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AN ANALYSIS OF RECENT TAX PROPOSALS IN WYOMING

Because of the increasing revenue requirements of state governments, there has arisen a need to reexamine state tax structures. Professor Rudolph, assisted by students Samuel E. Wing and Carl F. Meyer, Jr., discusses the legal obstacles and practical aspects that must be considered should an income tax be selected as one method of raising the necessary revenue. In the Comment following this article, students Donald K. Roberts and John A. Gordnier examine a state severance tax as a possible alternative. Neither study seeks to advocate the adoption of either tax nor does the order of presentation reflect a judgment as to relative priority. The articles are offered solely to facilitate an understanding of the legal and economic issues involved.

AN INCOME TAX FOR WYOMING: PROBLEMS AND POSSIBILITIES

*E. George Rudolph**†

During the past several years there have been increasing demands upon state general fund revenues, and this has naturally led to considerable discussion of the need for developing additional revenue sources. Among the sources most commonly mentioned is a state income tax. At present income taxes are levied in 35 states.[1] In addition to Wyoming the states not now employing this form of taxation are Connecticut, Florida, Illinois, Maine, Nevada, Ohio,[2] Pennsylvania, Rhode Island, South Dakota, Texas and Washington.

There has been a significant renewal of interest in state income taxation throughout the country in recent years.

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1. In addition, New Hampshire and Tennessee impose a tax on dividend and interest income; New Jersey taxes New York commuters.
2. Although Ohio imposes no state wide income tax, various cities within the state do impose a city income tax.

Since 1960 new income taxes have been adopted in West Virginia, Indiana, Michigan and Nebraska. According to recent reports income taxes are presently under consideration in South Dakota and Rhode Island.[3] In addition, as will be considered more fully at a later point, a number of states having older income taxes have substantially revised and updated their laws during the same period. In 1965 the Advisory Commission on Intergovernmental Relations, a federally sponsored body made up largely of elected and appointed officials from all levels of government,[4] recommended that the states give serious consideration to the enactment of personal income taxes, or the strengthening of existing income taxes, as a means for meeting the increasing revenue requirements of state government. In connection with this recommendation the Advisory Commission published a report, entitled *Federal-State Coordination of Personal Income Taxes,*[5] which deals more fully with many of the questions discussed in this article, especially those considered in Section II. While this report has been drawn upon heavily in the preparation of this article, it is not feasible to cite it at all relevant points. It should, perhaps, be added that some matters are treated here in a somewhat different fashion than in the Advisory Commission report, with the result that the conclusions, express or implied, are different. These differences, however, are mostly with respect to details and are not fundamental.

It is not the purpose of this paper to advocate the adoption of a state income tax in Wyoming, nor even to present arguments for or against such a tax as compared to alternative sources of revenue. It need hardly be added that there is no intention here to express any opinion as to the revenue needs of the state. Instead our purposes in this discussion are to explore some of the legal problems that would have to be met in enacting an income tax, and to consider some of the alternatives, or choices, available in planning and drafting a state income tax. To a considerable extent the two areas

3. TAX REVIEW, Feb. 1968, p. 5 (published by the Tax Foundation, Inc.).
4. The Advisory Commission was established by Public Law 86-380 enacted in 1959. At the time of publication of the report in 1959 its membership included two cabinet members, three United States Senators, three Congressmen, three governors, three state legislators, four mayors, and two county commissioners.
5. Copies are available from the Advisory Commission on Intergovernmental Relations, Washington, D.C. 20575.

overlap as will be seen. It may be noted preliminarily that most of the problems, as well as most of the alternatives, involve the coordination of a state income tax with the federal income tax.

I. BASIC CONSTITUTIONALITY

At the outset there is the question of whether any income tax will be valid under the Wyoming Constitution. The constitution, of course, includes no express authorization for such a tax. This, however, is not generally considered necessary.[6] The power to tax is an indispensible attribute of sovereignty[7] and, to the extent that specific constitutional provisions bear on the matter, they are ones which operate by way of limitation upon this general power.[8]

The only provision of the Wyoming Constitution which suggests any substantial problem with respect to an income tax is the one which provides, in part, that "all taxation shall be equal and uniform."[9] An income tax with a progressive rate structure would seem to raise an obvious question with respect to equality or uniformity.[10] Likewise a provision which, in effect, exempts income below a certain level, such as the so-called personal exemptions under the federal tax, would seem to raise a similar question.[11] The problem, however, is not so simple as the language of the constitutional provision would seem to suggest.

In two decisions the Wyoming Supreme Court has held that the uniformity provision applies only to property taxes

6. Alaska, Hawaii, Delaware, Vermont and Idaho, among others, impose income taxes without benefit of a constitutional provision or amendment.
7. "The Power of Taxation is an essential and inherent attribute of sovereignty . . . ." City & County of Denver v. Lewin, 106 Colo. 331, 105 P.2d 854, 858 (1940); *accord,* Featherstone v. Norman, 170 Ga. 370, 153 S.E. 58, 63 (1930).
8. City & County of Denver v. Tihen, 77 Colo. 212, 235 P. 777, 779 (1925); Colonial Pipeline Co. v. Comm'r, 206 Va. 517, 522, 145 S.E.2d 227, 232 (1966); City of Beaumont v. Feritta, 415 S.W.2d 902, 910 (1967).
9. WYO. CONST. art. I, § 28.
10. The people of Michigan, in their completely revised 1963 constitution saw fit to expressly prohibit progressive or graduated income tax rates. MICH. CONST. art. IX, § 7.
11. In a series of advisory opinions the Supreme Court of New Hampshire has ruled that, under a different type uniformity requirement, a progressive rate structure is invalid, but a flat rate with personal exemptions is valid. Opinion of the Justices, 84 N.H. 559, 149 A. 321 (1930); Opinion of the Justices, 95 N.H. 542, 64 A.2d 323 (1949); Opinion of the Justices, 99 N.H. 525, 113 A.2d 547 (1955). The Michigan statute is drawn on the same understanding.

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and not to excise taxes.[12] There are obviously no Wyoming decisions as to whether an income tax is to be classed as a property tax or an excise tax for this purpose. The question has been considered in a substantial number of cases arising under similar provisions in other state constitutions. These have reached conflicting results. Progressive income taxes have been held to be property taxes, and therefore invalid under uniformity requirements, in Pennsylvania, Washington and a few other states.[13] These decisions are undoubtedly responsible for the fact that Pennsylvania and Washington do not presently have state personal income taxes. In terms of end result the situation is the same in Illinois but the constitutional provisions involved there are substantially different.[14]

Most courts which have considered the question, however, have held that an income tax is an excise tax and not subject to constitutional provisions which require uniformity in property taxation.[15] It seems reasonably clear that this is the result which will be reached by any court which might now consider the question. The earlier cases classifying income taxes as property taxes were considerably influenced by the United States Supreme Court's decision in *Pollack v. Farmers Loan & Trust Co.*[16] which held that a tax upon income from property is, in effect, a tax on the property and therefore a direct tax. Later decisions of the Supreme Court have, to a greater or lesser degree, repudiated the *Pollack* decision and are consistent in holding that an income tax is an excise tax as distinguished from a property tax.[17]

State income taxes, incorporating graduated rate structures or providing exemptions, have also been attacked on

12. Unemployment Compensation Comm'n v. Renner & Tester, 59 Wyo. 437, 143 P.2d 181 (1943); Ludwig v. Harston, 65 Wyo. 144, 197 P.2d 252 (1948).
13. Kelly v. Holodner, 320 Pa. 180, 181 A. 598 (1935); Bronson v. Henneford, 185 Wash. 209, 53 P.2d 607 (1936); Opinion of the Justices, 266 Mass. 583, 165 N.E. 900 (1929); State v. Pinder, 30 Del. 416, 108 A. 43 (1919).
14. Bachrach v. Nelson, 394 Ill. 579, 182 N.E. 909 (1932).
15. Dufendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932); Reynolds Metal Co. v. Martin, 269 Ky. 378 (1937); Miles v. Dep't. of Treasury, 209 Ind. 172, 193 N.E. 855 (1935); Featherstone v. Norman, 170 Ga. 370, 153 S.E. 58 (1930); State v. Gulf M. & N. R.R., 138 Miss. 70, 104 So. 689 (1925); Maxwell v. Kent-Coffey Mfg. Co., 204 N.C. 365, 168 S.E. 397 (1933); Sims v. Ahrens, 167 Ark. 557, 271 S.W. 720 (1925). Huntor v. Commonwealth, 166 Va. 229, 183 S.E. 873 (1936); Lustlow-Saylor Wire Co. v. Wollbrinck, 275 Mo. 339, 205 S.W. 196 (1918).
16. 157 U.S. 429 (1895).
17. N.Y. *ex. rel.* Cohn v. Graves, 300 U.S. 308 (1937); Stanton v. Baltic Mining Co., 204 U.S. 103 (1916).

more general constitutional provisions such as the due process and equal protection clauses. The cases have uniformly sustained the taxes against such attacks on the grounds that the legislature may make reasonable classifications for purposes of taxation.[18] It has also been suggested that a uniformity requirement, even if it were applicable to an income tax, would not preclude the legislature making reasonable classifications and, therefore, would not be violated by an income tax with a progressive rate structure.[19]

It may be concluded with reasonable assurance, therefore, that there is no general constitutional barrier to the enactment of an income tax in Wyoming. There are, however, constitutional limitations that must be considered in planning and drafting an income tax statute. These will be discussed later.

II. COORDINATION WITH THE FEDERAL INTERNAL REVENUE CODE

In the nature of things an income tax law must be exceedingly complex since it needs to take into account all aspects of the economy which, itself, is very complex. Considerable effort, both legislative and administrative, is devoted to the continual modernization and improvement of the federal income tax law and, while one may disagree with the results in particular instances, it is clear that no state, and especially a state like Wyoming, can or should duplicate this legislative process. The obvious answer is to incorporate the multitudinous technical provisions and details of the federal statute into the state law by reference or, in other words, to base the state tax, in some fashion, upon the federal provisions. This is the approach which has been followed in every state that has enacted an income tax in recent years,[20] and a number of states, which had older laws that were supposedly self contained with respect to the computation of taxable income, have recently changed over to take advantage of the federal provisions.[21]

18. State v. Gulf, M. & N. R.R., *supra* note 15; Miles v. Department of Treasury, *supra* note 15. *See also* Miller v. Comm'n of Natrona County, 79 Wyo. 502, 337 P.2d 262 (1959).
19. Ludlow-Saylor Wire Co. v. Wellbrinck, *supra* note 15.
20. West Virginia (1962); Indiana (1963); Michigan (1967); Nebraska (1967).
21. Montana (1955); Idaho (1959); New York (1960); New Mexico (1961); Iowa (1965); Wisconsin (1965); Colorado (1967).

Basing the state tax upon the federal law also has an important advantage in terms of taxpayer convenience or, if you prefer, in lessening taxpayer inconvenience. With such a system, computing the state tax becomes largely a matter of carrying figures over from the federal return to the state return. The degree of simplicity or convenience, which is thus afforded, depends to a considerable extent upon the point on the federal return which is selected as the starting point for computing the state tax. This will be considered in detail later, but first some additional advantages of federal-state coordination should be noted.

The tendency of the various states to base their income taxes upon the federal law must inevitably lead to some uniformity among the laws of the various states. For reasons to be considered shortly the resulting uniformity is not presently as great as might be desired but, to the extent that it exists at all, it obviously lessens the burden on taxpayers who must file returns in more than one state. Uniformity also has the advantage of making judicial decisions and administrative rulings, both federal and of other states, relevant in interpreting the law of any particular state. In order to promote uniformity, and also to encourage greater use of personal income taxation by the states, the previously mentioned Advisory Commission on Intergovernmental Relations has proposed a Uniform Personal Income Tax Statute.[22] While this has apparently influenced some of the recent statutes,[23] it is not likely to be followed with sufficient fidelity, and in a sufficient number of states, to provide real uniformity in the near future. The most serious shortcoming of the Uniform Statute is that it does not include provisions for the taxation of corporate income although this is a common feature of state income taxes. Nonetheless it constitutes a significant development and will be frequently referred to in the balance of this article simply as the Uniform Statute.

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22. Published in, ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS REP., 1968 STATE LEGISLATIVE PROGRAM, UNIFORM PERSONAL INCOME TAX STATUTE 6-77 (1966). (hereinafter cited as UNIFORM PERSONAL INCOME TAX STATUTE).

23. The new Nebraska statute borrowed heavily from the Uniform Act even though it is fundamentally different with respect to the most important feature, the tax base. Ch. 487, § 14, [1967] Neb. Sess Laws. *See* text *infra* p. 486.

Finally, and perhaps most importantly, basing the state tax on the federal may result in significant benefits and economies in administration. This is an area which has been the subject of considerable discussion but is still in its infancy in terms of actual developments. For many years federal returns have been available for examination by state taxing authorities. A substantial majority of states have entered into formal agreements with the Internal Revenue Service for the exchange of information, and a number of state statutes include provisions expressly authorizing such agreements.[24] Such agreements typically extend to information concerning audit adjustments, persons failing to file returns and other matters in addition to the information disclosed in the returns themselves. The conversion to automatic data processing by the Internal Revenue Service is making much of this information more accessible for state purposes in a practical sense. The service is now distributing information from federal returns to the states in the form of computer tapes.[25] The usefulness of this from the point of view of the states depends not only upon their having the necessary electronic equipment to read it, but also upon the materiality of the information for state purposes. In short the usefulness of the information will be greater if the state tax closely parallels the federal provisions.

Going beyond these present developments, there has been some discussion of the Internal Revenue Service taking over the administration and collection of state income taxes to a greater or lesser degree, as a service to the states and to eliminate wasteful duplication of effort. The ultimate in this would be an arrangement whereby an individual could pay both his federal and state taxes on the basis of a single return.[26] Obviously this would require a high degree of similarity between the federal and state taxes. This type of arrangement has sometimes been suggested as a more viable alternative to the plans recently put forward for the sharing of federal revenues with the states.[27]

24. *E.g.*, IDAHO CODE ANN. § 63-3077 (Supp. 1967); MONT. REV. CODE ANN., § 84-4931(3) (1947); N.M. STAT. ANN. § 72-15A-37 (Supp. 1967).
25. U.S. NEWS & WORLD REP., Mar. 4, 1968, pp. 73-4.
26. *Id.*, August 8, 1966, pp. 87-8.
27. *See Tax Sharing with States: Plan That's in Trouble*, U.S. NEWS & WORLD REP., Feb. 27, 1967, pp. 104-06.

Once it is concluded, as apparently it must be as a practical matter, that the state income tax should be based upon the federal law, there remains the question of how this should be done. There are at least four possibilities that deserve consideration. In the discussion which follows primary emphasis will be on the taxation of personal income although much of the discussion will be applicable, to a greater or lesser degree, to the taxation of corporate income.

1. The Tax on a Tax

Probably the most appealing arrangement on first consideration, because of its apparent simplicity, is to levy a state tax equal to a flat percentage of the federal tax. This method has been followed for some time by Alaska and has been adopted in the new Nebraska and Vermont laws.[28] In practice, however, it may not be so simple as first appears, and it would seem to have at least one important disadvantage. As will be seen in a subsequent section, some income that is taxable at the federal level is immune from taxation by the state and, conversely, some income not subject to the federal tax may be taxed by the states. In such situations it would be necessary to recompute the federal tax as a step in computing the state tax.

The obvious disadvantage in the so-called tax on a tax is that any change in the federal rates will automatically effect a change in the state rates. In this connection it should be noted that in Nebraska the state rate is set administratively from year to year in the light of current revenue needs.[29] This obviously, although apparently incidentally, takes care of the disadvantage just mentioned. Finally, it should be mentioned that the tax on a tax scheme operates to incorporate into the state tax the steeply progressive feature of the federal rate structure. This may or may not be desirable, but at least it should be recognized.

2. Federal Taxable Income as the State Base

The second possibility is to base the state tax upon federal taxable income.[30] This would seem to provide as great

28. ALASKA STAT. ANN. § 43.20.010 (1962); Ch. 487(b), § 15(1), [1967] Neb. Sess. Laws; VT. STAT. ANN. tit. 32 § 5822 (Additional Supp. 1966).
29. Ch. 487(b), § 15(1)(a), [1967] Neb. Sess. Laws.
30. This method is followed, with more or less fidelity, by Idaho, *see e.g.*, IDAHO CODE ANN. § 63-3022 (Supp. 1967) and New Mexico, *see e.g.*, N.M. STAT. ANN. § 72-15A-2(0) (Supp. 1967).

a degree of simplicity and taxpayer convenience as the tax on the tax and would not be subject to the same disadvantages. But the tax on the tax may have one relative advantage. It would seem to make possible more accurate revenue estimates, at least at the outset, than is possible with an independent state rate schedule, at least if the state rate structure is progressive. This may very well be the reason that Nebraska chose the tax on a tax scheme, since reliable revenue estimates are more than ordinarily necessary if the tax rates are to be tied directly to revenue needs. On the other hand, reasonably reliable revenue estimates are possible in the case of a flat rate state tax. A revenue estimate of this sort for Wyoming is set out in Table III of the Appendix *infra* p. 529. As will be considered in detail later it is possible to introduce a substantial element of progression in such a tax without materially affecting the feasibility of reasonably accurate revenue estimates.

3. Federal Adjusted Gross as the State Base

The third possibility is to take federal adjusted gross income as the starting point for computing the state tax. Under this arrangement, as distinguished from the last, it is necessary for the state law to include its own provisions with respect to personal and dependency exemptions and the various personal or non-business deductions such as medical expenses, non-business interest and charitable contributions. It is possible that some overriding state policy might make it desirable to have different provisions on these matters than are included in the federal law. On the other hand, it seems doubtful that much would be gained as a practical matter by reopening debate on these items at the state level. Furthermore, it would obviously work against simplicity and taxpayer convenience to make separate provisions for such matters. The most important of these, in respect to state policy, are the personal and dependency exemptions. These can, in effect, be increased by allowing a per capita credit against the tax as is done in a number of states. The stated purpose for, and the operation of, such a credit will be considered in a later section, but it may be noted here that the granting of such credits would not greatly impair the

simplicity which is available through using federal taxable income as the state base.

The new statutes of Michigan and Indiana deserve mention at this point since they employ federal adjusted gross in a different manner.[31] They have in effect done away with most personal deductions such as non-business interest, medical deductions and the like. Michigan permits a husband to deduct alimony included in the income of his divorced wife. Indiana allows a limited credit against the tax for contributions to Indiana colleges. Both allow personal exemptions somewhat higher than the federal. Michigan is the most liberal in this respect, allowing $1,200 per exemption. Presumably these statutes provide for a larger tax base than using federal taxable income. But they seem inequitable in one respect. Under federal law some business expenses of employed persons are only deductible from adjusted gross income. These include membership dues in professional organizations, subscriptions to professional journals and the like. Apparently under the Michigan and Indiana statutes these are entirely non-deductible.

4. The Uniform Statute Formula

At this point consideration should be given to the applicable provisions of the Uniform Personal Income Tax Statute[32] and the quite similar provisions found in the new Colorado act,[33] as well as the statutes of a number of other states.[34] These start with federal adjusted gross and then give the taxpayer a choice between a standard deduction and itemized deductions. The standard deduction is ten percent of adjusted gross up to a maximum of $1000, which, of course, is the same as the federal formula without the minimum provisions. The itemized deductions are simply the total federal itemized deductions less any amount of state or local income taxes deducted on the federal return. Separate provisions are also included for personal and dependency exemptions but these follow the federal statute except for amounts.

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31. *See* IND. ANN. STAT. § 64-3203 (1967); MICH. STAT. ANN. § 7.557 (130) (Supp. 1968).
32. UNIFORM PERSONAL INCOME TAX STATUTE, *supra* note 22, § 7-9 at 13.
33. COLO. REV. STAT. ANN. §§ 138-1-10 to 138-1-14 (Perm. Cum. Supp. 1965).
34. MONT. REV. CODE ANN. § 84-4908 (1947); N.Y. TAX LAW, §§ 605, 14, 15 (McKinney 1966).

The obvious question suggested by these provisions is the extent to which end results will differ as compared to using federal taxable income as the starting point. Two principal differences may be noted. First, the optional standard deduction may be different to the extent that state adjusted gross income differs from the federal. But, as will be seen in a later section, such differences between state and federal income will ordinarily result only because of significant amounts of interest from federal bonds or from state and local bonds. Such income is largely confined to high income taxpayers and, if both state and federal adjusted gross income exceeds $10,000, there will be no difference in the optional standard deductions anyway. Furthermore such taxpayers generally itemize their deductions.

There will be a substantial difference between basing the state tax on federal taxable income and, on the other hand, following the Uniform Statute, so far as the treatment of state and local income taxes are concerned. It is obviously incongruous to permit a deduction for state income taxes paid for purposes of computing the state income tax liability. Yet this will be the result of using federal taxable income as the state tax base, at least for taxpayers who itemize their non-business deductions on their federal returns. But it seems reasonable to suggest that this is a question on which logic and theoretic correctness might well give way to considerations of simplicity and taxpayer convenience. As a matter of fact this seems to have occurred to a greater or lesser degree in all of the provisions dealing with this problem. In terms of end result the deduction for state income taxes is allowed in full in those states, such as Alaska and Nebraska, which base the state tax on the federal tax. Under the Uniform Statute and similar statutes the optional standard deduction is generally the same as the federal even though, for federal purposes, this is considered to include the deduction for state taxes.[35] Practically speaking the use of federal taxable income as the state base, without any adjustment for the deduction of state income taxes, would result principally in a small reduction in the effective rates. It

35. Idaho is similar in net effect. It starts with federal taxable income and provides for the addition of any state income taxes itemized on the federal return. IDAHO CODE ANN. § 63-3022 (Supp. 1967).

would also provide a small relative advantage to high income taxpayers.

On the other hand the advantages in using federal taxable income, rather than adjusted gross, as the state starting point may not be so great, in terms of taxpayer convenience, as would first appear. In the case of low income taxpayers who elect to pay the optional tax under Section 3 of the Internal Revenue Code no computation of taxable income is made for federal purposes. Consequently, if the state tax is based on federal taxable income, provision would have to be made for this computation on the state return or the state would have to provide for a similar optional tax.[36]

As indicated above, any state statute based on the federal law must include some irreducible minimum of special provisions for items which, for one reason or another, cannot be treated for purposes of the state tax in the manner provided by federal law. These will be considered in detail in a later section. These special provisions will obviously work to complicate matters when applicable, but they will not be of concern to the large majority of taxpayers.

Basing the state tax upon the federal statute in any of the ways outlined above raises serious constitutional questions, and these will be considered next.

III. CONSTITUTIONAL PROBLEMS IN LEGISLATING BY REFERENCE

There are two alternatives as to the method of incorporating the federal income tax statute into the state law by reference. First, the state statute may enact as state law, by reference, the federal statute as it stands on a particular date prior to the state enactment. On the other hand the state statute may attempt to go beyond this and incorporate all future amendments to the federal statute, as and when they become effective as federal law, and without further state action. Since simplicity and taxpayer convenience depend largely upon complete identity between the applicable provisions of state and federal law, the second alternative is obviously the best. If the first method is followed it will be necessary to make frequent amendments to the state law to

36. Colorado does provide for such an optional tax. COLO. REV. STAT. ANN. § 138-1-5 (Perm. Cum. Supp. 1965).

incorporate the intervening federal amendments. Even then it is possible that there might be short term variations because of the time lag in obtaining the necessary state action. This will be more serious in a state like Wyoming which has biennial legislative sessions. Unfortunately the second method raises more serious constitutional problems than the first.

State constitutions uniformly vest state legislative authority in the respective state legislatures.[37] Therefore, it may be argued that any attempt to adopt federal legislation, by reference, for state purposes amounts to an unconstitutional delegation of legislative authority. However, the argument does not seem very persuasive as applied to the adoption of a federal statute in a specified existing form. A number of cases from other states have sustained state statutes which adopt relevant parts of the federal Internal Revenue Code as of a particular prior date.[38] Apparently no statute of that sort has ever been invalidated.

But the argument concerning unconstitutional delegation of legislative authority applies with a good deal more force if the state statute attempts to incorporate subsequent amendments to the Internal Revenue Code. Then it can be said that the state legislature has, in effect, authorized Congress to make subsequent amendments to the state law. The most recent case in point sustained a statute of this sort on broad policy grounds.[39] The statute in question was an income tax passed by the legislature of the Territory of Alaska, and the federal Court of Appeals, in sustaining it, stated that uniformity in this area is particularly desirable and that, by incorporating the federal law including subsequent amendments, the legislature merely adopted an appropriate means to accomplish a proper state, or territorial, purpose. While the decision seems to be in no way based upon the territorial status of Alaska at the time, that factor may nonetheless detract from its value as a precedent. Other cases, said to represent the majority view,[40] are in direct conflict with the Alaska case. The Supreme Court of South Carolina held

37. WYO. CONST. art. III, § 1.
38. Underwood Typewriter v. Chamberlain, 94 Conn. 47, 108 A. 154 (1919); Featherstone v. Norman, 170 Ga. 370, 153 S.E. 58 (1930); Commonwealth v. Warner Bros. Theaters, 345 Pa. 270, 27 A.2d 62 (1942); Santee Mills v. Query, 122 S.C. 158, 115 S.E. 202 (1922).
39. Alaska Steamship Co. v. Mullaney, 180 F.2d 805 (9th Cir. 1950).
40. *See generally* Annot., 133 A.L.R. 401 (1941).

that any attempt to base the state's income tax on both current and prospective federal law would amount to an unconstitutional delegation of legislative authority.[41] The highest court in Georgia came to a similar conclusion, saying that even though adoption of the federal law as of a particular date was proper, it would be unconstitutional to attempt to adopt future provisions also.[42]

The question of incorporating subsequent amendments by reference has been presented in a substantial number of cases involving other types of statutes. In terms of end result these appear to have split more or less evenly.[43] But the precise nature of the problem may vary considerably from case to case. One distinction is worth noting. According to some of the cases only current law will be incorporated if the reference is to a particular statute by its title or popular name. On the other hand, if the reference is general as, for example, to "the laws of perjury of this state," then it will operate to incorporate future additions or modifications.[44] This distinction can, of course, be supported simply as a matter of statutory construction. But, in any event, it provides little comfort for present purposes.

Additional problems are presented by a section of the Wyoming Constitution which reads as follows: "No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended, or extended, shall be re-enacted and published at

41. Santee Mills v. Query, 122 S.C. 158, 115 S.E. 202 (1922).

42. Featherstone v. Norman, 170 Ga. 370, 153 S.E. 58 (1930).

43. *Held*: future amendments not automatically incorporated: Alabama: Hutto v. Walker County, 185 Ala. 505, 64 So. 313 (1913); Florida: Hutchins v. Mayo, 143 Fla. 707, 197 So. 495 (1940); Illinois: Wagner v. Retirement Board, 370 Ill. 73, 17 N.E.2d 972 (1938); Maine: Collins v. Blake, 79 Me. 218, 9 A. 358 (1887), and State v. Intoxicating Liquors, 121 Me. 438, 117 A. 588 (1922); Massachusetts: Commonwealth v. Kendall, 144 Mass. 357, 11 N.E. 425 (1887); Nebraska: Shull v. Barton, 58 Neb. 741, 79 N.W. 732 (1899); South Carolina: Santee Mills v. Query, 122 S.C. 158, 115 S.E. 202 (1922).
Held: future amendments automatically incorporated if it appears that such was the intent of the legislature. Indiana: Calumet Foundry v. Morz, 79 Ind. 305, 137 N.E. 627 (1922); Montana: Gustafson v. Hammond, 87 Mont. 217, 287 P. 640 (1930); Oregon: Noble v. Noble, 164 Ore. 583, 103 P.2d 293 (1940); Texas: Trimmier v. Carlton, 116 Tex. 572, 296 S.W. 1070 (1927); Vermont: Court of Insolvency v. Meldon, 69 Vt. 510, 38 A. 167 (1897); Wisconsin: Bibson Bros. Co. v. Worden-Allen Co., 220 Wis. 347, 265 N.W. 217 (1936); Arkansas: McLeod v. Commercial Nat'l Bank, 206 Ark. 1086, 178 S.W.2d 496 (1944).

44. Poldervaart, *Legislation by Reference, A Statutory Jungle*, 38 IOWA L. REV. 705 (1953).

length."[45] It seems fair to say that neither the purpose nor meaning of this is clear from even a careful reading. So far as the problem at hand is concerned, it may be argued that state adoption of the provisions of the Internal Revenue Code, by reference, constitutes an attempt to "extend" it as state law by reference to its title. It will be observed that on this problem there is apparently no basis for distinguishing between adopting a particular existing form of the Code or, on the other hand, adopting future amendments as well.[46]

Provisions of the sort quoted above are found in the constitutions of a number of states,[47] and their principal purpose is to require that, when a statute is amended, the amended section shall be re-enacted and set out in full in the amending act.[48] The word "extended" is not necessary for that purpose, and a number of states have similar provisions which do not include it. And it is obvious that the inclusion of the word, "extended," is the feature that makes the provision relevant to the legislation by reference problem. There have been a number of cases considering the application of the provision to attempts of various types to legislate by reference.

Several cases involve state statutes which refer to other state statutes for parts of their operating details. For example an Arkansas statute provided that "the general election laws, insofar as applicable, shall apply to school elections." This was sustained,[49] and apparently most cases involving similar provisions have upheld them when attacked as unconstitutional attempts to extend the prior law by reference.[50] Wyoming, in fact, has a case of this sort, but it will be reserved

45. WYO. CONST. art. III, § 26.
46. The constitutional provision does, of course, regulate the method of amending statutes, and it may be relevant to a provision which in effect provides for an automatic amendment of the state statute upon amendment of the federal statute. Clearly such amendment is not published at length in the state statutes. But neither is the original enactment so this does not appear to be a separate problem. There are apparently no cases on the question.
47. ALA. CONST. art. IV, § 2; ARK. CONST. art. V, § 23; COLO. CONST. art. V, § 24; KY. CONST. § 51; MONT. CONST. art. V, § 25; N.D. CONST. art. II, 264; OKLA. CONST. art. V, § 57; PA. CONST. art. III, § 6; N.M. CONST. art. IV, § 18.
48. State v. Petit, 69 Wyo. 478, 243 P.2d 177 (1952).
49. Byrd v. Short, 228 Ark. 369, 307 S.W.2d 871 (1957).
50. Riddell's Adm'r v. Berry, 298 S.W.2d 1, 4 (Ky. 1956); Berthet v. Gallatin County High School Dist., 102 Mont. 356, 358, 58 P.2d 264, 266 (1936); Service Feed Co. v. City of Ardmore, 171 Okla. 155, 158, 42 P.2d 853, 856 (1935).

for later consideration because of its possible significance on a further distinction.

If the state statute incorporates a federal statute by reference then the problem would seem to be different in at least one respect. It seems obvious that the word, "law," at the beginning of the constitutional section refers to state law, since only state law, as contrasted to federal law, can properly be dealt with in a state constitution. But for this section to have any application to our problem the word, "law," as there used must be read to include the Internal Revenue Code. With respect to legislation by reference federal legislation would seem to fall into the same category as any other outside material or source of information to which a state statute may refer to flesh out its details. For example, the Wyoming Inheritance Tax statute provides that future interests shall be valued by the "rules and standard tables of mortality, in use by the board of this state . . . ."[51] There are a few cases from other states dealing with the validity of statutes which incorporate federal legislation by reference when attacked under state constitutional provisions of the sort under consideration.

The case most closely in point is *Commonwealth v. Warner Bros. Theaters*[52] in which the Supreme Court of Pennsylvania sustained a corporate franchise tax based upon net income as determined for purposes of the federal income tax. Although the court did consider the effect of the Pennsylvania constitutional provision similar to the Wyoming section under consideration, its opinion on the point is very terse and difficult to understand.

The most troublesome case is *State v. Armstrong*[53] in which the New Mexico Supreme Court invalidated an attempt by the legislature of that state to incorporate the provisions of the federal prohibition law, the Volstead Act, into the law of the state by reference. The decision was based squarely upon a constitutional provision[54] identical in all respects with the Wyoming provision quoted above. The statute in question purported to adopt by reference all of the provisions of the

51. WYO. STAT. § 39-339 (1957).
52. 345 Pa. 370, 27 A.2d 62 (1942).
53. 31 N.M. 220, 243 P. 333 (1924).
54. N.M. CONST. art. IV, § 18.

federal statute, both those defining the crimes and those imposing penalties. In the course of its opinion the court developed a distinction between substantive and procedural provisions. The legislature may not, merely by reference to another statute, confer or take away "positive or substantial rights." On the other hand, it is permissible to adopt by reference the provisions of another statute dealing with "methods of procedure."

The terms "substance" and "procedure," have, of course, many meanings, and this brings us to the Wyoming case, *Board of County Commissioners v. White,*[55] decided in 1958. The court in this case sustained a statute authorizing counties to issue bonds for recreational purposes, and which provided that the county commissioners "may levy taxes, issue bonds or incur indebtedness in like manner as is or may be authorized by law for other county purposes." The court recognized the rule of *State v. Armstrong* but held that these were merely methods of procedure. The substantial right involved, the court stated, was the right to issue bonds for the purpose stated, and this was set forth in full in the challenged statute. In similar fashion it may be said that the substantive provisions of a state income tax are those which levy the tax and specify the tax rates. If the statute then refers to the federal law for the definition of taxable income and for similar details, these latter items are methods of procedure and such reference is permissible. It is interesting to note the similarity of this distinction to the one made in some of the cases dealing with the question of delegation of legislative authority. When the state legislature levies the tax and sets the rates it has properly discharged its function, and it may then refer to the federal law to supply the details.[56]

This discussion of constitutional questions badly needs a conclusion. It appears, in the first place, and in spite of the doubts occasioned by *State v. Armstrong,* that Wyoming may properly, and with reasonable confidence, adopt a state income tax incorporating the relevant provisions of the Internal Revenue Code as of a specified prior date. While, for the reasons set forth at the beginning, this is not the most

55. 79 Wyo. 420, 335 P.2d 433 (1959).
56. Alaska Steamship Co. v. Mullaney, 180 F.2d 805 (9th Cir. 1950); Commonwealth v. Warner Bros. Theaters, 345 Pa. 370, 27 A.2d 62 (1942).

desirable arrangement, it is apparently workable since a number of states are presently following it.[57] On the other hand, it would not seem advisable to provide in the state statute for the automatic incorporation of subsequent amendments to the federal law. In spite of the holding in the *Alaska Steamship* case the possibility that this might result in invalidating the whole statute appears too great to risk.

The Uniform Statute includes an alternative provision which is intended to eliminate, or at least minimize, the possible difficulties which may arise from incorporating the Internal Revenue Code as of a particular date.[58] This, in effect, provides for such incorporation, but then gives the taxpayer an option to compute his taxes on the basis of the Code as in effect for the taxable year. For practical purposes this apparently amounts to incorporating subsequent amendments to the extent that they are favorable to the taxpayer. Whether the constitutional problem involved in the delegation of legislative authority can be solved in this manner is by no means clear in the absence of relevant authority. Vermont, however, employed such a provision from 1947 to 1965 with no reported case challenging its legality.[59] The Vermont act of 1967, which, as previously noted, provides for a state tax computed as a percentage of the federal tax, follows the same general theory but with a different type provision. Obviously a statute of this sort must provide generally for computation of the state tax on the basis of current federal law. But the Vermont statute then provides a credit in the amount that the tax so computed exceeds the amount that would be payable on the basis of the federal law in effect on January 1, 1967.[60]

A number of states have recently adopted constitutional amendments which, in one form or another, authorize the basing of a state income tax upon the federal law. These include Colorado, Nebraska, New Mexico and New York.[61]

57. HAWAII REV. LAWS § 121-1.01 (Supp. 1965); IDAHO CODE ANN. § 63-3004 (Supp. 1967); IND. ANN. STAT. § 64-3211 (1967); IOWA CODE ANN. § 422.4 (Supp. 1966); KY. REV. STAT. § 141.010 (Supp. 1966); N.D. CENT. CODE ANN. § 57-38-01 (Supp. 1967); W. VA. CODE ANN. § 11-24-3 (Supp. 1967).
58. UNIFORM PERSONAL INCOME TAX STATUTE, *supra* note 22, alternate § 4, at 11.
59. *See* VT. STAT. ANN. tit. 32, § 5603(7) (Supp. 1967).
60. VT. STAT. ANN. tit. 32 § 5824 (Supp. 1967).
61. COLO. CONST. art. X, § 19 (amended 1962); NEB. CONST. art. 8, § 1B (amended 1966); N.M. CONST. art. IV, § 18 (amended 1964); N.Y. CONST. art. III, § 22 (McKinney 1967). Constitutional Amendments similar to these have been submitted to the electorate for their approval in Missouri and Virginia.

Except for Nebraska these expressly authorize the incorporation of subsequent federal amendments. While the Nebraska constitutional provision is not clear on this, the new Nebraska statute does incorporate subsequent federal amendments.[62] An amendment of the type adopted in Colorado, New York and New Mexico would seem desirable for Wyoming, and there is no reason why the adoption of such an amendment should await a firm decision to impose a state income tax. On the other hand, as previously indicated, the adoption of such an amendment is not necessary for the enactment of an income tax.

IV. INTEREST ON FEDERAL BONDS, CORPORATE FRANCHISE TAXES AND NATIONAL BANKS

The seemingly separate topics strung together in this garrulous heading are in fact interrelated in such a manner as to make separate consideration practically impossible.

By federal statute, first enacted in 1862, federal bonds and other obligations, and the interest thereon, are exempt from state and local taxation of any form.[63] While the statute includes the phrase, "unless otherwise provided," which recognizes that Congress may make express exceptions in particular instances, there are apparently no federal obligations which are taxable by the states. Interest on most federal bonds and other federal obligations is, of course, subject to the federal income tax.[64] In the case of a state income tax based on federal taxable income it is necessary, therefore, to provide for a reduction in the amount of such interest.

But a further possibility in this connection should be mentioned. Under the Internal Revenue Code no deductions are allowed for interest on indebtedness incurred to purchase or carry tax exempt state or municipal bonds, nor for other expenses incurred with respect to such income.[65] In similar fashion a state may properly disallow the deduction of such interest and expenses incurred in connection with federal

62. Ch. 487(b), § 14, [1967] Neb. Sess. Laws.
63. 31 U.S.C. § 742 (1964).
64. INT. REV. CODE of 1954, § 103(b) & (c).
65. INT. REV. CODE of 1954, § 265.

securities.[66] With this possibility noted the matter is pretty well covered so far as individual taxpayers are concerned, but for corporations the story is a good deal more complicated.

Interest on federal securities is just as exempt from state income taxation when received by a corporation as when received by an individual. However, a substantial number of decisions by the United States Supreme Court have sustained state franchise taxes based upon the net income of corporations derived from all sources including interest on federal securities.[67] The rationale for the distinction is that the franchise tax is not levied upon income but upon the privilege of doing business in the state. But for practical purposes there is no more than a formal difference between such a franchise tax and an income tax, and a number of states have, in effect, labelled their corporate income taxes as franchise taxes, presumably to reach the income on federal securities. For example, Nebraska imposes an income tax only upon corporations engaged solely in interstate commerce, and imposes a franchise tax on all domestic corporations and foreign corporations required to qualify to do business in the state.[68] The two taxes are the same except that the income tax applies to "taxable income" whereas the franchise tax is based upon "net income derived from all sources within the state."

If Wyoming were to follow a pattern similar to that of Nebraska, it would probably be necessary, or at least desirable, to repeal the present provisions which impose an annual license tax upon domestic corporations and foreign corporations doing business in the state, measured by the value of the corporation's property and assets located and employed

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66. UNIFORM PERSONAL INCOME TAX STATUTE, *supra* note 22, § 9(a)(1)(ii), at 13.

67. Flint v. Stone Tracy Co., 220 U.S. 107 (1913); Educational Films Corp. v. Ward, 282 U.S. 379 (1930); Tradesmans Nat'l Bank v. Oklahoma Tax Comm'n, 309 U.S. 560 (1940). *Compare* New Jersey Realty Title Ins. Co. v. Division of Tax Appeals, 338 U.S. 665 (1950). *See also* Nashville Trust Co. v. Evans, 195 Tenn. 205, 258 S.W.2d 761 (1953); Commonwealth v. National Biscuit Co., 390 Pa. 642, 136 A.2d 821 (1958). Woodland Production Credit Ass'n v. Franchise Tax Bd., 37 Cal. Rptr. 231 (Dist. Ct. 1964).

68. Ch. 487(b) § 34, [1967] Neb. Sess. Laws. The reasons for treating the two classes of corporations differently is that a corporation doing only interstate business is not subject to a franchise tax. Spector Motor Service v. O'Connor, 340 U.S. 602 (1951). However it may be subjected to a nondiscriminatory income tax. West Publishing Co. v. McGolgan, 27 Cal.2d 705, 166 P.2d 861 (1946), *aff'd* 328 U.S. 823 (1946).

in Wyoming.[69] This, of course, is the same as a franchise tax and it would not seem proper to levy two such taxes.

The problem under consideration is of particular significance with respect to banking corporations and other types of financial institutions since they generally hold substantial amounts of federal securities. The federal statute governing state and local taxation of national banks expressly authorizes the states to impose a franchise tax upon national banks measured by net income from "all sources,"[70] which has been interpreted to include interest on federal securities.[71] But national banks cannot be taxed at a higher rate than other financial institutions nor at a rate higher than the highest rate imposed upon commercial and industrial corporations.[72] The practical significance of this limitation will be discussed at a later point. Two further problems in connection with state taxation of national banks should be considered first.

It has been held to be unjustly discriminatory, and therefore invalid, to include interest on federal securities in the franchise tax base and, at the same time, exclude interest on the state and local bonds of the taxing state.[73] As will be seen in the next section, Wyoming, by an income tax, probably cannot tax the interest on most Wyoming state and local bonds, and further, with respect to outstanding bonds, this immunity has acquired contractual status and cannot be changed by statutory amendment.[74] But the same reasoning which permits including interest on federal bonds in the franchise tax base will also permit including interest on exempt state or municipal bonds, and the United States Supreme Court has so held in a case argued on the contract clause of the federal constitution.[75]

The previously mentioned federal statute regulating the state taxation of national banks raises a still further problem.[76] In brief it permits a state to levy any one of four

69. WYO. STAT. § 17-46 (1957).
70. 12 U.S.C. § 548 (1964). This does not use the term, franchise tax, but refers to a tax, "according to or measured by their net income . . .". But the cases demonstrate that a franchise tax is intended and the statute provides an alternative for imposing an income tax on national banks.
71. Tradesmens Nat'l Bank v. Oklahoma Tax Comm'n, 309 U.S. 560 (1939).
72. *But see* the Michigan and Colorado statutes discussed *infra* note 80.
73. Commonwealth v. Curtis Publishing Co., 363 Pa. 299, 69 A.2d 410 (1949).
74. *See* text *infra* p. 501.
75. Pacific Co. Ltd. v. Johnson, State Treasurer, 285 U.S. 480 (1931).
76. 12 U.S.C. § 548 (1964).

alternative types of tax. The state may levy an ad valorem tax on the shares, or tax the dividend income of the shares to the owner, or it may tax the income of the banking corporation, or lastly it may impose a franchise tax based on net income as discussed above. By an express proviso a state may impose either an income tax or franchise tax on a national bank and may also tax dividends on its shares under the provisions of a general income tax, providing that it is not discriminatory. The state and its subdivisions may also tax real estate owned by national banks. Present Wyoming statutes subject the shares of both state and national banks, and also the shares of loan and investment companies, to ad valorem taxation at the situs of the bank or company.[77] If national banks are subjected to either an income tax, or a franchise tax based on net income, then obviously this provision must be repealed as to national banks and should also be repealed as to state banks so as to avoid discrimination.

Practically speaking a state appears to have two alternatives with respect to these problems. First it may follow the Nebraska statute and impose a franchise tax, based upon income from all sources, upon all types and classes of corporations except those engaged exclusively in interstate commerce. Secondly, it may impose such a franchise tax upon financial institutions, including national banks, and a regular income tax upon other types of corporations.[78] The base for the franchise tax thus includes interest on federal securities but the base for the income tax does not. However, since many corporations do not have such income, the effective rates of tax will be the same for such corporations and for financial institutions, assuming the two taxes provide the same rates. This sort of arrangement was approved under the federal statute in a leading United States Supreme Court decision.[79] Michigan and Colorado go a step further by imposing a franchise tax on financial institutions at a higher rate than the general corporate income tax.[80] This is ap-

77. WYO. STAT. § 39-85 (1957).

78. *See* VT. STAT. ANN. tit. 32, §§ 5832, 5836 (Cum. Supp. 1967). *See* also the Michigan and Colorado statutes cited *infra* note 80.

79. Tradesmen's Nat'l Bank v. Oklahoma Tax Comm'n, 309 U.S. 560 (1939).

80. MICH. STAT. ANN. §§ 7.557(161) and 7.557(162) (Cum. Supp. 1968). COLO. REV. STAT. §§ 138-1-35 and 138-1-55. The Michigan rates are 5.6% on corporations generally and 7% on financial institutions. The Colorado rates are 5% and 6%.

parently permissible under the federal statute if other types of corporations are subject to additional taxes sufficient to make up the difference.[81]

V. OTHER VARIANCES FROM FEDERAL TAXABLE INCOME

In addition to interest on federal securities there are a number of other items which, for one reason or another, must or should be treated differently for purposes of a state income tax than they are for the federal tax. If the state tax is based on either federal adjusted gross income or federal taxable income the state statute must expressly provide for appropriate adjustments for such items. Since special provisions of this sort will tend to complicate the statute and will work against taxpayer convenience, they should probably be kept at a minimum.

1. Interest on State and Municipal Bonds

By express provision of the Internal Revenue Code, interest on state and municipal bonds is not included in federal taxable income.[82] There is, of course, no blanket federal barrier to the taxation of such income by the states. But, from this point on, the legality of taxing such income can best be considered as two questions.

There is, first, the question of whether Wyoming could properly tax the interest on its own state bonds and those of its municipalities and other local subdivisions. Most of the bonds presently outstanding, which might be called state bonds, have been issued by the University of Wyoming and these, by the statutes authorizing them, are exempt from Wyoming state and local taxes, including income taxes.[83] With respect to bonds presently outstanding these statutory provisions have acquired contractual status and could not be changed. So far as the bonds of municipalities, school districts and the like are concerned the situation is not so clear. A general statutory provision states that all state, county, municipal and school district bonds shall be exempt

81. Security-First Nat'l Bank v. Franchise Tax Board, 55 Cal. 2d 407, 359 P.2d 625, 11 Cal. Rptr. 289 (1964).
82. INT. REV. CODE of 1954, § 103(a).
83. WYO. STAT. § 21-444.94 (Supp. 1967). Note that under WYO. STAT. § 21-444.56 (Supp. 1967) University of Wyoming bonds are revenue bonds and are not to be considered as Wyoming state general obligations.

from taxation when owned by residents of the state.[84] The exemption is not specifically limited to property taxes although it is obvious that the draftsman was primarily concerned with such taxes.[85] This provision does not expressly mention interest as does the federal statute on federal bonds and the state statute concerning the bonds of the University of Wyoming. But it can be argued, following the United States Supreme Court's theory in the *Pollack* case,[86] that a tax upon the interest is, in effect, a tax upon the bond and thus prohibited by this general exemption statute. It is worth noting that most states do exempt the interest on their own bonds and those of their own local subdivisions from the state income tax.

There is no federal prohibition against a state taxing the bonds, or the interest thereon, of its sister states and the political subdivisions of such states, even though such interest may be tax exempt under the statutes of the issuing state.[87] In fact most state income taxes do apply to such interest by express provision and, if the state statute is based on federal taxable income, or adjusted gross, this constitutes an addition for state purposes. It should be added that jurisdiction to tax such income will depend generally upon the domicile of the bond holder within the taxing state. Questions of this sort will be considered in detail in the section headed, "Apportionment."

2. State and Local Taxes

This subject is discussed in section II, sub-section 4 *supra* pp. 488-90.

3. Deduction for Federal Income Taxes

The states with income taxes have split more or less evenly with respect to providing a deduction for federal income taxes paid.[88] Most of the surrounding states do pro-

84. WYO. STAT. § 39-12 (Supp. 1967).
85. A similar Indiana statute was interpreted to apply only to property taxes and not to income taxes. Storen v. J. D. Adams Mfg. Co., 212 Ind. 343, 7 N.E.2d 941 (1937), *aff'd* 304 U.S. 307 (1938).
86. Pollack v. Farmer's Loan & Trust Co., 157 U.S. 429 (1895).
87. Bonapart v. Tax Court, 104 U.S. 592 (1881); *see also* Union & Planter's Bank v. Fort, 170 Tenn. 285, 95 S.W.2d 39 (1936).
88. Federal taxes *are* deductible on the state returns in the states of Alabama, Arizona, Colorado, Idaho, Iowa, Kansas, Kentucky, Louisiana, Minnesota, New Mexico, North Dakota, Oklahoma, Oregon, and Utah.

vide for such a deduction[89] and in view of this, and also because of the seeming equity of such a deduction, it deserves careful consideration in connection with any proposal for a Wyoming income tax.

The argument in favor of such a deduction is clear and simple. In view of the high federal rates the federal tax does affect, in a significant manner, the ability of taxpayers to pay a state income tax. The shortcoming of this argument is that it disregards the fact that the state income tax must be designed to produce a given amount, or level, of income. To the extent that deductions are allowed which significantly reduce the amount of income subject to tax, the tax rates must be correspondingly higher. The end result, then, of permitting the deduction of federal income taxes is to shift the burden of the state tax among classes of taxpayers, and it is in this light that the deduction should be considered.

It is clear that a deduction for federal income taxes is of relatively greater advantage to high income taxpayers as compared to low income taxpayers. This results from the progressive rate structure of the federal tax. Stated differently the deduction results in a partial application, in reverse, of the federal rate structure for state purposes and, therefore, tends to make the state tax regressive. Several of the neighboring states have rather steeply progressive rate structures,[90] and the effect of the deduction in those states is probably to moderate or lessen the degree of progression. If such a deduction were permitted in connection with a flat rate tax, it would cause the tax to become significantly regressive above some middle level of income. In any event it seems

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Federal taxes *are not* deductible on the state returns of Alaska, Arkansas, California, Georgia, Hawaii, Indiana, Maryland, Mississippi, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

89. IDAHO CODE ANN. § 63-3022(c) (Supp. 1967); COLO. REV. STAT. ANN. § 138-1-15 (1965); MONT. REV. CODE ANN. § 84-4906(b) (1947); N.M. STAT. ANN. § 72-15A-1(O) (Supp. 1967); N.D. CENT. CODE § 57-38-01.2(c) (Supp. 1967); UTAH CODE ANN. § 59-14-5(g) (1953).

90. MONT. REV. CODE ANN. § 84-4902 (1947): From 1% on the first $1,000 to 7% on $7,000 and over.
UTAH CODE ANN. § 59-14-2 (Supp. 1967): From 2% on the first $1,000 to 6½% on incomes over $5,000.
N.M. STAT. ANN. § 72-15A-5 (Supp. 1967): From 1½% up to and including $10,000 to 6% on incomes over $100,000.
N.D. CENT. CODE § 57-38-29 (Supp. 1967): From 1% on incomes up to $3,000 to 11% on incomes over $15,000.
COLO. REV. STAT. ANN. § 138-1-4 (1965): From 3% up to $1,000 to 8% on incomes over $10,000.

more sensible for the state to determine for itself the desirable degree of progression, without having to consider the indirect and counter-vailing impact of the federal tax.

The deduction for federal taxes has another important disadvantage which can be briefly stated. Any increase in federal rates will result in a corresponding decrease in state revenues, and this, of course, could have serious budget consequences to the state. In like fashion a reduction in federal rates might result in undesirable state surpluses. More remote, but perhaps as important, are the economic consequences. It is now recognized that adjustment of federal tax rates is an important means for regulating the economy. The deduction for federal income taxes will cause the state tax to work directly counter to the federal tax in this respect.

4. Trust and Estates

To understand the problems under this heading it is first necessary to make a brief reference to the taxation of the income of trusts and estates under the Internal Revenue Code.[91] In general such income is taxed to the beneficiaries to the extent that it is distributed and to the trust or estate to the extent that it is accumulated. Under the federal law trusts and estates are subjected to the same tax, with minor variations, as individuals and this pattern has been followed by most states. Therefore, if the state tax is imposed upon either federal adjusted gross income or upon federal taxable income, this will include any income distributions which the taxpayer may have received as the beneficiary or an estate or trust. And the estate or trust will be taxed by the state in the same manner as provided by federal law. If, however, the trust or estate receives interest on federal bonds which must be deducted from income for state purposes or, on the other hand, receives interest on state bonds which is to be added to income, then there must be some formula for apportioning these adjustments among the various beneficiaries and the estate or trust. It may be questioned whether an express statutory provision is really necessary for this, but the Uniform Statute[92] and a number of others do have such

91. INT. REV. CODE of 1954, §§ 641-83.
92. UNIFORM PERSONAL INCOME TAX STATUTE, *supra* note 22, § 34, at 25.

provisions[93] and they undoubtedly contribute a certain amount of clarity and definiteness.

A further feature of the federal handling of the income of estates and trusts definitely does require express treatment in a state statute. If an estate or trust distributes income accumulated in an earlier year the Internal Revenue Code requires, subject to some limitations and special provisions, that such accumulation distributions be included in the income of the beneficiary in the year of distribution.[94] Since this income has already been taxed to the estate or trust in the prior year when received, the Code allows the beneficiary a credit against his tax in the year of distribution equal to the tax previously paid by the trust.[95] The reason for this method of handling is to prevent the using of a trust to accumulate income at a relatively low tax rate for distribution in subsequent years tax-free to high bracket beneficiaries. There would not seem to be a great need to protect the integrity of a state's progressive rate structure in this manner. Obviously if the state has a flat rate there would be no need at all. The simplest solution to the problem, then, would be an authorization to reduce taxable income for state purposes by the amount of any accumulation distribution included in federal taxable income. The Uniform Statute, however, follows the federal pattern in providing a credit for the tax previously paid by the trust.[96]

5. Partnerships

Under the Internal Revenue Code[97] and the various state income tax statutes, partnerships are not separate tax paying entities, and the partnership income, whether distributed or not, is taxed to the partners in the first instance. This presents no basic problems as far as a state tax based on federal adjusted gross or taxable income is concerned. However if adjustments to partnership income are necessary because of interest on federal or state bonds, then there is the problem of passing through these adjustments to the individual part-

93. Ch. 487(b), § 20, [1967] Neb. Sess. Laws; COLO. REV. STAT. ANN. § 138-1-46 (1965).
94. INT. REV. CODE of 1954, §§ 665-68.
95. *Id.* at § 668(b).
96. UNIFORM PERSONAL INCOME TAX STATUTE, *supra* note 22, §§ 36, 40, at 26, 28.
97. *See generally* INT. REV. CODE of 1954, §§ 701-71.

ners. This, of course, is similar to the problem considered above with respect to estates and trusts.

It should be further noted that, in the case of both partnerships and estates and trusts, there are additional problems in determining whether particular income may properly be taxed by the particular state. Problems of this sort will be considered in the next section headed, "Apportionment."

6. Net Operating Losses

Under the Internal Revenue Code a net operating loss is carried back for three years preceding the loss year and is carried over to the five succeeding years.[98] The loss is deducted in the earliest possible year. There would seem to be no good reason why this same pattern could not be followed for purposes of a state income tax, although the provision for first carrying the loss back obviously results in refunds that would be avoided by carrying the losses forward in the first instance. This would result in some additional administrative problems, but these are probably less serious than the taxpayer inconvenience which would result from having different rules for state purposes. If the federal arrangement is followed then no special state provision is necessary since the net operating loss carry backs and carry overs will be taken into account in arriving at federal adjusted gross or taxable income.

There will, however, be a temporary problem during the first three years the state tax is in effect. Once the tax becomes effective it would appear unfair to require the loss to be carried to a prior year in which no state tax was imposed. It may also be argued that a loss should not be carried forward from a year before the tax became effective, although this does not seem so obvious. In any event these problems, once they are recognized, can be taken care of by relatively simple provisions.

VI. APPORTIONMENT OF INCOME AMONG STATES

The most complex provisions of a state income tax statute are usually those which define the income subject to taxation by the particular state, and those which are otherwise designed

98. *Id.* at § 172.

to protect taxpayers against the taxation of the same income by more than one state. This is an area in which uniformity among the various states is especially desirable, and in which cooperative action among the states is likely to provide the most workable solutions. Substantial steps have already been taken in this direction as will be seen. But it is first necessary to describe the prevailing arrangements and their legal background.

There are a number of federal constitutional limitations upon the states' taxing power that are relevant to a state income tax. Probably the most important is the one which invalidates any state tax which imposes an undue burden upon interstate commerce.[99] But according to the prevailing decisions of the United States Supreme Court, interstate commerce is not immune from state taxation and may properly be required to bear its fair share of such taxation.[100] This means, in effect, that a state cannot impose a tax on a business in interstate commerce which will be discriminatory when considered in comparison to the taxation of comparable intrastate businesses. Nor may the states subject interstate businesses to multiple taxation.[101] So far as income taxes are concerned, this requires the allocation of income from interstate commerce among the various states involved in a manner designed to avoid multiple taxation of the same income.

In 1959 Congress, in response to the Supreme Court's decision in the case of *Northwest States Portland Cement Co. v. State of Minnesota*,[102] enacted the so-called Minimum Standard Act, severely limiting the right of the states to tax net income from certain types of interstate commerce.[103] The statute, in effect, prohibits a state from imposing an income tax on an individual or concern whose only activity within

99. This whole subject is discussed in considerable detail in Hartman, *State Taxation of Corporate Income from a Multistate Business*, 13 VAND. L. REV. 21 (1959).
100. Northwest States Portland Cement Co. v. Minnesota, 358 U.S. 450 (1959). The dissenting judges took the position that a state could not tax a foreign corporation if its only activities in the state were in interstate commerce. It should be noted that a state may not impose a franchise tax upon a corporation whose only activity in the state involves interstate commerce even though the tax is measured by net income. Spector Motor Service v. O'Connor, 340 U.S. 602 (1951).
101. Adams Mfg. Co. v. Storen, 304 U.S. 307 (1938).
102. Northwest Portland Cement Co. v. Minnesota, *supra* note 100.
103. Pub. L. No. 86-272, 15 U.S.C. § 381 (1964).

the state is the solicitation of orders for goods, which are accepted by such individual or concern at an out of state office and filled by shipment from a point out of state.[104] Under the act the out of state concern may have permanent salesmen and even a sales office within the state without becoming subject to the state income tax.[105] The statute in effect overrules the *Northwest States Portland Cement Co.* case which sustained a tax under just such circumstances. The rule of the case was deemed objectionable by the sponsors of the federal legislation because of the burden and expense imposed upon interstate businesses in complying with the income tax laws of a large number of states, the lack of uniformity among the apportionment formulae of the various state laws, and the resulting possibilities of subjecting the same income to multiple taxation.[106] It is worth noting that the Senate committee report accompanying the act stated that it was intended only as a temporary or stop gap measure until a broader permanent solution could be developed.[107]

The Minimum Standard Act has itself engendered considerable controversy. It has been argued that the act discriminates against the smaller states and in favor of the large industrial and commercial states. In similar fashion it is claimed that the Act discriminates against local businesses and in favor of the large interstate businesses.[108] As might be expected efforts are presently being made to counteract these allegedly undesirable features, and Wyoming has played its part in such efforts. However, further consideration of such matters must be left for the detailed consideration of the various apportionment rules and formulae.

The limitations upon state taxation of interstate commerce, as discussed above, are particularly applicable to corporations. At least one other important principle comes into play with respect to individual taxpayers. In two landmark cases the United States Supreme Court has recognized

104. The limitation does not apply in the case of state residents and domestic corporations. On the other hand the act includes a provision under which a resident "independent contractor" may enter into sales contracts on behalf of a non-resident seller without subjecting the latter to state income taxes.
105. This is not expressly provided in the act but was apparently intended. S. REP. No. 658, 86th Cong., 2d Sess., 1959 U.S. CODE CONG. & AD. NEWS 2548.
106. *Id.*
107. *Id.*
108. *Id.* at 2556 (Minority Views).

that a state may constitutionally tax the entire income of its residents including that derived from out-of-state sources. The first case involved income realized from business activities in another state.[109] The second involved rents from land located in a different state.[110] The rationale for this rule is that the state of domicile provides sufficient in the way of protection and services to justify the tax. But, regardless of its constitutionality, any attempt by a state to fully exploit its power to tax under this principle would be patently unfair since such income is also taxable by the state where it originates.[111] Furthermore, any such attempt would inevitably come into conflict at some point with the prohibition against placing discriminatory burdens on interstate commerce. Nevertheless, the basic principle permitting an individual's entire income to be taxed by the state of domicile has apparently had a substantial impact upon the formulation of state income taxes.

The state statutes, in providing solutions to these problems, commonly divide taxpayers into a number of classes. The most numerous and, therefore, the most important class consists of resident individuals. These are generally required to report all of their income from both in-state and out-of-state sources and to compute their tax on the total. They are then granted a credit against the tax for income taxes paid to other states upon that portion of their income properly taxable by such states. Since the effective rate of tax in such other states may be higher than that of the state of residence, the credit will generally be limited to an appropriate fraction of the total tax shown on the return filed in the state of residence.[112] It is worth noting here that the state of residence will effectively tax income attributable to states not having an income tax.

Non-resident individuals are taxed upon their income from in-state sources.[113] It is also necessary to provide some formula for allowing the deduction of proportionate parts of the various personal deductions such as medical expenses, charitable contributions and the like, or the optional standard

109. Lawrence v. State Tax Comm'n, 286 U.S. 276 (1932).
110. New York *ex. rel.* Cohn v. Graves, 300 U.S. 308 (1937).
111. Shaffer v. Carter, 252 U.S. 37 (1920).
112. For an example *see* COLO. REV. STAT. ANN. § 138-1-8 (Supp. 1965).
113. COLO. REV. STAT. ANN. § 138-1-15 (Supp. 1965).

deduction, and for the allowance of appropriate fractions of the personal and dependency exemptions. Likewise state statutes also usually include special provisions for persons who are residents for only a part of the taxable year.[114] Again the principal problems involve allocating income, personal deductions and dependency exemptions. It would appear that, both in the case of non-resident individuals and part year residents, these problems with respect to deductions and exemptions might be considerably simplified by using federal taxable income as the state base.[115]

Typically corporations are treated differently in this respect than individuals. In most statutes no attempt is made to classify corporations with respect to residency or domicile, but instead the tax for all corporations is computed on income from in-state sources only. Corporations, of course, do not present any problems with respect to personal deductions and personal and dependency exemptions. Any attempt to treat corporations, whose normal business activities extend into more than one state, in the same fashion as individuals would likely come into conflict with the constitutional limitations concerning undue burdens upon interstate commerce.

The most important statutory provisions in this area are those which set forth the rules for determining the source of various types of income. In 1957 the Conference of Commissioners on Uniform State Laws approved the Uniform Division of Income for Tax Purposes Act,[116] and this has been closely followed in a number of recently enacted statutes.[117] The Uniform Act does not make provision for allocating compensation for personal services, or the income of financial organizations or public utilities, but is quite comprehensive otherwise.[118] For example, rental income and capital gains from real estate are allocated to the state in

114. COLO. REV. STAT. ANN. § 138-1-16 (Supp. 1965).
115. The formula could then provide for the inclusion of a fractional part of taxable income, the fraction to be in-state adjusted gross income over total adjusted gross. No separate mention would have to be made of the personal deductions and exemptions. *Compare* the Colorado provisions cited *supra* notes 113 and 114.
116. UNIFORM DIVISION OF INCOME FOR TAX PURPOSES ACT, 9A U.L.A. 447 (1965). This was apparently prepared at the request of the Council of State Governments.
117. MICH. STAT. ANN. §§ 7.557(1105) to 7.557(1123) (Supp. 1968); Ch. 487(b), §§ 35-52, [1967] Neb. Sess. Laws; IND. ANN. STAT. § 64-3219 (Supp. 1967).
118. Income from personal services is customarily allocated to the state where the services are performed. *See* MICH. STAT. ANN. § 7.557(1110) (Cum. Supp. 1968).

which the real estate is located. Income and capital gains from intangibles are allocated to the state of the taxpayers commercial domicile.

The most significant provisions of the Uniform Act are those which govern the allocation of business income. For this purpose the act employs a so-called three factor formula to determine the percentage of the taxpayers total income to be allocated to the taxing state. In effect the percentage is the average of a property factor, a payroll factor and a sales factor. The property factor is the ratio of in-state property to total property. The payroll factor is the ratio of the in-state payroll to the taxpayer's total payroll. And the sales factor is the ratio of in-state sales to total sales. In-state sales are defined to include all sales in which goods are delivered to, or shipped to, a purchaser within the state, regardless of the "f.o.b. point or other conditions of the sale."[119]

Since in-state sales alone will cause some income to be apportioned to the taxing state under the Uniform Act formula, it seems clear that this must on occasion come into conflict with the federal Minimum Standard Act discussed above.[120] Most state statutes, whether or not based on the Uniform Act, are probably similar to it in this respect.[121] There have been a number of cases since the adoption of the federal act involving attempts to tax out-of-state sellers who solicit orders in the taxing state and ship goods to buyers located in the state. As would be expected the sellers have been uniformly successful in these cases on the basis of the federal statute.[122]

This subject is still in a state of flux since, as previously mentioned, the federal Minimum Standard Act of 1959 was only intended as a temporary or stop gap measure. Pursuant

119. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS REP., 1968 STATE LEGISLATIVE PROGRAM, UNIFORM PERSONAL INCOME TAX STATUTE, § 16, at 18 (1966).
120. *See* text *supra* p. 507.
121. Hartman, *State Taxation of Corporate Income from a Multistate Business*, 13 VAND. L. REV. 21 (1959), which lists sixteen states which employ a three factor formula very similar to the Uniform Act. A number of others use different formulae which often include a sales factor.
122. Oklahoma Tax Comm'n v. Brown-Forman Distillers Corp., 420 P.2d 894 (Okla. 1966); International Shoe Co. v. Cocreham, 246 La. 244, 164 So. 2d 314 (1964); State *ex. rel.* Ciba Pharmaceutical Products Inc. v. State Tax Comm'n, 382 S.W.2d 645 (Mo. 1964); Smith Kline & French Laboratories v. State Tax Comm'n, 403 P.2d 375 (Ore. 1965).

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to Title II of that act a comprehensive study of state taxation of interstate commerce was undertaken by a sub-committee of the Committee of the Judiciary of the House of Representatives. As a result of this study a bill, H.R. 11798, entitled the Interstate Taxation Act, was introduced in October, 1965.[123]

In brief this bill based jurisdiction to impose a corporate net income tax upon the corporation either owning or leasing real estate within the state, or having one or more employees located within the state. It provided a two factor apportionment formula, the two factors being property and payroll. The usual sales factor was omitted. It also required, in effect, that state corporate income taxes be based upon the federal Internal Revenue Code as amended from time to time.[124] This bill apparently ran into heavy going during the course of public hearings and was not enacted.

A considerably modified bill, H.R. 2158, was introduced in the 90th Congress and is currently pending. The income tax provisions of this bill do not apply to corporations with average annual incomes in excess of $1,000,000. However, Public Law 86-272, the Minimum Standard Act,[125] is to continue in effect and will be applicable to such corporations.

With respect to other commercial and industrial corporations a state's jurisdiction to impose an income tax depends, under the present bill, upon the corporation having a business location within the state. This is defined to include the ownership or rental of real property within the state, the location of one or more employees within the state, or the maintenance of a stock of inventory within the state. However, if an employee's only activities in the state or the solicitation of orders to be accepted at an out-of-state office he is not considered as located in the state. The language of this requirement is identical to the Minimum Standard Act.

A corporation subject to tax under the jurisdictional tests stated above has an option to either compute its tax in

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123. A good discussion of this bill may be found in, Comment, 19 VAND. L. REV. 523 (1966).

124. It is, of course, questionable whether Wyoming and a substantial number of other states could constitutionally enact such a provision. *See* text *supra* pp. 490-97.

125. *Supra* note 103.

accordance with the state law or according to a two factor formula included in the bill. The formula includes a property factor and a payroll factor but not a sales factor. The stated reason for not including a sales factor is the alleged difficulty in determining the place of sale. This is not entirely persuasive because, although there may be considerable confusion among the states presently, the test included in the Uniform Act seems simple enough to apply.

The 1965 bill made the two factor formula applicable to all corporations, and this was probably its most controversial feature. It was contended to be discriminatory in favor of the larger commercial and industrial states, and to threaten serious revenue losses to the smaller so-called consumer states.[126] The current bill is different to the extent that a corporation with an average annual income in excess of $1,000,000 will be taxed in accordance with the taxing states three factor formula providing that the state has jurisdiction to tax it at all under the 1959 Minimum Standard Act.

Unlike the 1965 bill, the current bill does not purport to furnish a final solution to the problem. Title IV provides that the House Judiciary Committee and the Senate Finance Committee shall evaluate the progress of the states in solving problems of state taxation of interstate commerce for a period of four years and that, if substantial progress is not made during that time, further legislation shall be proposed.

There is presently a move on foot to deal with the problem in a different fashion by means of an interstate compact entitled the Multistate Tax Compact. The most significant aspect of this for present purposes is the inclusion, practically verbatim, of the provisions of the Uniform Division of Income for Tax Purposes Act. The compact, in addition, includes an optional provision under which a taxpayer whose only activity in the state consists of sales, and whose total sales do not exceed $100,000, may elect to pay a

126. *See* Comment, VAND. L. REV., *supra* note 123. Footnote 64 of the Comment includes some interesting statistics on revenue losses and gains which would result for changing to the two factor formula. For example, Idaho would lose 47% of its corporate income tax revenue, New Mexico 20% and Colorado over 10%. In dollar amounts Colorado would lose over a million dollars and Montana one-half million. Corresponding gains would be realized by such states as Indiana, New Jersey and Pennsylvania.

tax computed as a percentage of such sales.[127] This alternative tax is to approximate the tax which would otherwise be owing, and is apparently intended to simplify compliance by interstate sellers with a relatively small volume of in-state business. In its 1967 session the Wyoming Legislature authorized the governor to take the necessary steps looking towards Wyoming's adherence to the Compact.[128] Since the compact cannot become effective until acted upon by Congress, it is apparently hoped that it will supersede the various federal legislative efforts in this area.

In view of the currently unsettled state of affairs on this subject, Wyoming, if it enacts an income tax law, would probably be well advised to follow the lead of Nebraska and Michigan in incorporating the Uniform Act.[129] This will be the best solution if the compact eventually becomes effective. In the meantime it will have to be understood that these provisions will occasionally have to give way to the federal Minimum Standard Act, and that the possible conflicts will be considerably more serious if the pending federal legislation is enacted.

VII. ADMINISTRATION

A state income tax must necessarily include lengthy and detailed provisions governing the administration of the tax. These provisions, however, raise comparatively few legal or policy questions. Generally they should be considered in terms of relative taxpayer convenience and administrative economy and efficiency. Taxpayer convenience will most likely be promoted by having the state requirements parallel the federal provisions as closely as possible. This will also tend to promote administrative economy and efficiency because, as previously mentioned, much available federal information will then be useful for state purposes.[130] Beyond this the income tax provisions should be drawn to fit into the existing organizational structure of the state government, and the administrative provisions of the income tax should

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127. The Michigan Income Tax Act includes a somewhat similar provision, the optional tax rate being 2/5 of 1% of total sales. MICH. STAT. ANN. § 7.557 (1191) (Supp. 1968).
128. Ch. 196, [1967] Wyo. Sess. Laws.
129. *See* statutes cited *supra* note 117.
130. *See* text *supra* p. 485.

be as similar as possible to the comparable provisions of other tax statutes.

An income tax in Wyoming would undoubtedly be placed under the general supervision of the State Tax Commission.[131] The actual administration of the tax would be under the state director of revenue and he would have authority to prescribe regulations, issue deficiency notices and the like.[132] It would undoubtedly be necessary to establish an income tax division within the office of the director of revenue. The Wyoming Administrative Procedure Act would be applicable with respect to the adoption and publication of regulations, administrative hearings on deficiencies and refunds and similar matters.[133] In addition to the foregoing generalizations it will be useful for present purposes to enumerate the various administrative matters that must be provided for in the statute. This will serve not only to describe a substantial part of the content of the statute, but also to indicate the nature and magnitude of the administrative machinery required.

Since, as the Commissioner of Internal Revenue frequently emphasizes, an income tax operates on the principal of self-assessment, the statute must include detailed requirements for the filing of returns. These generally can and should follow the federal requirements closely with respect to the time of filing, persons required to file and similar matters. The state income tax must, of course, also include requirements for withholding on wages and salaries, and these too can be patterned closely on the federal requirements with respect to the obligations of employers to report and account. It would seem, however, that withholding rates could be set more conveniently by administrative action than by statutory provision. Likewise, the statute should probably provide for the filing of estimates and the payment of estimated tax. However, in view of the relatively low state rates it should be possible for these requirements to be a good deal more limited than the federal provisions.

The statute must necessarily provide for the assessment of deficiencies and should also provide opportunities for

131. *See* WYO. STAT. §§ 39-32, 39-34 (Supp. 1967).
132. WYO. STAT. §§ 39-35, 39-36 (Supp. 1967).
133. WYO. STAT. §§ 9-276.19 to -276.33 (Supp. 1967).

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administrative hearings on proposed deficiencies. Under the present Wyoming organization it would be possible to provide two levels of administrative hearings. Thus there could be provision for informal conferences with personnel of the office of the Director of Revenue and more formal hearings before the State Tax Commission.[134] There would, of course, be a right of appeal to the courts from an adverse administrative decision, but present statutes are probably adequate for this purpose.[135]

Administrative convenience and efficiency would probably be increased by authorizing the revenue director to enter into final closing agreements, under appropriate safeguards, in the settlement of disputed cases. Judging from the federal practice such closing agreements would be relatively rare. Most settlements at the federal administrative level are effected by the taxpayer agreeing to the assessment of a deficiency in a given amount. While this does not constitute a binding agreement on either side, it generally closes the case since the file will be closed and the assessment of a further deficiency, or a claim for refund, will subsequently be barred by the statute of limitations in ordinary course. Present Wyoming statutes forbid the compromise of any tax liability,[136] and if it is desired to authorize formal closing agreements it would probably be necessary to amend this provision. It should be further noted that this provision also prevents compromises based on the inability of the taxpayer to pay the full amount of the liability. The latter problem is, of course, no different with respect to income taxes than in the case of other types of taxes.

In addition to the deficiency procedure it would also be necessary to provide a refund procedure. Paralleling the federal practice, this would provide for the filing of a refund claim, administrative consideration of the claim, and for either an appeal to the courts or an independent suit to recover the over-payment. The latter, of course, would be more consistent with the federal pattern. It would also be necessary

134. Such provision is made with respect to the Wyoming Sales Tax in WYO. STAT. § 39-302 (Supp. 1967), with respect to the Wyoming Use Tax in WYO. STAT. § 39-323 (1957), and with respect to the Wyoming Inheritance Tax in WYO. STAT. § 39-361 (1957). *See also* Wyoming Administrative Procedure Act, WYO. STAT. § 9-276.25 (Supp. 1967).
135. WYO. STAT. § 9-276.32 (Supp. 1967).
136. WYO. STAT. § 39-38 (Supp. 1967).

to establish a fund for the payment of refunds since, if all receipts were paid immediately into the general fund, legislative appropriations would apparently be necessary to make the refunds.[137] This problem, of course, is not unique to an income tax and there is presently a general provision in the statutes which may be satisfactory for this purpose.[138]

There must, of course, be periods of limitation for the assessment of deficiencies and the filing of refund claims. These should probably be the same as the comparable federal limitations.

An income tax statute in Wyoming would have to include its own provisions with respect to collection by distraint after an assessment becomes final, and for liens for delinquent taxes. There are presently such provisions in other tax statutes, such as the sales tax, for example,[139] but these would not be available for an income tax. In any event more detailed provisions would seem desirable, especially with respect to filing lien notices and priority of liens. Ultimately, uniform provisions on these matters, applicable to all taxes administered by the director of revenue, might be desirable, but that is not a problem for consideration here. With respect to collection the statute should also include provisions for collection by suit. This is principally necessary for out-of-state taxpayers who have no property subject to distraint or lien. For this purpose the employment of out-of-state legal counsel should be authorized.

Finally, the statute should provide penalty assessments for late filing, under payment of tax and similar matters. Criminal sanctions should be provided for the more flagrant attempts at willful tax evasion.

It seems obvious from the above that the administration of an income tax could be placed under the state director of revenue with little difficulty and a minimum of organizational changes. It would of course be necessary to provide for some additional personnel.[140] An income tax differs from

137. WYO. CONST. art. III, § 35. *See also* WYO. CONST. art. XVI, § 7 and WYO. STAT. § 9-58 (1957).
138. WYO. STAT. § 39-41 (Supp. 1967). *See also* WYO. STAT. §§ 39-309, 39-331 and 39-350 (1957).
139. WYO. STAT. § 39-299 (1957).
140. The State Director of Revenue is authorized to make such additions under WYO. STAT. § 39-37 (Supp. 1967).

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other state taxes with respect to administration because of the larger number of returns which must be processed. There is no way in which an accurate estimate of administrative costs can be made in a study of this sort. Such costs depend upon a number of variables, including the scope of the program for auditing returns. As previously noted, much assistance of this sort is available through cooperative agreements with the Internal Revenue Service. A recent study of the administrative costs of the Montana Income Tax reported total costs for the personal income tax of $358,000 which amounted to 2.1% of the revenue collected.[141] The administrative cost reported for the corporate income tax was $26,140 which was only 0.4% of the total revenue. These percentages would seem to compare favorably with the figure of 2.94% of total revenue, reported by the Wyoming revenue department as the administrative costs for the state taxes which it presently administers.[142]

VII. RATES, BURDENS AND REVENUE ESTIMATES

This section is devoted to some of the more obviously practical aspects of an income tax such as tax rates, the burden of the tax upon particular classes of taxpayers, and the amounts of revenue which will be produced by various rate structures. Much of this information can best be presented in the form of tables and a number of tables dealing with these matters are included in the Appendix, *infra* pp. 527-33. These will be referred to at appropriate points in the discussion which follows.

The first major question under this heading is whether the tax should be assessed as a uniform percentage of taxable income or be based on a progressive rate structure. While most state income taxes do employ progressive rate structures, two of the more recent ones, those of Michigan and Indiana, are of the flat rate type. It should be noted, however, that a flat rate tax is, in fact, made progressive at lower income levels through the allowance of deductions for personal and dependency exemptions. Michigan allows personal and depen-

141. Wicks & Killworth, *Administrative and Compliance Costs of State and Local Taxes*, 20 NAT'L TAX J. 309 (1964).
142. [1964-1966] WYO. STATE BD. OF EQUALIZATION, DEP'T OF REVENUE, BIENNIAL REP. at 36.

dency exemptions in the amount of $1200 for each exemption as shown on the federal return.[143] Indiana allows $1000 for the taxpayer and $500 for each dependent, with some modifications when the spouse has separate income.[144]

A number of states allow a credit against the tax for each exemption claimed upon the return.[145] These usually are in the neighborhood of seven to ten dollars and are for the stated purpose of providing a refund for sales tax paid on food and drugs. Consistently with this the statutes usually allow a refund when the total credits exceed the amount of tax as otherwise computed. Such a credit will operate in the same fashion as personal and dependency exemptions in making a flat rate tax progressive. Since the Wyoming sales tax does extend to food and drug purchases, a credit of this type would be an appropriate feature for a Wyoming income tax. Such a credit must obviously be limited to state residents.

Table I illustrates the method of computing a 3% flat rate tax based on federal taxable income and providing a credit of ten dollars for each exemption.[146] Table II illustrates the net burden of the tax and the effective rates at various levels of income. It will be observed that the effective net rate, taking into account the reduction in federal taxes because of the deduction for the state tax, progresses from 0.4% at $5,000 of adjusted gross income to 2% at $20,000 and remains constant thereafter. Since little if any tax would be paid by a family with $5,000 or less of adjusted gross income, this would seem to provide a substantial degree of progression at the income levels where it is most needed. As shown by Table III a personal income tax of this sort would produce approximately $8,000,000 per year in Wyo-

143. MICH. STAT. ANN. § 7.557(130) (Cum. Supp. 1968).

144. IND. ANN. STAT. § 64-3202 (Supp. 1967).

145. COLO. REV. STAT. ANN. § 138-1-18 (Supp. 1965); IDAHO CODE ANN. § 63-3024 (Supp. 1967); Ch. 487(b), § 15(2), [1967] Neb. Sess. Laws. *See also* UNIFORM PERSONAL INCOME TAX STATUTE, *supra* note 119, § 10, at 14. This act, as previously noted, is sponsored by the Advisory Commission on Intergovernmental Relations. This type of credit receives considerable support from the Commission's report, ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS REP., FEDERAL-STATE COORDINATION OF PERSONAL INCOME TAXES 64-7 (1965).

146. While this is higher than the credit provided in most states the ten dollar figure seems necessary to obtain the desired degree of progression with a three percent flat rate tax. See Table II. It is also realistic as a sales tax refund. At Wyoming's 3% sales tax rate it equals the tax on $333 of purchases. This is certainly not more than the present average yearly individual food cost. Consult any housewife.

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ming. Additional income would, of course, be available through a corporate income tax and this will be considered later.

Two words of caution need to be expressed with respect to a flat rate tax of the sort described above. It will not work satisfactorily if a deduction is allowed for federal income taxes paid. This would not only operate to reduce the amount of revenue which it would produce, but would also cause the tax to be substantially regressive, as is more fully explained at an earlier point.[147] Second, it has to be recognized that the credits are an integral part of the tax structure. It was recently suggested in Colorado that substantial additional revenue could be realized, without increasing the rates, simply by repealing the credit. This, of course, would be a rate increase in actual effect and would constitute a proportionately greater increase at the lower income levels.

A further possibility may be noted. With a 3% flat rate tax an increase of $333 in the personal and dependency exemptions would give the same result as the $10 credit, except for the refund feature. While this might be less vulnerable to later amendments, it would make it impossible to base the tax upon federal taxable income and, to that extent, would complicate the statute. There might also be a problem in restricting it to residents.

It is difficult to generalize with respect to progressive rate structures since these may vary considerably, both in terms of the percentage rates and also with respect to the income levels at which each higher rate becomes effective. As mentioned earlier most of the surrounding states have progressive income taxes, but they all dilute or moderate the rate of progression by allowing the deduction of federal income taxes paid. Table IV summarizes the principal features of the income taxes of these states, and also of Michigan and Indiana which are modern examples of flat rate taxes.

Idaho will serve to provide a more detailed illustration of a progressive tax. Its rates progress from 2½% on the first $1,000 of taxable income to 9% on all taxable income over $5,000.[148] The income brackets are, in effect, doubled

147. *See* text *supra* p. 502.
148. IDAHO CODE ANN. § 63-3024 (Supp. 1967).

on a joint return. For example, in the case of a married taxpayer the 2½% rate will apply to the first $2,000 of taxable income. Table V shows the net burden and the effective rate of the Idaho tax at various levels of income. It will be observed that the tax in effect becomes regressive at income levels above $30,000. This is due at least partly to the deduction for federal income taxes paid. As shown by Table VI a progressive rate structure patterned after that of Idaho would produce substantially more revenue for Wyoming than the 3% flat rate tax illustrated by Table III. This conclusion is also supported by Table VII which demonstrates that there are substantial amounts of personal income in Wyoming which would be taxable in the higher brackets. Almost one half the total taxable income is reported on returns showing over $10,000 of adjusted gross income.

In considering the actual burden of a state income tax special consideration should be given to the deduction for state taxes which is allowed in computing the federal income tax. Tables II and V show the effect of this deduction in terms of the net burden of the state tax. In effect a part of the state tax is offset by the resulting deduction in the federal tax. But two points must be made concerning this. First, the deduction is of no value at all for taxpayers who use the optional standard deduction in computing their federal tax. In this respect the tables are inaccurate, or at least misleading. Second, the deduction is of relatively greater value to high income taxpayers because of the progressive rate structure of the federal tax. Stated differently it tends to make the state tax regressive in terms of net burden. These effects are illustrated by the tables.

To take care of the first of the above objections and, to a lesser extent, the second, it has been proposed that a percentage of the state taxes be allowed as a credit against the federal income tax.[149] The percentages suggested range between 30% and 50%. The credit would be optional in the sense that a high bracket taxpayer could elect to deduct his state income tax in the present manner. A credit of this sort would, in effect, be a form of federal revenue sharing with the states. The present arrangement permitting the

149. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS REP., FEDERAL-STATE COORDINATION OF PERSONAL INCOME TAXES 116-20 (1965).

deduction of state taxes in computing the federal income tax also has this result. It has been estimated that approximately 24% of state income taxes are presently being recovered at the taxpayer level by the deduction for federal tax purposes.[150] Stated differently, the federal government is now in effect paying 24% of state income taxes.

It is not realistic to consider the burden of a state income tax without taking into account other state and local taxes.[151] Table VIII shows comparative rates in Wyoming and a number of neighboring states for some of the more important types of taxes presently being levied. It should be emphasized that the table is only intended to give some idea of comparative tax burdens upon typical wage earners and salaried persons. These are the groups that pay the bulk of personal income taxes. Corporations and persons in business are subject to some additional taxes. Two more or less important types of tax, liquor taxes and automobile registration fees, have been omitted from the table because of the difficulty in presenting meaningful comparisons. But the table is at least sufficient to indicate that the burden of these other taxes in Wyoming is more or less average in comparison to our neighboring states. All of these, except South Dakota, have income taxes.

Consideration should also be given to the distribution of the total tax burden among various classes of taxpayers and the manner in which this would be modified by the adoption of an income tax. Two comments seem appropriate with respect to the present Wyoming situation. First, the sales tax, which is the most important single source of state general fund revenue, bears relatively more heavily on low income as compared to high income taxpayers. This is especially true of a sales tax such as Wyoming's which applies to food sales. In this respect, then, an income tax seems more desirable than further increases in consumer's taxes.

Second, there is reason to believe that property taxes, which supply most local revenue, presently constitute a severe

150. *Id.* at 116, 118.

151. For a comprehensive study of the present Wyoming tax structure in comparison with those of eleven other area states, *see* BUEHLER, WYOMING TAX STUDY (1966). Some of the figures in this study must be used with caution. For example, as the author recognizes, dividing total tax receipts by the total population does not give an accurate picture of the tax burden upon individual taxpayers.

burden upon farmers and ranchers. Unlike the situation of many other taxpayers, almost all the assets of the farmer or rancher are subject to assessment for tax purposes, and the total tax liability is likely to be considerably out of line with his income.[152] The present depressed status of agriculture and its already high tax burdens should be given consideration in the search for new revenue sources. Under current conditions a state income tax would bear relatively lightly on most farmers and ranchers.[153] It is interesting to note in this connection that the greatest activity in the adoption of state income taxes occurred during the depression, largely to provide relief from property taxes.[154]

A further possibility with respect to rates should be considered. As mentioned at an earlier point the rate in Nebraska is set administratively each year on the basis of the total appropriations for the year and the anticipated revenue from other sources.[155] While this is unique so far as state income taxes are concerned, it is clearly desirable to have some device for balancing income and expenditures. In Wyoming this is done by authorizing the Board of Equalization to set the state mill levy from year to year.[156] The property tax would seem better for this purpose than the income tax because the property tax base can be predicted more accurately.[157] If it should be desired to provide some property tax relief in Wyoming upon the adoption of an income tax, this could be done most easily by repealing the six mill state levy for the school foundation program.[158]

152. *See* BUEHLER, *supra* note 151, at 7 where it is stated: "A more meaningful measure of the burden of farm and grazing property taxes may be found in their relation to farm net income. Wyoming taxes ranked third highest among the 11 states in 1964 in relation to net income."

153. The Department of Agriculture reported average Wyoming farm and ranch net income for 1966 at $6,589. U.S. DEP'T OF AGRICULTURE, ECONOMIC RESEARCH SERVICE, FARM INCOME STATE ESTIMATES—1949-1966 at p. 11 (Aug. 1967 Supp.) The estimate for 1967 is $6,034. FARM INCOME SITUATION, Feb. 1968, at p. 24 (published by U.S. Dep't of Agriculture, Economic Research Service). During recent years this has varied downward to as low as $2,828 in 1964. It should be pointed out that a number of very small non-commercial operations are included in making these averages. On the other hand the figures include substantial amounts of non-taxable imputed income, such as raised food consumed by the farmer's family and the rental value of farm dwellings.

154. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS REP., FEDERAL-STATE COORDINATION OF PERSONAL INCOME TAXES 56 (1965).

155. Ch. 487(b), § 15(1), [1967] Neb. Sess. Laws.

156. WYO. STAT. §§ 39-1, 39-26, 39-28. (1957).

157. In this connection it may be noted that the Nebraska constitution prohibits a state property tax levy. NEB. CONST. art. VIII, § 1A (amended 1966).

158. WYO. STAT. § 39-75 (1957).

Corporate income taxes must be considered separately with respect to both rates and revenue potential. Practically every state which has a personal income tax also has a corporate income tax, or a franchise tax measured by net income which is the same thing for all practical purposes.[159] In addition several states which do not have personal income taxes do have corporate taxes.[160] Table IV shows the rates of the corporate taxes in a number of the surrounding states and certain others. It will be noted that these are all flat rate taxes rather than progressive. The rates are generally higher than the lowest rates on the personal income tax scale, usually in the neighborhood of five per cent. But care must be exercised in comparing the corporate rates with the individual rates, and also with each other, because of variations concerning the deductibility of federal taxes. For example, Colorado permits the deduction of federal income taxes in computing the state personal income tax but not for purposes of the corporate tax.[161] The Idaho law is now similar in this respect although, prior to 1965, a deduction for federal taxes was permitted for purposes of the corporate tax.[162]

It is extremely difficult to make an accurate revenue estimate for a hypothetical corporate income tax in Wyoming. The difficulty, of course, lies in determining the amount of corporate income subject to tax in Wyoming. It is not possible to use Internal Revenue figures for this purpose since not all of the income of corporations reporting from Wyoming would be subject to a Wyoming tax and, on the other hand, substantial amounts of income reported on corporate returns filed from other federal districts would be subject to the Wyoming tax. The total amount will be affected to some extent by the eventual outcome of the current dispute over apportionment discussed in Section VI above. Table IX shows an indirect computation of Wyoming corporate taxable income. This is based upon ratios of total national business receipts, in various industrial and commercial categories, to the total national amounts of corporate taxable

159. *See* text *supra* p. 498.
160. Connecticut: CONN. GEN. STAT. REV. § 12-214 (Supp. 1966); New Jersey: N.J. REV. STAT. § 54:10A-2 (Supp. 1966); Pennsylvania: PA. STAT. ANN. § 1871 (Supp. 1967); Rhode Island: R.I. GEN. LAWS ANN. § 44-1122 (Supp. 1967).
161. COLO. REV. STAT. ANN. §§ 138-1-13(3)(b) and 138-1-38 (Supp. 1965).
162. IDAHO CODE ANN. §§ 63-3025, 63-3025A, and 63-3028 (Supp. 1967).

income in the same categories. These ratios are then applied to Wyoming business receipts in the same categories. The accuracy of this estimate depends upon corporations supplying more or less the same percentages of business receipts in the various categories in Wyoming as nationwide, and also upon Wyoming profit margins being approximately the same in the various categories. The estimate shows Wyoming corporate taxable income of $88,623,000. Taxed at a three percent rate this would produce about $2,658,000 of revenue.

One further point should be mentioned in regard to taxing corporate income. Under the Internal Revenue Code the income of so-called Sub-Chapter S corporations is not subject to the corporate tax but instead is taxed directly to the shareholders. A state tax based upon the federal law should probably follow the same pattern.[163]

By way of conclusion it appears reasonably clear that through a combination of a personal income tax and a corporate income tax, both imposed at moderate rates, Wyoming could realize approximately $10,000,000 per year of additional revenue. Substantial amounts above this could be obtained by adopting a progressive rate scale for the personal tax, comparable to those found in adjoining states, and by taxing corporate income at a rate in the neighborhood of 5% which appears to be more or less typical or average. It further appears that an income tax would fit into the existing tax structure very well in terms of obtaining a more equitable distribution of the total tax burden among various classes of taxpayers. An income tax would certainly seem better in this respect than further increases in the rates of existing taxes. This, of course, is not to say that an income tax would necessarily be more equitable than other possible types of new taxes. Moreover, even with the addition of an income tax, the total state and local tax burden in Wyoming would be reasonable in comparison to other states.

Finally, however, it must be noted that there is likely to be a considerable time lag between the enactment of an income tax and the receipt of significant amounts of revenue. Any new income tax should become effective on the first day of January of a given year because the vast majority of tax-

163. *See, e.g.*, COLO. REV. STAT. ANN. § 138-1-36 (Supp. 1965).

payers report income for federal tax purposes on a calendar year basis.[164] Since the Wyoming legislature meets during January and February of odd numbered years, the practical question is whether an income tax can be enacted at a particular session to be effective for the year beginning on the January first just past, or whether the effective date must be postponed until the next January. There is apparently no state or federal constitutional restriction upon retrospective legislation in this area, and a substantial number of cases, decided both by the United State Supreme Court and various state courts, have sustained income tax statutes which were made effective for the full calendar years during which they were enacted.[165] But this procedure raises at least one obvious problem. It would be impossible to withhold taxes from wages and salaries for the entire year and, in fact, substantial time might elapse after the enactment of the statute and before withholding procedures could be established. The withholding provisions could be postponed until the second year, but this appears somewhat unsatisfactory. Furthermore the retroactive feature might seem particularly unpalatable to taxpayers. All of which suggests that delay may be particularly undesirable if it is determined that an income tax is necessary or desirable for the near future.

164. Taxpayers on a fiscal year basis could be required to report for a short period beginning on the January 1st effective date and ending at the end of the fiscal year. This would require a separate accounting. In the alternative they might be permitted simply to report an appropriate fraction of their federal taxable income.

165. Atlantic Coast Line R.R. v. Daughton, 262 U.S. 413 (1922); Herndon v. West, 87 Idaho 335, 393 P.2d 35 (1964); Mecham v. State Tax Comm'n, 17 Utah 321, 410 P.2d 1008 (1966).

APPENDIX

TABLE I

SAMPLE COMPUTATION OF 3% FLAT RATE TAX

(Based upon Federal Taxable Income. With $10 food sales tax credit.)

The hypothetical taxpayer is married, has two children, received $8,000 in salary during the year and had no other income.

Computation of taxable income on Federal return, 1040:

Line 5	Total wages and salary	$8,000
Line 11a	Optional Standard deduction (10% of A.G.I.)	800
		7,200
Line 11d	Personal and Dependency exemptions (4 x 600)	2,400
	Taxable Income	$4,800

Computation of State Tax:

Taxable Income	$4,800
At 3%	144
Less food sales tax credits ($10 x 4)	40
State Tax	$104

TABLE II

THREE PERCENT FLAT RATE TAX—BURDEN AND EFFECTIVE RATES AT DIFFERENT INCOME LEVELS (Married Taxpayer with Two Children)

1 Adjusted gross income (line 9, Federal income tax return)	2 State income tax	3 Federal income tax without deduction for state tax	4 Federal income tax with deduction for state tax	5 Federal tax saving (3 — 4)	6 Actual burden of state tax (2 — 5)	7 Residual income (1 — 3)	8 Percentage of state tax to residual income (6 ÷ 7)
$ 5,000	$ 20	$ 290	$ 287	$ 3	$ 17	$ 4,710	0.4%
8,000	104	772	752	20	84	7,228	1.2%
10,000	158	1,114	1,084	30	128	8,886	1.4%
12,000	218	1,512	1,464	48	170	10,488	1.6%
15,000	308	2,172	2,104	68	240	12,828	1.9%
20,000	458	3,428	3,300	128	330	16,572	2.0%
25,000	608	4,892	4,697	195	413	20,108	2.0%
30,000	758	6,596	6,323	273	485	23,404	2.0%
50,000	1,358	15,360	14,681	679	679	34,640	2.0%
100,000	2,858	43,140	41,425	1,715	1,143	56,860	2.0%

EXPLANATORY NOTES:

1. The tax provides for a credit of $10 for each exemption claimed on the return. In all the above examples this amounts to $40.
2. The tax is computed on taxable income as shown on the federal return.
3. No deduction is allowed for federal income taxes paid.
4. In computing both state and federal taxes, in the examples set out above, the optional standard deduction was used except that, for purposes of column 4, the state income tax was added to the optional standard deduction. If personal deductions are itemized this will tend to lower the amount of the tax and the effective rate on residual income (column 8) at the higher income levels.

TABLE III

THREE PERCENT FLAT RATE TAX—ESTIMATED REVENUE YIELD

Total Wyoming Federal Taxable Income (1965)	$371,823,000
At 3%	11,154,690
Less food sales tax credit (329,826 exemptions x $10)	3,298,260
Estimated Revenue	$ 7,856,430

Data from, *I.R.S. Statistics of Income, Individual Income Tax Returns, 1965.*

TABLE IV

COMPARATIVE ANALYSIS OF SELECTED STATE INCOME TAXES

State	Tax Base	Personal Rate—%	Exemptions	Deduction for Fed. Tax	Food Sales Tax Credit	Corporate Tax Rate
Colorado	Fed. Taxable Income[1]	3.0-8.0	750	Yes	7.00	5%
Idaho	Fed. Taxable Income	2.5-9.0	600	Yes	10.00	6%
Indiana	Fed. Adjusted Gross Income	2.0	1000[2]	No	8.00	2%
Michigan	Fed. Adjusted Gross Income	2.6	1200	No	None	5.6%
Montana	Fed. Taxable Income[1]	1.1-7.9	600	Yes	None	5.5%
Nebraska	Fed. Tax Liability	10%[3]	......	No	7.00	2%[3]
New Mexico	Fed. Taxable Income[1]	1.5-6.0	600	Yes	None	3%
Utah	State Computed	2.0-6.5	600	Yes	None	6%
West Virginia	Fed. Taxable Income	1.2-5.5	600	No	None	6%

NOTES:

1. For states which start with federal adjusted gross and then allow itemized or optional standard deductions comparable to the federal, the tax base is shown as federal taxable income.
2. Indiana allows $1000 for the taxpayer and $500 for each dependent. The exemption for the spouse will be $1,000 if she has adjusted gross income of her own in that amount. Otherwise the amount of such income or $500.
3. Nebraska corporate rate is 20% of individual rate and is applied to taxable income. The personal rate is between 2% and 2½% of federal adjusted gross income.

TABLE V

IDAHO RATE STRUCTURE—BURDEN AND EFFECTIVE RATES AT DIFFERENT INCOME LEVELS (Married Taxpayer with Two Children)

STATE INCOME TAX—IDAHO RATE STRUCTURE
(Married Couple—two children)

1 Adjusted gross income (line 9, Federal income tax return)	2 State income tax (b)	3 Federal income tax without deduction for state tax	4 Federal income tax with deduction for state tax	5 Federal tax saving (3 — 4)	6 Actual burden of state tax (2 — 5)	7 Residual income (1 — 3)	8 Percentage of state tax to residual income (6 ÷ 7)
$ 5,000	$ 3	$ 290	$ 290	$ 0	$ 3	$ 4,710	.06%
8,000	112	772	751	21	91	7,228	1.3%
10,000	199	1,114	1,076	38	161	8,886	1.8%
12,000	306	1,512	1,444	68	238	10,488	2.3%
15,000	484	2,172	2,065	107	377	12,828	2.9%
20,000	815	3,428	3,206	222	593	16,572	3.5%
25,000	1,133	4,892	4,529	363	770	20,108	3.8%
30,000	1,430	6,596	6,081	515	915	23,404	3.9%
50,000	2,442	15,360	14,139	1,221	1,221	34,640	3.5%
100,000	4,441	43,140	40,475	2,665	1,776	56,860	3.1%

EXPLANATORY NOTES:

1. The Idaho rates on taxable income are as follows: 1) 0-$1000 2½%; 2) $1000-$2000 5%; 3) $2000-$3000 6%; 4) $3000-$4000 7%; 5) $4000-$5000 8%; 6) over $5000 9%. The brackets are, in effect, doubled on a joint return. Thus, for example, the 2½% rate will apply to the first $2000 of income in the case of a married taxpayer.
2. The tax here likewise provides for a $10 per exemption credit.
3. This, unlike Table II, provides a deduction for the federal income tax paid.
4. In all other respects the computations are made on the same basis as on Table II.

TABLE VI

INCOME ESTIMATE FOR WYOMING USING IDAHO RATE STRUCTURE

Wyoming Federal Personal Income Tax (fiscal 1965)	$ 68,000,000
Idaho Federal Personal Income Tax (fiscal 1965)	115,000,000
Ratio—Wyoming to Idaho	59%
Idaho State Personal Income Tax Receipts (1965)	26,638,000
Estimated Wyoming State Income Tax Receipts (59% of $26,638,000)	$ 15,716,000

Data from, *I.R.S. Statistics of Income, Individual Income Tax Returns, 1965.* Department of Commerce, Bureau of the Census, Annual Report, *State Tax Collections*, 1966.

TABLE VII

WYOMING PERSONAL INCOME BY ADJUSTED GROSS INCOME CLASSES

(As shown on federal returns, 1965)

Adj. Gross Income Classes	Number of Returns	Total Adj. Gross Income	Total Taxable Income
0	1,847	0	0
1-599	3,603	1,247,000	0
600-999	11,555	9,892,000	138,000
1000-1999	15,696	23,227,000	6,160,000
2000-2999	11,386	29,665,000	12,055,000
3000-3999	11,688	41,110,000	16,299,000
4000-4999	9,317	42,342,000	15,475,000
5000-5999	7,540	41,955,000	18,956,000
6000-6999	11,876	76,793,000	41,848,000
7000-7999	7,720	57,306,000	32,076,000
8000-8999	6,969	58,740,000	37,086,000
9000-9999	2,741	25,778,000	15,495,000
10,000-14,999	11,719	136,944,000	91,878,000
15,000-19,999	2,375	39,757,000	30,293,000
20,000-49,999	1,767	46,165,000	37,321,000
50,000-99,999	158	10,533,000	9,224,000
100,000-499,000	31	5,144,000	4,585,000
500,000-1,000,000	1	609,000	487,000
1,000,000 and over	1	2,534,000	2,448,000
TOTALS	117,993	643,881,000	371,823,000
Summary			
0-4999	65,094	141,623,000	50,126,000
5000-9999	36,846	260,572,000	145,462,000
10,000 and over	16,052	241,686,000	176,235,000

Data from, *I.R.S. Statistics of Income, Individual Income Tax Returns, 1965.*

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TABLE VIII

COMPARATIVE TAX BURDENS—WYOMING AND NEIGHBORING STATES

State	Sales Tax	Gasoline Tax	Cigarette Tax	Property Tax[1]
Colorado	3%[2]	7¢	5¢	$600 (Greeley)
Idaho	3%	7¢	7¢	$424 (Boise)
Montana	-----	6¢	7¢	$387 (Miles City)
Nebraska	2½%[3]	7.5¢	8¢	$686 (Scottsbluff)
South Dakota	3%	6¢	8¢	$711 (Rapid City)
Utah	3%	6¢	8¢	$359 (Ogden)
Wyoming	3%	6¢	8¢	$364 (Casper)

NOTES:

1. The property tax figure is the tax on a residential property with an actual value of $20,000 in the city indicated. Information was furnished by the county assessors. For some states information was obtained for more than one city. The differences between cities in the same state were relatively small.
2. Denver has an additional 2% city tax.
3. Scheduled to go down to 2% on January 1, 1969.

TABLE IX

ESTIMATED WYOMING CORPORATION TAXABLE INCOME

(Prepared by Professor Timon A. Walther, College of Commerce and Industry, University of Wyoming)

Classification	National Total* Business Receipts (Million $)	Corporate* Taxable Income Not Including Subchapter S (Million $)	Per Cent of* Corporate Taxable Income to Business Receipts	Wyoming** Business Receipts (Thous. $)	Wyoming Corporate Taxable Income (Thous. $)
Agriculture, forestry and fisheries	37,602	184	.489	173,600	849
Mining	13,810	1,076	7.791	504,633	39,316
Construction	58,664	798	1.360	143,000	1,945
Manufacturing	383,357	22,851	5.961	81,678	4,869
Transportation, communication, electric, gas, etc.	71,589	7,722	10.787	131,625	14,198
Wholesale	160,404	2,450	1.527	248,605	3,796
Retail	218,636	2,582	1.181	486,311	5,743
Finance, insurance and real estate	53,393	8,875	16.622	98,171	16,318
Services	58,903	1,254	2.129	74,644	1,589
Total				1,942,267	88,623

* Date from sample study of U.S. Treasury Department. ** Estimates based upon U.S. Dept. of Commerce figures.

COMPUTATION: 88,623 (thous.) (.03) = 2,658,690 Tax Revenue.