²⁰ "Employ relief money to build for the future," he argued, "It aids the deserving farmer and builds the community for the future."⁶²¹ He concluded:

609. *Id.* § 3.

610. *See, e.g., Sales Tax Blanks Are Now Available Here*, GREYBULL STANDARD, Mar. 21, 1935, at 1 (the distribution of forms was undertaken by E. K. Parks at the First National Bank of Greybull).

611. 1935 Wyo. Sess. Laws ch. 74, § 4(b).

612. *Id.* §§ 4(c), (d).

613. *Id.* § 4(e).

614. *Id.* § 6.

615. *Id.* § 16.

616. *Id.* § 23.

617. *Sales Tax to be Collected in Few Weeks*, WYOMING STATE TRIBUNE, Feb. 18, 1935, at 1.

618. *See, e.g., REPORT OF COORDINATING COMMITTEE OF FEDERAL DEPARTMENTS AND AGENCIES IN WYOMING*, submitted to Governor Miller on Dec. 2, 1935 (on file with the Wyoming State Archives).

619. *Enter the Sales Tax*, GREYBULL STANDARD, Feb. 21, 1935, at 2.

620. *Id.*

621. *Id.*

Passage of the sales tax should be welcome news to Republican legislative candidates, who in this county made their campaign solely on this issue. They asked to be elected so that they might go into the legislature and pass a sales tax. To our Republican friends who asked for it, we extend greetings and felicitations. They can no longer seek election on the issue.⁶²²

The sales tax was not popular elsewhere in the Big Horn Basin. "The sales tax law, which goes into effect in April, is not meeting with favor in Powell, the very center of advocacy of sales tax principles in past years," wrote editor R. T. Baird.⁶²³ "Our farmers are opposed to the tax as an added burden. It still leaves the owner of property as chiefly taxed. The sales tax revenue is earmarked for relief."⁶²⁴ He concluded that the original intent had been undermined and voters would respond in the next election.⁶²⁵

Nonetheless, most Wyomingites seemed to accept the sales tax. "Although some wary residents view the coming sales tax with skeptical eyes and have started stocking their larders with large quantities of food-stuffs before the first of the month, most of Cheyenne's residents are unperturbed over the new duties on groceries," the *Wyoming Eagle* reported.⁶²⁶ The paper pointed out that there would be no tax assessed on purchases of less than thirteen cents "and the big share of grocery sales come under that price."⁶²⁷

J. B. Griffith of the *Lusk Herald* wrote that he once purchased three cigars each day, amounting to a total purchase of fifteen cents.⁶²⁸ With the new rule on sales tax, he started buying a cheaper variety that cost three for a dime.⁶²⁹ He tried to buy a newspaper, for five cents, and the druggist demanded an extra penny.⁶³⁰ When he protested, the druggist said he had to charge because it was one purchase.⁶³¹ "So we took our cigars, walked out on the sidewalk, sniffed the fresh air, came back in and bought the paper for five cents—and beat Gov. Miller out of a penny."⁶³²

622. *Id.*

623. R. T. Baird, *Sales Tax Not Popular Here*, POWELL TRIBUNE, Mar. 7, 1935, at 4.

624. *Id.*

625. *Id.*

626. *Few Cheyenne Housewives 'Stocking Up' to Beat Tax*, WYOMING EAGLE, Mar. 22, 1935, at 1.

627. *Id.*

628. *With Wyoming's Editors*, WYOMING EAGLE, May 3, 1935, at 9 (quoting *Cheating on Governor Miller*, LUSK HERALD, Apr. 25, 1935, at 2).

629. *Id.*

630. *Id.*

631. *Id.*

632. *Id.*

"Like anything new, the sales tax has already been the cause of many wails and groans on the part of local merchants, on account of the extra figuring and book work which the law entails," wrote the editor of the *Gillette News Record*.⁶³³ He thought that within a month or two, however, most "merchants and purchasers alike will have grown accustomed to the extra cent, two or three . . ."⁶³⁴

The "emergency nature" of the sales tax convinced many Wyomingites that the tax was needed. Typical was the reaction by the editor of the *Casper Tribune-Herald*: "Regardless of its unpleasant features, however, all may find some measure of satisfaction in the purpose to be served—unemployment relief."⁶³⁵

On the other hand, some places in the state saw the sales tax as benefiting Cheyenne. "Cheyenne realizes that it will require a sizeable force of men and women in various capacities to administer the tax," Axel W. Lilja, editor of the *Greybull Standard*, complained.⁶³⁶ "But up here in the Big Horn Basin where appointments to state jobs are as scarce as feathered simians, we can't become enthusiastic about the sales tax."⁶³⁷

The state board of equalization, charged with establishing sales tax collection rules, issued the first set of requirements in late March 1935.⁶³⁸ One preconceived view was shattered—the tax had to be calculated on total purchases made. While an individual item of less than thirteen cents was tax exempt, if an individual bought more than one, the tax was to be assessed over the entire purchase.⁶³⁹ One cent was to be charged for purchases of fourteen to sixty-four cents; sixty-five cents to \$1.25, two cents.⁶⁴⁰ The tax schedule was widely published with nearly every Wyoming newspaper featuring it on the front page.⁶⁴¹

633. GREYBULL STANDARD, Apr. 4, 1935, at 4 (quoting *The Sales Tax Now With Us*, GILLETTE NEWS RECORD, Apr. 2, 1935, at 2).

634. *Id.*

635. *With Wyoming's Editors*, WYOMING EAGLE, Mar. 22, 1935, at 9 (quoting CASPER TRIBUNE HERALD).

636. Axel W. Lilja, *Cheyenne Embraces Sales Tax*, GREYBULL STANDARD AND TRIBUNE, Apr. 4, 1935, at 4.

637. *Id.*

638. *Rules Announced as State Awaits New Sales Tax*, WYOMING EAGLE, Mar. 29, 1935, at 1.

639. *Id.*

640. *Id.*

641. *See, e.g., Schedule of Sales Taxes is Completed*, GREYBULL STANDARD, Mar. 28, 1935, at 1.

The *Wyoming Eagle* published the entire text of the sales tax regulations in its March 29 issue.⁶⁴² The regulations took almost one and one-half pages. The preamble to the regulations stated that the primary purpose was

the relief of property tax by meeting directly the demands made by the US government for funds with which to meet relief purposes, by meeting directly the demands of sorely depleted public schools funds and, if available, the removal of a portion of the burden of state government and institutions.⁶⁴³

The regulations provided a long list of items that were not subject to the sales tax, including sales of livestock for all but breeding purposes, livestock feed, shoe-shining services, cigarettes (but not cigars—according to a board ruling in early April), “personal services,” except for supplies sold by such service providers as barbers, oculists, dentists, etc.⁶⁴⁴ Merchants statewide were puzzled by numerous special rules and exemptions.⁶⁴⁵

The *Cody Enterprise* pointed out that Wyomingites would become “tax conscious” over the next two years.⁶⁴⁶ “Heretofore a vast percentage of the people paid no taxes. They believed in ‘relief’ and lots of it, because it cost them not a penny . . . Now it should and will be different. We are going to pay as we go.”⁶⁴⁷

“If we can get used to the sales tax, it should prove helpful in years to come,” the *Powell Tribune* editor wrote.⁶⁴⁸ He pointed out that “Labor interests are much opposed to the sales tax, because they believe the men who enjoy the large incomes thus escape their share.”⁶⁴⁹ The editor pointed out that

[i]t seems that from property, income and taxable sales ultimately come the revenue for our government expenses. The delay in getting this proper distribution of the tax burden is a tragic injustice to property owners, who have in past years

642. *Here's Complete Text of Wyoming's New Sales Tax Regulations*, WYOMING EAGLE, Mar. 29, 1935, at 2, 3.

643. *Id.* Other papers published highlights of the regulations. *See, e.g., General Sales Tax for Wyoming Consumers*, POWELL TRIBUNE, Feb. 21, 1935, at 2 (April board ruling on cigars).

644. *All Cigars Must Bear Sales Tax, Is State Ruling*, WYOMING EAGLE, Apr. 5, 1935, at 1.

645. *Powell Business Men Study Sales Tax Law*, POWELL TRIBUNE, Apr. 4, 1935, at 3.

646. CODY ENTERPRISE, Apr. 5, 1935, at 2.

647. *Id.*

648. *Sales Tax Proving Inconvenient and Irritating*, POWELL TRIBUNE, Apr. 4, 1935, at 4.

649. *Id.*

been meeting far beyond their share of state, county, school and municipal expense.⁶⁵⁰

The universality of the taxpayers was emphasized by the *Powell Tribune*:

The tourist, the Mexican, the transient laborer, the salaried man here for a short time only, the non-property owners in all walks of life are now paying generously into the state treasurer's coffers. They are doing their part to help relieve the property owner of his tax burden. The sales tax is a nuisance and it is unpopular with a great number, but already we are becoming accustomed to its inconveniences and if it were put to a vote of our people such a tax would be continued.⁶⁵¹

By the end of 1936, the Wyoming economy was improving slightly. Nine of the twenty-one Public Works Administration projects authorized in Wyoming had been completed and work continued on the remaining ones.⁶⁵² For the first time in many years, the State Department of Game and Fish was out of debt.⁶⁵³ Wyomingites apparently were reconciled to the sales tax. "About the worst to be said of the sales tax is that it is a nuisance," wrote Tracy McCracken of the *Wyoming Eagle*.⁶⁵⁴ "But we can think of lots of taxes that are much more than a nuisance. Most others are burdens."⁶⁵⁵

The Wyoming League of Municipalities met in January, 1937. Mayors from throughout Wyoming advocated what they saw as an even less burdensome "tax"—gambling.⁶⁵⁶ They urged the legislature to legalize gambling, at least allowing it as a local option.⁶⁵⁷ Many mayors were strongly opposed.⁶⁵⁸ The motion carried only after "a heated discussion" and then by barely a majority.⁶⁵⁹ The mayors also voted that if the sales tax were to be continued, it should be divided in the following manner: one-half to the

650. *Id.*

651. *With Wyoming's Editors*, WYOMING EAGLE, Apr. 26, 1935, at 9 (quoting *Everybody Now Paying Taxes*, POWELL TRIBUNE, Apr. 18, 1935, at 4).

652. *Nearly \$2.5 million in Work Done in Wyoming by PWA During 1936*, WYOMING EAGLE, Jan. 1, 1937, at 5. The completed projects were the liberal arts building at the University of Wyoming; state institutional buildings at Evanston, Casper, and Lander; schools in Buffalo, Riverton, Lander, and Egbert; and water works improvement in Sundance. *Id.*

653. *Game Department Ends First Year Out of Red*, WYOMING EAGLE, Jan. 1, 1937, at 5.

654. Tracy McCracken, *The Task of the Legislature*, WYOMING EAGLE, Jan. 12, 1937, at 23.

655. *Id.*

656. *Mayors Endorse Legalized Gambling*, WYOMING EAGLE, Jan. 7, 1937, at 1, 16.

657. *Id.*

658. *Id.*

659. *Id.*

state; one quarter to the cities; and the remaining quarter to the counties.⁶⁶⁰ The next day, ministerial associations from throughout the state and the WCTU announced they were setting up lobbying efforts to defeat any attempt to repeal the laws against gambling.⁶⁶¹

The 1937 session opened with little interest in an income tax even though Governor Miller had proposed an initiative on such a tax in his message to the legislature.⁶⁶² Legislators displayed little interest although Platte County State Senator S. Manning introduced Senate Joint Resolution Two on the seventh day of the session proposing “an amendment to the Constitution of the State of Wyoming, providing that the legislature shall have power to levy and collect taxes on incomes.”⁶⁶³ The bill was referred to the revenue committee, but later that same day, Manning gained unanimous consent to withdraw the resolution.⁶⁶⁴ The same resolution was introduced into the House on the twenty-first day of the session by the House Revenue Committee.⁶⁶⁵ After considerable delays in considering the act, it finally came up for third reading in the House on the thirty-seventh day of the session. It did not pass. Only seventeen House members voted for it with thirty-nine opposed.⁶⁶⁶ In his “State of the State” address, opening the 1937 legislative session, Governor Miller urged economy.⁶⁶⁷ The budget he submitted was exactly ninety dollars below the total appropriations made by the legislature two years earlier. Only the University of Wyoming would receive a huge increase under Miller’s proposal with many agencies facing budget cuts.⁶⁶⁸ Nonetheless, the Wyoming Taxpayers League mobilized for action to defeat the bills they believed would greatly increase spending.⁶⁶⁹ On the revenue

660. *Id.* Later in the session, the league met and drafted four proposed bills for legislative action, one legalizing gambling. See *Mayors Draft Four Measures for Lawmakers*, WYOMING EAGLE, Jan. 23, 1937, at 11.

661. *Battle Lines Drawn on Gambling Act*, WYOMING EAGLE, Jan. 8, 1937, at 1, 8.

662. *Governor’s Message to the 24th Legislature*, *supra* note 565, at 21.

663. *Introduction, Reading and Reference of Bills*, S.J. Res. 2, 24th Leg., Reg. Sess., at 50 (Wyo. 1937).

664. *Id.* at 52.

665. *Introduction, Reading and Reference of Bills*, H.R.J. Res. 2, 24th Leg., Reg. Sess., at 166 (Wyo. 1937).

666. *Bills on Third Reading*, H.R.J. Res. 2, 24th Leg., Reg. Sess., at 497-98 (Wyo. 1937).

667. *Miller Urges Economy as He Submits Budget*, WYOMING EAGLE, Jan. 13, 1937, at 1, 8.

668. *Governor’s Message to the 24th Legislature*, *supra* note 565, at 17.

669. *Tax League Called Into Action To Fight Legislative Measures*, WYOMING EAGLE, Jan. 26, 1937, at 1. The four leaders of the group were identified as Lee Simonson, Thermopolis; T. S. Taliaferro, Jr., W. E. Mullen and M. E. Robertson. *A Fight Against Higher Taxes*, WYOMING EAGLE, Feb. 2, 1937, at 1 (photograph). Others enlisted to lobby for the group were: John D. Clark, Cheyenne; Tom Rogers, Green River; N. R. Greenfield, Rawlins; and George Klett, Cheyenne. *Id.*

side, he recommended continuation of the sales tax, warning that without it, "The property tax . . . could be more than doubled."⁶⁷⁰

"The sales tax has done all that was expected of it and more," he told the legislature.⁶⁷¹ It was a popular tax with the public, he said, but noted it had "vociferous enemies."⁶⁷² He pointed out that some action had to be taken—either to renew the sales tax or to turn to an alternative. He recommended retention of the sales tax, but eliminating the tax on foodstuffs and placing the sales tax on "luxury items" previously exempted.⁶⁷³

Earlier, Cheyenne publisher Tracy McCracken editorialized on removing the tax from food.⁶⁷⁴ He acknowledged that it probably would not be practical, particularly since one-fourth of all sales tax revenues came from sale of food and separating food from non-food items in stores would be a nightmare for the average grocer, for instance.⁶⁷⁵

In addition to advocating renewal of the sales tax, Miller urged the passage of an income tax.⁶⁷⁶ "I have felt the graduated income tax to be the most just and equitable form of taxation," he reminded the legislature, but he also pointed out the difficulties in gaining its passage.⁶⁷⁷ "I share with many others the belief that a really well-balanced tax program would embrace three major revenue factors—a graduated income tax, a sales tax and the property tax," Miller argued, concluding with an argument for a constitutional amendment to be placed on the 1938 ballot.⁶⁷⁸ The Revenue Committee, siding with Governor Miller, introduced House Joint Resolution Two authorizing the income tax amendment to the State Constitution.⁶⁷⁹ When the bill reached the full House, it was rejected by a vote of 17-39, almost

670. *Miller Urges Economy as He Submits Budget*, WYOMING EAGLE, Jan. 13, 1937, at 1, 8.

671. *Governor's Message to the 24th Legislature*, *supra* note 565, at 20-21.

672. *Id.*

673. *Id.* He also urged adoption of a "use tax." *Id.* Newspapers republished the entire message. *See, e.g., Message Proposes Income Tax Referendum*, WYOMING EAGLE, Jan. 14, 1937, at 14, 15. Miller also explained his veto of the gambling act following the 1935 legislative session, indicating that he remained opposed to gambling. *Governor's Message to the 24th Legislature*, *supra* note 565, at 20-21. "You know what gambling does to the souls of men. You know without listening to a sermon that gambling is a much more corroding evil than is the addiction to liquor. You know, too, the type of people legalized gambling attracts to a community . . ." *Id.* Nonetheless, gambling remained the hottest issue of the session with numerous bills introduced to legalize it. *See, e.g., \$500,000 Gambling Tax Bill Proposed*, WYOMING EAGLE, Jan. 16, 1937, at 1.

674. Tracy McCracken, *The Task of the Legislature*, WYOMING EAGLE, Jan. 12, 1937, at 23.

675. *Id.*

676. *Governor's Message to the 24th Legislature*, *supra* note 565, at 21.

677. *Id.*

678. *Id.*

679. *Introduction, Reading and Reference of Bills*, *supra* note 665, at 166.

exactly the reverse of the 40-16 vote in favor of the sales tax introduced at the same time.⁶⁸⁰

Labor unions, still opposed to the sales tax, but willing to compromise, sent representatives to meet with the governor early in the legislative session. "If the state absolutely needs the revenue produced by the sales tax—as Governor Miller informed the conferees it did—labor is willing to have the law reenacted, John Ross, president of District 22, United Mine Workers of America, said."⁶⁸¹ In return for labor dropping its opposition, Miller assured Ross and the other union leaders that he would not seek to increase the sales tax to three percent.⁶⁸² Further, he told them he would seek a constitutional amendment for an income tax.⁶⁸³ "We feel that the wage earner in the lower brackets bears the sales tax out of proportion to his income," Ross declared. "However, if it is removed from foods—the big necessity—we feel that we will not oppose its reenactment, since Governor Miller says the revenues are vitally needed."⁶⁸⁴

Labor leaders failed to gain critical editorial and political support for their position, however. Cheyenne editor McCracken noted, "The sales tax is here to stay."⁶⁸⁵ He wrote that he did not see the same necessity for removing food from taxation because "it is based on the fact that at present large numbers of people are on relief and many more are earning but a bare subsistence income."⁶⁸⁶ He argued that since the sales tax "now being written lacks the temporary features of the present act, being probably a permanent feature of our taxation system, the fewer exemptions granted will be more fair to all concerned."⁶⁸⁷ As to the elimination of the sales tax on foodstuffs, organized labor continued to insist on the exemption. Late in the session, Martin Cahill, state federation of labor president, and Albert Roberts, vice president of District Twenty-Two, United Mine Workers, appeared before the Revenue Committee in support of an amendment, drafted by union attorney Bard Farrell, to remove the sales tax on food.⁶⁸⁸

The legislature failed to follow Miller's recommendations and seemed to ignore labor's entreaties. During initial consideration in an evening session on the twenty-eighth day of the legislature, dozens of other

680. *Bills on Third Reading, supra* note 666, at 497-98.

681. *Certain Passage of Sales Tax Seen as Compromise is Reached*, WYOMING EAGLE, Jan. 20, 1937, at 1.

682. *Id.*

683. *Id.*

684. *Id.* at 20.

685. Tracy McCracken, *It's Here to Stay*, WYOMING EAGLE, Feb. 2, 1937, at 15.

686. *Id.*

687. *Id.*

688. *Labor Forces Amendment Exempting Tax on Foods*, WYOMING EAGLE, Feb. 4, 1937, at 1.

amendments were offered to the sales tax act, broadening the exemptions.⁶⁸⁹ One significant change raised the base rate for exempted items from eleven cents to twenty-four cents.⁶⁹⁰ The next afternoon, on third reading, the bill passed with overwhelming support.⁶⁹¹ Forty legislators voted for it with only sixteen voting against.⁶⁹² After House passage, the bill went to the State Senate where, after a few more amendments, but not those urged by the labor leaders, the measure gained an even more overwhelming endorsement of twenty-two for and just three senators opposed.⁶⁹³

The legislature reenacted the sales tax, but the name was changed slightly to no longer imply that the tax was "temporary." The new title no longer contained the word. In what was then titled the "Selective Sales Tax Act of 1937," section four changed the lower limit on the tax to twenty-four cents, made a few exemption adjustments, but kept the tax largely as it had been during the preceding four years.⁶⁹⁴ The effective date was April 1, 1937.⁶⁹⁵ Once again, state revenue shortfalls, for the time being, were averted, but the income tax constitutional amendment no longer mustered interest. Governor Miller signed the law soon after the legislature adjourned.⁶⁹⁶

Were there political repercussions from making the sales tax permanent? If so, they are difficult to assess. Some historians have pointed to Governor Miller's support for the income tax as part of the reason for his loss to Nels Smith in the 1938 general election.⁶⁹⁷ Others believe he lost the critical support from his "base" among union Democrats because he did not succeed in his promise to eliminate the sales tax on food nor to gain a constitutional amendment for an income tax. A number of other issues contributed

689. *Introduction of Bills*, H.R.B. 118, 24th Leg., Reg. Sess., at 147 (Wyo. 1937). The committee gave the bill a "do pass" recommendation. *Id.* The amendments were added in Committee of the Whole considerations during an evening session on February 8. *Id.* See also *Sales Tax on Food Kept in House Bill*, WYO. EAGLE, Jan. 30, 1937, at 1.

690. 1937 Wyo. Sess. Laws ch. 102 § 4(e).

691. *Bills on Third Reading*, H.R.B. 118, 24th Leg., Reg. Sess., at 306 (Wyo. 1937).

692. *Id.*

693. *Joint Conference Committee Report*, S., 24th Leg., Reg. Sess., at 318-19 (Wyo. 1937). The two senators from Sweetwater County, Rudolph Anselmi and Earl Wright, and Platt Wilson from Lincoln County, voted "no." *Id.* One member, Binney, was absent and did not vote. *Id.*

694. 1937 Wyo. Sess. Laws ch. 102 § 4. See also H.R.B. 118, 24th Leg., Reg. Sess. (Wyo. 1937).

695. 1937 Wyo. Sess. Laws ch. 102, § 26.

696. *New Sales Tax Becomes Law as Miller Signs Legislative Bill*, WYOMING EAGLE, Feb. 25, 1937, at 1.

697. LARSON, *supra* note 17, at 467.

to Smith's victory over Miller. For one, Miller was seeking what was then an unprecedented third term.⁶⁹⁸

Lincoln County representative Carl Robinson introduced an income tax bill in the 1939 legislature.⁶⁹⁹ But the legislative mood had become even more anti-income tax. State Representative Ernest F. Shaw of Park County introduced House Joint Memorial Six advocating repeal of the federal income tax.⁷⁰⁰ While Robinson's measure was sent to the Judiciary committee where it died, the memorial urging repeal of the Sixteenth Amendment to the United States Constitution and elimination of the federal income tax sailed through the House by a vote of 30-18 and the Senate on a 17-9 vote.⁷⁰¹

By most indications, Wyomingites had become conditioned to the sales tax and hostile to the idea of an income tax. The economy was improving and the legislature apparently felt the revenue crisis of the early 1930s had been solved through passage of the sales tax and an accompanying use tax. At a time when most of the surrounding states were opting for income taxes as a means of "broadening the tax base," the Wyoming legislature had made a choice that was to have a long-term impact on state funding and an enduring legacy to future governors and state legislators, even into the next century.

VI. THE FUTURE OF WYOMING TAXATION

On November 5, 1974, Wyoming voters approved an amendment to the Wyoming Constitution making it extremely difficult to establish a state income tax.⁷⁰² The amendment does not outright prohibit an income tax as some people believe. The section reads: "No tax shall be imposed upon income without allowing a credit against such tax liability for all sales, use,

698. *Id.* T. A. Larson suggested another reason for Miller's defeat was his inability to reduce gasoline prices despite considerable assertions during his previous campaigns that he would accomplish such a task. *Id.*

699. *Introduction, Reading and Reference of Bills*, H.R.J. Res. 7, 25th Leg., Reg. Sess., at 181 (Wyo. 1939). It was referred to the Judiciary and Elections Committee where it stayed for the session. *Id.*

700. H.R.J. Memorial 6, 25th Leg., Reg. Sess., at 200 (Wyo. 1939).

701. *Bills on Third Reading*, H.R.J. Memorial 6, 25th Leg., Reg. Sess., at 358 (Wyo. 1939). For the Senate vote, see S.J. Memorial, 25th Leg., Reg. Sess., at 429 (Wyo. 1939).

702. WYO. CONST. art. XV, § 18. House Joint Resolution Twelve was introduced on January 27, 1973, by Representatives Smith, Mulvaney, Meier, Hellbaum, and Simpson. H.R.J. Res. 12, 42nd Leg., Reg. Sess. (Wyo. 1973). The bill passed February 11 on a vote of 52-6, with one excused and three absent. *Id.* The Senate passed the bill 24-6 on February 21. S.J. Res. 12, 42nd Leg., Reg. Sess. (Wyo. 1973). The measure was championed in the legislature by Nels Smith, the namesake and grandson of the man who defeated Miller for governor in 1938.

and ad valorem taxes paid in the taxable year by the same taxpayer to any taxing authority in Wyoming.”⁷⁰³

Since 1969, when Wyoming finally adopted a severance tax on minerals, state government remains heavily dependent on the two “legs of the tax stool”—sales taxes and severance taxes.⁷⁰⁴ For as long as fossil fuels remain central to American energy needs and the estimated coal and other mineral reserves in Wyoming are accurate, the state can expect to receive substantial revenues from minerals. The severance tax, unpopular with out-of-state owned mineral companies, is a novel state “export.” Little of the tax is paid by Wyoming residents. Instead, the costs are paid by the many out-of-state users of the final product produced by the mineral. In the case of the mineral produced in greatest abundance, coal, the ultimate electricity consumers in midwest or southwestern states are paying just a few mills in each monthly bill they receive from the power companies burning Wyoming coal.

Unless another means of assessment is used, however, Wyoming will receive only a tiny percentage of the delivered value of the particular product. The tax on coal, for instance, is paid on the value as determined at the mouth of the mine—not at the delivered price charged at the final destination.⁷⁰⁵ The shipping costs to distant destinations are substantial and these are not considered in assessing the tax. Given that shipping costs for the coal far outweigh the production costs, Wyoming receives far less per ton than the shippers, mostly absentee-owned railroad corporations. Mineral companies concerned about the competitive impact of the severance tax on out-of-state sales need to look for ways to reduce shipping costs, perhaps through developing greater competition for transport.

Unless the sales tax rates are raised so substantially that Wyoming buyers no longer purchase goods or make purchases elsewhere, the sales tax will remain an important (and probably popular) means of taxation.⁷⁰⁶ Critics correctly point to the sales tax as one of the most regressive forms, particularly given that Wyoming law does not exempt food and other essentials from sales tax. Despite the absence of exemptions for “essentials,” numerous other “loopholes” are included in the sales tax laws. By reexamining the numerous exemptions attached to the sales tax law in 1935 and later, the legislature could increase revenues with relatively little impact on most citizens.

703. WYO. CONST. art. XV, § 18. The 1973 legislature passed the resolution for the amendment; the measure passed on November 5, 1974, and was proclaimed to take effect on December 12, 1974. H.R.J. Res. 12, 42nd Leg., Reg. Sess. (Wyo. 1973).

704. For a recent critique of the state’s heavy reliance on mineral taxes, see SAM WESTERN, PUSHED OFF THE MOUNTAIN, SOLD DOWN THE RIVER 102 (2002).

705. WYO. STAT. ANN. § 39-14-104 (LexisNexis 2003).

706. The use tax is assessed on all goods purchased outside the state and brought into Wyoming. The rationale is to tax goods that are not reachable by sales tax collections. Of course, the enforcement is problematic.

Property taxes in Wyoming remain relatively low, in comparison to neighboring states. Property taxes historically have been assessed for the needs of local government and school districts. With the increasing costs of education and the equalization decisions of the Wyoming Supreme Court, passage of a set statewide levy earmarked for the schools may be necessary. Likely, the increased valuations of homes in “vacation spots” like Jackson Hole, Cody, Saratoga, and elsewhere, and increasing values on mineral production properties, will offset any need for increased tax rates on property.

Higher values of real property, more severance taxes gained from greater production of minerals, and continued collections of sales taxes ought to allow Wyoming government to balance budgets well into the future—but it will not be without conflict. Without population gains, greater demands for minerals, or better employment opportunities for Wyomingites, the costs of maintaining state services are bound to increase into the twenty-first century.

But increased population brings with it a quandary. The taxes generated by minerals are not tied to population. With the addition of more and more residents, those already living in Wyoming gain a smaller percentage of benefit from every severance tax dollar the state earns. Increases in the other major form of tax revenue, the sales tax, are dependent on either increased rates or greater consumer spending. For more sales tax revenues, more population (or more tourism) is desirable. Thus, the two “legs” are in conflict over the crucial question of growth or “development.” One of the greatest challenges for future political leaders will be to try to balance the needs for growth with maintenance of the “Wyoming way of life”—with the two forms of revenue sources looming in the background.

Unless Article XV, section 18, of the Wyoming Constitution, is changed to eliminate the offset of all other taxes, Wyoming citizens would be foolish to adopt an income tax. Given the off-set provision, out-of-state mineral companies would be the biggest winners from an income tax on Wyoming residents, but so would owners of extremely expensive homes. Given this reality, one can expect future efforts by mineral interests and wealthy homeowners to get the Wyoming legislature to pass an income tax while, at the same time, they will insist that the constitutional Article XV set-offs remain in place.

An income tax may come to Wyoming (if Article XV, section 18 were amended), but only if the sales and property taxes increase to levels most voters find onerous. Further, an income tax may come if alternative energy sources make fossil fuels obsolete, cheaper alternatives are found for trona, and mineral extraction becomes less competitive with sources in other states or nations. In the view of this writer, that day is far in the future.

