THE DEVELOPMENT OF THE TAXATION OF INHERITANCES IN OHIO

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THE INHERITANCE TAX IN THE STATE OF OHIO

CHAPTER I - - INTRODUCTION

1 - DEFINITIONS

In a discussion of the inheritance tax, it seems necessary to lay down definitions applying to the different forms of this tax. Economists and tax experts on the whole seem to have neglected to make any distinction between the various types, even though our lawmakers and courts, not to mention writers on the legal phases of the subject, have done so. In England, especially, we find that several types of inheritance taxation are in force (1). The fact that our present Federal inheritance tax law is designated as the "Estate Tax" will probably cause a little more care to be exercised in the use of these terms.

By inheritance tax is meant any tax imposed on the devolution of, or succession to, or enjoyment of (2),real or personal property, whether by will or intestacy. On the whole, this definition conforms to the usage both of economists and of legal writers. Dr. West has defined it (3) as "any tax on the devolution of property, real or personal,

(1) See any writer on English Public Finance, but more especially Bastable, C.F., Public Finance, Third Edition, 1903, Book III, Chapter 9.
(2) Owing to the fact that life estates cannot be disposed of either during his life or at his death by a life tenant, it seems advisable to add the words "enjoyment of" in order to make the definition more exact.

either by will or by intestacy."(1) The best legal definition has been written by the Supreme Court of Colorado and might very well be accepted, not only by legal writers, but by taxation experts and economists as well (2):

> "No term sufficiently comprehensive could be more aptly employed to embrace a tax upon the right to acquire interests in both real and personal property passing by will or by inheritance, whether lineal or collateral, than the term 'inheritance tax.' By this term the legislature intended to express the specific nature of the tax and that it should operate upon interests to which a person succeeded upon death."
>
> "The word 'inheritance' is no doubt properly confined to property passing by descent or by operation of law. But by popular use this word has become applicable to cases of testacy and is broad enough to sustain a provision imposing a tax on the right of succession by will" (3).

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(3) West, Max, The Inheritance Tax, Second Edition, 1908, p. 6, in Columbia University Studies in History, Economics and Public Law.

(1) Dr. Edwin R. A. Seligman, in the 3d Edition (1900) of his Essays in Taxation, p. 121, has defined the term in practically the same words as Dr. West but has omitted this definition from the later editions of his work.

(2) In re Macky, 46 Colo. 316.

(3) For authorities, other than those above-mentioned, for the definition of this and other terms see: Seligman, Edwin R. A., Essays in Taxation, 3d Edition, 1900, p. 121 West, Max, The Inheritance Tax, 2d Edition, 1908, Preface p. 6: Smith, Adam, Wealth of Nations, Book V, Chapter 2, p.p. 340-345 in Everyman's Edition; Blakemore and Bancroft Inheritance Taxes, 2d Edition, 1914, pp. 1-2; Taylor, Newton M., The Elements of Taxation, pp. 50-51; Means, David M., The Methods of Taxation, 1909, p. 211; Plehn, Carl C., Introduction to Public Finance, 4th Edition, 1920, pp 203-207; In re Macky, 46 Colo. 316; In re Inheritance Tax, 23 Colo. 392, 493. Of all recent writers on Public Finance, Dr. Plehn makes the most serious attempt to define the various terms. Other writers use first one term and then another, leaving it to the reader to determine from the

By legacy tax is meant a tax upon an interest in personal property on the death of another while a tax upon an interest in real property is termed a succession tax, using these terms in a very restricted legal sense (1). Some of our courts have attempted to make a distinction between a legacy tax and a succession tax which merits consideration. The former has been interpreted to include taxes on specific inheritances or bequests and the latter to include taxes on transfers of property in general(2). While not specifically making this distinction nearly all of the court decisions of the American states have tacitly recognized it. Moreover, it conforms to popular usage and there is no good reason why it should not be followed by writers on Public Finance.

An estate tax or duty should be confined to a tax upon the succession to the whole estate of the decedent and not to shares passing to each of the individual beneficiaries. The ambigious manner in which this term has

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context which one is meant or else to the reader's knowledge of the various forms of the tax which seems to be taking too much for granted.

(1) Blakemore and Bancroft, Inheritance Taxes, 2d Edition 1914, p. 2.

(2) In re Macky 46 Colo. 316.

been used in many statutes has caused not a few of them to be called into court and also made it necessary to declare some of them unconstitutional (1).

Other names sometimes used but not applicable to Ohio are "transfer tax" (used to designate the New York inheritance tax laws since 1892), "death duty," "probate duty," "settlement estate duty," and "account duty." Some of these terms are synonomous while others are distinct types and are to be found mainly in England and on the Continent. The "transfer tax" includes

> "the passing of property or any interest therein in the possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift." (2)

"Death duties" was the general term used in England to include six forms of inheritance taxes before 1894:

(1) probate duty
(2) account duty
(3) legacy duty
(4) succession duty
(5) estate duty
(6) settlement estate duty (3)

These duties may be grouped into two great classes. First

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(1) State v. Ferris, 53 Ohio State 314; Knowlton v. Moore, 178 U.S. 41

(3) Laws of New York, 1909, as amended 1922. Chapter 62, Article 10, Section 243.

(2) Seligman, Edwin R.A., Essays in Taxation, 9th Edition, 1921, p. 453

the probate duties which include the probate duty, the account duty, the estate duty and the settlement estate duty. All of these duties impose a tax upon the total estate before distribution and are similar to our Federal Estate Tax. The second class included the legacy duty and the succession duty which are levied on the individual shares. At present, English death duties consist of the estate duty, with its supplementary imposition, the settlement estate duty; the succession duty; and the legacy duty(1).

II. HISTORICAL SUMMARY OF THE INHERITANCE TAX IN OHIO.

Ohio was the eighteenth state in the American Union to enact an inheritance tax law, if the Territory of Hawaii is excluded. She bid fair to be one among the most progressive states as far as this type of taxation is concerned owing to the fact that she was the first to make an attempt to impose a graduated inheritance tax applying to direct heirs(2). Unfortunately, due to faulty construction, this law was declared unconstitutional (3), and, with

(1) Seligman, Edwin R.A., Essays in Taxation 9th Edition, 1921, pp 453-454; Plehn, Carl C., Introduction to Public Finance, 4th Edition 1920, pp 205-207.
(2) 91 Ohio Laws 166, 1894
(3) State v.Ferris, 53 Ohio State 314.

the exception of an act passed in 1904(1), which was repealed two years later (2), Ohio made no further attempt to tax direct inheritances until 1919(3)

III - PROPOSALS MADE TO TAX INHERITANCES BEFORE 1893 AND THE BACK-TAX THEORY.

As early as 1889, a bill to tax inheritances was proposed and submitted to a Senate Committee on Taxation(4). In this bill only collateral inheritances were to be taxed. Direct ancestors or descendants, a relict, brother or sister of the whole or half-blood, and their lineal descendants, and strangers were to be exempt. The rate was fixed at five per cent and an exemption of one thousand dollars was provided. A rather curious provision was present in this bill, viz., the total exemption of strangers from the operation of the tax.

In 1892, Daniel Ryan, later Secretary of State of Ohio and Chairman of the Tax Commission, wrote a series

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(1) 97 Ohio Laws 398, 1904
(2) 98 Ohio Laws 229, 1906
(3) 108 Ohio Laws 561, 1919.
(4) Report of Committee appointed under Senate Joint Resolution #26 to investigate the Question of Taxation 1889, pp. 12-13

of articles on Taxation which were published in The Toledo Commercial during January and February. These articles were later collected and published in book form (1). Mr. Ryan saw the fiscal necessity for such a tax since the State Auditor had estimated that a deficit of $800,000 would be shown for that year by the State, and the collateral inheritance tax offered a means of meeting that deficit (2).

However, Mr. Ryan used another argument in support of this method of taxation, namely, the back-tax argument. According to this theory, the taxation of inheritances offers an excellent method of reaching by taxation, property which has escaped taxation during the life of the decedent(3). At death, practically all estates must go through the probate court and appraisals are often necessary, and, if not, they could be required and very easily made without any great expense. It follows, then, that this affords an excellent

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(1) Ryan, Daniel J., Taxation, 1892, pp 9-17
(2) Ibid., p. 15
(3) West, Max, The Inheritance Tax, 2d Edition, 1908, p.121, in Columbia University Studies in History, Economics and Public Law; Seligman, Edwin R. A., Essays in Taxation 9th Edition, 1921, p. 135; Plehn, Carl C., Introduction to Public Finance, 4th Edition, 1920, pp. 209-210

opportunity to tax property which has been evaded during the life of the decedent. At the time when Mr. Ryan presented his arguments for the collateral inheritance tax, the general property tax in Ohio was a dismal failure, just as it is today. He contended that, since much personal property was escaping taxation, the inheritance tax suggested a method by means of which a part of this back-tax could be collected.

A quotation from this author will not be out of place at this point since it throws considerable light, not only on the type of taxation under consideration, but also, on the general property tax, which is still the mainstay of revenue as far as our local governments are concerned.(1)

> "The taxation of personal property in this State (Ohio) is a failure in so far as complete returns from the owners thereof are concerned. The only property in this State that bears its full proportion of taxation is real estate, and the reason of that is apparent. Unfortunately, and it is not creditable to our public morals to admit it, but there is a prevalent belief among a great many that it is no sin to deceive an assessor or cheat the State. However, it is useless to waste space on the whys and wherefores of the failure to make full returns of personal property in Ohio. We are confronted by that fact, and the true policy is how can it be remedied."
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> "Failing in the reform needed in this line, to-wit: the pursuit of personal property for a place on the duplicate, the taxation of inheritances is a very effective method of seizing, for the time being, for taxation, a portion of the personal property of the State at its full value. A man may hide his personal credits and

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(1) Ryan, Daniel J., Taxation, 1892, pp 15-16.

> property all through his life, and by an unknown system of reconciliation with his conscience may manage to make returns that do not represent their full value; but at his death, if his property be delivered to others than those exempted in the Holcomb bill (1), it is sure in that instance to be taxed to its full value. I regard it,then as one of the ways in which personal property inherited under certain conditions may be made to pay its full proportion to the State."

The back-tax argument has been very popular among the statesmen and individuals who have recommended the inheritance tax. For instance, in the State of New York, it called forth a message from a Governor who, throughout his administration, was an ardent advocate of the tax. The following excerpt from Governor Hill's message to the Legislature shows that that State was experiencing the same difficulties in regard to the taxation of personal property as was the State of Ohio and that the inheritance tax was offered as a solution to that vexatious problem(2).

> "If,however, the Legislature in its wisdom shall hesitate to adopt the radical changes hereinbefore outlined (3), another method of reaching personal property for the purpose of taxation may be found in the plan of a graduated probate and succession tax upon the personal property of decedents."

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(1) The Holcomb Bill, which was introduced into the House of Representatives early in 1892, but was never enacted into law, provided for a tax of three and one-half per cent on collateral inheritances with an exemption of one thousand dollars.
(2) New York Assembly Journal, 114th Session,1891,pp 19-20
(3) Governor Hill here refers to other methods suggested by him in order to place personal property on the tax duplicate.

"Nearly all such estates are carefully appraised by impartial officials selected by our surrogate courts, and upon such appraisal the personal estate can at least be subjected to one tax, although it may never have been able to be reached during the life of the decedent. A system can easily be devised absolutely requiring all estates of decedents over a certain valuation to be administered in a surrogate's court, to the extent of obtaining an appraisal of the personal property thereof, and after allowing reasonable exemptions to the immediate next of kin, a fair percentage tax may be imposed upon the remainder, collectible in the surrogate's court, and reasonably graduated according to the value of the estate. This theory of such a graduated percentage tax seems fair and just, especially in view of the fact that personal property, under existing methods, nearly entirely escapes taxation during the life of its owners" (1).

Dr. West stated that this argument seemed more influential than any other for the extension of the inheritance tax in the United States, at least, in so far as he was able to ascertain the motives of legislation(2). However, ten states have been added to the list of those taxing inheritances since 1908 and in most of these the necessity for a greater amount of revenue seems to have been the motive underlying enactment of such legislation. This would also apply, in the main, to those states which had amended their old laws or passed new ones.

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(1) In compliance with this recommendation, the New York Legislature, in 1891, passed a law taxing direct inheritances of personal property at the rate of 1% when the value of the personalty was $10,000 or over.

(2) West, Max, The Inheritance Tax, 2d Edition, 1908, p.204

The back-tax argument seems to be the weakest of all those advanced in favor of the taxation of inheritances. First of all, it is not the inheritance as such which is being taxed, but merely an attempt to collect at death taxes which the dedédent had evaded during his lifetime. Such a tax differs in principle from the inheritance tax. In the second place, it would not bring justice as between taxpayers unless all taxpayers evaded the general property tax in exactly the same proportion. Inasmuch as some persons are more thruthful than others, as Cohn has pointed out, it is unlikely that all will evade by exactly the same proportion.(1) Moreover, if they did, it would not be necessary to have inheritance tax laws to meet this difficulty, since justice would be secured by merely raising the amount on the assessed valuation. Finally, granting the validity of the back-tax argument thus far, it is evident that if one person has property which escapes taxation, let us assume for forty years, while in the case of a second person it has been only ten years, the amount is greater in the first case than in the second, even if both have possessed the same amount of property. This would demand the imposition of a tax proportioned to the length of the period during which such evasion took

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(1) Cohn, G., The Science of Finance, 1895, pp. 304-305. Translated by T. B. Veblen in Economic Studies of the University of Chicago, No. 1. Incidentally, Professor Cohn advances at this point a strong argument for the exemption of incomes of public servants.

place but, if a person were able to conceal his wealth during his life, it certainly would be very difficult, if not impossible, to determine how long he had owned a certain amount of property. Moreover, most individuals who leave property are constantly accumulating more as time passes and this opens other difficulties. The better method would be to follow that of the Swiss cantons which exact a heavy penalty if it is found at death that the decedent has evaded taxation during his life(1).

To be consistent, Mr. Ryan should have recommended that the tax be applied to direct as well as to collateral inheritances, and, since he granted that real estate was bearing its full share of the general property tax, it should have followed the recommendation of Governor Hill and have applied only to personalty.

In 1910, Governor Harmon, in a message to the General Assembly, mentions inheritance as a method of securing back-taxes, but his statement inclines more to the Swiss view above mentioned than it does to the back-tax argument as applied to the taxation of inheritances.

> "The right to inherit is created by law, so that conditions may be imposed. Let one of them be that nobody shall receive any share in the

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(1) West, Max, The Inheritance Tax, 2d Edition, 1908, pp. 34, 204.

> distribution of an estate until he produces proof that all moneys, credits and securities of the deceased were duly returned for taxation by him in his life time. If such proof be not made let the property, in default, or its proceeds, or some part thereof, go to the State. Too great hardship can be avoided, in proper cases, by permitting the payment of an amount equal to what the taxes would have been if proper returns had been made, as under the Federal revenue laws the courts allowed stamps to be placed on instruments which had not been duly stamped when executed. And then penalties may be freely added without impairing the effectiveness of the laws by affording ground for refusal to answer questions"(1)

Governor Harmon certainly makes it clear that "the right to inherit is created by law," and that it is not "a natural, inherent right" as has been held by some of the state courts(2).

Mr. Ryan made two other proposals which are fairly important: first, no exemptions should be granted in the case of bequests to "religious, eleemosynary or public institutions or purposes," and second, that all the revenue from the tax should be paid into the State treasury(3). The first proposal has never been consistently followed in Ohio. Up to 1900, such bequests were taxable, but in that

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(1) Mercer, James K., Ohio Legislative History, 1909-1913, p. 30. Governor Harmon's Message to the 78th General Assembly, Jan. 3, 1910.
(2) Nunnemacher v. State, 129 Wis. 190, 1903
(3) Ryan, Daniel J., Taxation, 1892, p. 14.

year the law was amended so as to exempt certain institutions(1). In 1919, bequests to educational, charitable and municipal corporations for public purposes were exempted when located within the state(2). More recently, (1923), a reciprocity clause was added(3). The second is now prevented by a constitutional amendment(4).

Mr. Ryan also foresaw certain constitutional difficulties in the path of an inheritance tax in Ohio due to that provision of the Constitution which makes it obligatory that all taxes be imposed according to the uniform rule(5). He contends, and he has the weight of authority on his side, that it is not a tax on property(6) and hence does not come within the province of the uniform rule. Judge Cooley's Law of Taxation is quoted to the effect that "Succession to an

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(1) 94 Ohio Laws, 101
(2) 108 Ohio Laws, 561
(3) Amended Senate Bill #55
(4) Article XII was amended in 1912 when sections 7, 8 and 9 were added. These sections pertain to income and inheritance taxation. Section 9 makes it compulsory to permit 50% of the revenue obtained from these taxes to be retained by the township or municipality in which they originate.
(5) Ohio Constitution, 1851, Article XII, section 2.
(6) Ryan, Daniel J., Taxation, 1892, p. 12.

inheritance may be taxed as a privilege, notwithstanding the property of the estate is taxed, and taxes on property are required by the Constitution of the State to be unfform"(1).

In all fairness to Mr. Ryan, it is necessary to add that he finally advances the argument that the inheritance tax is a very good method of raising revenue(2).

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(1) Ryan, Daniel J., Taxation, 1892, p. 12-13
(2) Ibid, pp. 14-17

CHAPTER II - LEGISLATION FROM 1892 to 1894.

Even though the inheritance tax had been proposed as a means of meeting the deficit which was likely to be forthcoming in 1892, the General Assembly took no action upon it until almost the close of the session when House Bill, No. 219, sponsored by Mr. Holcomb, was brought to a vote on April fifth and was successfully carried through the House of Representatives with a large margin - sixty votes having been cast for the bill and eighteen against it (1).

Owing to the fact that the General Assembly adjourned within two weeks after the House had passed the Holcomb bill, a vote was not taken in the Senate and thus Ohio had to wait until the next session before any action could be taken. However, one of the first matters to be taken up by the Senate when it convened in 1893 was the question of taxation of inheritances. The Holcomb bill was again submitted (2), withstood the test, and became a law (3) on January 27, 1893.

I. PROVISIONS OF ACT OF 1893 .

The bill was divided into seventeen sections, The first section stated the property liable to the tax - the act clearly stating that it is the property rather than the right to succeed to property which is to be

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(1) House Journal, 1892, p.150.
(2) Senate Journal, 1893, p.36.
(3) 90 Ohio Laws 14. 1893.

taxed and this is again maintained where in the last section property is defined as "both real and personal in any form, including annuities -" (1). Parents, husband, wife, brothers, sisters, nieces, nephews, adopted children, the lineal descendants of the five relatives last named, daughters-in-law, and sons-in-law were exempt, thus making it a limited collateral inheritance tax law. The rate was fixed at three and one half percent and an exemption of ten thousand dollars was granted. Another feature, which is deserving of mention, provided that the revenue derived from this source was to be for the use of the state. This and the act of 1904 are the only acts ever passed in Ohio in regard to inheritances which directed that all of the revenue be paid into the state and since it remained in force only one year the state treasury received very little benefit from it.

In case property was bequeathed to both direct and collateral kindred provision was made that the bequests going to direct heirs and the exemption of ten thousand dollars be made before computing the tax (2). If the testator provided in his will for the payment of executors, administrators or trustees the amount left to them was exempt unless the probate court, which had complete jurisdiction in this matter, found that the be-

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(1) 90 Ohio Laws 14, Section 17.
(2) Ibid., Section 2.

quest exceeded what it considered a reasonable compensation, in which case the excess over this "reasonable compensation" was taxed (1).

The administrators, executors or trustees were to deduct and collect the tax and then pay it to the treasurer of the county in which the probate court having jurisdiction over the estate was situated (2).

Where a legacy was given for a limited period of time the tax was to be collected but if, at any later period, this ceased to exist the amount of the tax was to be refunded (3) and also if a tax was erroneously collected a refund was made (4).

The power of sale was granted to all administrators, executors or trustees where it was necessary to resort to that expedient in order to pay the tax (5). The estate was to be appraised at its market value and if the appraisal was not satisfactory to the state it might call for a reappraisal. In this bill Ohio was somewhat more fortunate than her sister states and made provision for the valuation of annuities and life estates (6). In New York, for example, under the first inheritance tax law enacted (7) no provision was made for the valuation of annuities, life estates, contingent remainders and so on and this fact was one of the causes which brought the law

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(1) 90 Ohio Laws 14, section 3.
(2) 90 Ohio Laws 14, sections 4 and 5.
(3) Ibid. sections 7.
(4) Ibid. section 11.
(5) Ibid. section 8.
(6) Ibid. section 12.
(7) Laws of New York, 1885, Chap. 483.

into court in order to test its constitutionality (1). With a reactionary court, and most of our state courts are, if compared with the New York State Court of Appeals, it is likely that this would constitute sufficient grounds for declaring an act to be unconstitutional.

The probate court was given jurisdiction to hear and determine all questions in relation to the tax (2) and the state, presumably on the ground that it received all revenue, was to bear all costs of collection (3). Finally, in order to prevent laxity of enforcement of the law, the probate judge was required to report each six months, all property which had become subject to the tax and all taxes due but unpaid (4) and an estate could not be settled until the tax was paid and a receipt therefor was obtained from the county treasurer (5).

This tax was in reality a graduated form of taxation and not proportional as might be presumed at a glance. In fact it was degressive (6). This was due to the exemption features of ten thousand dollars and the one rate of three and one half percent. This can be very easily understood by using an example. Let us assume that five decedents leave estates of different values: the

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(1) Matter of McPherson, 104 N.Y. 306.
(2) 90 Ohio Laws 14, section 13.
(3) Ibid., section 15.
(4) Ibid., section 14.
(5) Ibid., section 16.
(6) For a definition of the term degressive see any recent writer on Public Finance and Taxation.

first leaves fifteen thousand dollars; the second, eighty five thousand dollars; the third, five hundred and ten thousand dollars; the fourth, one million five hundred thousand dollars; and the fifth, twenty million dollars. In each instance the tax is to be found by taking the excess over ten thousand dollars and multiplying by three and one half percent. This would appear as follows:

Amount of Estate	Exemption	Amount subject to tax at $3\frac{1}{2}\%$	Amount of tax	Real rate or ration of the tax to the total estate
$ 15,000	$10,000	$ 5,000	$ 175.00	1.166%
85,000	10,000	75,000	2,625.00	3.082
510,000	10,000	500,000	17,500.00	3.431
1,500,000	10,000	1,490,000	52,150.00	3.476
20,000,000	10,000	19,990,000	699,650.00	3.498

Thus it is apparent that the rate is approaching $3\frac{1}{2}\%$, but that it never reaches it, which conforms to the definition of a degressive tax.

II. MODEL FOR THE OHIO LAW.

Opinions differ as to the model for the act of 1893. The most able authority on the Inheritance tax has stated that the law was copied in a large part from the

Connecticut statute in existence in 1892 (1). Others insist that it was framed after the Virginia and Maine laws of the time (2). In making a comparison with the Virginia statute there seems to be no good reason for believing that the Ohio law in anyway followed provisions of the Virginia law. As to the Maine law, there is good evidence that Ohio did not try to imitate her sister state. It must be admitted that the statutes of the two states are almost duplicates, except that Maine imposed a rate of two and one half per cent, while in Ohio the rate was three and one half percent; and the Maine exemption was only five hundred dollars, while the Ohio exemption was ten thousand dollars (3). To return to the evidence above mentioned: The Ohio Act became law on January 27, 1893; the Maine Act became law on February 9, 1893, or almost two weeks later (4). This seems to prove conclusively that the Ohio law was not a copy of the Maine law, but if any one should still be in doubt then let him call to mind the fact that the Holcomb bill was mentioned by Mr. Ryan in an article written for the Toledo Commercial under the date of February 6, 1892, or a year before the enactment of the Maine law, and was passed by the House of Representatives on April 5, 1892 (5).

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(1) West, Max, The Inheritance Tax, Columbia University Studies, 1893-1894, pp.89-91. However, Mr.West does not mention this in his second edition, 1908.

(2) Blakemore and Bancroft, Inheritance Taxes, second edition, 1914,p.995. Also Dyer v. Hagerty,12 Ohio Cir.Ct.Reports 606.

(3) Maine Laws of 1893, chap.146; 90 Ohio Laws 14.

(4) Ibid

(5) House Journal, 1892,p.150

Since the state of New York was a pioneer in this field one might expect that most states would follow her footsteps. New York had begun to tax collateral inheritances in 1885 (1). There is considerable difference in phraseology when compared with the Ohio law but the essence of the two acts is the same except that the rate, in the case of New York is five percent and the exemption was only five hundred dollars (2). The Maine law had the same exemption but a different rate (two and one half percent). However, a well known legal authority on inheritance taxation has stated (3) that New York based her early acts (4) upon the Pennsylvania statutes as they existed prior to 1855 (5) and a comparison of the acts bears out his statement. It follows then that Ohio, if she has copied any one, has gone in reality to her sister state, Pennsylvania, for her ideas.

Ohio was more fortunate than New York in drafting her law since she made provision for an accurate val-

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(1) Laws of New York, 1885, chap. 483.
(2) Ibid., section 1.
(3) Dos Passas, Benj. F., The Law of Collateral and Direct Inheritance, Legacy and Succession Taxes, 2d Ed., 1895, p.18.
(4) Laws of N.Y., 1885, chap. 483; Laws of N.Y., 1887, Chap. 713; Laws of N.Y., 1889, chap. 307, 479; Laws of N.Y., 1890, chap. 553; Laws of N.Y., 1891, chap. 215.
(5) Acts of 1825-26, chap. 72; Laws of 1846, #390.

uation of annuities and life estates (1), which New York failed to do and which caused her law to be severely criticized by her Court of Appeals when its constitutionality was tested (2).

The original act of 1893 remained in effect for slightly over a year when it was completely revised (3).

III. REPORT OF THE TAX COMMISSION OF 1893.

The same session of the General Assembly which enacted the Holcomb bill into law also made provision for a Special Tax Commission (4). This came as a result of insufficient state revenue and dissatisfaction with the system of taxation which arose out of the uniform rule required under the Constitution of 1851 (5), [Art.12]. The Commission made its report December 23, 1893 (6), which is conceded to be among the best, if not the best, of American reports during the period 1870-1900 (7).

It is necessary to keep in mind the fact that the Commission of 1893 was provided in the main, to study

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(1) 90 Ohio Laws 14, section 12.
(2) Matter of McPherson, 104 N.Y. 306.
(3) 91 Ohio Laws 169.
(4) 90 Ohio Laws 385, April 20, 1893.
(5) Infra, p.35, N.
(6) Report of the Tax Commission of Ohio of 1893, Preface.
(7) Seligman, E.R. A., Essays in Taxation, 3d Edition, 1900, pp.414-416; 9th Edition, 1921, pp.605-606.

the general property tax and it might be expected that most of its recommendations would be for the purpose of making that form of taxation more equitable.

Twice is the inheritance tax recommended in the report:

"1. The tax upon inheritances is another means of reaching personal property which otherwise escapes. It is approved because it is an effective substitute for the tax upon intangible property." (1).

"2. The equalization of taxation and increase in revenue, by laying taxes on business, with an especial view to reaching intangible property, and corporations and enterprises, whose ability to contribute to the expenses of the government, can not be justly measured by a tax on their property, and to this end the following taxes are suggested:

** 'b. A privilege tax on the transfer of property by deed, mortgage, or will, ***;

'c. An extension of the collateral inheritance tax to classes exempted by the present law (2), and an increase of the tax.'(3)."

Here, again, is found evidence of the back-tax argument insofar as the inheritance tax is suggested as a "substitute" for the tax on intangible property. However, it might very well, and probably does, mean that it is to be used as a "substitute" and not neces-

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(1) Report of the Tax Commission of Ohio of 1893, p.62.
(2) The Collateral inheritance tax act of 1893 (the Holcomb bill) is referred to here. 90 Ohio Laws 14.
(3) Report of the Tax Commission of Ohio of 1893,p.70.

sarily as an additional method of taxing personalty.

As has been pointed out, Ohio already had a limited collateral inheritance tax with a very low rate. Evidently the Commission, by recommending an extension of the tax and an increase of the tax, meant to include direct as well as collateral heirs and progressive rates, ie., graduation both as to relationship and as to amount. In addition, the Commission recognized the faculty theory of taxation which is important not only in the problem under consideration but also when applied to taxation generally. It represented a breaking away from the old juristic idea of "benefit" and certainly marks a step in advance.

In addition to the extension of the inheritance tax the Commission probably intended to recommend probate duties when, in its report, the statement is made suggesting "a privilege tax on the transfer of property by deed, mortgage or will." These duties usually provide for only a small fee on the wills probated and the fee is either fixed, or graduated within wide limits, and is ordinarily stated in dollars and cents rather than in percentages which tends to make the tax a regressive one. The Wisconsin duties of 1868 (1), 1877 (2), and 1889 (3), which were

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(1) General Laws of 1868 (Wisconsin), chap. 121.
(2) Wisconsin Laws of 1877, chap. 98.
(3) Wisconsin Laws of 1889, chap. 176.

regressive and have been called probate fees (1), furnish a good example of this form of inheritance taxation. Probate duties differ somewhat in theory from the direct and collateral inheritance taxes in that the former tax the right to transmit property while the latter tax the right to <u>receive</u> or <u>succeed to</u> property although little distinction is made in actual practice(2). Presumably probate duties are based on either the theory of the <u>value-of-service</u> or the theory of the <u>cost-of-service</u>. The first theory assumes that the beneficiary receives a service from the state since state regulations permit him to receive property which otherwise he could not get as the right of inheritance is created by law. This would permit graduation both as to relationship and as to amount. In the second case, there are certain costs which are due to the probation of wills and someone has to meet these. Taxpayers, as a class, receive no benefit from the right of an individual to transmit or to receive property. Consequently, it seems only fair that the cost connected with this right should be borne by those who benefit. This is absolutely in accord with the benefit theory.

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(1) Phelan, Raymond V., Financial History of Wisconsin, 1906, p. 429. In Bulletin of the University of Wisconsin, #193, Economic and Political Science Series Vol. 2, #2.
(2) West, Max, The Inheritance Tax, 2d Edition, 1908, p. 19; Seligman, Edwin R. A., Essays in Taxation, 9th Edition, 1921, p. 127; Plehn, Carl C., Introduction to Public Finance, 4th Edition, 1920, p. 206.

The principle of graduation need not be applied as it does not necessarily follow that a large estate will require more time or trouble on the part of the county probate court than a small one. In fact, in many cases the reverse is more likely to be true. Those having large estates usually dispose of them by will before death while those possessing small estates let them pass by the intestate laws of the state. Certainly the court has more to do in the latter than in the former case.

The Ohio Commission recommended "a privilege tax on the transfer of property by *** will." Since the tax was to be placed only on wills and would not apply in cases of intestacy when the property passes by the law of the State, it may be very justly inferred that this would place a premium on intestacy. Only one argument can be given in defense of this and, that is, greater diffusion of wealth may occur when the property passes by the intestate laws of the State than in the cases when the decedent makes a will. The question as to whether greater diffusion will be secured by testacy or intestacy is certainly a debatable one.

In England for example, the probate duty applied to personal property passing either by will or intestacy.(1).

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(1) Seligman, Edwin R.A., Essays in Taxation, 9th Edition, 1921, p. 453.

This is much the better method since it places no premium either on testacy or on intestacy but uses the duty merely as a revenue measure and not a method of social reform.

The General Assembly of Ohio did not follow the recommendation of the Tax Commission in regard to this form of taxation.

IV. CONSTITUTIONALITY OF THE LAW OF 1893

The law of 1893, as originally passed, was never brought before the Supreme Court to test its constitutionality. It was amended at the following session of the General Assembly and, thus, only the new law came into court (1). Consequently, the treatment of the constitutionality of the original collateral inheritance tax act will be reserved until the discussion of the law as amended in 1894 (2).

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(1) Hagerty v. State, 55 Ohio State 613.
(2) Infra, p. 49.

CHAPTER III -- LEGISLATION OF 1894

I. THE DIRECT INHERITANCE TAX LAW.

The seventy-first General Assembly which convened on January 1, 1894, was an epoch making one so far as inheritance taxation is concerned. It passed acts taxing successions to both direct heirs and collateral heirs. It also had the distinction of being the first state legislature to enact into law a graduated direct inheritance tax.

The Special Tax Commission had made its Report in December preceding and this gave to the General Assembly a list of recommendations which the latter might use as a guide in tax legislation.

The first act passed in regard to inheritances was one affecting direct heirs (1) although a collateral inheritance tax act became law on the same day (2).

II. PROVISIONS OF THE DIRECT INHERITANCE TAX LAW.

In accord with the recommendations of the Tax Commission the first section of the act was designed to include all those who had been exempted by the Collateral inheritance law of 1893.

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(1) 91 Ohio Laws 166. April 20, 1894.
(2) April 20, 1894.

When the entire property of the decedent was less than twenty thousand dollars no tax was imposed; when in excess of twenty thousand dollars and up to and including fifty thousand dollars, the rate was one percent upon the entire estate; when in excess of fifty thousand dollars and up to and including one hundred thousand dollars, the rate was one and one half percent upon the entire estate; when in excess of one hundred thousand dollars and up to and including two hundred thousand dollars, two percent upon the entire estate; when in excess of two hundred thousand dollars up to and including three hundred thousand dollars, three percent upon the entire estate; when in excess of three hundred thousand dollars up to and including five hundred thousand dollars, three and one half percent upon the entire estate; when in excess of five hundred thousand dollars up to and including one million dollars, four percent upon the entire estate; when in excess of one million dollars, five per cent upon the entire estate.

Perhaps this can be best illustrated if put in table form:

When the value of the entire property of the decedent--			Rate (percent) applicable to entire estate.
Does not exceed $20,000			0
Exceeds $ 20,000 and does	not exceed	$ 50,000	1
50,000	"	100,000	1½
100,000	"	200,000	2
200,000	"	300,000	3
300,000	"	500,000	3½
500,000	"	1,000,000	4
1,000,000	"		5

This tax is what may be called an estate tax, that is, it is on the whole amount transmitted rather than on each share received. In some respects it is similar to the present Federal Estate Tax Law but differs in others. For example, under the present Federal Law, the first fifty thousand dollars is exempt; the next fifty thousand dollars is taxed at the rate of one percent; the next one hundred thousand dollars at the rate of two percent and so on. In calculating this tax if one had a net estate of two hundred thousand dollars, fifty thousand dollars would be exempted; fifty thousand dollars would pay a tax of five hundred dollars and one hundred thousand dollars would pay a tax of two thousand dollars or a total of two thousand five hundred dollars. But under the Ohio Law of 1894 the whole of the two hundred thousand dollar estate would be taxed at two percent (1).

(1) In support of this statement see State of Ohio, ex rel. v. Ferris, 53 Ohio State 337.

This was an important factor in deciding the constitutionality of this statute.

Provision was made for the county to retain twenty-five percent of the revenue from the tax, the state receiving the remaining seventy-five percent. The collateral inheritance law of 1893 provided that all revenue go to the state and in that case the state was to bear all costs of collection, but under this statute, the state and county shared the costs in the same ratio as they shared receipts (1). On the face of it this seems to be a step in the wrong direction since it is likely to cause undue expenditure on the part of the county in certain years when receipts are great and might lead to extravagance in the way of public improvements which in the lean years they may find difficult to maintain. This is based on the fact that the smaller the political subdivision the more likely will such receipts fluctuate. The present Wisconsin Act enacted in 1903 and later amended has a similar provision except that it is much smaller, being only seven and one half percent (2).

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(1) 91 Ohio Laws 166, section 12.
(2) Wisconsin Statutes, chap. 72, sec. 72.20.

The remainder of the first section is similar to the first section of the collateral inheritance law of 1893.

The rest of the sections of the act are similar to those of 1893. The following table shows the section numbers of the acts which are alike:

Law of 1893.		Law of 1894.
Sec. 1 & 2	(Sec. 1 similar except rates) heirs and amounts changed and sec. 2 could not apply to the direct law.	No Similar sec.
Sec. 3		Omitted.
Sec. 4	(Slightly changed in new act)	Sec. 2
Sec. 5		Sec. 3
Sec. 6		Sec. 4
Sec. 7		Omitted.
Sec. 8		Sec. 5
Sec. 9	(Receipts apportioned between county and state in law of 1894.)	Sec. 6
Sec. 10		Sec. 7
Sec. 11		Sec. 8
Sec. 12		Sec. 9
Sec. 13		Sec. 10
Sec. 14		Sec. 11
Sec. 15	(Change in apportionment of costs.)	Sec. 12
Sec. 16		Sec. 13
Sec. 17		Omitted

III. CONSTITUTIONALITY OF THE DIRECT INHERITANCE TAX LAW.

While the proposed act was before the General Assembly its enemies took pains to have it amended in such a manner that the twenty thousand dollars was not exempted in case estates were taxable (1).

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(1) West, Max, The Inheritance Tax, Second Edition, 1908, p. 136, in Columbia University Studies in History, Economics and public law.

If this was done with a view to rendering the act unconstitutional, the trouble was well rewarded for, on June 27, 1895, the Supreme Court of Ohio declared that it was unconstitutional (1).

This case was commenced in the Circuit Court of Hamilton County. A decedent who died May 8, 1894, had left an estate of over fifty thousand dollars, and letters of administration had been granted to his widow. The prosecuting attorney made application to the probate judge for the appointment of appraisers in order to have the estate appraised with the view to assessing the tax, but the judge held that the law was unconstitutional and refused to carry out the demands of the county prosecutor (2).

The Circuit Court had held that the law was unconstitutional solely because the exemption clause did not apply to taxable estates, but it conceded the right of the General Assembly to impose a tax, even a graduated one, on direct inheritance (3).

In many ways the decision of the Circuit Court is on a parity with that of the Supreme Court and since the latter saw fit to incorporate it in its decision, it will do no harm to give a brief review of it (4).

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(1) State of Ohio, ex rel. v. Ferris, 53 Ohio State 314. June 27, 1895.
(2) Ibid., page 315.
(3) Ibid., page 316.
(4) Ibid., page 316 and State v. Ferris, 9 Ohio Circuit Court Reports 298.

"1. The tax attempted to be imposed is not upon the property itself."

" 2. But it is in the nature of an excise upon the right or privilege of succession to such property."

"3. Such tax does not violate section two, article twelve (1), but may be rightfully imposed under section one of article two (2), the general grant of legislative power."

"4. The act is not in conflict with section twenty-six, article two (3), providing all laws of a general nature shall have uniform operation throughout the state."

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(1) Article XII, section 2 -- "Laws shall be passed, taxing by uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money, but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars, for each individual, may be general laws, be exempted from taxation; but, all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published, as may be directed by law." N.B. This is the section as in effect in 1894.

(2) Article II, Section I (1894); "The legislative power of this State shall be vested in a general assembly, which shall consist of a senate, and a house of representatives."

(3) Article II, Section 26 (1894): "All laws of a general nature shall have a uniform operation throughout the state; nor, shall any act, except such as relates to public schools, be passed to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution."

"5. But the law violates the underlying principle of uniformity, laid down in Railroad Company V. Connelly, 10 Ohio State, 160, in complete exemption of estates of twenty thousand dollars and under."

"6. But, if the statute exempted twenty thousand, dollars, or any other sum, of every estate from taxation, it would in our judgment be equal and valid, even in imposing a graded tax, as it does."

"7. Because of the exemption feature the statute violates the Fourteenth Amendment (1) of the Constitution of the United States."

Notwithstanding the fact that the act in question distinctly stated "That <u>all property</u> within the jurisdiction of this state, and any interest therein, **** shall be liable to a tax as follows" (2), the Circuit Court held that it was an excise and not a tax on property. In 1906 the Supreme Court of Wisconsin (3) held that the tax was of the nature of an excise tax upon the transfer or the right to receive the property and not upon the property itself.

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(1) Reference is here made to the first section of the 14th Amendment. "All persons form or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

(2) 91 Ohio Laws 166, section 1.

(3) Nunnemacher V. State, 129 Wis. 190. Inheritance Tax Laws of Wisconsin, 1921, p. 41.

It is evident that the Court gave the act a very liberal interpretation in order to avoid bringing it under the "uniform rule" clause of the State Constitution.

When the case came before the Supreme Court the prosecutor in defense of the law (1) argued that the "uniform rule" section of the article on taxation in the Constitution did not prevent the General Assembly from using other means to raise revenue but that the section applied only to the taxation of property. He pointed out that the direct inheritance tax was not a tax on property but "upon the privilege of transmitting and succeeding to property." Thus he made the "right" the object of taxation and the center of his argument. He added that it was necessary to appraise the property to determine the amount of the tax, but insisted that it was not a tax imposed upon the property. Furthermore, he contended that the state might impose a duty on this "right", since the "right" to transmit or succeed to property is not a natural one, but one derived from the state. This is in direct contradiction of a decision delivered by the Supreme Court of Wisconsin as late as 1906 (2): "The right to transmit property by descent or by will

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(1) State of Ohio, ex rel, v. Ferris, 53 Ohio State 316-318.
(2) Nunnemacher v. State, 129, Wisconsin 190.

is an inherent right protected by the constitution and, though subject to reasonable regulation, cannot be wholly taken away or substantially impaired by the legislature," and four years before (1902) Justice Marshall of the Supreme Bench of that State wrote (1) that he was of the opinion "that the right to transmit property is not a mere privilege from sovereign authority and subject to absolute legislative control, but is a right, the enjoyment of which is protected by constitutional guaranties, though its character in that regard, is not inconsistent with legislative authority to impose reasonable burdens, in the nature of taxes, upon the right to take by the will of a deceased person, or under statutory regulations in regard to the distribution of the estates of intestates." Both of these decisions seem remarkable in view of the opinion held by most people that the state of Wisconsin was and is as progressive, if not more so, as any state in the Union.

The final argument of the prosecuting attorney was that the act was passed under the legislative power granted by the constitution and was a regulation of inheritance.

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(1) Dissenting opinion of Marshall, J., in Black v. State 113 Wisconsin 206.

In opposition to the law the counsel for the probate judge contended that (1):

> "1. The tax is on property because--
> A. It is for general revenue, and no tax can be levied for that purpose except on property."
> B. By the terms of the act, the tax is nominally and in effect laid on property."
>
> "2. Being a tax on property, it violates in several respects section two, article twelve". (2)
>
> "3. If not a tax on property, still the exemption and the graduated rate violate the principle of uniformity which must underlie all taxation."

It must be admitted that the act does state quite clearly that it is a tax on property, but even then the counsel adds that if not a property tax it is still subject to the "uniform rule". In this, if he grants that it is not a tax on property he has little support from other states. In New York, for example, the court did not even consider the rule of uniformity, although it was specifically mentioned by the counsel in opposition to the act (3). In 1902 the same question arose in Wisconsin and the court was of the opinion that classification of heirs and

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(1) State of Ohio ex rel. v. Ferris, 53 Ohio State 319.
(2) See Page 35, footnote number 5, for reference.
(3) Matter of McPherson, 104 New York 308, 316.

graduated rates were not in violation of the rule of uniformity so long as the classification was based "on real differences," which afford "rational grounds of distinction" and if the exemptions were reasonable(1)

Turning again to the decision of the court of last resort, the Supreme Court held that the legislature had the right to tax "franchises, rights and privileges" and that the law was in compliance with that article of the State constitution which required, and still requires, that laws of a general nature must have uniform operation throughout the state(2), but declared that the act was unconstitutional since it was in violation of the second section of the Bill of Rights of the Ohio Constitution(3) which states that "All political power is inherent in the people. Government is instituted for their equal protection and benefit."

The question at once arises as to the manner in which this section of the Constitution affects the taxation of inheritances. The opinion of the Court is the best answer to this(4)

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(1) Black vs. State, 113 Wisconsin, 205.
(2) Ohio Constitution, 1851, Article II, Section 26.
(3) Ohio Constitution, 1851, Article I, Section 2. Not all of the section is quoted.
(4) State of Ohio, ex. rel. v. Ferris, 53 Ohio State 336-338.

"If government is instituted for the equal protection and benefit of the people, it follows that laws which are passed under a government so instituted must likewise be for the equal protection and benefit of the people. This statute fails to protect equally the people who exercise the right and privilege of receiving or succeeding to property. The right to receive the first twenty thousand dollars of an estate not exceeding that sum is protected from taxation, while the right to receive the first twenty thousand dollars of an estate exceeding that sum is taxed the sum of two hundred dollars. This is not equal protection. Again the right to receive fifty thousand dollars' worth of property of an estate not exceeding that sum is taxed five hundred dollars, while the right to receive fifty thousand dollars of an estate exceeding that sum is seven hundred and fifty dollars. This is not equal protection. The same may be said of the other graduations provided for in the statute."

"The right or privilege of receiving or succeeding to property is valuable in proportion to the value of the thing received. It cannot be consistently said that the right to receive twenty thousand dollars is of no value, and that the right to receive twenty thousand and one dollars is of the value of two hundred dollars and one cent."

"Again, he who uses the right or privilege of receiving property of the value of twenty thousand dollars, and pays therefor a tax of two hundred dollars and one cent, is not equally benefitted for the tax paid, as he who uses the same right or privilege of receiving property of the value of twenty thousand dollars, without paying any tax whatever for the use of such right. The exemption of twenty thousand dollars and the increase of the per cent as the value of the estate increases renders this statute unconstitutional."

"Our constitution requires equality in our tax laws, and also equality in their execution as near as may be. The only exemption allowed, as to taxation of property, is personal property to the amount of two hundred dollars to each individual, and certain other property devoted to public or charitable uses.

Two hundred dollars in value to each individual is the extent to which the legislature has the power to exempt personal property from taxation. The constitution must be regarded as consistent with itself throughout, and as section two, of article twelve permits an exemption from taxation of personal property not exceeding two hundred dollars, a construction of section two of the Bill of Rights is hereby evinced to the effect that in the taxation of subjects other than property, an exemption up to two hundred dollars in value would be regarded as for the equal protection and benefit of the people. The exemption must be equally for all, and the rate per cent must be the same on all estates. There can be no discrimination in favor of the righ or poor. All stand upon an equality under the provisions of the constitution and it is this equality that is the pride and safeguard of us all."

"In support of the law, it is urged that this exemption and graduation may be sustained upon the ground that the costs of administration in a small estate are proportionately larger than in a large one, and that therefore the small estate should be free from taxation. The answer is that equality in taxation is required by the constitution and that our administration laws are enacted upon the principle of equal protection and benefit of the people, and this unequal mode of taxation is not required to remedy any defect on the burdens of these laws."

The Court recognized the fact that an inheritance tax was not on property, but on the "right or privilege of receiving or succeeding to property." This is quite in conformity with the decisions of Courts of other states. On the other hand, it failed to give any consideration to the "faculty" theory of taxation, which had been recognized by the Tax Commission, but insisted on retaining the "benefit" theory and along with it the idea of proportionality since "the right * * * is valuable in proportion to the value of

the thing received." This meant that there was no place in Ohio for a progressive form of taxation and yet, as has been shown above(1), that is exactly the form actually in existance under the collateral law. However, under the direct inheritance tax law, the progression was very much in evidence while, under the collateral law, it was concealed and operated only because of the exemption feature. In fact it is not going too far to say that the majority of taxes are progressive, in some form or another, although usually this is not so apparent as it was in the law before the Court.

Even though that section of the article of the constitution which provides for the uniform rule was brought into the decision, yet the rule itself was held not to apply and only the clause exempting personal property was given any serious consideration, the Court insisting by analogy that the exemption of twenty thousand dollars should apply to not one case but to all cases, that is, the twenty thousand dollars should be deducted from all taxable estates. This is quite in keeping with the opinion of the Circuit Court except the latter held graduation to be constitutional. The Circuit Court had based its decision on the Fourteenth Amendment to the Federal Constitution, but the Supreme Court declined to

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(1) Supra. pp. 19, 20.

consider that amendment on the ground that it was no broader than the second section of the Bill of Rights of the Ohio Constitution. Taken by and large the decision of the Circuit Court seems to represent a more progressive attitude than that of the court of last resort.

Wisconsin, in 1899, passed a law taxing inheritances(1) which in many ways was similar to the Ohio direct inheritance law of 1894 and more especially as to the operation of the exemption clause. This statute granted an exemption to personal estates of ten thousand dollars, but taxed personal estates which were in excess of the ten thousand dollars. The act was held to be in violation of the Fourteenth Amendment to the Federal Constitution since the exemption clause consituted "arbitrary discrimination, and not classification." The Ohio case of State v. Ferris was quoted and the Court said, in part, which reads much like the Ohio decision:

> "Thus it results that one collateral relative, receiving a legacy of two thousand dollars from one testator, whose estate amounts to nine thousand five hundred dollars, pays no tax, while another collateral relative in the same degree, receiving a legacy of two thousand dollars from another testator whose estate amounts to ten thousand five hundred dollars is obliged to pay a tax. Here is unlawful discrimination, pure and simple. No rational distinction or difference can be drawn between the two legatees simply because the estates from which their legacies came are of slightly different size.

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(1) Wisconsin Laws of 1899, Chapter 355.

> They are both within the same class, surrounded by the same conditions, and receiving the same benefits. One pays a tax, and the other does not. This is not the equal protection of the laws."(1)

One very weak argument was advanced in favor of the law which probably did more harm than good and that was to the effect that the exemption and progressive rates would make a lighter burden for the small estates (2), and since the costs of administration were usually higher in proportion to the amount of the estate for the small than for the large estates, therefore the latter should bear less tax. The Court was justified in this case in holding that to be no reason for progression or exemption. In most cases an inheritance may be treated as an accidental income which increases the ability of the beneficiary to pay and if cost of administration is the reason for an inheritance tax then why not charge a flat tax or else a regressive one? Of course, in the case where the head of the family is taken away by death, there may be a diminution in the income of the family, but if his income came from his property rather than from his labor, the financial circumstances of the family will not be altered. As the relationship becomes more distant and as the amount left behind to each beneficiary becomes greater the less becomes the economic dependence

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(1) Black v. State, 113, Wisconsin 221
(2) State of Ohio, ex rel. V. Ferris, 53 Ohio State 338

on the decedent.

The last argument considered by the Court was concerning the regulation of inheritances with a view to securing a better distribution of wealth (1), but the Court insisted that laws were already on the statute books for that purpose and that, if further regulation were deemed necessary or expedient, it could be accomplished by amending those statutes. This makes evident the great danger in a tri-partite system of government such as is found in the United States and her Commonwealths. The Supreme Courts of each state are practically unlimited in what may be called their law-making powers. In England, for example, Parliament is supreme. All that is left to the court is the right to interpret. In America, the Court may not only interpret but also say whether a statute shall become a law. In the main, this is due to our written Constitutions, but certainly they could be amended. Moreuver, if the representatives of the people enact laws it is evident that the electorate desires them and, hence, they should stand. If objectionable the power of repeal is always left. Let the Court interpret, but not make, laws.

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(1) State of Ohio, ex rel. v. Ferris 53 Ohio State 338.

IV - PROVISIONS OF THE COLLATERAL INHERITANCE TAX LAW AS AMENDED IN 1894.

The collateral inheritance tax law of 1893 had been in force slightly over a year when the General Assembly passed the direct inheritance act. In order to make both of them consistent, it was necessary to revise the old statute and with that purpose in mind six sections were repealed and new amendments were put in their place (1).

The heirs to whom the new law applied were the same as formerly, but three important changes were made in the first section. First, the rate was raised to five per cent, an increase of one and one-half per cent. Second, the exemption was reduced from ten thousand dollars to two hundred dollars, presumably to that set by the constitution for personal property(2). Third, the receipts were to be divided between the county in which they originated and the state, the county to retain twenty-five percent and the state seventy-five per cent(3). It will be recalled that up to this time the state had received all of the receipts and had also borne all costs of collection. Since the county shared in the receipts, it was only fair to the state that the smaller political unit bear its proportion of the expense and this change was also incorporated(4).

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(1) 91 Ohio Laws 169. Passed April 20, 1894. The sections amended and repealed were 1,2,3,4,9,14 and 15.
(2) Ohio constitution, 1851, Art. XII,Section 2;Supra p.35
(3) See also sections 6 and 9 of the Direct and Collateral Inheritance Tax acts respectively.
(4) ~~Continued from p. 25~~ 91 Ohio Laws 169, Section 15.

The second section of the collateral inheritance tax act of 1894 made provision for determining the property liable to the tax in a case where part of it went to direct heirs and the remainder to collateral heirs. The amount bequeathed to direct heirs plus the exemption of two hundred dollars was to be deducted before computing the tax.

A penalty was exacted under the laws of 1893 and 1894, both as to collateral heirs and as to direct heirs. If the tax was paid within one year a discount of one per cent for each full month "prior to the expiration" of the year was permitted; but if not paid within the year, interest was to be charged at the rate of eight per cent thereafter until paid. Finally, if the tax had not been paid at the end of eighteen months, the county prosecuting attorney was compelled to institute proceedings in the county common pleas court in order to collect (1)

A rather strange omission is noticeable in all of the statutes enacted thus far and that is the absence of any provision granting exemption to educational, religious, scientific, charitable and municipal corporations and the like. This may have been due to the influence of Mr. Ryan, who was evidently a friend of Mr. Holcomb, the sponsor of

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(1) 91 Ohio Laws 169, Section 4.

the first bill, and this was carried over into the latter bills. Mr. Ryan opposed the exemptions of such corporations and institutions(1).

V. -CONSTITUTIONALITY OF THE COLLATERAL INHERITANCE TAX LAW

The act first came up for consideration in the Circuit Court of Franklin County(2) and two questions were raised. First, it was contended that the statute was unconstitutional because it exempted not only direct or lineal heirs, but also certain collateral heirs as brothers, sisters, nephews and nieces and their lineal descendants; and in the second place, the tax was for a general purpose, but the law provided that twenty-five per cent was to be retained by the county in which it originated.

Fortunately for the collateral inheritance tax act, the constitutionality of its mate, the direct inheritance tax law, had been decided and the second contention was easily disposed of by referring to the decision, the syllabus of which stated that "

> "Funds raised by taxation of franchises, rights and privileges may be applied to the purposes of general revenue, or any other purpose authorized by statute"(3)

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(1) Ryan, Daniel J., Taxation, 1892, p. 14. See also Chapter I above.
(2) Dyer, Pros. Atty. V. Hagerty, Probate Judge, 12 Ohio Circuit Court Reports 606.
(3) State of Ohio, ex rel. V. Ferris 53 Ohio State 314.

As to the first objection the court quotes at length from decisions in other states having constitutions similar to that in Ohio and which have upheld the constitutionality of laws similar to the Ohio law. Especially worthy of notice is the opinion of the Maine court, Maine having enacted a law similar to the Ohio act about two weeks later than the latter state:

> "The legislature may, in its discretion, select classes from which duties and excises may be required, not, however, degenerating into arbitrary and oppressive burdens"(1).

The Circuit Court was of the opinion that the distinction between the collateral heirs could be supported on moral grounds and finally concludes that the classification was within the power of the General Assembly and that it was neither "unreasonable nor oppressive" but was "uniformly imposed upon all estates and upon all persons within the description contained in the statute" and was "not unequal"(2).

When the statute came before the Supreme Court for consideration the counsel in opposition to the act contended (3) first, that the right of inheritance is as old as common law itself. This is the old stereotyped argument which is met in practically every state when the constitutionality

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(1) State V. Hamlin, 86 Me. 503
(2) Dyer, Pros. Atty. V. Hagerty, Probate Judge, 12 Ohio Circuit Court Reports 608, 610
(3) Hagerty, Judge, V. The State, ex rel. 55 Ohio State 615-618. Decided January 26, 1897.

of inheritance tax laws is questioned. Second, the rule of uniformity and equality was violated, but a little more than usual was granted when the statement was made that "Taxes must be uniform and equal on the same class of property or privileges." In this we find the presumption that the law made some distinction between classes, but its constitutionality would be granted if it could be proved that this classification was based on some rational distinction. The inequality of classification alluded to here is that of the exemption of certain collateral kindred as brothers, sisters, nephews, nieces and their lineal descendants who were placed among the direct heirs in both the direct and collateral inheritance tax acts of 1894. The counsel,for the benefit of the Court, laid down five rules which they considered to be the basis of classification though they added that sometimes the court used one and sometimes another:

> "1. All classification must be based upon substantial distinctions, which make one class really different from another."
>
> "2. The classification adapted in any law must be germane to the purpose of the law."
>
> "3. Classification must not be based upon existing circumstances only, or those of limited duration, except where the object of the law is itself a temporary one."
>
> "4. To whatever class a law may apply, it must apply equally to each member thereof."

"5. If the classification be valid, the number of members in the class is wholly immaterial."

These rules of classification are fair enough, but it remains to be seen whether the act in question does or does not conform to them. The chief contention against constitutionality, then, was the classification of heirs.

The counsel for the State laid down four arguments in defense of the act(1). In the first, it was agreed that the phraseology of the direct and collateral inheritance tax acts were the same except that in the latter those features were absent which were held to be unconstitutional in the former. Certainly this could not be denied and a comparison is sufficient to show that there was this difference. The direct inheritance tax law stated "That all property within the jurisdiction of this state, and any interest therein * * * shall be liable to a tax as follows, to wit: <u>When the value of the entire property of such decedent exceeds the sum of twenty thousand dollars</u>(2)* * *,"(3) while the law taxing collateral inheritances read as follows: "That all property within the jurisdiction of this state, and any interest therein * * * shall be liable to a tax of five per centum of its value, <u>above</u> the sum of two hundred dollars,(2)* * *"(4)

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(1) Hagerty, Judge, v. The State, ex rel., 55 Ohio State 621-624.
(2) Underscored words are mine- L.E.S.
(3) 91 Ohio Laws 166, Section 1
(4) 91 Ohio Laws 169, Section 1.

The two unconstitutional features of the former statute were, first, the progressive rate; and second, the fact that the exemption did not apply to taxable estates(1). In the latter, the rate was, to all intents and purposes a proportional one, though in reality degressive and the exemption of two hundred dollars applied to all.

The second argument was a counter one to that advanced by the counsel in opposition, to the effect that it was subject to the "uniform rule", but this had been disposed of in the case of State ex rel. v. Ferris.

The third argument, that it was a tax on property, had been decided in the direct inheritance tax case.

The final argument was that the division of receipts between the county and state, which was held to be unconstitutional by the attorneys for the plaintiff, had already been settled.

The counsel for the state added that in only one case had collateral inheritance tax law been held unconstitutional(2) and that this was good evidence that the burden

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(1) State, ex rel., v. Ferris, 53 Ohio State 314.
(2) Curry v. Spencer, 61 N.H. 624, 1882. In 1878, N.H. had passed a collateral inheritance tax act with a rate of one per cent. The judge, who delivered the opinion of the Court, held that it violated the provisions of the New Hampshire Constitution, which "declared every inhabitant to be bound to contribute his share" and the limitation of the power of imposing taxes to "proportional and reasonable assessments, rates, and taxes upon all inhabitants and residents within said state, and upon the estates within the same," in so far as certain relatives were exempted, while others were taxed.

of proof was on those who opposed the act.

In answer to the objections to the act the Court agreed that the decision of the Circuit Court was just. However, the opinion shows that other points were urged before the higher court which had not been advanced before the lower court.

In part the court stated(1) that:

> "Most of the objections urged against the validity of the act are answered in State ex rel. v. Ferris, 53 Ohio State, 314. The act there held invalid made an inhibited distinction as to the value of the property received, the right to receive being there, as here, the real subject of the imposition. No such distinction appears in this act, which lays a uniform tax upon the reception of all amounts above two hundred dollars, and that exemption is expressly authorized by the constitution on the levying of taxes upon property."

> "This act is said to be invalid because of its discrimination among the collateral kindred, the tax being imposed upon the value of the property received by some and not upon that received by others. The power exercised by the general assembly in this instance is legislative and vested by the first section of the second article of the constitution. Since the right to receive property by inheritance is not guaranteed by the constitution, it prescribes no limitation upon the power of the general assembly to designate the persons who may thus receive. The discrimination is based upon, and justified by, the fact that there are degrees in collateral kinship."

> "It is further objected that the act is invalid because the provision that all property 'which shall pass by will * * * sale or gift' shall be subject to the imposition, invades the owner's guaranteed right to sell and convey property, which right is embraced

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(1) Hagerty, Judge v. State, ex rel., 55 Ohio State 625-626.

> within its enjoyment. But the meaning of the word 'sale', as used in the statute, is to be determined by the maxim noscitur a sociis, and it includes only transactions which, though in form sales, are in fact gifts. Since the act is within the legislative power granted, and not within the letter or spirit herein, it is valid."

Again it is insisted that it is not a tax on property but on the right to receive. However, an attempt is made to bring in that section of the constitution which provides for the uniform rule by quoting the exemption to personal property (1). This point is irrelevant and there is no good reason for arguing that the statute complies with the exemption permitted to the constitution. Section two of Article twelve of the Ohio Constitution applies only to the taxation of property and not to the imposition of a tax on franchises, privileges and the like. Moreover, the exemption granted under this section does not apply to all property--real and personal--but to personalty alone. The action of the court in this case can be justified only on two grounds; first, in State, ex rel. v. Ferris, the court had held that the Constitution must be assumed to be consistent throughout(2): and second, that in a case where a decedent bequeathed or left personal property the exemption

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(1) Ohio Constitution, 1851, Article XII, Section 2.
(2) State of Ohio, ex rel. v. Ferris, 53 Ohio State 338.

would have to be not over two hundred dollars. It was wholly unnecessary to support the decision with that part of the constitution and certainly there was a danger in doing such a thing. Our American Courts follow precedents in so far as that is possible. Up to 1912, the Constitution remained the same in regard to the taxation of inheritances. What would have happened had the court, in considering the direct inheritance tax law of 1904, insisted that the exemption to direct heirs could not exceed two hundred dollars? It met a great deal of opposition as it stood, with an exemption of three thousand dollars. It probably could not have been passed if the limit to the exemption had been two hundred dollars. Yet, the court implied in the case of the law of 1894, that the two hundred dollar exemption was in compliance with the constitution.

It is clear that the court recognized the fact that inheritance was not a sort of "divine right," as it were. In fact, if the rate were uniform and if the exemption applied to all taxable estates or no exemption was granted the general assembly might safely have confiscated the property without incurring the wrath of the Court. We have seen above that a Wisconsin court held that the right of inheritance was a natural and inherent right subject only to reasonable limitations. Certainly, the Ohio Court, even though its

decision was delivered some ten years earlier, conforms more closely to the opinion of authorities on Public Finance and Taxation than does the Wisconsin Court.

The argument had been advanced that the law interfered with the right of a property owner to sell his property or transfer it in any way he pleased. The Court easily, and justly, disposed of this by holding that the word "sale" in the act meant gifts "inter vivos" or without any valuable consideration which would be commensurate with the value of the property. The Court is to be applauded for its position since gifts "inter vivos" or in contemplation of death furnish a most fruitful source of trouble in the taxation of inheritances.

CHAPTER IV

LEGISLATION AND DEVELOPMENT OF INHERITANCE TAXATION IN OHIO FROM 1894 TO 1906

Ohio had started out with the prospect of being the most progressive of the progressive states in the Union as far as inheritance taxation is concerned, but with the blow dealt by her Supreme Court she gave up the idea of the taxation of direct inheritances. Still matters might have been worse. The principle of this form of taxation had been upheld, even though the particular law had been held to be invalid. Governor McKinley, later President of the United States, summed up the situation very well in that part of his annual message to the General Assembly, which dealt with taxation(1):

> "The act of April 20, 1894, levying a direct inheritance tax, has been held invalid by the Supreme Court because of the inequality of its graded features and the large exemption. At the same time the power of the state to raise revenue by taxing successions has been sustained."
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> "The taxes mentioned above are, in one shape or another, franchise taxes, prices paid to the state for the privileges obtained from it, conditions annexed to the exercise of franchises or privileges granted by the State or enjoyed through its permission and under its protection. The right of the State to raise revenue by levying such taxes may be regarded as settled by the recent decisions of our highest judicial tribunal."

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(1) Governor's Messages, Executive Documents, 1895, I, Page 7.

Evidently, Governor McKinley held the belief that, sooner or latter, the direct inheritance tax again would become a part of our state fiscal system. Unfortunately, it was ten years before the general assembly made another attempt. One thing is clear, the legislature knew that it had the power to impose inheritance taxes, even on direct heirs, provided it was more careful in setting rates and exemptions.

I - REFUNDING ACTS.

Inasmuch as the state had received some revenue under the direct inheritance tax act, it became necessary to enact legislation to return to the heirs the amounts which they had paid under this act. On April 27, 1896, House Bill No. 424 was passed and became law (1). The act was in three sections. The first provided for refunding the state's share of the tax collected and the state auditor was directed to draw warrants on the state treasurer in order to make the refunder, but it was necessary that anyone to whom this was due should furnish a certificate from the county auditor showing that the tax had been paid. Payment was to be made out of the general revenue fund. The second section provided for the refund

(1) 92 Ohio Laws 374.

of the county's share of the tax and was to be paid out of the county expense fund. Any person entitled to such refund had to secure a warrant on the county treasurer from the county auditor. By the third section, the act was to take effect at once.

However, the state auditor refused to issue warrants on the ground that the act had not received the concurrent votes of two-thirds of the members elected to each branch of the general assembly, as required by the state constitution(1) On June 8, 1897, the Supreme Court of the State granted the contention of the State Auditor Guilbert(2), which made necessary the enactment of a new law passed by the necessary two-thirds of the members of each house of the General Assembly. This was done on April 8, 1898(3). The first two sections of the new refunding act were substantially the same as in the unconstitutional refunding act, as was also the fourth the same as the third of the old act. The section which was added was to the effect that all refunds which had been made should be treated as though they had been made under the new one.

This brings to an end the direct inheritance tax act of 1894. In many ways, the student of this form of taxation is likely to speculate upon what might have taken

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(1) Ohio Constitution, Article II, Section 29.
(2) In all justice to Auditor Guilbert, whose reports are much superior to either his predecessors or successors, it must be said that he asked for an appropriation legalizing the refunding of the taxes paid. Annual Report of the Auditor of State, 1897, page 4.
(3) 93 Ohio Laws 95.

place in the way of inheritance taxation, if the Ohio statute had become law. It is possible that the history of taxation in the states of this country might have been radically different.

II - ACT OF 1900.

The collateral inheritance tax laws of 1893 and 1894 had granted no exemptions to various educational, religious, charitable, or municipal corporations or the like. Probably they were omitted on the ground that in most cases they were supported privately and that a bequest to them represented an accidental-income and therefore furnished an excellent object for the imposition of a tax. As far as bequests to the state or to a municipal corporation are concerned, it would be simply a case of taking it out of one pocket and putting it in another. This is not strictly true of bequests to municipal corporations since, in this case, a limited number only would receive the benefit directly; while if the state took a share of it through an inheritance tax the whole state would be the gainer.

On April 6, 1900, however, the collateral inheritance tax law was so amended that the tax should "not apply to property, or interests in property, tr ansmitted to

the state of Ohio under the intestate laws of this state, or embraced in any bequest, devise, transfer or conveyance to, or for the use of the state of Ohio, or to or for the use of any municipal corporation or other political subdivision of said state for exclusively public purposes, or public institutions of learning, or to or for the use of any institution in said state for purposes of purely public charity, or other exclusively public purposes; and the property,or interests in property so transmitted or embraced in any such devise, bequest, transfer or conveyance is hereby declared to be exempt from all inheritance and other taxes, while used exclusively for any of said purposes."(1). The amendment was made retroactive, that is, it applied to all inheritances which had passed or vested but upon which the tax had not yet been paid(2).

On the whole this amendment has been left to the interpretation of the Attorney-General and his rulings are fairly clear on this point. Most of these are found in Opinions of Attorney General since 1914. To use an

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(1) 94 Ohio Laws 101, section 1.
(2) 94 Ohio Laws 101, section 2.

illustration as to the application of the terms in this amendment:. Suppose that a testator left a bequest of one hundred thousand dollars to Otterbein College, located at Westerville, Ohio, which is a denominational institution, while a second testator left a like sum to Ohio State University, which is supported by the State. The bequests to both institutions would be exempt because the former is an institution "for purposes of purely public charity" while the latter is classed among "public institutions of learning"(1).

Until recently it has been held that a bequest or devise to any institution mentioned in the act of 1900 up to 1919 were taxable in case that institution was situated without the state(2), but late in 1922 this was reversed by a decision of the Supreme Court(3).

The law of 1900 had been in operation for four years before a case was brought into court to determine the application of this act(4). Two questions arose: first,

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(1) Opinions of the Attorney General (1916), Volume I,p. 301 and Cassidy, John R., Ohio Law of Inheritance Taxation, 1923, p. 133, also Opinions of the Attorney General (1915) Volume I, p. 493.
(2) Opinions of the Attorney General (1916), Volume I,p.466
(3) The President and Fellows of Harvard College, et al., vs. The State of Ohio, in the Supreme Court of Ohio,No. 16928. A reciprocity clause was added during the last session of the general assembly (1923). It will be found in Chapter VI, infra.
(4) Humphreys v. State,70 Ohio State 67. Decided March 22, 1904.

as to the extent of the operation of the exemption clause in regard to bequests to "charitable institutions," and, second, whether such controversies were subject to appeal. The second question was easily answered since the law of 1893, with its amendments, provided for appeal from the probate court subject to the same conditions "as in other cases" which was construed to mean the same as in the case of appeals from the court of common pleas(1). At to the first question, the court had to break a new path and the only precedents were to be found in the decisions of Courts of other states.

A bequest had been made to the Woman's Home Missionary Society, which was an auxiliary to the Board of Foreign Missions, another to the American Tract Society, and a third to the Board of Missions for Freedmen. All of these institutions carried on work in Ohio, though the Board of Missions for Freedmen was confined in the main to the southern states, and all of them had offices in this state, but only the Women's Home Missionary Society was incorporated in Ohio, even this was subsidiary to the General Assembly of the Presbyterian Church of America, which, in

(1) Humphreys v. State, 70 Ohio State 67. Decided March 22, 1904.

turn, was not incorporated in Ohio.

The decedent made no provision as to how and where the money was to be expended. Since the organizations listed were found in practically all states of the Union it was not necessary that the bequest be used in Ohio. The act, however, expressly stated that the exemptions were to be "to or for the use of any institutions in said state for purposes of purely public charity, or other exclusively public purposes."

The court granted that the organizations were for charitable purposes and were not for profit. However, in an examination of the decisions of the highest courts in other states it was found that a distinction was made between domestic and foreign corporations, notwithstanding the fact that, in many cases, these corporations confined their operations to the state in which they were located but not incorporated. Both the Illinois(1) and New York(2)

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(1) People v. The Seaman's Friend Society, 87 Ill.246. This corporation was incorporated under the laws of Ohio but was carrying on relief work in the city of Chicago. The Illinois Court held that its premises were taxable. It was not an inheritance tax case, but Justice Price held that the same rules would obtain.

(2) Matter of Estate of Prime, 136 N.Y. 347. That part of the decision referred to stated that "It is the policy of society to encourage benevolence and charity. But it is not the proper function of a state to go outside its own limits and devote its resourses to support the cause of religion, education or missions for the benefit of manking at large." Fortunately, New York has had a change of heart since this case was brought before the court. See Article IX, chap. 62, Section 221, Laws of New York, 1909.

Courts had had such cases before them and had delivered opinions which were adverse to the organizations seeking exemption. The main point brought out in each of these states was that foreign corporations were permitted to carry on their work only because of interstate comity and that the various state legislatures might impose any conditions which they saw fit and that it was not necessary to relieve them from taxation even though they might be organized solely for charitable purposes. The Ohio court, by following the same process of reasoning, held that bequests to foreign corporations of a charitable character were subject to the tax.

It was also contended that the Fourteenth Amendment to the Constitution of the United States and the second section of the Bill of Rights of the Ohio Constitution were applicable since corporations are citizens. The court declared that corporations were not citizens within the meaning of these sections of the two constitutions and concluded that foreign corporations had no right to complain since the imposition of this tax was one of the conditions to which they were subjected if they operated or continued to operate in this state.

III. THE PERIOD FROM 1900 TO 1904.

After the passage of the act of 1900 there was little agitation for new inheritance tax laws applying to direct heirs. Governor Nash in his message did not even mention the revenue derived from this source, let alone ask that the law be changed or extended. That remained for his successor, Governor Myron T. Herrick, at present Ambassador to France, who early in 1904 asked the General Assembly to extend the inheritance tax law. The State revenues were not keeping pace with expenditures and the newly-elected Governor saw the necessity of securing new sources of taxation and with that end in mind he sent a special message to the legislature stating:

> "I therefore urge upon you the importance of the enactment of a direct inheritance tax law. Such a law will, it is estimated, result in an annual revenue to the state of from four hundred thousand dollars to five hundred thousand dollars. This, in my opinion, is a just source of revenue, and one that has been adopted with good results in many states."(1)

IV DIRECT INHERITANCE TAX LAW OF 1904.

As a result of the Governor's message, House Bill, No. 584, was passed just five days later, April 25, 1904,

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(1) Special Message from Myron T. Herrick, Governor, to the 76th General Assembly, April 20,1904. In Senate Journal, Volume 96, 1904, Appendix IV, p. 54.

the House voting sixty-six for the bill and twenty-three against(1) while in the Senate the vote stood twenty-two yeas and seven nays(2). The act was sent to the Governor the same day and with his signature it became law on April 25, 1904(3).

The new statute was composed of fourteen sections and as is usually the case the first one contained the important provisions of the act.

It differed considerably from the acts of 1893, 1894 and 1900. In the first place, it applied to direct heirs and thus was similar to the direct inheritance tax law of 1894, in fact, it was applicable to the same heirs. The unconstitutional statute had stated:

> "That all property within the jurisdiction of this state, and any interest therein, * * * shall be liable to a tax as follows," etc.(4)

As has been pointed out the court interpreted this to mean "the right to succeed to property"(5), but it might easily have held it to be a tax on property if the act had been strictly construed. The draftsman of the new act avoided

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(1) House Journal, 1904, p. 920
(2) Senate Journal, Volume 96, 1904, p. 842
(3) 97 Ohio Laws 398.
(4) 91 Ohio Laws 166
(5) State of Ohio, ex rel. v. Ferris, 53 Ohio State 314.

this feature by phrasing it so that it read:

> "The right to succeed to or inherit property within the jurisdiction of this state, and any interest thereon, * * * shall be taxed as follows, to-wit: Upon the value of the property exceeding three thousand dollars, succeeded to or inherited by any person, two per centum on such excess"(1)

This act, then, made the exemption three thousand dollars and the rate two per cent. If the statute was brought before the Supreme Court this body would find it difficult to hold the law unconstitutional since all the defects of the earlier law had been corrected. The rate was apparently proportional instead of being graduated and, at any rate, followed the uniform rule and the exemption applied to the taxable estate as well as to estates of an amount less than three thousand dollars in value. There was left an opportunity for the enemies of the act and that was to be found in the decision of the Court in regard to the Collateral Inheritance law of 1894 when it implied that the exemption could not be more than two hundred dollars which was granted by the Constitution in the case of personalty (2).

The act was broad enough to include bequests made by the decedent, inheritances passing by the intestate laws

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(1) 97 Ohio Laws 398, Section 1.
(2) Haggerty, Judge, v. State of Ohio, ex rel. 55 Ohio State 625.

of the state, annuities, or gifts or sales made in contemplation of death. In fact, it was one of the most carefully phrased statutes to be found in existence at that time.

With the exception of two sections, the rest of the act was practically the same as the former acts. These exceptions were in regard to the recipient of the revenue and the costs of collection(1). All revenue was to be paid directly into the state treasury and the state was to bear all expenses. The collateral inheritance tax law was not amended to conform to this wise provision.

V. - CONSTITUTIONALITY OF THE LAW OF 1904.

As might be expected the new law soon came before the Supreme Court (2). Much of the ground had already been covered in testing the constitutionality of the laws of 1894.

Justice Spear, who delivered the opinion of the Court, reiterated that inheritance taxes were excise taxes; that the constitution granted power to the legislature to enact such laws; that the right of inheritance is not guaranteed by the constitution; and finally quoted the Federal Supreme Court to substantiate these conclusions

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(1) 97 Ohio Laws, 398, sections 2 and 12.
(2) The State, ex rel. v. Guilbert, Auditor of State, 70 Ohio State 229.

which had been very liberal in its interpretation of such laws(1). It must be admitted that the former Courts did not have the advantage of being able to quote from the highest judicial tribunal in this great country.

Two arguments were left to those who opposed the act-- that related to the question of exemptions. First, the opponents contended that the inheritance of estates having a value less than three thousand dollars was exempt, while an inheritance having a value grater than that amount was taxable and hence there was a lack of uniformity and equality demanded by the constitution. Justice Spear gave two answers to this objection:

> "The person who inherits six thousand dollars has three thousand dollars exempt; the person who inherits three thousand dollars has three thousand dollars exempt. They are on a perfect equality in that regard. The same reasoning applies where it happens that the smaller inheritance falls below three thousand dollars. As well might it be urged

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(1) Magoun v. Ill. Trust and Savings Bank, 170 U.S.283, 1898. The quotation which Judge Spear gave was as follows:
"1. An inheritance tax is not one on property, but one on the succession.
2. The right to take property by devise or descent is a creature of the law, and not a natural right--a privilege, and therefore the authority which confers it may impose conditions upon it.
Upon these principles it is deduced that the states may tax the privilege, discriminate between relatives, and between these and strangers, and grant exemptions; and are not precluded from this power by the provisions of the respective state constitutions requiring uniformity and equality."

> that the law which exempts from execution homesteads of the heads of families of one thousand dollars in value is invalid on the ground of inequality of privilege because one debtor's homestead may not reach one thousand dollars while that of another may. It is to be borne in mind that the act does not create a classification of persons for the purpose of imposing a tax on that class. It is not a tax on persons at all. If it is felt more by some than by others, this is owing merely to the fact of the different circumstances which surround the different persons. No person, nor no set of persons, is selected arbitrarily or otherwise for the imposition of burdens or for relieving of burdens"(1).

In the second place, the Court, in its decision in the Hagerty case had attempted, for some unknown reason, to bring into the opinion that clause of the constitution which granted an exemption of two hundred dollars personalty. Now came an opportunity for those who opposed the bill to make a defense out of this. However, Justice Spear was more consistent than the former Justice and pointed out that an inheritance tax is an excise tax and, therefore, that the section of the Constitution which applied to the taxation of property had nothing whatever to do with the present case.

Taken as a whole the decision in this case is exceptionally well written and the conclusions reached are briefly summarized in the following words (2).

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(1) State v. Guilbert, 70 Ohio State 250.
(2) Ibid, pp. 254-255.

"1. The power to impose taxes is a legislative power, and is vested in the general assembly by section I of Article II of the Constitution." (1)

"2. Section II of Article XII is a limitation upon the taxing power so far as the same applies to taxation of property, both as to the method of taxation and the character and amount of property which may be lawfully exempted from taxation and furnishes the governing principle for all laws authorizing taxes for general revenue upon property. But this section has no application to taxes known as excise taxes."

"3. The tax of April 25, 1904, entitled "An act to impose a tax upon the right to succeed to or inherit property," being a tax not upon property but upon the right to inherit or succeed to property, the power to enact the same is not affected by the limitations of Section II, of Article XII of the Constitution. Such right is derived from and regulated by municipal (2) law; it arises from the relation of the individual to the state, and is not an inherent or constitutional right. It follows that in assessing a tax upon such right or privilege, the state may lawfully measure or fix the amount of the tax by referring to the value of the property passing, and is not precluded from this power by the provision of the Constitution requiring uniformity and equality of taxation."

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(1) This section vests all legislative power in the General Assembly.

(2) "Used chiefly to designate *** the law prescribed or enforced by a state in the regulation of the rights, and in the government, of those subject to its jurisdiction. ***In its widest use municipal law includes all the law of the land governing the rights of the members of a state and those subject to its jurisdiction, including the written and unwritten law."--Webster's New International Dictionary.

"4. An excise tax which operates uniformly throughout the state, and bears equally upon all persons standing in the same category, does not deprive any of the equal protection of the laws."

"5. The act of April 25, 1904, is not in conflict with the constitution or bill of rights because of the exemption therein contained, and is a valid law."

Both Justice Price and Justice Davis wrote dissenting opinions. Justice Price confined more than half of his discussion (1) to the legal side of the question, which is of no particular importance as far as inheritance taxation is concerned. In addition to this he insisted that even if it is granted that such taxation is not on property but upon "the right to succeed to or inherit property", still that right is "a property right" and hence subject to the uniform rule clause of the state constitution. He believed that it was nothing more nor less than a hairsplitting distinction which the courts were making in order to declare the laws constitutional. For sake of argument it may be assumed that what he said was, and is, true but our legislators are our representatives and if such laws are enacted, then, it is evident that it is the will of the voters and the court should do anything

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(1) State ex rel. v. Guilbert, 70 Ohio State 256-259

in its power to agree with the will of the majority. What would be the history of the United States of America today if the Supreme Court had always construed the Federal Constitution literally? Certainly it would be very much different. This makes apparent one evil of a written constitution, but fortunately our Justices have been unusually broad minded men, liberal and progressive, yet, with a sufficient amount of conservatism to hold the populace in check.

Justice Davis added little, if anything, to what had been written by Justice Price (1), except to show that the tax is measured by the amount of property and concluded therefrom that it was a tax on property and hence, subject to the uniform rule. In criticism it may be stated that the estate transferred is only used to compute the amount of the tax and it does not necessarily follow that it is a tax upon the estate.

VI. MESSAGE OF GOVERNOR HERRICK.

A few days before the close of his administration Governor Herrick sent a message to the Seventy-seventh General Assembly which had just convened. (2)

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(1) State ex rel. v. Guilbert, 70 Ohio State 259-260
(2) Message of Myron T. Herrick, Governor of State of Ohio, to the Seventy-seventh General Assembly, January 1, 1906, pp. 7-8

It is one of the few Governor's messages, not only in Ohio but throughout the Union, which shows a real grasp upon the subject of inheritance taxation. It is unfortunate that the new legislature and the newly elected Governor, The Hon. John M. Pattison, did not heed his words, In it is to be found a summary of the legislation and of the court decisions on Ohio during the period 1893 to 1906.

It will be recalled that the direct inheritance tax law of 1904 had been enacted primarily because the Governor had recommended it. The text of this message is as follows:

> "In line with this policy of relieving real and personal property from the burdens of taxation for state purposes (1) have been the several inheritance tax laws passed by the legislatures of Ohio during the last ten years. The first of these laws was an act of 1894 putting a tax upon collateral inheritances. It has been sustained by the Supreme Court and is in force and effect today. Another passed by the same general assembly fixed a tax upon the right to direct inheritances, but a technical objection condemned the act when submitted to the test of constitutionality, and the state derived no revenue from it (2). These acts were passed

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(1) Governor Herrick desired to see a complete separation of State and Local Revenues. This conforms on the whole to the opinion of writers on Public Finance and Taxation generally -- L.E.S.

(2) The state did receive a little in the way of taxes but this had to be refunded -- L.E.S.

by the legislature without any division on party or political lines, and were supported almost unanimously in the general assembly. The new direct inheritance tax law which was passed at the last session of the legislature is in all respects like the earlier one, except that it avoids the constitutional objections, and has been sustained by the Supreme Court. It produced last year for the General Revenue Fund of the State, three hundred seventy-two thousand, twenty dollars and forty eight cents. It is one of the fairest laws of this character in force in any state in the Union. It entirely exempts small estates, thus relieving heirs of limited means, and puts the burden on those best able to bear it. The rate of two per cent is much smaller than is exacted in many states and is only half as large as that imposed in New York. Inheritance tax laws are now in force in twenty-one states. This form of taxation, although very old in other countries, has been of modern growth in America. It existed in but three states as late as twenty years ago. Ten years ago it had been adopted in nine states; twelve states have passed such acts within the last decade, and most of them within the last five or six years. In almost every instance where such acts have been repealed, or declared unconstitutional, they have been reenacted later in some modified form. Their general purpose is to secure some fair and reasonable toll for the support of the government from those who inherit unearned or accumulated wealth, and so far as this purpose is accomplished, such laws are in harmony with modern thought on the subject of taxation and will grow in favor as the principle they express is understood."

It is evident that the Governor held no hallucinations in regard to this form of taxation. He did not support it as a method of collecting taxes which had been evaded; nor a means of diffusing

wealth; nor as a fee for services connected with the settlement of estates; but simply as a revenue measure, which was not burdensome to those who had received a sudden accretion to their wealth or income.

CHAPTER V

LEGISLATION AND DEVELOPMENT DURING THE PERIOD 1906-1919.

I- REPEAL OF THE DIRECT INHERITANCE TAX LAW OF 1904

One week after Governor Herrick had sent his final message to the general assembly John M. Pattison delivered his inaugural address as the newly-elected Governor of Ohio.

During the state political campaign in 1905, the question of the taxation of direct inheritances had been made an issue, the Democratic candidate for governor had opposed it and as he was elected the conclusion was drawn that the voters of the state desired a repeal of this statute. It is probable that the opposition was more apparent than real (1). Morever, Governor Pattison was likely elected because he was an ardent advocate of prohibition and "blue-sky" laws in general.

Hon. Wade H. Ellis, Attorney-General during the Pattison-Harris administration, believed that the tax was unpopular because, first, it imposed new burdens on real estate which was bearing more than its just share; and, second, it was used by the tax

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(1) West, Max, the Inheritance Tax, 2d Edition, 1908, p. 136, in Columbia University Studies.

inquisitors and other local officers to "oppress the helpless" in the case of personalty (1). The Attorney-General concluded that

> "the first of these objections is fundamental, and will only disappear when the evil to which it calls attention is removed from the tax system of the state. The second was largely disposed of when the Supreme Court disposed of the tax inquisitor, and may be further remedied by appropriate legislation protecting small estates from needless inventions."

If Mr. Ellis had kept in mind the fact that the tax which he mentioned was not tax on property but an excise tax, he probably would not have made the statement so absolute. It is true that many did hold that it was a tax on property, but that is no reason for a writer on the subject of taxation to treat it as such. In addition, if a tax has been evaded during the life of a decedent the poor are not oppressed if the state takes what is rightfully its own when his estate is settled. However, this is again the old back-tax argument and it is difficult to support it as a reason for the taxation of inheritances.

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(1) Ellis, Wade H., Taxation in Ohio, 1906, pp.20-21.

Nevertheless, in his inaugural address, Governor Pattison said (1):

> "I do not hesitate to say that I believe it is the wish of the great majority of the people of the state that the law enacted at the last session, known as the Inheritance Tax law, should be repealed. If the sum of money obtained from this source is needed by the state, it should be collected in some other manner."

Governor Pattison was ill when he assumed his duties as the executive head of the state and lived only a short time after his incumbency, but the legislature carried out his platform promises and accordingly Senate Bill, No. 3, was passed on April 2, 1906, and became law on April 16, 1906, without the approval of the Governor (2).

This repealing act contained a curious provision which made "estates in which the inventory has already been filed by the date of the passage of this act" subject to the tax. Certainly this was a penalty which a few inheritors had to pay for being so prompt in filing inventories and settling up estates.

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(1) Inaugural Address of Hon. John M. Pattison, Governor of Ohio, January 8, 1906, pp. 13-14.

(2) 98 Ohio Laws 229.

However, this clause brought the repealing act into court (1) on an error to the Circuit Court of Hamilton County. The executors and administrators had filed an inventory of a decedent on November 7, 1905, but the tax had not been paid when the new statute went into effect.

Two contentions were brought forth in the case: first, that the "exception" was invalid and, hence, the right to tax expired with the repeal; and, second, that the whole act was unconstitutional and, therefore, the direct inheritance tax act of 1904 was still in effect. Justice Summers, who delivered the opinion of the court, supported the first contention and held that the remainder of the act was constitutional, even though the "exception" was invalid. As a result the law of 1904 came to its end on April 16, 1906.

II. - RECOMMENDATION OF THE STATE AUDITOR.

Following 1906, there was considerable agitation in Ohio for prohibition of the liquor traffic and as a result a local option law was passed which permitted county home rule in regard to this question.

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(1) Friend vs. Levy, 76 Ohio State 26, Decided February 26, 1907.

The smaller rural counties voted in many cases to close the saloons within their confines. The state had been receiving considerable revenue from the Dow tax on saloons and now this source was gradually but surely being removed. The state auditor found it necessary to look for new sources of revenue and most of these are to be found in his report for 1908. He made one recommendation in regard to inheritance taxes.

> "The reenactment of the direct inheritance tax law with an exemption of tenthousand dollars for each legatee is earnestly recommended."
>
> The operation of the county local option will curtail the revenue somewhat, but with the reenactment of the direct inheritance tax law, the revenues would be ample to provide appropriations for all legitimate needs of the state".(1)

III. - THE CONSTITUTIONAL CONVENTION OF 1912.

During the years 1908 to 1912 there seems to have been no effort made to extend the collateral inheritance tax law by a reenactment, in some form or another, of the direct inheritance tax act of 1904.

In 1910 the question of holding a constitutional convention was submitted to the voters at the general election held in November. The following

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(1) Ohio Auditor of State's Report, 1908, P. 8.

general assembly passed a bill providing for the election ofdelegates to such a convention. The delegates were chosen on November 7, 1911, and on January 3, 1912, they met and organized.

No attempt was made on the part of the convention to re-write entirely the Constitution of 1851, but forty-one amendments were agreed upon by delegates and submitted to the electorate on September 3, 1912.

Only one amendment, Number 32, affects the question of taxation directly. Article XII, under the Constitution of 1851 with amendments, was composed of six sections. The amendment submitted in 1912 revised sections one, two and six and added sections seven, eight, nine, ten and eleven. The amendment carried by a majority of 19,175 -- the total vote cast being 269,039 for and 249,864 against the proposal (1).

Although the direct inheritance tax law of 1904 had been held constitutional, still there

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(1) Constitution of Ohio, 1912. Published by Charles H. Graves, Sec'y of State. See especially pp. 24; 53-54; and 82. Also "Constitution of the U.S. and Constitutions of Ohio, Notes on Constitutional Conventions of Ohio" published for the Constitutional Convention of 1912 by C.B. Galbreath, Secretary, pp. 177-182.

was no reason to believe that the progressive rate principle could be applied in Ohio. The law of 1894 had been declared invalid partially because of the graduated rate and the act as passed in 1904 had made no attempt to use this type of taxation.

To make graduation and exemption possible in the case of inheritance and income taxation the delegates added three new sections to the Constitution. Number seven applies to inheritance taxes and states that "Laws may be passed providing for the taxation of the right to receive or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation."

The new section, as adopted, makes it constitutional to graduate inheritance taxes both as to the amount inherited and to the degree of kinship. However, there seems to be one fault with the amendment as it now stands. What is the meaning of the clause

"a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation?" Everything depends on the interpretation of the word "estate." Does "estate" mean the whole amount of property left by the decedent or does it mean the share falling to each beneficiary? If the latter, it is an ambiguous use of the term and certainly should be reserved to the former case. Our Federal Estate Tax law would be entirely changed if the latter interpretation were used. If, however, the former interpretation is the correct one, then the exemptions in connection with any one estate are limited to a total of twenty thousand dollars. This is exactly what it means if we follow the Proceedings and Debates of the Convention. Mr. Colton, the author of the proposal, was questioned on this point and he emphatically declared that the exemption of twenty-thousand dollars applied to the total estate left by the decedent and not to the individual legatee or heir (1). What does this signify? Nothing more nor less than the fact that

(1) Ohio Constitutional Convention, 1912, Proceedings and Debates, Vol. II, P. 1506.

that the present inheritance tax law is unconstitutional. To make the case clearer, let us use an example. The present law grants an exemption of five thousand dollars to widows and minor children. Suppose a decedent leaves a wife and five children and by his will his wife is to take her dower right of one-third of his ninety thousad dollars estate,the remainder to be divided equally among the children. In this case, the total exemptions would be thirty thousand dollars and plainly this is unconstitutional, if the total exemption cannot exceed twenty-thousand dollars.

For some reason or another this point was not raised until the close of the year 1922 when a question arose as to the exemption of bequests to "public institutions of learning" without the state. (1). Justice Jones thought it necessary to construe that section of the constitution relating to inheritance taxation which had been added in 1912 and as the constitutionality of the present law depends on this decision, it is necessary to quote from the opinion at some length.

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(1),The President and Fellows of Harvard College et al. v. The State of Ohio, Number 16928. Decided December 29, 1922. The other questions in this case will be found in a discussion of the law of 1913. Infra, pp.

"The first question confronting this court, is whether Section seven of Article XII of the Constitution, as amended in 1912, confers upon the Legislature the right to tax, or to exempt from taxation, the estate of the decedent, or whether the power relates to exemptions laid upon estates received or succeeded to by the beneficiaries."

"At the outset it must be conceded that, if the exemption referred to in that section relates to the former, i.e., the decedent's estate, the present inheritance tax laws of the state, Sections 5331 to 5334, inclusive, of the General Code, are void, since they do not carve the exemptions from the decedent's estate, but from the amounts severally succeeded to by beneficiaries. Article XII, Section VII, reads as follows: 'Laws may be passed providing for taxation of the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of such estate not exceeding twenty thousand dollars may be exempt from such taxation.'"

"It will be observed that the words 'estate' and 'estates' are used three times in the section quoted. The question here is whether the use of the word, 'estate' used in the last clause, has the same meaning as 'estates' employed in the first clause of the section. *** If the word estate in the last clause has the same meaning as the same is used in the first clause of that section of the Constitution, undoubtedly discretionary power is given to the General Assembly to carve the exemption entirely from the amount received or 'succeeded to' by the beneficiaries." ****

"An examination of the first clause of Section VII discloses that the use of the word 'estates', undoubtedly comprehended such estates as might be received or suceeded to. Twice in the first clause this word was used in that sense. Having

thus employed the term as relating to the inheritance of estates succeeded to, a construction of the entire context of the section would seem to demand that the word 'estate' employed in the last clause was used in the same sense as the former. In Volume I, Section 400, Story on Constitution, the author discussing the various rules of interpretation, after quoting Mr. Blackstone upon that subject, says, that: 'If words happen to be dubious, their meaning may be established by the context, or by comparing them with other words and sentences in the same instrument.' Some stress is laid upon the fact that in the discussion of this phase of the quoted section, one Mr. Colton, a member of the Constitutional Convention, stated that in his opinion the exemption reached the decedent's estate and not the estate received by an heir. While the debates in the Constitutional Convention may assist the doubtful import of language used and in the removal of doubt therein, they sometimes prove to be unsafe guides in the interpretation of the instrument, as the latter should be construed accordingly to its import as it may be presumed to have been understood by the people who ratified it."

"The legislative branch of the government, as shown by the enactment of contemporaneous legislation, has construed it otherwise, that the exemption in question should be taken from the estate succeeded to by the beneficiary. It is true that this legislation has not been acquiesced in for a long period of time, yet for some ten years this inheritance tax exemption law has been in effective operation and estates administered accordingly. And since the validity of these inheritance tax exemption laws is attacked for unconstituionality we may be permitted to quote the language employed by Judge Ranney in Railroad Company v. Commissioners, Ohio State 82, and Bank v. Hines, 3 Ohio State 52, as follows: 'The presumption is always in favor of the validity of the law; and it is only when manifest assumption of authority and clear impracticability between the Constitution and the law appear, that the judicial power can refuse to execute it.

> Such interference can never be permitted in a doubtful case.' If the term 'estate' employed in the last clause of Section7, Article XII, is only ambiguous, when taken in connection with the context of said section, and in view of the fact that the subject matter under consideration was taxation and exemption of inheritances, or estates succeeded to, we employ such a construction as will hold the tax inhertance law valid and will give it effective and practical operation. In view of the fact that the number of direct and collateral heirs varies, it is comprehensible why the inheritance tax should be laid upon the size of the share received, rather than upon the property to be divided."

Section eight is confined solely to the income tax. Section nine affects both income and inheritance taxation and provides for the distribution of receipts from these sources. The text of the section is as follows:

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

As the amendment on taxation was threshed out in a committee on taxation, the debates of which are not available, there are no means by which one may determine the reason for this particular provision.

It is not mentioned in the debates on the floor of the convention. It does not conform to the ideal of a separation of state and local revenues(1) if used by both the state and local community in which it originates. There is one path out of the difficulty and that is to permit the local subdivision to take all of it but, owing to the fact that receipts from the inheritance tax fluctuate within wide limits even where they are collected by the state, it offers a precarious and undependable source of revenue to the small political unit such as the township, school district, or municipality (2). It would have been much better to have followed the advice of Governor Herrick in his message to the Seventy-seventh General Assembly (3) and the provisions of the direct inheritance tax act of 1904 (4).

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(1) See especially Seligman, Edwin R.A., Essays in Taxation, Ninth Edition, 1921, Chapter XI.
(2) This has been discussed in Chapter III, p.32 supra.
(3) Message of Myron T.Herrick, Governor of State of Ohio, to the Seventy-seventh General Assembly, January 1, 1906, pp.7-8 quoted supra, p. 76.
(4) 97 Ohio Laws 398, sections I and XII.

IV. THE COLLATERAL INHERITANCE TAX AMENDMENT OF 1913

In 1913, James M. Cox became Governor of Ohio. A few months previous to his inauguration the voters of the state had ratified several amendments to the Constitution and this meant a great deal of work both for the new Governor and for the general assembly in order that old statutes be changed to be in accord with these amendments.

In his inaugural address and first message Governor Cox made clear the necessity for these changes and in several instances recommended entirely new legislation. The revenues of the state were showing a tendency to decline and the local option law was doing its share in this line. Accordingly, the Governor addressed the General Assembly on this point, saying in part (1):

> "Your body is given the right to provide legislation taxing incomes, inheritances and franchises. **** The underlying spirit of taxation contemplates an arrangement under which contribution for governmental support shall be proportioned as nearly as possible to the benefits received.***** With inheritances

(1) Inaugural Address and First Message of Hon. James M. Cox, Governor, January 14, 1913, pp. 33-34.

> "the constitution permits the exemption of estates up to twenty thousand dollars. This form of taxation is sanctioned by usage in a great many of the states. **** With the constitutional right to tax inheritances, incomes and franchises and the production of coal, oil, gas, and other minerals there is abundant facility to provide for the depletion in revenue occasioned by the revision of the liquor laws and to take care of any other emergency which might arise."

Governor Cox was either inconsistent or showed a change in attitude toward graduation of rates between 1913 and 1919 when the present statute was enacted. In the message above he advised proportional rates, but in 1919 he approved an act which imposed a progressive tax.

Accordingly, in 1913, the legislature amended the collateral inheritance tax law in order to make it conform to the new amendment to the Constitution. The distribution of receipts as between the state and the county was changed from seventy-five per cent and twenty-five per cent respectively to fifty per cent for the state and fifty per cent for the township,

city or village in which the tax originated (1). In addition to the change in the distribution of receipts, the exemption to collateral heirs was increased from two hundred dollars to five hundred dollars (2).

Following the enactment of the law of 1913, it was natural that the question should arise as to the place where the tax originated. Does it originate where the owner lives or does it originate where the property is located? In general, it is necessary to accept the legal answer to this question which is to the effect that personal property attends the domicile of the owner while realty is taxed wherever it is located.

In 1915, a resident of Logan County died, leaving a will which was admitted to probate in that county (3). He possessed real estate in an adjoining county, Hardin, which he directed his executors to sell in order to pay certain legacies, which, in turn, were subject to the collateral inheritance tax. The

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(1) 103 Ohio Laws 463, Section I.
(2) 103 Ohio Laws 463, section II.
(3) The Village of Belle Center, et al. v. The Board of Trustees of Roundhead Township, et al, 99 Ohio State p. 50.

executors complied with the terms of the will and sold the real estate. Out of the proceeds they paid the various legacies and also the tax, all of which was paid into the Logan County Treasury. The trustees of the townships in the adjoining township claimed fifty per cent of the revenue on the ground that the tax had originated, not at the home of the owner, but where the real estate was located. The probate court ordered the fifty per cent paid to the village where the owner made his will and where he died.

Justice Johnson, who delivered the opinion of the court, did not directly attack the issue but drew his conclusions by analogy. He argued that, if, in the case under consideration, the decedent had been a resident of another state and he bequeathed property, located in this state, to collateral kindred, that the legacies would have been taxable under the act of 1913 even though the former owner was never a resident of this state. Then, where would the fifty per cent of the tax go? To the city, village or township in the other state of which he was a resident? Certainly, not! Therefore, the learned Justice concludes that the same would

be true where a decedent lived in one county and held property in another; that is, the tax originates in that community where the property is located (1).

There seems to be one weakness or defect in the decision and though, as far as the Court is concerned, we may consider the matter closed, yet courts have been known to reverse their opinions. Did not the power of sale directed by the terms of the will convert the realty into personalty and, hence, make the tax originate at the domicile of the owner? On this point, Justice Johnson's opinion does not appear to be conclusive when he states:

> "Nor does the fact, that in this case the will provides that the executors shall sell the Hardin County land and pay the legacies out of the proceeds, change the locality in which the inheritance tax originated. Conceding the lands directed by will to be sold and converted into money are treated in equity as personal estate, still the land which is so treated in equity is the source, the origin, from which the tax comes" (2).

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(1) The Village of Belle Center, et al. v. The Board of Trustees of Roundhead Township, et al, 99 Ohio State, pp. 51-56.

(2) Ibid., p. 50

A similar and oft quoted case came before the New York State Court of Appeals. On the whole, the New York decision is almost as inconclusive as that of the Ohio Court although the former goes a little further than the latter. Justice Gray, in delivering the opinion of the court (1), held that,

> "Property, which was the decedent's at the time of his death is subjected to the payment of the tax" (2)

He added further:

> "Nor is the argument available that, by the power of sale conferred upon the executors, there was an equitable conversion worked by the lands in New Jersey, as of the time of the testator's death, and, hence, that the property sought to be reached by the tax, in the eye of the law, existed as cash in this state in the executor's hands, at the moment of the testator's death. There might be some doubt whether the main proposition in the argument is quite correct and whether the land did not vest in the residuary legatees, subject to the execution of the power of sale" (3)

Then according to this opinion the tax

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(1) Matter of Estate of Swift, 137 N.Y. 77. Decided January 24, 1893.
(2) Ibid.,p. 82.
(3) Ibid.,p. 86.

becomes due and payable at the death of the owner and, even though the property is later converted into cash, the situs of that property is in the particular township, village or city where located. The New York Court has held the same to be true of personalty when the owner has habitually kept it or invested in a place other than at his own domicile (1)

In 1917 the Attorney-General of Ohio ruled that where real estate was located in another state it was not subject to the inheritance law in effect at that time, and,even though the decedent,by his will, directed that the lands be sold in order to pay the legacies, this did not make such property subject to the tax. (2)

V. EXEMPTION OF BEQUESTS TO "PUBLIC INSTITUTIONS OF LEARNING.

In 1916 a resident of Hamilton County, Ohio,

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(1) Matter of Estate of Romaine, 127 N.Y. 80. Decided June 2, 1891.
(2) Opinions of the Attorney General (1917), Volume II, p. 1282.

died leaving a residuary legacy of some seventy-five thousand dollars or thereabouts to Harvard College which is located in Massachussetts. The probate court of Hamilton County insisted that the collateral inheritance tax law applied since Harvard College was located without the State of Ohio (1). It has been noted above (2) that this case was an important one in the history of inheritance taxation since it clarified the constitutional amendment of 1912.

The counsel had agreed that this institution was a public institution of learning. Hence, it was only necessary for the Court to construe that part of the collateral inheritance tax law which granted the exemption. Practically, the whole case rested on the proposition of certain marks of punctuation and, on the face of it, it seems strange that one comma more or less might mean, as in this instance, some thirty-seven hundred dollars either to Ohio or to Harvard College.

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(1) The President and Fellows of Harvard College et al. v. The State of Ohio, No. 16928. Decided December 29, 1922.
(2) Page forty-two.

The section under consideration read as follows:

> "The provisions of the next preceding section shall not apply to property, or interests in property, transmitted to the State of Ohio under the intestate laws of the state, or embraced in a bequest, devise, transfer or conveyance to, or for the use of the state of Ohio, or to or for the use of a municipal corporation or other political subdivision thereof for exclusively public purposes, or public institutions of learning, or to or for the use of an institution in this state for the purpose only of public charity or other exclusively public purposes. The property, or interests in property so transmitted or embraced in such devise, bequest, transfer or conveyance shall be exempt from all inheritance and other taxes while used exclusively for any such purposes" (1).

Justice Johnson held that the Legislature had the right to exempt "public institutions of learning" and, also, that the text of the act both by "grammatical construction, by punctuation and by juxtaposition" did not confine its operations solely to such institutions as are located within the state.

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(1) 94 Ohio Laws 101, Section I.
(2) Annual Report of the Auditor of State, A.V. Donahey, 1918.

VI. RECOMMENDATIONS OF STATE AUDITOR DONAHEY.

In 1913 and for eight consecutive years, the present governor of Ohio was auditor of state. During this period, he attempted to keep down the tax burden on the people in so far as the State was concerned. He advocated in various reports certain policies which he believed would accomplish this end. In one of his reports (1) he devoted considerable space to the question of taxation. This was following the entry of the United States into the Great War and with rising prices and increasing activity on the part of the commonwealth it was necessary to secure larger revenue. Moreover, the national prohibition amendment to the Federal Constitution seemed likely to be ratified by the necessary states and thus cut off another source of revenue (2). Two methods were open to increase receipts: first, increase direct taxes; and, second, find new sources of revenue. The auditor believed the latter method to be the better of the two and advised the enactment of laws taxing incomes and inheritances on the ground that they were "the

(1) Annual Report ofthe Auditor of State, A.V.Donahey, 1918.
(2) Ibid. p.11.

most just, equitable and wisest methods oftaxation from an economic standpoint" (1).

However, one difficulty was met in these forms of taxation. Both of them were being used by the national government in order to meet its ever increasing expenditures, especially since 1914. The income tax had never been used in Ohio as it had been adopted by the Federal Government as early as 1913. The Federal government had also used the inheritance tax on several different occasions, but only for short periods of time during some emergency. Many authorities on Public Finance and Taxation believed that the present federal estate tax would be repealed as soon as the country came back to "normalcy." In fact, many believed that this source of revenue should be left solely to the states since they possess all the administrative machinery (2). On the other hand, Ohio had made the taxation of inheritances a permanent part of her fiscal policy since 1894 and there was no good reason why she should not continue to do so.

Auditor Donahey secured data and laws from other states taxing inheritances and also secured information from the eighty-eight probate courts in this state as to

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(1) Annual Report of the Auditor of State, A.V.Donahey, 1918, p.10
(2) Dr. Seligman argues that this tax should be administered by the Federal Government on the "Principle of Efficiency and Suitability", but it should be left to the states on the "Principle of Adequacy." - Essays in Taxation, 9th ed.,1921, pp.382,386.

SCHEDULE OF RATES AND EXEMPTIONS(1)

	Exemption	First $25,000 less exemption	Second $25,000	On Excess of $50,000 to $100,000	On excess of $100,000 to $500,000	On excess of $500,000 to $1,000,000	In excess of $1,000,000
Wife Husband Lineal Issue Lineal Ancestor Acknowledged or adopted Child Lineal Issue of Same	$10,000 $10,000 5,000 5,000 5,000 5,000	1%	2%	3%	4%	5%	10%
Brother Sister Descendant of Same Son-in law Daughter-in-law	$2,500 2,500 2,500 2 500 2,500	2%	4%	6%	8%	10%	15%
Uncle Aunt Descendant	$ 1,000 $ 1,000 $ 1,000	3%	6%	9%	12%	15%	20%
Great Uncle Great Aunt Descendant of Same	$ 300 300 300	4%	8%	12%	16%	20%	25%
Other degree of collateral consanguinity, stranger in blood, body politic or corporate	$ 100	5%	10%	15%	20%	25%	30%

If paid within one year from the date of death of the decedent, a discount of 5% should be allowed.

If the tax is not paid within eighteen months from the date of death, interest at the rate of 6% to the date of payment should be added to the tax, (unless delay was due to litigation or other unavoidable cause, then the rate should be 4% until the cause is removed).

Exemption applies to each individual share and must be taken out of the first $25,000.

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(1) Annual Report of the Auditor of State, A.V.Donahey 1918, p. 11.

the amount of realty and personalty inherited or succeeded to each year. This he found to be approximately seventy-five million dollars (1). From the information obtained from other states, a schedule of rates and exemptions was prepared for the classes of heirs to whom inheritances might fall and this was turned over to the general assembly. The rates ranged from one per cent for direct heirs to thirty per cent for very distant relatives, strangers and corporations. The following schedule is an exact reproduction of that recommended by the Auditor.

(See Schedule on opposite page.)

There is one feature of this recommendation which is especially worthy of attention. The exemptions were to betaken out of the first twenty-five thousand dollars. The present Ohio and New York laws as they are actually administered make the first twenty-five thousand dollars, that is, the first bracket, come over and above the exemption. For example, assume that a direct heir, whose exemption is five thousand dollars, receives a legacy, and that the rates imposed are one per cent on the first twenty-five thousand dollars, and two per cent on the next fifty thousand dollars. What is his total tax? Under the present New York and Ohio methods, five thousand dollars would be exempt; the next twenty@five thous-

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(1) Annual Report of the Auditor of State, A.V.Donahey, 1918, p.10.

and dollars is taxed at 1% which gives two hundred fifty dollars; and the remainder of the fifty thousand dollars, or twenty thousand dollars, is taxed at the rate of 2%, giving four hundred dollars and a final total of six hundred fifty dollars. By following Auditor Donahey's recommendation - assuming thesame conditions - five thousand dollars is exempt; twenty-five thousand dollars less the exemption, or twenty thousand dollars, is taxed at the rate of 1%, which makes a tax of two hundred; and the remainder - fifty thousand dollars less twenty-five thousand dollars, or twenty-five thousand dollars - is taxed at the rate of 2%, giving two hundred fifty dollars and the total sum would be seven hundred dollars. By following the Auditor's recommendation there is a gain by the state of fifty dollars in this case. In other words, the exemption under the New York and Ohio laws, as now administered, are not taken out of the lower brackets, but out of the highest bracket in which the last amount falls (1).

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(1) A simple formula may be used to determine the amount of revenue lost by the state and gained by the beneficiary where the exemption is taken out of the upper brackets, provided the exemption is less than the amount of the first bracket.
Let A = the amount lost by the state or gained by the beneficiary;
E = the exemption; R = the highest rate which is applicable to the given bequest;
R_1 = the lowest rate.
Then $A = E(R - R_1)$.

To return to Auditor Donahey's Report, it was estimated that a statute carrying out the schedule recommended would yield a revenue of eight million dollars annually (1). In order to secure proper enforcement of the proposed act and to obtain information to be used by appraisers and others who might be interested in the tax returns, a recommendation was made to the effect that "all deeds conveying real estate shall show the actual consideration involved in the transaction" (2). In and of itself this recommendation is justifiable since most real estate sales of today are for "One dollar and other considerations" which entirely conceals the selling price, thus making it difficult for appraisers to determine the market value of land. However, as long as Ohio retains the general property tax with its unequal burdens on taxpayers as a means of raising revenue for the state, it is probable that any attempt to increase valuations of land will be vigorously opposed. Perhaps, if a law were passed calling for a reappraisal, which would probably increase the burden of a certain class of taxpayers, the citizens of this state might look more favorably upon other methods of raising revenue.

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(1) Annual Report of the Auditor of State, A.V.Donahey, 1918, p.11.
(2) Ibid.

CHAPTER VI.

LEGISLATION AND DEVELOPMENT OF INHERITANCE TAXATION FROM 1919 TO THE PRESENT (1923)

Notwithstanding the fact that the constitutional amendment, which was adopted in 1912, permitted the application of graduation to inheritance both as to the amount succeeded to or received and as to the relationship of the heir to the decedent, nothing was done in the way of enacting such laws until 1919.

I - THE LAWS OF 1919.

In 1919 the national prohibition amendment was tarified and became a part of the Federal Constitution. As a result, Ohio immediately lost one great source of revenue and it was generally believed that new sources must be sought immediately.

When the general assembly convened in 1919, it at once provided for a joint special committee on taxation. This committee was to study the methods used in other states and from this study it was to devise some means for raising revenue to replace that lost from the liquor traffic(1). This committee, with the aid of Professor Harley L.Lutz of Oberlin College, drafted an inheritance tax law to supplant the old collateral inheritance tax law. The bill submitted

(1) Mercer, James K., Ohio Legislative History,1919-1920, pp. 96-97.

was framed on the model proposed by the National Tax Association(1) and was very similar to the present New York law though not identical(2).

As a result of this recommendation the General Assembly passed Senate Bill No. 175 on May 8, 1919, and the Governor approved it on June 5, 1919(3).

II - PROVISIONS OF THE ACT OF 1919.

This act was composed of thirty-seven sections, thirty-two of them directly affecting inheritance taxation and the other five providing for various compensations to county officers and semi-annual statements to the state auditor.

In order to make the act clear, the words "estate", "property," "succession," "within the state," "decedent," and "in contemplation of death" were defined(4). The term "succession" was defined as "the passing of property in possession or enjoyment, present or future." This definition conforms to the best usage of that term where applied to the taxation of inheritances.

There are seven cases of succession in which an inheritance tax is imposed(5)

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(1) Mercer, James K., Ohio Legislative History, 1919-1920, pp 130-131, Volume III
(2) Report of the Special Joint Taxation Committee of the 83d Ohio General Assembly, Dec. 11, 1919, p. 59.
(3) 108 Ohio Laws 561
(4) Ohio General Code, Sec. 5331
(5) Ibid, Sec. 5332.

1. When property of a decedent who was a resident of Ohio, passes by will or intestacy.

2. When the decedent was not a resident of Ohio and the property passes by will or intestacy under the laws of another state or country, but the property is located in Ohio.

3. When the transfer is during life but (a) in contemplation of death, or (b) intended to take effect after death.

4. When a person or corporation exercises the power of appointment derived from any disposition of property. This is made equivalent to a succession and the same rights and obligations are imposed in this case as in any of the three above.

5. In the case of joint estates the whole property is taxable as though all of it belonged to the decedent. Ohio does not provide for "joint" estates but it was necessary to cover this since other states so recognize them and these "joint" estates might hold property in Ohio which would be taxable(1).

6. When a decedent bequeaths property to his executors or trustees, or makes them residuary legatees, any excess over a reasonable compensation is taxable. The probate court has jurisdiction to determine what is reasonable

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(1) Cassidy, John R., Ohio Law of Inheritance Taxation, 1923, p. 131

compensation. This feature has been found in all Ohio inheritance tax laws beginning with the first collateral law of 1893 (1).

7. When any increases in property take place but determinable by death, the increase is subject to the tax.

(In addition, the law distinctly states the method for determining the tax;)

> "Such tax shall be upon the excess of the actual market value of such property over and above the exemptions made (2), and at the rates prescribed in this subdivision of this chapter."(3)

This means that the exemptions are not deducted from the first bracket, but that the first bracket operates over and above the exemption(4)

Section 5331-7, just quoted, is certainly inconsistent with Section 5335-1 subsection (a) which states that

> "On successions passing to any person mentioned in the first and second sub-paragrpahs of the preceding section:
> (a) One per centum on the excess of the value of the property over the exemptions up to and including the sum of twenty five thousand dollars."

This is just as clear that the exemption is to be carved out of the first bracket as is section 5331-7 to the effect that the first bracket operates over and above the exemption. However, the state tax commission follows the latter practice.)

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(1) 90 Ohio Laws 14, section 3.
(2) Underscored words are mine.-- L.E.S.
(3) Ohio General Code, section 5331, paragraph 7.
(4) See page 104 for a discussion of this point.

(In order to promote uniformity in state laws and interstate comity(1), the new law was drafted in such a manner that, if a decedent paid an inheritance tax in another state or country on property subject to the tax in Ohio, no tax would be due in this state if the amount paid elsewhere is more than it would be here, provided that the beneficiary guarantees or secures the payment of the tax to the other state or country. If the tax in the foreign jurisdiction should happen to be less than it would be in Ohio the beneficiary must not only guarantee the foreign payment but he must also pay the difference between the amount collectible in the foreign jurisdiction and that collectible under the Ohio law to the state of Ohio(2). This does not secure all that a disinterested individual might have hoped in the way of interstate comity. It subjects the succession to property of a non-resident decedent to taxation in two jurisdictions and it benefits the beneficiary of an Ohio decedent since his succession is taxed only in the state of Ohio.

All bequests to or for theuse of the State of Ohio, or to municipal corporations or other political subdivisions for public purposes, as well as to public institutions of learning and for charitable purposes are exempt provided,

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(1) Report of the Special Joint Taxation Committee of the 83d Ohio General Assembly, December 11,1919, page 58.
(2) Ohio General Code, section 5333

however, that these are "carried on in whole or in substantial part" in Ohio (1). This is much clearer than the old collateral inheritance tax act of 1900 which was so ambiguous as to make it necessary for the Supreme Court to interpret the provision (2). There seems to be considerable difference of opinion as to what extent one state should recognize the exemption of bequests to educational, charitable, religious and public institutions of another state. From the point of view of self-interest much is to be said in favor of the Ohio method as it existed under the 1919 law. Even in New York, where the present law permits the exemption of such institutions no matter where they are located, the Court of Appeals has taken the same attitude(3). On the other hand, the state exists to foster the welfare of society, but, if the state sets an example of selfishness how can the individual be expected to practice generosity and unselfishness? True, the state may lose a few dollars, but that could be easily made up if the exemptions were taken out of the first bracket, as suggested above(4). It may also be added that many of our residents make use of such institutions located in other states. Take, for example, public institutions of learning located outside of Ohio. Ohio may gain from such institutions in two ways; first,

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(1) Ohio General Code, section 5334
(2) 94 Ohio Laws 101
(3) Matter of Estate of Prime, 136 N.Y.347. Quoted above in connection with the case of Humphreys v. State, 70 Ohio State 67.
(4) Supra, p. 105

many of her citizens may receive their education in those institutions although they are in no way supported by this state; and, second, citizens of other states educated outside of Ohio may come to this state later in life, thus giving Ohio the benefit of their training, for which Ohio paid nothing. New York makes no provision as to whether these institutions are located within or without the state(1). The New York law offers the best model for those states who desire to be unselfish and magnanimous but to those who do not care to go to that length the Connecticut statute with its reciprocity feature offers a sort of a middle ground when it states that (2):

> "All property given, devised or bequeathed to any religious, educational, literary, charitable, missionary, benevolent, hospital or infirmary corporation incorporated under the laws of another state or territory of the United States, or of a foreign country, including corporations organized exclusively for Bible or tract purposes, and corporations organized for the enforcement of laws relating to children or animals, and all gifts, devises and bequests to a minicipal corporation in trust for a specific public puppose, shall be exempt from the tax prescribed by chapter 66 of the general statutes as amended, provided the laws of such states, territory or foreign country exempt from inheritance and transfer taxes, or do not impose such taxes upon, property given, devised or bequeathed by a resident thereof to any such corporation incorporated under the laws of this state."

Through the efforts of Dr. Henry F. Walradt, Professor of Public Finance and Taxation at Ohio State University,

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(1) Laws of N.Y., 1909, Chap. 62, Article 10, section 221.
(2) Connecticut, Public Acts of 1921, Chapter 283.

a bill was submitted and passed by the General Assembly during the last session carrying out, in part, the provisions of the Connecticut statute (1). The amended Ohio law (2) is not as broad as that of Connecticut since the former applies the reciprocaty feature only in the case of an "institution of leaning within any state of the United States which state does not impose an inheritance, estate or transfer tax on property given, devised or bequeathed by a resident thereof to an institution of learning within this state." It remains a question, however, as to the reason for omitting the word "public" in the clause quoted. This would make bequests to certain institutions of learning operated for profit exempt from the inheritance tax if in another state or to such an institution in this state if received from a resident of another state as Connecticut or New York. Then there is the question of uniformity and equality as between these institutions and that remains for our courts to determine.

As to the other exemptions the heirs are divided into three classes(3). The first class includes only the wife and minor child who are granted an exemption of five thousand dollars: parents, husband, adult child, adopted

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(1) Amended Senate Bill No. 55, Approved March 29, 1923.
(2) Amended Senate Bill No. 55
(3) Ohio General Code, section 5334.

SCHEDULE I

SCHEDULE OF RATES AND EXEMPTIONS UNDER THE OHIO LAW OF 1919.

Successors	Exemption.	On $25,000 or part thereof above exemption.	On next $50,000 or part thereof	On next $100,000 or part thereof.	On the balance.
1st CLASS Wife or minor child	$5,000	1%	2%	3%	4%
2d CLASS Parents, husband, adult child, adopted child, or person recognized as adopted child and made a legal heir under the provisions of this or any other state of country, or their lineal descendants.	$3,500	1%	2%	3%	4%
3d CLASS Brother, sister, nephew, niece, daughters-in-law, sons-in-law, or any child to whom the decedent for at least ten years before succession was mutually recognized as a child.	$ 500	5%	6%	7%	8%
4th CLASS To all other persons, corporations or institutions not included above.	0	7%	8%	9%	10%

child, or the lineal descendants of the children are given an exemption of three thousand five hundred dollars; and in the third class are to be found certain collateral kindred--brothers, sisters,nephews, nieces, daughters-in-law, sons-in-law and persons whom the decedent for ten years recognized as children--with an exemption of five hundred dollars. Although no fourth class is specifically mentioned, yet it is tacitly assumed in the following section which imposes the rates. No exemption is allowed to those successions which fall in the fourth class.

The rates follow the classes in the order named for successions, with the exception that successions falling to persons in the first two classes are combined and bear the same rates.

Schedule I best illustrates the classes of exemptions and the rates.

To illustrate the computation of the tax, let us assume that a decedent leaves an estate of $2,550,000 and by his will $1,000,000 is left to his wife; $800,000 to an adult child; $400,000 to his invalid sister, $250,000 to the XY church for its own use; and $100,000 to Columbia University. What is the total tax? The bequest to the wife

SCHEDULE II

SCHEDULE TO DETERMINE THE AMOUNT OF THE TAX ON AN ESTATE OF $2,550,000 AS ASSUMED ON OPPOSITE PAGE

Class	Amount Succeeded to	Exemption	On $25,000 or part thereof over Exemption.		On next $75,000 or part thereof		On next $100,000 or part thereof		On the Balance			Total Tax
			Rate per Cent	Amount of Tax.	Rate per Cent	Amount of tax.	Rate per cent	Amount of Tax	Amount of Balance	Rate per cent	Amount of Tax.	
I	$1,000,000	$5000	1	$ 250	2	$1500	3	$ 3000	$975,000	4	$ 31,800	$ 36,550
II	800,000	3500	1	250	2	1500	3	3000	796,500	4	31,860	36,610
III	400,000	500	5	1250	6	4500	7	7000	199,500	8	15,960	28,710
IV	250,000	0	7	1750	8	6000	9	9000	50,000	10	5,000	21,750
Total	$2,450,000*			$3500		$13500		$22000			$ 84,620	$123,620

* A bequest of $100,000 to Columbia University is exempt.

falls in the first class; to the adult child, in the second class; to the invalid sister, in the third class; to the XY church, in the fourth class, since the attorney general has ruled that a bequest to churches for general purposes is taxable owing to the fact that they are not institutions of public charity (1); and the bequest to Columbia University is exempt since New York exempts bequests to such institutions in Ohio, and the reciprocity feature now in force applies.

Put in the form of a schedule, it would appear as in Schedule II opposite.

All inheritance taxes become due and payable at the time of succession, but where the succession is contingent and not vested at the decedent's death, they become due and payable when actual possession takes place. The successors, executors and trustees are personally liable for all taxes with interest, and the administrators, executors and trustees must deduct the tax from the property to which a person succeeds or else collect it from that person and they cannot be compelled to deliver the property until such tax is paid. Moreover, the administrators of the

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(1) Opinions of the Attorney-General, 1920, Vol. I, p. 640.

decedent's estate are given the power to sell the property to pay the tax if that is necessary (1).

As in the old direct and collateral laws of 1894, a premium is given for the prompt payment of the tax. If it is paid within one year after it becomes due, a discount of one per cent for each full month prior to the end of the year is made. After the expiration of the year, interest at the rate of eight per cent per annum is charged until paid unless some unavoidable cause of delay has arisen and in that case the rate is five per cent per annum (2).

Ample provision is made for refunding the amount of any taxes overpaid and, also, for collecting additional taxes where deductions have been erroneously allowed. (3)

The probate court is given "jurisdiction to hear and determine all questions", which may arise, relating to the taxation of inheritances (4). The probate court directs the county auditor, who is the inheritance tax appraiser for his county, to determine the actual market value of the property of the decedent. The auditor notifies the interested parties concerning the appraisal and, in addition, he may "compel the attendance of witnesses and the production of books and papers," where that is necessary (5).

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(1) Ohio General Code, section 5336.
(2) Ibid., Section 5338.
(3) Ibid, sections 5339 and 5343.
(4) Ibid., section 5340.
(5) Ibid., section 5341.

The state tax commission or any interested party may file exceptions within sixty days, to the appraisement and determination of the taxes, but the grounds upon which it is done must be stated. By law the probate court must hold a hearing within ten days and it is given power to make any changes which "seem just and proper in the premises (1). If no exceptions are taken, the probate court certifies the report of appraisal and the amount of the tax to the county auditor, but if exceptions are taken, the report must be filed within five days after the probate judge finally determines the case. The county treasurer collects the tax (2). Therefore, the minimum period which must elapse, before the tax can be paid is sixty days and may be seventy-five days after the death of the decedent, thus making the maximum discount for payment not more than ten per cent.

In order to prevent evasion of the tax, corporations are prohibited from transferring shares of stock without the written permission of the State Tax Commission. The same provision applies to safe deposit companies, trust companies, banks and other institutions or persons who hold securities in their control. By an amendment added in 1920 (3), if the transfers are made on the part of the institutions mentioned without the knowledge of the death of the decedent, they are not held liable for the tax. The tax commission or the county auditor or their representatives are given power to

(1) Ohio General Code, section 5346.
(2) Ibid., section 5347.
(3) 108 Ohio Laws, 1192.

examine the securities. If the securities are transferred without the knowledge of the representatives of the state, the institution or person doing so is liable for the amount of the tax plus any interest (1). As early as 1917, the state tax commission had recommended that such a clause be added to the collateral inheritance tax law then in operation. This recommendation was made on the ground that a considerable amount of revenue might be gained from this source and that it discriminated against those Ohioans who succeeded to stocks, bonds and other securities of corporations located inother states where such transfers were taxed no matter where they were held. The commission advised the appointment of a state supervisory body to enforce, assess and collect the tax (2).

If the tax is not paid within eighteen months, the state auditor is directed to notify the county prosecuting attorney of the failure to pay the tax (3). The prosecuting attorney may represent the county auditor as inheritance tax appraiser whenever that is necessary and in case of litigation he is the legal representative of the state. However, the state tax commission may call on the state attorney-general if that is deemed expedient. (4)

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(1) Ohio General Code, section 5348-2
(2) Annual Report of the Ohio Tax Commission, 1917, pp.18-19.
(3) Ohio General Code, section 5348-3.
(4) Ibid., section 5348-4.

Provision is also made in thelaw for the appointment of deputies to assist the county auditor and the tax commission is empowered to designate examiners, accountants and any other of the commission's assistants to aid in the administration of the act (1). The tax commission is directed to see that all proceedings are carried through to the determination of the tax.

Originally the fees, provided for the services performed by the probate judge in connection with the inheritance tax, were to be paid out of the gross receipts of the tax (2) but the 1920 amendment changed this and, at present, they are taken out of the state's share of the receipts (3). Similar provisions were made for the county auditor and the county treasurer with the exception that, for these two offices, the compensation was graduated according to the amount collected during the calendar year (4). These provisions are very similar to the New York law in regard to the compensation of county treasurers. However, in New York the county treasurer receives no fee in those counties having salaried appraisers(5). It is very difficult to defend the fee system under any

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(1) Ohio General Code, sections 5348-5 and 5348-4.
(2) 108 Ohio Laws 561; Ohio General Code, section 5348-10.
(3) 108 Ohio Laws 1192.
(4) Ohio General Code, sections 2624-1 and 2685-1.
(5) Laws of New York, 1909, Chapter 62, Article 10, Section 237.

diruumstance. It often leads to political corruption in various forms. Moreover, the citizens of our country will seek these offices if they are on a salary basis since the prestige, which accompanies the office, is worth the low salary.

As directed in the amendment to the Constitution, which provides that at least fifty per cent of the receipts shall be returned to the locality in which they originate, the law of 1919 provided that the revenues should be divided on a fifty-fifty basis between the state and the "municipal corporation or township" in which these revenues originate but a qualification is added compelling these political subdivisions to credit one-half of their share to their sinking-fund, if any, and the other half to their general revenue fund (1). In 1920 the law was amended to make the state bear all costs of collection. This means that the state actually receives less than fifty per cent of the total revenue. A few words in criticism may be added at this point. Under the present Constitution it is impossible for the state to take more than one-half the receipts. A far better method would be to let the state take all and, as a consequence, it could either lower the direct state levy or, perhaps, give it up altogether. However, as the Constitution stands at present the state can take at least fifty per cent of the revenue and it should do this

(1) Ohio General Code, section 5348-11.

by all means since this may also lead to a lower state levy. This criticism applies equally well to the message of Governor Cox quoted a few paragraphs below.

At present Ohio is not in dire straits financially, and this has led some to insist that all the receipts from the inheritance tax be left to the smaller political units. In 1921 Governor Cox sent a message to the General Assembly suggesting that such a change be made (1):

> "Personally, I am convinced that taxes within the state some day will be derived exclusively from lands, incomes, inheritances and franchises. * * *"
>
> "Society is yearly demanding more and more from government and under the existing methods of taxation, the money cannot be raised without heavy imposition upon visible property, which may bring about a very sharp economic reaction. The returns from the inheritance are showing a considerable increase, the result largely of the administrative efficiency of the State Tax Commission. Since the financial condition of the state is thoroughly satisfactory, and that of local subdivisions quite the reverse, I think that we would be entirely safe in turning all revenue from this form of taxation over to the communities. Until the federal debt shows a considerable continuing decline, there is doubtless little hope of the repeal of the national assessment against inheritances. Except in the emergency of war, the state government only is justified in imposing this tax. It grows out of the theory that inasmuch as government conveys property from one generation to another, there should be some compensation for the service. Whatever is rendered, however, in this particular is by the state and county; there is no federal participation whatsoever in service."

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(1) Message of James M. Cox, Governor of Ohio, Jan. 3, 1921. Senate Journal, 1921, pp.881-882.

This message has been quoted at some length because it shows a good grasp, on the whole, of the theory of taxation. Yet we might quarrel just a little with certain statements and implications. If the inheritance is based on the cost of service why are such high rates imposed? If we make cost of service our criterion, then, a small fee is all that can be justified. This recognizes only "benefit" and that, in turn, could never permit graduation.

To return to the law of 1919, the act leaves no loophole as to where a tax on real estate originates, but expressly states that it has its origin where the realty is located (1). A little more difficulty might be expected as to the origin of the tax on personalty. In the case where the owner of the personal property was a resident of Ohio, the old legal fiction, that personalty follows the domicile of the owner, obtains. However, the law provides for taxing successions of intangible property of decedents who were non-residents and the following rules for the determination of the origin have been laid down: first, where the shares of stock transferred are issued by an Ohio corporation, the tax originates where the corporation has its principal place of business in this State; second, in the cases of bonds, notes, and other securities in control of corporations, institutions or persons, the

(1) Ohio General Code, section 5348-13; see also The Village of Belle Center, et al. v. The Board of Trustees of Roundhead Township, et al., 99 Ohio State 50, and supra, p.94.

tax originates where these institutions, persons, or corporations are located; and, third, where money is on deposit, the origin is at the place where the deposit is made (1).

The final section of the Act of 1919 provided that the proceedings for the assessment and collection of the tax under the old collateral inheritance tax law, which proceedings were in progress when the new act was passed, would in no way be affected (2). Consequently, the State is still receiving some little revenue from the collateral inheritance tax act of 1894 with its amendments (3).

An amendment was made in 1923 which affects the transfer of property in "contemplation of death," and deduction for taxes. The former is merely a device for reaching gifts inter vivos, and it attempts to define the period of time elapsing before death during which gifts are made, such gifts to be considered as having been made in contemplation of death. The time limit is two years before the decedent's death, but the tax may be avoided if the beneficiary is able to prove to the satisfaction of the State that such gift was not made in contemplation of death. However, the burden of proof is thrown on the beneficiary (4).

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(1) Ohio General Code, section 5348-14;
(2) 108 Ohio Laws 561, section 4.
(3) Annual Report of the Auditor of State, 1922, pp.273-275.
(4) Amended Senate Bill, No. 55, approved March 29, 1923.

Such a measure is to be highly commended and the Ohio provision is certainly less harsh than the Wisconsin provision which sets a time limit of six years (1).

If a person dies before tax-listing day in any year all past taxes due but unpaid are deductible in computing the inheritance tax. If he dies on or after tax-listing day all past taxes due and unpaid and those for the year in which death took place are deductible (2).

III. THE REPORT OF THE SPECIAL COMMITTEE ON TAXATION, 1919.

Owing to the need for additional revenue due to the prohibition to the Federal Constitution, the Eighty-third General Assembly appointed a special tax committee (3) to investigate the question of taxation. As has been mentioned this committee made a report most of which was written by Prof. Harley L. Lutz of Oberlin College.

As this committee drafted the law of 1919,

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(1) Wisconsin Statutes, Chapter 72, Section 72.01(3) as amended by Wisconsin Laws of 1913, chapter 643, section 1.
(2) Amended Senate Bill, No. 55, approved March 29, 1923.
(3) Senate Joint Resolution, No. 6, adopted January, 1919.

its report on the subject of inheritance is worth quoting even if it is somewhat lengthy. Moreoever, it gives a brief historical survey of this form of taxation in Ohio and states the reason for setting the rates as they are at present (1):

> "The committee's inheritance tax measure was enacted in the earlier session of the general assembly and the text of the law is not reprinted in this report. Inasmuch as there has been no suitable opportunity hitherto for the discussion of this bill, we include herewith an account of its more salient features."
>
> "The position of the inheritance tax in the modern taxation system is too well established today to require argument in its defense. Ohio's inheritance tax law has long been out of line with the best legislation on this subject, since it applied to collateral heirs only, its administrative provisions have been defective, and its yield, therefore, negligible. A progressive direct inheritance tax law would have been of doubtful constitutional validity after the case of State vs. Ferris (53 O.S. 314, 1895) until this doubt was removed by the adoption of Article XII, Section 8, in which the rule of progression was expressly sanctioned."
>
> "The immediate occasion which compelled resort to the direct inheritance was the

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(5) Report of the Special Joint Taxation Committee of the 83d Ohio General Assembly. December 11, 1919, pp. 57-59

prospect of losing the liquor revenues, a prospect which became a certainty as the national prohibition amendment was ratified. The joint special taxation committee proceeded to study with great care the inheritance tax laws of the various states and in the preparation of the bill which was enacted into law we sought to draft such a law as would reflect accurately Ohio's general position on the subject of inheritance taxation. We found that there was a wide variation in rates, estate groups and exemptions. We avoided the extreme radicalism of one section and the extreme conservatism of another, and sought to work out a safe middle ground that would somewhat correspond with our strategic position between the west and the east."

"In accord with universal modern usage we have made the rates on all classes of heirs progressive. Beyond reasonable exemptions to direct heirs, every inherited estate is an indication of suddenly enhanced ability to pay, and there is every reason for attempting to guage this increased ability to pay by a system of graduated rates. On the other hand it was our aim to keep the rate of progression fairly moderate in order to avoid discouragement to capital accumulation. In establishing the stages or progression we have kept in mind the needs of the state as well as the two considerations just mentioned. We have confidence that our rate schedules will receive general approval as a satisfactory achievement of our threefold purpose. In this connection the fact should be emphasized that only a small portion of the community's accumulated wealth becomes subject to an inheritance tax in any given year; and in order to avoidundue discrimination it becomes highly desirable that such rates as are established should remain fairly stable for a considerable period of years."

"The particular grouping of the beneficiaries which we have established is calculated to approximate with some fairness the variations in dependency upon the decedent, and so to assure a fairer recognition of ability to pay. Three classes are set up, distinguished by the degree of such dependency, and receiving different exemptions. The usual class of direct heirs is divided, the wife or a minor child being allowed $5,000 and all other so-called direct heirs receiving $3,500 exemption. Collateral heirs are allowed $500 exemption and unrelated persons and institutions are allowed no exemption. Three schedules of rates are provided, applying respectively to direct heirs, to collateral heirs, and to all other beneficiaries."

"In determining the conditions under which property passing by succession shall be subject to the inheritance tax, we have had in mind the desirability of promoting interstate comity and uniformity. The conditions which we have laid down correspond closely to the provisions of the model inheritance tax law which has been recommended by the National Tax Association. We have further sought to promote interstate comity and uniformity by permitting the deduction of taxes of like amount and character laid by any other state or country on the succession to property situated therein, provided a guarantee or security for the payment of these taxes be given. If the foreign taxes are less in amount than those that are hereby levied, such succession becomes taxable under this law to the extent of the difference between the taxes paid or guaranteed in the foreign jurisdiction and those which would be collectible under the Ohio law"

"It was felt to be very necessary to establish the best possible administrative conditions in order to secure the largest financial results, and to this end, the state tax commission was placed in general charge of the law. The county probate courts are given jurisdiction of all questions that would arise not only with respect to succession by death but also with respect to succession inter vivos, and the county auditors are made the appraisers of the property. The assessment of taxes is made by the probate courts, subject to the appeal of interested parties including the tax commission. As a means of securing a better listing of property for taxation during the life of the owner, as well as to promote effectiveness of the present law, section 5348-2 forbids the transfer of any stocks, or other securities, or the opening of any safety deposit boxes, unless notice is served at least ten days prior thereto to the tax commission and the county auditor. Representatives of either of these officials may personally examine such deposits, securities and other assets, at the time of delivery or otherwise."

"The constitutional requirement of distribution has been observed, but with the further requirement that one half of the amount assigned for the use of any municipal corporation or township shall be credited to the sinking fund of such district, if any, and the other half to the general fund. The fees for collection and the other expenses of administration are paid from the remaining half, the residue of which is turned into the general revenue of the state."

IV. DEDUCTION OF THE FEDERAL ESTATE TAX

On December 29, 1922, the question of the deduction of the Federal Estate Tax from the estate of a decedent before determining the amount of a succession falling to a residuary legatee(1).

The facts of the case were recited in the decision and were to the effect that a resident of Franklin County disposed of a large estate by will. In this testamentary document there were several specific bequests and devises to relatives and friends and, in addition, what may be called a residuary clause by which the residuary of the estate was bequeathed to certain charitable, religious, and educational institutions. Among the residuary legatees was the Young Men's Christian Association and in order to make a distribution among the residual beneficiaries the executor brought suit in Court to secure advise on this point,

Justice Wanamaker, who delivered the opinion

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(1) The Young Men's Christian Association, et al. v. Ora Davis, et al., No. 17369, Ohio Supreme Court.

of the Court, quoted twice from the Federal Estate Tax Law (1), showing that it was framed to apply to the right to transmit rather than the right to receive and that it applied to the estate before any distribution took place. In other words, he pointed out that the Federal Estate Tax was an "estate" tax and not an "inheritance" tax.

Dr. Plehn has pointed out that, under the Federal Estate Tax, the residuary legatee bears the burden of that tax(2). The Ohio decision is in conformity with his statement but there is at least one state in the Union where this is not true and that is in Wisconsin (3) which provides that

> "Inheritance tax paid in another state or to the federal government is not a proper deduction in determining the net estate subject to the tax."

Justice Wanamaker used good common sense when he stated:

> "In the distribution of property agreeable to will it is elementary, of course,

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(1) Revenue Act of 1921, Title IV, sections 400 to 411, Approved November 23, 1921.
(2) Plehn, Carl C., Introduction to Public Finance, 4th Edition, 1920, p. 214.
(3) The Inheritance Tax Laws of Wisconsin, 1921, p.51

that the testator may, in a large measure, determine the priority in which his several bounties may be distributed, and in so doing it is to be presumed that a legacy specific as to the person, thing or amount, shall have priority over a mere general provision; especially from its very nature, over all residuary devises and legacies." (1)

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(1) The Young Men's Christian Association, etal. v. Ora Davis, et al. No. 17369 Ohio Supreme Court.

CHAPTER VII.

REVENUE FROM THE TAXATION OF INHERITANCES IN OHIO

As has been pointed out Ohio has used the inheritance tax as a revenue producer. It remains for us to see whether this form of taxation has been a success from the fiscal point of view.

I. - TAXATION OF DIRECT INHERITANCES.

The taxation of direct inheritances may be grouped into three periods: first, from the enactment of the law of 1894 (1), until it was held to be unconstitutional (2) -- a period of two years; second, beginning with the operation of the law of 1904 (3) and ending with its repeal in 1906 (4) -- a like period of two years, but receipt flowing into the State Treausry as late as 1907; and, third, beginning in 1919 (5) and extending up to the present.

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(1) 91 Ohio Laws 166
(2) State ex rel. v. Ferris, 53 Ohio State 314
(3) 97 Ohio Laws 398.
(4) 98 Ohio Laws 229
(5) 108 Ohio Laws 561.

All receipts for the first period were refunded (1) because the act was declared invalid by the Supreme Court and for this reason the revenue from the taxation of direct inheritance for this period is of interest only to see whether that source would have been a revenue producer. It must be kept in mind that the state received, not the whole amount of the tax, but only seventy-five per cent that the fiscal year ended on November fifteenth instead of June thirtieth as at present (the change in the fiscal year was made in 1915). During the first nine months of its operation the direct inheritance tax produced $2,246.71. Of this amount $2,034.78 came from Hamilton County and the remainder -- $211.93 -- came from Champaign County (2). In 1895, the State's share of the revenue amounted to $3,895.27 contributed by eight counties; Cuyahoga, $1,274.56; Fairfield, $1,070.70; Franklin, $859.65;

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(1) The refunding act is to be found in 93 Ohio Laws 95.
(2) Annual Report of the Auditor of State, 1894.

Hamilton, $156.81; Jefferson, $62.96; Miami, $135.64; Noble, $142.73; and Pickaway, $292.22 (1).

It would be unfair to draw any conclusions as to the success of the law of 1894 from a revenue standpoint. In the first place it was an entirely new form of taxation in Ohio and, secondly, it was in operation for such a short period of time.

Let us turn, then, to the direct inheritance tax law of 1904. By the terms of this act all receipts went to the state. There is nothing to indicate the county in which the receipts originated owing to the fact that payment of the tax was made directly to the state treasurer (2).

Although the law was repealed in 1906 revenue continued to flow into the state treasury as late as 1907 (3). The total amount received by the state from 1904 to 1907 was $531,685.41. The

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(1) Annual Report of the Auditor of State, 1895.
(2) 97 Ohio Laws 398.
(3) See Annual Reports of the Auditor of State, 1904-1907.

receipts for each year are shown in the following table:

Year	Amount
1904	$ 53,664.93
1905	372,020.48
1906	96,000.00
1907	10,000.00
Total	$ 531,685.41

The act of 1904 went into effect late in April of that year and the fiscal year ended November fifteenth, and it would certainly take some little time for the various officials who administered the law to put it in operation, so that, the amount of the revenue secured during those six months (approximately) was not surprisingly large. In 1905, there were no serious handicaps to be overcome and the receipts increased almost 700% or to $374,020.48. In April, 1906, the act was repealed and the revenue fell off at once. Considering the exemption granted and the low proportional rate of two per cent the law was a brilliant success and had it remained in operation for a few years it would have borne out the estimate made by Governor Herrick that it would

yield between $400,000 and $500,000 annually (1), if it did not exceed it.

Finally, the State made a third attempt, in 1919, to tax direct inheritances and the total amount received by the State including the year ending June 30, 1922 was $3,052,062.55. Since the State's share of the receipts goes into that part of the general revenue fund known as the "inheritance tax fund" and includes collateral as well as direct inheritance tax receipts, it is impracticable to ascertain just how much of this revenue is due to the taxation of successions passing to direct heirs. Due to the constitutional amendment of 1912 (2), at least one half the revenue must be returned to the city, township or village in which the tax originated and, in addition, to that, the state, under the terms of the act of 1919, pays all costs of collection (3).

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(1) Supra, p. 67
(2) Ohio Constitution, Article XII, section 9.
(3) 108, Ohio Laws 1192, section 5348-10.

Let us see what the committee, which framed this law, has to say for itself (1)

> "The best indication of the proper yield of the inheritance tax is the New York experience. The exemptions and shhedules of rates in the New York law are not exactly indentical with those in the new Ohio inheritance tax law, but a sufficient parallel exists to permit of a deduction as to comparative results. The average yield of the New York law for the five full fiscal years, 1913 to 1918, (omitting nine months in 1915-1916 because of a change in the fiscal year was $11,475,183. On the assumption that the value of the estates probated in the two states will bear the same ratio to each other as the amounts of personal incomes returned under the Federal Income tax law in 1917, the yield of the Ohio Inheritance tax would be 24.51% of the New York yield, or $2,813,567. If we increase the figures by fifty per cent in order to make our estimate perfectly safe we get $4,220,350, which is probably in excess of the yield to be expected from the inheritance tax during the first few years of its operation."

In 1920 state auditor Donahey made mention of the receipts from this source in his report (2) and although the law had been in

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(1) Report of the Special Joint Taxation Committee of the 83d Ohio General Assembly. December 21, 1919, p. 59

(2) Annual Report of the Auditor of State, A.V. Donahey 1920, p. 229.

operation scarcely a year he seemed to believe that it should be pouring in a vast amount of revenue. He said in part:

> "If the experience of the past year is any indication,this new plan of raising state and local revenues is going to prove a very great disappointment to both the authors of the law and the taxing districts that so sadly need the additional funds. So far, the revenues produced have been insignificant, the state receiving the past year but $463,144.83. The state and local taxing districts ought to be able to raise from five million to ten million dollars yearly from direct inheritance taxes under a law properly drafted."

Granting Auditor Donahey's contention that the law should have been drafted in such a way as to yield more revenue still his implication that the taxing districts are going to find this an excellent source of revenue cannot be granted. At best, the inheritance tax furnishes a very undependable source of revenue for the small political subdivision. Moreoever, during the fiscal year mentioned by Auditor Donahey, the receipts were only $1800 less than the total for all collateral inheritance taxes collected from 1895 to 1912 inclusive.

Considering the report of the committee and the report of the auditor together, it seems that, for the present at least, both went to extremes. However, the revenues continue to increase and, as is shown in the paragraph above, it is probable that within a very short time the prediction made by the committee will prove to be true.

II. REVENUE FROM THE COLLATERAL INHERITANCE TAX ACTS.

Although a collateral inheritance tax act was passed in 1893 (1) and amended in 1894(2) no report of revenue from this source is to be found until 1895 when the auditor of state first included the receipts from collateral inheritances both by year and by counties.

From 1895 up to and including 1912 the income of the State from this source was tabulated by counties in the auditor's Annual Report. However, beginning with 1913, a change was made in these reports and no detailed statement of receipts was given. Fortunately, the state auditor's Report for 1922 again contains a table of receipts by source

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(1) 90 Ohio Laws 14.
(2) 91 Ohio Laws 169.

and by counties. It is to be hoped that this policy will become permanent.

Let us examine the tables for a short time. A few rather startling facts are brought out by these figures. First of all, the total revenue from the collateral inheritance tax for the eighteen years shown in Table IV amounted to only eighteen hundred dollars (in round numbers) more than was produced in the second year (1920) of the operation of the law of 1919 (1). During the period 1895-1912, the state received three-fourths of the receipts and bore the same proportion of the costs while under the act of 1919 the state could not possibly receive more than one-half of the revenue, but, in addition, by the latter statute, the state had--and has-- to bear all costs of collection. This makes the eighteen sink to nothing if not below zero.

In the second place, Hamilton County paid in a greater amount during the years 1895-1912 (2) than did Cuyahoga County, and this holds true for the collateral inheritance tax up to and including the last fiscal year (1922). According to the

(1) Table IVand supra, p.141
(2) Table I.

Census of 1900, Hamilton County, including Cincinnati, had a larger population than Cuyahoga, including Cleveland, but, when the census was taken in 1910, the latter county was the larger, One might think, at first thought, in view of these tables that Hamilton County was wealthier than Cuyahoga County, but, if the true wealth of both counties were known, it is likely that the reverse is true. In fact, there seems to be no one reason for this and it is probable that one guess is as good as another.

In the third place, during the eighteen years under consideration there were ten counties in which no revenue was obtained, or, in other words, slightly over eleven per cent of the counties had no collateral inheritances large enough to be taxed. These counties were: Brown, Fayette, Hardin, Holmes, Meigs, Monroe, Ottawa, Paulding, Putnam and Vinton. The revenues vary so widely that it is impossible to assign any reason for the lack of receipts from these counties.

Another fact which stands out in the table

is the great fluctuation of revenues from each county. This bears out the statement made earlier that the inheritance tax offers a precarious form of revenue for the small political subdivison.

If the years 1895-1912 are taken into account the collateral inheritance tax was a failure from the revenue standpoint. It was not a dependable source of income for the state since the receipts fluctuated within very wide limits and a glance at Table I shows better than can be expressed by words how little the counties might be able to definitely rely upon it.

Coming to the period beginning with 1913 and extending up to the present the taxation of collateral inheritances has been a vivid success as a revenue measure when compared with the previous period. During the ten years, 1913-1922, Ohio received a total income of $2,233,954.28, or $1,769,006.78 more than she received during the preceding eighteen years. Yet, in 1922, the act of 1919 produced $1,442,715.27 or approximately two-thirds as much in one year as in the ten years previous.

Morever, in comparing the 1895-1912 period with the 1913-1922 period it is necessary to state once more that the State received only one-half the gross receipts in the latter case while she received three-fourths of them in the former period. Another factor working to the disadvantage of the 1913-1922 period was the change in the fiscal year in 1915, from November fifteenth to June thirtieth, thus giving a short fiscal period for that year.

If a comparison is made between the receipts from the inheritance tax and the total receipts for the state it is clear that the inheritance tax is not an important source of revenue so far as Ohio is concerned (1). The inheritance tax in some form or another has been a part of our fiscal system since 1893 and has been producing revenue for twenty-eight years it formed less than one per cent of the total state receipts; and in only one year (1905) has it exceeded three per cent of the total. Notwithstanding the low proportional rate under the 1904 act, that law was responsible for the greatest ratio of the inheritance tax receipts to total receipts when the former made up 4.374% (in 1905) of the total state revenue.

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(1) Table IV.

It is encouraging to see the gradual increase in the ratio of inheritance tax receipts to total receipts which began in 1919 with the enactment of the present law. As time passes it is probable that the ratio will continue to increase until the taxation of inheritances forms an important part of our total revenue to the state.

As the present Ohio law is very similar to the New York law, a comparison between the two may prove beneficial. For the fiscal year, ending June 30, 1920, the total state receipts in New York were $115,591,606.99 (1). Of this amount the Transfer Tax law, as the New York inheritance tax law is officially designated, brought in $21,259,640.81 (2), or 18.4% of the total.

It must be admitted that Ohio does not possess as much wealth as New York but the total state revenues are not as large in Ohio and we might expect the ratio of inheritance tax receipts to total state receipts for the two states to conform pretty closely. Of course, Ohio is at a disad-

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(1) Annual Report of the Comptroller, Part I, 1920, p. XI.
(2) Ibid., pp. XVIII and XIX.

vantage as compared with her sister state since the former must surrender at least one-half of the revenue to the smaller political subdivison.

CHAPTER VIII.

SUMMARY AND CONCLUSION

Ohio began taxing inheritances in 1893 (1) applying this form of taxation only to certain collateral heirs. The rate was proportional and low and the exemption large but, at least, it was a beginning.

A year later, the collateral inheritance tax act was amended (2) by lowering the exemption and raising the rate. At the same time, an act was passed taxing successions to direct heirs (3). The notable feature of the latter law was the use of progressive rates, Ohio being the first commonwealth in the United States to levy a graduated tax on direct inheritances. The exemption was fairly large, but no larger than many in effect in other states at the present time. The law was held to be invalid (4) on the account of the inequality worked through the application of the exemption and

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(1) 90 Ohio Laws 14 (1893).
(2) 91 Ohio Laws 169 (1894).
(3) 91 Ohio Laws 166 (1894).
(4) State ex rel. v. Ferris, 53 Ohio State 314 (1895)

because of the progressive rates. As a consequence, all taxes collected were refunded (1).

The collateral inheritance tax law met with a better fate and was declared constitutional (2). It was amended in 1900 (3) in order to exempt certain bequests, but remained in practically the same form until 1919 when it was repealed and replaced (4). However, a constitutional amendment was added in 1912 (5) which necessitated a slight amendment to the act in 1913 (6) to make it conform to the constitutional requirement as to the distribution of receipts. The exemption to collateral heirs was increased at the same time.

Turning back to direct inheritances, a second attempt was made in 1904 to tax them (7). An act was passed with a proportional rate and an

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(1) 93 Ohio Laws 95(1898)
(2) State ex rel. v. Hagerty, 55 Ohio State 613 (1897)
(3) 97 Ohio Laws 398 (1900).
(4) 108 Ohio Laws 561 (1919).
(5) Ohio Const. as amended, 1912, Art. XII, sec. 9
(6) 103 Ohio Laws 463 (1913).
(7) 97 Ohio Laws 398 (1904)

exemption of $3,000. It fared better in the Court than the earlier act and was held constitutional (1). In 1906, the taxation of direct inheritances became an issue in the gubernatorial campaign and since the enemies of the act were elected it was promptly repealed (2). No further attempt was made to tax successions passing to direct heirs but the voters ratified a constitutional amendment in 1912 which permitted the use of graduation both as to the amount received and as to the relationship to the decedent. (3).

In 1919, a new measure was passed which is now in effect (4). The heirs are divided into four classes as to exemptions and into three classes as to rates. The rates are very low and the exemptions for direct heirs are lower than are found in most of our states.

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(1) State v. Guilbert, 70 Ohio State 229 (1904).
(2) 98 Ohio Laws 229 (1906).
(3) Ohio Constitution as amended, 1912, Article XII, section 7.
(4) 108 Ohio Laws 561 (1919) and 1192 (1920).

All the inheritance tax laws which have been on the statute books were enacted primarily with the hope that they would yield considerable revenue. The acts of 1893 and 1894 were passed because of a deficit in the state treasury. The laws of 1904 and 1919 were designed to replace the loss of revenue from county local option in 1904 and national prohibition in 1919.

As revenue producers the collateral inheritance tax laws have not lived up to the hopes to those who saw in them a fertile source of revenue. The direct inheritance tax law of 1904 promised success as far as receipts are concerned, but it was not in effect long enough to give it a fair trial. The present law is making a good start and probably will become more important as time passes.

Ohio, with all her wealth, might very well increase the rates as well as the number of brackets and decrease the spread within each bracket in the case of all collateral heirs, and strangers or corporations. The exemptions to these classes

should not be increased. In the case of direct heirs, it would be well to leave the exemptions and the rates as they now stand but the number of brackets could be increased and the spread within each bracket decreased which would call for additional rates as the present law makes provision for only four brackets.

In conclusion, it may be said that Ohio has made a start in this form of taxation and it is probable that she will continue to progress. It is to be hoped that within a short time her citizens will have become well enough educated and sufficiently unselfish to try to bring about other tax reforms which are so sorely needed.

---FINIS---

APPENDIX

TABLE I

STATE RECEIPTS FROM THE COLLATERAL INHERITANCE TAX FROM 1895-1912 INCLUSIVE, BY COUNTIES (1)

Year	County									
	Adams	Allen	Ashland	Ashtabula	Athens	Auglaize	Belmont	Butler	Carroll	Champaign
1895				$ 977.48	$ 165.39		9.17			
1896	$ 64.51						35.94			
1897				15.00			317.99			
1898					3,292.08		41.34	$1,123.48		
1899								10.65		
1900		$352.98		394.37				314.86		
1901										
1902		320.82					402.72		$ 92.13	
1903								296.78		
1904							52.03			
1905						$45.36		177.64		
1906			$ 57.12			103.24				
1907			688.94							
1908										
1909										
1910	$298.10									
1911		11.03					109.33			
1912							647.82	$2,034.65		$253.72
Total	$362.61	$684.83	$746.06	$1,386.85	$3,457.47	$ 148.60	$1,616.34	$3,997.02	$ 92.13	$253.72

(1) Compiled from the Annual Reports of the Auditor of State, 1895-1922

TABLE I (Cont'd)

STATE RECEIPTS FROM THE COLLATERAL INHERITANCE TAX FROM 1895-1912 INCLUSIVE, BY COUNTIES

Year	Counties								
	Clark	Clermont	Clinton	Columbiana	Coshocton	Crawford	Cuyahoga	Darke	Defiance
1895							$10,556.48		
1896	$ 10.69						214.87		
1897									
1898	2,482.98						631.04		
1899	6,003.20						3,825.16		
1900	7,987.68		$ 19.92				2,971.39		
1901	299.18			$ 106.62		$ 27.60	754.69		
1902	1,060.64			258.16			1,877.54		
1903	461.07			93.00			4,781.46	$401.36	$287.14
									60.51
1904	365.02			165.46	$ 748.30	371.28	10.74		
1905	485.48			737.47			5,136.80		
1906	2,381.30		231.79	57.41		111.58	12,785.03		
1907	15.04			95.57			1,359.43		242.76
1908				481.95			4,841.03		
1909	32.07			119.24			7,953.06		19.28
1910		$656.88					485.20		60.41
1911				573.95		1,730.91	3,201.78		
1912					52.24		41,718.65		
Total	$21,584.35	$656.88	$251.71	$2,688.83	$800.54	$2,241.37	$103,104.35	$401.36	$670.10

TABLE I (Cont'd)

STATE RECEIPTS FROM THE COLLATERAL INHERITANCE TAX FROM 1895-1912 INCLUSIVE, BY COUNTIES

Year	Counties								
	Delaware	Erie	Fairfield	Franklin	Fulton	Gallia	Geauga	Greene	Guernsey
1895									
1896									
1897				$ 292.00					
1898				8,816.00					
1899	$ 289.94								
1900		$ 92.31		511.78		$ 185.24			
1901		373.25	$ 41.25						$ 186.51
1902		637.46		349.58				$1,135.35	
1903	497.10	[illegible]							
1904	[illegible]			42.37					
1905	285.75	[illegible]	294.81	1,869.50					
1906				2,199.94					
1907				1,402.45	$29.76				
1908				149.95					
1909	413.22								
1910			148.00	37.00			145.50	1,979.18	
1911			57.34	13,770.56		1,049.17		1,397.10	
1912	302.57		884.82	339.15		22.19	157.65	263.43	
Total	$1,788.58	$1,103.02	$1,426.22	$29,780.28	$29.76	$1,256.60	$303.15	$4,775.06	$ 186.51

TABLE I (Cont'd)

STATE RECEIPTS FROM THE COLLATERAL INHERITANCE TAX FROM 1895-1912 INCLUSIVE, BY COUNTIES

Year	Counties								
	Hamilton	Hancock	Harrison	Henry	Highland	Hocking	Huron	Jackson	Jefferson
1895									
1896									$ 28.63
1897	$ 21,303.75						$87.23		101.66
1898	1,827.13		$ 486.14						43.03
1899	3,645.58		95.45		$ 59.98		284.95		
1900	4,008.38		466.48						
1901	3,363.14				58.77				
1902	884.61		138.32						
1903	15,641.51						204.80		
1904	15,889.78	$ 38.68							
1905	15,222.34								
1906	6,014.59								
1907	3,498.12						695.47		
1908	6,845.28						100.68		
1909	10,324.44		19.41						
1910	2,732.90				11.25		35.34	$ 90.09	
1911	2,390.90	401.91		$18.75				219.91	
1912	8,356.67		602.82		696.48	$489.31			
Total	$121,949.12	$440.59	1,808.62	$18.75	$ 826.48	$489.31	$1,408.47	$310.00	$173.32

TABLE I (Cont'd)

STATE RECEIPTS FROM THE COLLATERAL INHERITANCE TAX FROM 1895-1912 INCLUSIVE, BY COUNTIES

Year	Counties								
	Knox	Lake	Lawrence	Licking	Logan	Lorain	Lucas	Madison	Mahoning
1895									
1896									
1897				$1,105.65					$1,066.52
1898				140.70		$ 377.72		590.34	224.52
1899				295.47		431.98			
1900						206.68			537.24
1901				146.68	$ 22.84	426.68	$ 174.15		113.95
1902	$392.42				297.81	27.22			268.66
1903		$ 330.81		133.58		10,673.41	94.80	149.25	
1904		143.66					1,954.85	1,583.85	295.07
1905		179.04			142.80		23.95	319.38	146.68
1906		46.76		346.22			1,481.47	7.14	
1907		28.20	$ 349.86	782.78					
1908		172.43		213.82			7,259.33	7,259.33	
1909				902.18		125.56	22,019.01		
1910		5,075.51	524.88	217.20			832.02		
1911				309.95		66.05	2,384.43		
1912		24.71	367.68	470.33			1,639.14	8,631.87	
Total	$392.42	$6,021.12	$1,242.42	$5 064.56	$463.45	$12,335.30	$37,863.15	$11,281.83	$2,652.64

TABLE I (Cont'd)

STATE RECEIPTS FROM THE COLLATERAL INHERITANCE TAX FROM 1895-1912 INCLUSIVE, BY COUNTIES

Year	County									
	Marion	Medina	Mercer	Miami	Montgomery	Morgan	Morrow	Muskingum	Noble	Perry
1895										
1896					$ 1,122.44					
1897					300.30					
1898				197.75	345.42				$21.95	$ 92.14
1899			$26.73		547.40			21.53		
1900		$1,265.57		30.00	145.06			81.84	11.94	35.65
1901		20.98		76.97	180.86	9.08				
1902					218.40					
1903				225.12	952.44			832.26		366.21
1904		20.35		606.01		71.37		168.96		
1905	$278.46	24.63		755.57	2,041.32		$614.61			140.56
1906		64.40		53.41	44.94		35.02	42.15		
1907				47.82						
1908		49.98		1,658.84	27.30					
1909		413.59		13.38	299.89			348.60		
1910				912.02	960.52			10.71		
1911		71.68			572.39			523.23		
1912		85.81		465.55	358.11			1,239.69		
Total	$278.46	$2,016.99	$ 26.73	$5,042.44	$8,116.79	$80.45	$649.63	$3,268.97	$33.89	$634.56

TABLE I (Cont'd)

STATE RECEIPTS FROM THE COLLATERAL INHERITANCE TAX FROM 1895-1912 INCLUSIVE, BY COUNTIES

Year	Counties								
	Pickaway	Pike	Portage	Preble	Richland	Ross	Sandusky	Scioto	Seneca
1895									
1896									
1897									
1898							$ 23.78	$171.48	$ 54.94
1899	$ 82.80			$ 11.72				83.83	
1900			$ 309.44	389.12			36.82		
1901				90.95			281.02	47.25	159.78
1902	48.54			1.12	$143.91	$ 37.69	133.96		46.12
1903		$146.12		38.06	377.14				13.62
1904	7.97						115.74	334.99	
1905			2,001.81	49.98					
1906	2.80		530.25	28.56			239.37		274.84
1907	39.25		662.94	268.77			23.52		
1908		132.09	229.69	29.70		248.69	353.54		
1909							126.22		
1910							114.04		
1911	477.60								
1912						1,082.43	64.47		1,095.63
Total	$658.96	$278.21	$3,734.13	$907.98	$521.05	$1,368.81	$1,512.48	$ 637.55	$1,644.93

TABLE I (Cont'd)

STATE RECEIPTS FROM THE COLLATERAL INHERITANCE TAX FROM 1895-1912 INCLUSIVE, BY COUNTIES

Year	County							
	Shelby	Stark	Summit	Trumbull	Tuscarawas	Union	Van Wert	Warren
1895								
1896								
1897					$ 110.79			186.32
1898				$ 182.26	28.12			3,008.69
1899	$165.38	$ 993.96	$ 281.38					93.86
1900		1,379.67	190.68	250.82	63.75			630.78
1901	208.76	48.85	2,919.99					
1902	5.58	105.06	2,427.55		224.11			463.02
1903	16.41	1,295.27	1,268.33					27.80
1904	27.51	20.50	1,443.71	14.15				
1905	215.85	606.42	72.70			$31.12		3,039.57
1906		98.12	704.84					113.60
1907			340.49					
1908			1,301.18					488.14
1909			1,051.57					958.50
1910			1,118.61					182.80
1911			629.89				$115.10	[illegible]
1912		3,963.47	1,208.05					2,584.24
Total	$639.49	$8,511.32	$14,958.97	$ 447.23	$ 426.77	$31.12	$115.10	$11,777.32

TABLE I (Cont'd)

STATE RECEIPTS FROM THE COLLATERAL INHERITANCE TAX FROM 1895-1912 INCLUSIVE, BY COUNTIES

Year	Counties				
	Washington	Wayne	Williams	Wood	Wyandot
1895					
1896					
1897					
1898				$10.93	
1899	$ 241.13				
1900	39.81		$ 32.98		
1901	32.82	$1,367.44			$1,984.62
1902	743.59				
1903	22.13	6.02			
1904					
1905					
1906					
1907					145.99
1908					
1909					
1910	128.52				
1911	660.43				
1912	371.40				
Total	$2,239.83	$1,373.46	$ 32.98	$10.93	$2,130.61

Grand Total, 1895-1922 -	$ 464,947.50
Grand Total By Counties -	464,643.99
Difference	$ 303.51 *

* See footnote to Table II

TABLE II

TOTAL RECEIPTS FOR EACH OF THE COUNTIES MAKING A RETURN DURING THE PERIOD 1895-1912

County	Amount	County	Amount	County	
Adams	$ 362.61	Greene	$ 4,775.06	Morrow	$ 649.63
Allen	684.83	Guernsey	186.51	Muskingum	3,268.97
Ashland	746.06	Hamilton	121,949.12	Noble	33.89
Ashtabula	1,386.85	Hancock	440.59	Perry	634.56
Athens	3,457.47	Harrison	1,808.62	Pickaway	658.96
Auglaize	148.60	Henry	18.75	Pike	278.21
Belmont	1,616.34	Highland	826.48	Portage	3,734.13
Butler	3,997.02	Hocking	489.31	Preble	907.98
Carroll	92.13	Huron	1,408.47	Richland	521.05
Champaign	253.72	Jackson	310.00	Ross	1,368.81
Clark	21,584.35	Jefferson	173.32	Sandusky	1,512.48
Clermont	656.88	Knox	392.42	Scioto	637.55
Clinton	251.71	Lake	6.021.12	Seneca	1,644.93
Columbiana	2,688.83	Lawrence	1,242.42	Shelby	639.49
Coshocton	800.54	Licking	5,064.56	Stark	8,511.32
Crawford	2,241.37	Logan	463.45	Summit	14,958.97
Cuyahoga	103,104.35	Lorain	12,335.30	Trumbull	447.23
Darke	401.36	Lucas	37,863.15	Tuscarawas	426.77
Defiance	670.10	Madison	11,281.83	Union	31.12
Delaware	1,788.58	Mahoning	2,652.64	Van Wert	115.10
Erie	1 103.02	Marion	278.46	Warren	11,777.32
Fairfield	1,426.22	Medina	2,016.99	Washington	2,239.83
Franklin	29,780.28	Mercer	26.73	Wayne	1,373.46
Fulton	29.76	Miami	5,042.44	Williams	32.98
Gallia	1,256.60	Montgomery	8,116.79	Wood	10.93
Geauga	303.15	Morgan	80.45	Wyandot	2,130.61

GRAND TOTAL, 1895-1912, by Counties - - - - - - - - - - - - $ 464,643.99(1)

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(1) This total is $303.51 short of the total as given by years in the various reports. In the Auditor's Report for 1902 the receipts from the collateral inheritance tax are reported as $13,054.60, but if the receipts from the counties are totaled it will be found that the amount should be $12,742.09, or a difference of $312.51. In the report for 1904 the receipts are given as $24,543.86, but the grand total from the counties is $24,552.86, or a difference of $9.00. Subtracting the latter difference from the former difference, the discrepancy of $303.51 is accounted for in tables II and III

TABLE III

TOTAL STATE RECEIPTS FROM THE COLLATERAL INHERITANCE TAX FOR THE YEARS 1895-1922 INCLUSIVE

Year	Amount	Year	Amount
1895	$11,708.52	1909	$ 45,139.22
1896	1,477.08	1910	16,756.68
1897	24,887.21	1911	30,743.39
1898	24,159.02	1912	80,881.59
1899	17,547.02	1913	134,894.00
1900	22,943.24	1914	112,753.82
1901	13,524.68	1915	213,046.53
1902	13,054.60	1916	216,158.96
1903	39,275.86	1917	368,003.01
1904	24,543.86	1918	285,892.87
1905	34,723.75	1919	447,871.20
1906	28,456.69	1920	249,562.14
1907	10,571.17	1921	155,751.85
1908	24,553.92	1922	50,019.90

Grand Total, 1895-1922 inclusive, by years. . . . $ 2,698,901.78

TABLE IV

RATIO OF INHERITANCE TAX RECEIPTS TO TOTAL STATE RECEIPTS 1895-1922, INCLUSIVE

Year	Ratio of Inheritance Tax Receipts to Total	Total Inheritance Tax Receipts (1)	Total State Receipts
1895	.190	$ 11,708.52	$ 6,035 156.04
1896	.023	1,477.08	6,492,536.37
1897	.345	24,887.21	7,206,151.57
1898	.313	24,159.02	7,723,327.97
1899	.229	17,547.02	7,658,095.60
1900	.292	22,943.24	8,031,817.72
1901	.176	13,524.68	8,036,428.59
1902	.132	13,054.60	9,855,524.65
1903	.509	39,275.86	7,715,579.30
1904	.928	78,208.79	8,427,878.15
1905	4.374	406,744.23	9,298,176.66
1906	1.233	124,456.69	10,086,546.32
1907	.189	20,571.17	10 891,439.60
1908	.211	24.553.92	11,636,872.90
1909	.400	45,139.22	11,282,812.79
1910	.145	16,756.68	11,567,122.77
1911	.236	30,743.39	13,037,293.01
1912	.555	80,881.59	14,572,674.61
1913	.866	134,894.00	15.578,471.60
1914	.548	112,753.82	20,544,539.15
1915 (2)	1.846	213,046.53	11,541,588.84
1916	1.127	216 158.96	19,175 760.29
1917	1.760	368,003.01	20,910,626.83
1918	1.206	285,892.87	23,695,073.34
1919	2.218	565,019.86	25,476,682.23
1920	2.256	712,562.14	31,592,058.27
1921	2.351	1,184,805.64	50,394,364.91
1922	2.623	1,492,735.17	56,904,119.73

(1) From 1895 to 1912 these receipts represent 75% of the total net receipts; beginning 1913 to 1920, the state received 50% of the total net receipts; and from 1920 to the present the state received 50% of the gross receipts out of which all costs are paid.
(2) Fiscal year changes from November fifteenth to June thirtieth.

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