1961

Reallocation of Death Taxes between the Federal and State Governments

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A long-standing controversy over federal-state allocation of death tax revenues has quickened with the recent report of the Advisory Commission on Intergovernmental Relations. In the view of the Advisory Commission, we ought to expand the present system of credits against the federal estate tax for death taxes paid to the states. The authors of this Article reject the Advisory Commission's approach, primarily on the grounds that it would compound the inefficiencies inherent in a dual system of tax collection and would accentuate the differences in death tax yield that presently obtain between the high- and low-income states. Instead, the authors urge cosideration of an allotment of a portion of the proceeds of the federal death tax to the states, with any state's share being reduced by its own death tax collections; thus, the states would be encouraged to abandon their separate death taxes in favor of a single death tax administered by the federal government.

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INTRODUCTION

The problem of allocating death tax revenues between the federal government and the states has from time to time received active attention over a period of many years. The Revenue Act of

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1924[1] provided a credit against the federal death tax of 25 per cent thereof for state death taxes paid up to that amount. The Revenue Act of 1926[2] increased the maximum percentage to 80 per cent. Since the enactment of the Revenue Act of 1932[3] the credit has been much less and now averages about 10 per cent. Recently the Joint Federal-State Action Committee[4] and its successor, the Advisory Commission on Intergovernmental Relations,[5] have made studies of the problem, especially with the view of increasing state revenues as a partial substitute for the ever increasing grants-in-aid from the federal treasury.

In this discussion we first present a definite proposal which has evolved from our studies, and then comment on recommendations of the Advisory Commission on Intergovernmental Relations set forth in its report of January 1961.[6]

I. PROPOSAL FOR REDISTRIBUTION OF DEATH TAX REVENUES BETWEEN THE FEDERAL GOVERNMENT AND THE STATES

In searching for an appropriate method for a redistribution of death tax revenues we have kept in mind, *inter alia,* the following objectives and principles:

(1) Simplification of administration.
(2) Economy of administration.
(3) Efficiency of administration.
(4) Reduction of the burdens of taxpayer compliance.
(5) More orderly and less competitive relationships between federal and state governments and between different state governments.
(6) More equitable distribution of tax burden among nation's taxpayers.
(7) Elimination or reduction of conflicts of jurisdiction.
(8) Avoidance of undue coercion.
(9) Substitution of tax proceeds for federal grants-in-aid.
(10) Consideration of a suitable equalization formula.
(11) National viewpoint as distinguished from a mere local or provincial viewpoint.

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1. Ch. 234, § 301(b), 43 Stat. 304 (1924).
2. Ch. 27, § 301(b), 44 Stat. 70 (1926).
3. Ch. 209, § 402(a), 47 Stat. 245 (1932). The present credit provision is in INT. REV. CODE OF 1954, § 2011.
4. See Report No. 1 of the committee, dated Dec. 5, 1957. The committee was created by the President and the Conference of Governors.
5. Created by Pub. L. No. 380, 86th Cong., 1st Sess. (Sept. 24, 1959), 5 U.S.C.A. § 2371 (Supp. 1960).
6. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, COMMISSION REPORT—COORDINATION OF STATE AND FEDERAL INHERITANCE ESTATE, AND GIFT TAXES (1961) [hereinafter cited as REPORT].

It may be noted that among the foregoing objectives are objectives that Congress prescribed for the Advisory Commission on Intergovernmental Relations and stated in Public Law 86-380, which established that commission, as follows:

> It is intended that the Commission . . . will . . . recommend methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive relationship between the levels of government and to reduce the burden of compliance for taxpayers.[7]

Our proposal is to allot to the states a portion of the proceeds of the federal death tax collected during each preceding year. If deemed appropriate, each allotment could be conditioned on the performance by the state of specifically prescribed functions. The proposal contemplates a very substantial portion of the federal death tax proceeds to be alloted to the states, such as 50 per cent. However, from each state's annual allotment would be subtracted the total amount of any death taxes collected under its laws for the preceding year. It is expected that under this arrangement, Nevada (now the only state which has no death tax) would be joined by other states in relieving themselves of the burden of death tax administration.

It is believed that this proposal would eliminate—or at least greatly reduce—the multiplicity of death taxes among the states and would concentrate the death tax administration in the federal government. By its very nature, this is a tax which can be much better administered by a single, well-trained organization. It necessarily involves many complicated property arrangements that result in difficult and complex tax problems. However, the total number of decedents having taxable estates each year is small in comparison with the great number of cases requiring annual processing under other types of taxes (such as the income tax). A comparatively small group of highly trained death tax examiners can handle this tax very efficiently. Scattering the administration of this tax among a multiplicity of organizations and among many persons spreads out too thinly the processing of a comparatively small number of cases for efficient results. If one organization administers the tax on cases drawn from all of the states, a number of specialists can be used for the specialized problems that arise. This is not intended to imply that the personnel and organization administering the federal death tax have actually been superior to those of the individual states. However, it is reasonable to conclude that one organization administering the death tax can

7. Section 2(7), 73 Stat. 703-04 (1959), 5 U.S.C.A. § 2372(7) (Supp. 1960).

be made to achieve a much greater degree of efficiency and economy than is possible with a multiplicity of organizations.

A single death tax administered by the federal government would eliminate jurisdictional controversies between states such as arise over questions of domicile. It would be far superior to any system of uniform state statutes, even if the states could be persuaded to accept a standard death tax statute.

As the gift tax is primarily a supplement to the death tax, they should be treated alike. Consequently, as a part of the same program, a corresponding portion of the federal gift tax proceeds should be added to the portion of the federal death tax proceeds for allotment to the states under the same formula and conditions.

The practicability of this proposal is apparent. A few simple amendments of the estate and gift tax chapters of the Internal Revenue Code could launch the program. Economy in administration is obvious. The economy and efficiency of a single administrative organization was the primary reason for the recommendation of a somewhat similar tax system urged by a Royal Commission in Canada and its subsequent adoption in that country. However, we regard the detailed methods adopted in that country as inappropriate for the United States.

Probably the idea that first occurs to a person considering a fair division of taxes between the states and the federal government is to allocate exclusive jurisdiction of various kinds of taxes to each. Where feasible, this is of course a simple solution. Such exclusive jurisdiction is successful in the case of automobile license fees imposed by the states and in the case of customs duties imposed by the federal government. Although exclusive state jurisdiction of death taxes has been frequently advocated, we believe it is not feasible. If the federal government eliminated itself from this field of taxation, it would dry up as a source of substantial revenue. History shows that if the federal government were to abandon this tax, the states would compete with each other in attracting wealthy residents by lowering or eliminating death taxes. States can afford to do so because the death tax is not one of their principal sources of revenue. For substantially the same reason, *inter alia,* we do not favor the proposition that, for the purpose of death taxes, estates of less than a prescribed value (such as $500,000) be exclusively allocated to the states, and that estates of such value or more be exclusively allocated to the federal government. Abandonment by the federal government of estates below $500,000 would result in an unwholesome competition among the states for wealthy residents owning property up to that amount. This would result in an unnecessary loss of revenue for both the states and the federal government. Although exclusive state jurisdiction of

death taxes is not practicable, exclusive federal jurisdiction of this source of revenue is feasible. Furthermore, we believe that this tax is well suited for both the single federal administration and the sharing of the proceeds between the federal government and the states.

The term "allotment" as used herein is to be distinguished from "grant-in-aid." The term "grant-in-aid" generally connotes a gratuity and would usually be so characterized when it comes from the general funds of the federal government. If, however, an amount alloted is strictly limited to the proceeds of a particular federal tax and constitutes in substantial part or in whole a return to the state of tax collected in that state, it is not a mere gratuity from the federal government. In this connection, it is interesting to note that Professor Edwin R. A. Seligman, as long ago as 1916, made a similar distinction—between "division of the yield" (allotments) and a "system of subventions" (grants-in-aid).[8] And a decade later, in his treatise, he discussed a "comprehensive federal death tax" with a "division of yield between the nation and the state."[9]

Each state's allotment of the federal death tax might be a prescribed percentage of the proceeds collected during the preceding year in that state, or it might be computed according to an equalization formula based on relative economic needs. Programs for which the federal government makes grants-in-aid generally require greater expenditures in the states of low per capita income than in the states of high per capita income. Since the purpose of channeling to the states a much greater proportion of the total death taxes collected in the country is to reduce the need for federal grants-in-aid or future increases of federal grants-in-aid, it is our view that an equalization formula should be adopted for the computation of the allotments. The equalization formula which we suggest is to compute each state's share on its percentage of the national population, adjusted in accordance with the inverse ratio between its per capita income and the national per capita income. Another equalization formula, less helpful to the states of low per capita income, would be one based solely on population, without adjustment for differences in per capita income. If the use of an equalization formula were deemed inadvisable and merely a uniformly prescribed percentage of the tax collected in each state were allotted to it, the chief objective of the plan could still be achieved—that is, the elimination (or at least reduction) of the multiplicity of state statutes and administrations, with resulting

8. Seligman, *The Relations of Federal, State and Local Revenues*, Columbia University Quarterly, March 1916, p. 127.

9. SELIGMAN, STUDIES IN PUBLIC FINANCE 165, 176 (1925).

economy and efficiency. However, if the aim of increasing the states' share of death tax proceeds is to reduce the dependence of the states upon federal grants-in-aid, while approximating the present allocation of funds to the low-income states, there is reason to adjust the percentage of the federal death tax allotted to the states in accordance with the degree to which a particular plan serves the interest of the nation as a whole. Therefore, if approximately 50 per cent of the federal death tax were allotted to the states under the income-adjusted equalization formula which we favor, the portion allotted to the states under an equalization formula based solely on population could justifiably be reduced to 40–45 per cent; and if no equalization formula were used, the percentage could be still less—perhaps 35–40 per cent.

It may be anticipated that the principal objection to the proposal will be an alleged loss of financial independence on the part of the states. It may be argued that the states would become dependent upon the federal government for their share of death tax revenue instead of relying on their own independent death tax in the old American tradition. *But the continued existence of the state death tax revenue is now dependent upon the support of the federal death tax.* As previously pointed out, this source of revenue would dry up if the federal government abandoned this field. Consequently, no actual loss of financial independence would result from the adoption of this proposal. It would in fact support state activity in areas best handled by the states and relieve the federal government from such functions. The effect of this would be to strengthen the state governments and not to weaken them.

Furthermore, since the allotments under our proposal would be in lieu of some of the grants-in-aid now being doled out to the states, or in lieu of additional grants-in-aid that would otherwise be doled out in the future, it is impossible to conclude that acceptance of the allotments would constitute a greater dependence than acceptance of grants-in-aid (which are gratuities from the general funds of the federal government).

A further argument against a single death tax to be administered by the federal government with shares of the proceeds allocated to the states, as stated in the January 1961 report of the Advisory Commission on Intergovernmental Relations, is that "it would separate responsibility for raising revenues from responsibility for expenditures."[10] This is a catchy phrase, but it will not stand analysis. It is not generally customary or desirable to have the responsibilities of collecting taxes and of controlling the expenditure of tax revenue combined in the same official or the same govern-

10. REPORT, *supra* note 6, at 89.

mental organization. Thus, in the federal government, the Department of Agriculture expends funds from the Treasury Department that were collected by the Internal Revenue Service. Although the states are sovereign in some spheres, they are not independent nations; their expenditures of tax funds collected by the federal government and made available to the states—whether as grants-in-aid or as allocations of the federal death tax—must be made in a responsible manner. If, for example, death tax proceeds allotted to a state were wasted, with the result that its services were inefficient and inadequate, it may be presumed that the replacement of the officials responsible for such waste would soon be demanded by its citizens. Finally, we are not here considering gifts by one nation to another, as in the case of foreign aid.

Another argument against this proposal is that difficulties have arisen under somewhat similar schemes now in effect in other countries having a federal system of government.[11] Some difficulties may be expected under any system, but if this argument is intended to imply that the proposal presents greater difficulties than other systems, the implication has no basis. On the contrary, the simplicity and efficiency of the proposal indicate that less difficulties may be expected. Difficulties that have arisen in the countries mentioned and also in Australia, where a sharing system applies to income tax, may be largely attributed to the lack of adequate and fixed allocation formulae. This is of prime importance, and we would not advocate the system without the adoption of an adequate and fixed allocation formula assuring each state a fair and equitable allocation of the proceeds of the tax.

We may now turn to a special feature of our proposal. It may be noted that no state would be required to repeal its death tax in order to receive its allotment of the federal tax collected. If a state did not repeal its death tax, however, the amount of its allotment would be reduced by the amount collected during the preceding year under its own death tax. Statistical studies made by the Treasury Department[12] disclose that about 10 per cent of the federal death tax now imposed is allowed as a credit for state death taxes, but that the total of state death taxes equals about 25 per cent of the total federal death tax. Thus the states collect about 2½ times the amount of the total credit.[13] The percentages collected in the states vary greatly, due to differences in the distribution

11. See *id.* at 22 n.3 (relating to West Germany and Canada), 91 (relating to Canada).

12. See Final Report of the Joint Federal-State Action Committee, Feb. 1960, app. V, pp. 71–72.

13. Later information indicates more than 2½ times and perhaps more nearly 3 times the total credit. See REPORT, *supra* note 6, at 49 (table 9).

of wealth and to differences among the state statutes with respect to the types of property interests reached and to the exemptions, deductions and rates. A study of the application of our proposal on the basis of 1958 statistics—with an assumed 50 per cent of the federal estate tax collections allotted to the states, together with the use of the equalization formula based on population and per capita income—reveals that four states would not have received as much as they collected under their own death tax statutes during that year. All the other states would have received more. Some would have received forty and fifty times as much. But state death tax collections fluctuate greatly from year to year, and it appears probable that—even with a statistical study covering a much longer period of time, together with the latest census figures —a definite conclusion could not now be reached with respect to a few of the states. These few states would probably desire to continue their own taxes. The others would probably repeal their death taxes shortly after the system became effective. Of course, if the federal death tax were substantially strengthened and the yield thereby materially increased, all the states could be expected to repeal their death taxes. If the equalization formula based solely on population were adopted, or if no equalization formula were used, all states would probably repeal their taxes, even with a smaller percentage of the total federal death tax allotted to the states.

II. SUMMARY OF JANUARY 1961 REPORT OF THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Although we do not agree with the conclusions reached in the Advisory Commission's report, we believe that the report is a valuable contribution to studies in this field, particularly with respect to the statistical material and to the scholarly manner in which it is presented.

A. Increased Federal Estate Tax Credit

The chief proposal of the Advisory Commission is to increase substantially the credit against the federal estate tax for death taxes paid to the states. They would revise section 2011 of the Internal Revenue Code of 1954 by means of a two-bracket credit, providing a high credit in the lower tax brackets and a lower credit in the higher tax brackets. They suggest a credit equal to 80 per cent of the gross federal tax on the first $250,000 of net estates, and 20 per cent on the balance. An alternative suggested would limit the 80 per cent credit to the first $150,000, and 20 per cent on

the balance. Based on 1959 statistics, those alternatives would allow total credits against the total federal gross estate taxes imposed in the United States of 47.5 per cent and 40.8 per cent respectively.[14] The amount of the credit in each estate would, of course, vary in accordance with the size of the estate; under the suggested alternatives the credit would range from 80 per cent in the smaller cases to slightly over 20 per cent in estates above $10,000,000.

An important condition is attached to the increased credit. It would not be allowed for death taxes imposed by any state unless that state were to revise its statute, by imposing higher rates or otherwise, to increase its total death tax collections up to the aggregate of the new increased credits plus an additional amount —to correspond to the present excess of its death tax collections over the present aggregate credits. At the present time, state death taxation in excess of the amount of the credit is especially pronounced in the smaller estates. Therefore, merely increasing the state tax up to the amount of the increased credit would reduce federal tax proceeds without a corresponding increase in state tax revenue. The special condition which the Advisory Commission recommends would increase the aggregate state tax collections to at least equal the aggregate decrease in federal taxes collected in the state.

Under the suggested credit, aggregating 47.5 per cent of the total gross federal tax, the states would collect an aggregate amount of about 55 per cent or more of the total federal and state death taxes, and the federal government would collect the balance of about 45 per cent or less. At present these percentages are about 22 per cent and 78 per cent respectively.[15]

Another condition which the Advisory Commission would attach to the increased credit is a requirement that such credit be limited to estate taxes imposed by the state, as distinguished from inheritance taxes. States would be required to repeal inheritance taxes and substitute estate taxes. This is supposed to be in the interest of uniformity and simplicity.

B. Gift Tax

The Advisory Commission does not recommend a gift tax credit, but recommends that the credit for death tax *"be fixed at a level somewhat higher than that required for death tax purposes alone, in recognition of the fact that property distributions during life*

14. *Id.* at 68 (table 13).

15. These estimates are based on information provided by the Commission. See *id.* at 48–49, 76.

reduce death tax revenues, and to enable most States to forego gift taxes."[16]

C. ALLOTMENT OF FEDERAL DEATH TAX COLLECTIONS TO STATES

With respect to a single death tax, to be administered by the federal government and shared with the states, the Advisory Commission—

> *recommends that when and if a consensus develops among the States in favor of central collection and State sharing of death taxes, the development should be facilitated. Specifically, the States should be afforded an option to forego their independently imposed death taxes with the Federal estate tax credit in return for an allocate share of Federal collections.*[17]

This seems to be no more than a recognition that such a plan merits consideration, and that if in the future the states generally favor such a plan they should be afforded an option to accept a share of federal collections in lieu of the imposition of their own taxes under the shelter of the federal credit. As interpreted by former Secretary of the Treasury, Robert B. Anderson, in a footnote to the report, this recommendation "looks to the more distant future and does not seem essential to the immediate proposals."[18]

III. COMMENTS ON PROPOSALS OF ADVISORY COMMISSION

Under the present federal statute no credit is allowed on taxable estates of $40,000 or less, and thereafter the proportion of the credit increases from less than one per cent on estates slightly above $40,000 to a maximum of nearly 20 per cent on estates above $20,000,000. This graduated increase serves no purpose and the reason therefor is historical only. The Advisory Commission's proposal would reverse the order of increase in two steps, by allowing the smaller estates the larger credit and by limiting the larger estates to the smaller credit. Thus, to a limited extent, a greater portion of the death tax revenues would be redistributed to the less wealthy states. However, this is the best that can be said for the proposal. Since, with minor exceptions (chiefly real estate), the death tax is only available to the state of the decedent's domicile, the states having few wealthy domiciliaries would be benefited very little by this feature.

The Advisory Commission has rejected a system, such as we

16. *Id.* at 23.
17. *Id.* at 22.
18. *Ibid.*

have proposed, which would utilize a federal death tax with the proceeds to be shared between the states and the federal government; the Commission merely recognizes such a system as a possibility for the distant future. Instead the Commission proposes an expansion of the present system, with a separate tax for each state under the shelter of the federal credit. Reasons given in the report for this decision are both illuminating and disappointing.

> We approach the quest for improved coordination of State and National death taxes with a predilection for existing institutions because the present interrelationship, built around the Federal tax credit, has squatter's rights derived from 35 years of occupancy.[19]
>
> Those preoccupied with the effectiveness of the Federal form of government cloak these complaints [of the States' lesser share of death taxes, and of the complexities involved in the present system] with greater significance than revenue considerations alone would warrant. Because the estate tax credit represents the one outstanding effort to coordinate overlapping Federal and State taxes, they view its success or failure as symbolic of the ability of our Federal form of governmental organization to adapt itself to changing times.[20]

Although the Commission may feel that these are sufficient reasons for its position, we must conclude that a claim to squatter's rights and a stubborn adherence to an outmoded symbol may be more appropriately regarded as hindrances to our federal form of governmental organization in adapting itself to changing times.

In spite of the Commission's conclusions and the decided slant in its arguments, it should be commended for its sincere effort to present all sides, as shown by the following two paragraphs:

> Political considerations, in turn, are enmeshed in the enduring issues surrounding the role of the States in the Federal system, their sovereign right to shape their own tax systems and to engage in experimentation within the wide latitude afforded by the Constitution, their corollary obligation to assume political responsibility, and to satisfy a democratic society's compulsion to keep decision making close to the people.
>
> Passage of time has enhanced the public's attachment to these values. But it has also enhanced the difficulties in the path of their realization, especially in the area here under consideration: the taxation of property passing from one generation to the next. As the economy grows more truly national, the accumulation of private property becomes increasingly more national. The utilization of markets, raw materials, labor and managerial skills—the sources of private wealth—recognizes no State lines. A State's jurisdiction to tax an estate turns to a large extent on the domicile of the decedent, a factor which may bear no relationship to the geographic origin of his wealth and which can be changed at personal will. The States, at the same time, claim a proprietary interest in death taxes because they were

19. *Id.* at 7.
20. *Id.* at 6.

> first to develop them and because the decedent's privilege to transfer property to his heirs is controlled by State law.[21]

One should note the emphasis placed several times in this report on the states' sovereign right to shape their own tax systems and their corollary obligations of political responsibility. The first criterion given for evaluating proposals is: "Will it help to strengthen State government . . . by preserving freedom of tax action for the States and by affording them full latitude to exercise political responsibility?"[22]

Then there is the assertion that among the arguments that may be mustered in support of exclusive state taxation on property transfers at death are the following:

> a. The States were first to develop this tax area and have a proprietary interest in it;
> b. The transfer of property from the deceased to his heirs is a privilege controlled by State law and in the absence of an heir the property reverts to the State . . . .[23]

The fact that state laws govern the transfer of property at death —whether by will or through intestacy statutes—gives the states no exclusive or proprietary interest in the death tax. The United States Supreme Court long ago decided that the death tax is an excise on the transfer of property by death,[24] just as a sales tax is an excise on the transfer of property by sale. The idea that the death tax constitutes a devolution of property upon the state as a forced heir was rejected by the Supreme Court. State laws govern not only rights in transfers of property by death, but also sales contracts, wage contracts, rights to interest on bonds—all of which are subjected to state death taxes, sales taxes, or income taxes. The states can have no proprietary interests to the exclusion of the federal government in any of these taxes. It should be obvious that no proprietary interest can accrue from the claim that any state was the first to develop this tax area. A death tax was imposed by the Egyptians in 700 B.C., and the Romans during the first century B.C. developed it very highly.[25]

Exclusive federal taxation of transfers of property at death, with shares of the proceeds allotted to the states, should be the goal of any attempt at death tax reform, for reasons which are largely admitted in the Commission's report:[26]

21. *Id.* at 7.
22. *Id.* at 8.
23. *Id.* at 84.
24. New York Trust Co. v. Eisner, 256 U.S. 345 (1921); Knowlton v. Moore, 178 U.S. 41 (1900); Scholey v. Rew, 90 U.S. (23 Wall.) 331 (1874); *cf.* United States Trust Co. v. Helvering, 307 U.S. 60 (1939).
25. See 1 PAUL, FEDERAL ESTATE AND GIFT TAXATION 3 (1942).
26. See REPORT, *supra* note 6, at 84–85.

(1) State death taxes depend for their existence upon the protection of the federal government, without which interstate competition would quickly dissipate the yield of those taxes.

(2) Large estates are generally the product of economic activity on a national scale.

(3) State death taxes require multiple tax statutes and administrative organizations, and they develop interstate jurisdictional conflicts.

(4) State death taxation is unstable, with wide fluctuations of yield from year to year.

(5) A multiplicity of tax organizations cannot be as efficient as one organization for the entire country, and this is especially true of death tax administration.

In referring to the foregoing reasons, the Commission states:

> These considerations tend to tip the balance of the argument in favor of National rather than State taxation of estates. . . . On logical grounds there is little to justify universal tax overlapping in an area which produces less than 2 per cent of tax revenues and at the same time requires very exacting tax administration. . . . Under prevailing circumstances, however, a coordination arrangement which gives at least partial recognition to both groups of contenders, the States and the Federal Government, appears to possess a priority claim . . . if not economy and efficiency. This was the remedy selected when this issue was last confronted in the 1920's. . . . This would not foreclose a reexamination of the question at some future time when the States' "appropriate share" of these revenues has been reestablished and some tangible progress in Federal-State fiscal coordination has succeeded in placing this issue into better perspective.[27]

The illogical character of this decision seems to have troubled at least two of the members of the Commission, as shown by the following footnote:

> Mr. John Burton adds the following comment in which Governor Hollings concurs:
>
> "The information presented in this document makes it very clear that estates and gifts are not a very satisfactory object of State taxation. States cannot operate in the area effectively without the protective umbrella of the Federal tax credit and the amount of revenue involved is too small to justify duplicate tax administration and duplicate compliance burdens on taxpayers. In our search for less tax overlapping, less interstate tax competition, and more economical tax administration, we may want to give consideration to reserving estate and gift taxation for the Federal Government and placing at the disposal of States other tax areas they can administer more economically and efficiently. However, I concur in these recommendations because in light of the history of this subject, they go about as far as appears practicable at this time."[28]

27. *Id.* at 85.
28. *Id.* at 14.

We believe that the adoption of the greatly expanded credit and the establishment of the greatly increased state death taxes under the aegis of the federal government would erect a formidable obstacle in the way of future attempts to achieve the clearly superior system which we have described and which the Advisory Commission's report really admits is superior. It would further entrench the unnecessary multiplicity of state death tax administrative organizations, and strengthen the claims of the states of "proprietary interests" in this form of taxation. It unduly emphasizes higher percentage levies by means of higher rates and additional "pick up" taxes when the real need is to achieve a more equitably distributed tax burden. Efforts should be made to lower the percentage levies and to spread the tax burden on an impartial basis. Such efforts could be more successfully focused on one tax, the federal death tax. Improvement of the federal tax should not be embarrassed by a multiplicity of high percentage levies.

The proposal of the Advisory Commission would perpetuate the numerous state death tax statutes and expand the numerous state administrative organizations. The inefficiency and economic waste by reason of such multiplicity of organizations would be continued and increased. Jurisdictional controversies would be continued. Nothing would be gained except the transference of tax funds from the federal government to the states and this at exorbitant cost. Even the political responsibilities of the states, which the proponents of this proposal say they hold so high, would be lessened and not enhanced.

The condition for the allowance of the expanded credit which would perpetuate the excess of the state death taxes above the amount of the credit points up one of the weaknesses of the expanded credit proposal. In the eagerness of the states to obtain the maximum advantage of this gimmick, they may be expected to increase their taxes much beyond what may be intended. Thus taxpayers throughout the land would suffer greater burdens, not in the interest of greater equality, but with the present inequities magnified.

Since states are free to increase their taxes to any extent deemed desirable, the question may now be asked: Why does the Advisory Commission propose that the federal government condition its allowance of the contemplated enlarged credit on the state's increasing its death tax beyond the limit of the new credit to the extent that its tax now exceeds the present credit? The answer is that the state officials are reluctant to take the political responsibility of imposing heavier tax burdens in some cases and of depriving taxpayers of tax reductions in other cases. By having the federal government impose the requirement of such state tax in-

creases, political responsibility for the result would be shifted to the Congress. Thus, in the Commission's report we find the following statements:

> States would be free, of course, to increase their taxes to parallel the additions to the Federal tax credit and to capture their revenue equivalent for their treasuries without increasing aggregate (Federal and State) death taxes. This, however, is unlikely to occur to any significant degree. The initial effect of the higher tax credit would be a form of Federal tax reduction and States would be under pressure not to nullify it by State tax adjustments, lest they discourage the in-migration of well-to-do residents from other States. This likelihood has been urged upon us by State officials.[29]
>
> . . . .
>
> [I]t is unlikely that the Federal revenue cost of an increased tax credit would be substantially balanced by a corresponding revenue gain for the States through voluntary State action. This generalization has particular validity with respect to those tax credit patterns which place heavy reliance on the lower tax brackets . . . because legislators are particularly loath to arouse apprehension about taxing "the small family nest egg."[30]

Because the state death tax excess over the present credit is far more pronounced in the lower brackets, the state legislators are chiefly fearful of the political reaction of voters interested in the smaller estates, and on this matter are concerned to a much lesser degree with interstate competition for wealthy residents.

Where, we may now ask, is the political responsibility of the states, which state officials and the Commission's report have so much emphasized in arguing for the retention of state death taxes? The Commission states:

> The efficiency of revenue sharing in distributing financial aid to States is by the same token its principal weakness. It would separate responsibility for raising revenues from responsibility for expenditures. This consideration looms large in our minds because the strength of State governments will be no greater than the political responsibility they accept and bear.[31]

The Advisory Commission's proposal that states be required to abandon inheritance taxes and substitute estate taxes is also bad. We believe that the greater simplicity of the estate tax has been overrated. A graduated tax based on each beneficiary's share is more equitable. Although the estate taxes designed to pick up the difference between the maximum credit and the amount of the inheritance taxes limit the characteristic effects of the inheritance taxes, such limited benefits exist in many cases and have full ef-

29. *Id.* at 17.
30. *Id.* at 78.
31. *Id.* at 89.

fect in the smaller estates. If, in the future, the federal government undertakes revisions of its death and gift tax statutes in order to make them more equitable and comprehensive, it may well shift—in whole or in part—to the inheritance tax. To require the states to abandon inheritance taxes in favor of estate taxes would impede efforts of the federal government to improve its tax structure.

At this point we may ask: If the states are to be forbidden the use of the inheritance tax form of taxation, what becomes of "their sovereign right to shape their own tax systems"?[32] And what of the Advisory Commission's criterion: "Will it help to strengthen State government . . . by preserving freedom of tax action for the States and by affording them full latitude to exercise political responsibility?"[33]

CONCLUSION

It is unfortunate that the Advisory Commission's proposal with regard to a central collection and revenue sharing plan is so weak. They propose that it be considered in the distant future "when and if a consensus develops among the States"[34] in favor of it. Consideration of this plan—or any other plan—should not depend wholly on the wishes of state governments. The matter of an efficient and equitable revenue system for the entire country is primarily the concern of the people of the United States and their representatives in Congress. It should be considered now, or at any time the people or the Congress deem desirable. It is not a matter to be taken up only "when and if a consensus develops among the States."

In order to safeguard the development of equitable improvements of death taxation in this country, we think it is important that the proposals of the Advisory Commission on Intergovernmental Relations, as stated in its January 1961 report, be rejected. We hope that the proposal set forth in the Part I of this Article will receive careful and favorable consideration.

32. *Id.* at 7.
33. *Id.* at 8.
34. See note 17 *supra* and accompanying text.