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THE NEW JERSEY GROSS INCOME TAX: AN ANALYSIS FROM BACKGROUND TO ENACTMENT

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The passage of the New Jersey Gross Income Tax Act[1] has brought forth a great deal of comment, both critical and supportive. Unfortunately, there has been a great deal of misinformation as to what is contained in the Act and the accompanying legislation, the background of the Act, and the reason for its passage.

The New Jersey Gross Income Tax is unique.[2] It is an outgrowth of a legislative effort in all its parts. While Governor Brendan T. Byrne supported the concept wholeheartedly, the program was conceived, developed,

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[1] New Jersey Gross Income Tax Act, ch. 47, 1976 N.J. Laws 285 (codified at N.J. STAT. ANN. § 54A:1-9 (West 1977)). Documentation of the proceedings surrounding the adoption of the New Jersey Gross Income Tax Act and its companion legislation is almost impossible. No verbatim record is kept for committee meetings nor for sessions of either house of the Legislature. Committee meetings tend to be informal insofar as the participation of the public is concerned. Only attendance and votes upon motions to amend or release bills are formally recorded in the committee meetings. Similarly, in sessions of the Senate and General Assembly, there is no record of debate, and the sole public record is that of attendance and vote upon bills, amendments and motions set forth in the Senate Journal and the Minutes of the General Assembly. Therefore, the documentation as set forth herein reflects the circumstances as described above.

[2] It is the understanding of the author that the program passed in the summer of 1976 is not only unique in the annals of New Jersey, but also in the entire country. The leadership of the General Assembly majority requested that a program be devised which would meet the requirements of public school financing and, at the same time, provide property tax relief. The program was developed without drawing upon provisions of previous tax proposals in New Jersey or upon programs existing in any other state. The following major elements of the program demonstrate its uniqueness: a) a graduated gross income tax; b) the dedication of revenues from the tax to property tax relief; c) homestead rebates by direct cash payments to home owners; d) tenant sharing of property tax savings by a pass-through procedure; e) the cap on state, county and municipal expenditures.

and brought to fruition by the Legislature, and in the greater part by the General Assembly. By recounting his experiences with the various tax programs, the mechanics of their consideration by the New Jersey Legislature, and his opinion of those proposals, this writer will attempt to clarify the record.

Background of New Jersey Income Tax

The proposal for a personal income tax in New Jersey did not arise with Governor Brendan T. Byrne's program, nor Governor William T. Cahill's, nor even with Governor Richard J. Hughes' in 1966. Rather, the income tax has been advanced by various groups and individuals for more than twenty years.[3] This revenue raising method is one which has arisen at times when new revenues were felt to be necessary, and, thus, it would surface and subside with the incidence of such situations.

What might be termed the first serious attempt for passage of a state personal income tax was made in 1966 when it appeared that such a tax would become law. After passage by the General Assembly, however, the proposal failed in the Senate;[4] and, at the last minute, a retail sales tax was substituted and enacted.[5]

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[3] In the late 1950's, proposals were advanced by legislators, private individuals and groups to increase state aid to the public schools. The natural outgrowth of these proposals was the funding mechanism necessary to provide the state with additional revenues. In every case the funding mechanism was either an income tax or a sales tax. For the most part, legislators tended to prefer the sales tax, while in the forefront of the movement for a personal income tax was the League of Women Voters of New Jersey. No formal proposal was advanced for an income tax, but two sales tax bills were introduced in 1960. Assemblyman Hiering, proposed a 3% sales tax exempting food and prescription drugs. A. 654, 184th N.J. Legis., 1st Sess. (1960). Assemblyman Bateman, proposed a sales tax of 2% almost identical to the Hiering bill but with all revenues dedicated to public education. A. 656, 184th N.J. Legis., 1st Sess. (1960). Although hearings were not held on the funding proposals directly, they were discussed thoroughly during hearings held on school aid. However, the general feeling in the Legislature at the time was that a broad base tax was not necessary, and nothing further was done for the next five or six years.

[4] 1966 N.J. ASSEMBLY MINUTES 366-67, 501; 1966 N.J. SENATE JOURNAL 455.

A. 10, 190th N.J. Legis. (1966), was passed by the General Assembly on March 16, 1966, by a vote of 31-29. 1966 N.J. ASSEMBLY MINUTES 366-67. There was insufficient support in the Senate for passage, and A. 10 was not brought to a vote in that House. The bill proposed to impose a personal income tax at rates ranging from 1% to 5% on taxable income.

[5] A. 700, 190th N.J. Legis. (1966), imposing a retail sales tax of 3%, was passed on April 25, 1966 by a vote of 40-18 in the Assembly. 1966 N.J. ASSEMBLY MINUTES 501. It passed the Senate on April 27, 1966 by a vote of 18-8, 1966 N.J. SENATE JOURNAL 455, and was approved on the same day as the Sales and Use Tax Act, ch. 30, 1966 N.J. Laws 86 (codified at N.J. STAT. ANN. § 54:32B-1 (West 1960)). The passage of the sales tax put to rest proposals for the income tax.

In 1970, Governor Cahill appointed a blue ribbon committee[6] to undertake a study of the tax structure of the state and to report its findings and recommendations. The committee engaged a large staff, held public hearings, and reported to Governor Cahill on February 23, 1972. In its six-volume report, the committee analyzed the tax structure, revenue needs, and capital needs of the state.[7] An extensive series of recommendations were made which were translated into proposed legislation and were introduced by Assemblyman DeKorte who had had a prominent role as a member of the committee and who was Majority Leader of the General Assembly.[8] Extensive public hearings were held by the Taxation Committee, and the major bills were carefully examined in committee meetings.[9] Although considerable support was generated from prominent individuals in the public and private sector who had served on the State Tax Policy Committee, the personal income tax bill failed by a wide margin in the General Assembly. The entire proposal died.[10]

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[6] The New Jersey Tax Policy Committee was established by Governor William T. Cahill pursuant to Executive Order No. 5, 1970 N.J. Laws 1234. Senator HarrySears was appointed Chairman and members appointed by the governor were prominent citizens of the state representing business, labor, state, county and municipal government and the general public, including two former chief executives, Alfred E. Driscoll and Richard J. Hughes.

[7] One member of the Tax Policy Committee, Senator Edward J. Crabiel, the Senate Minority Leader, refused to sign the report. Senator Crabiel criticized the program as one which would provide a windfall to business at the expense of the individual taxpayer.

[8] The bills contained both substantive and administrative proposals. The major bill on which the proposed tax program was based, A. 1250, 195th N.J. Legis., 1st Sess. (1972), would have imposed a personal income tax at rates of 1% to 14% on taxable income. In addition, A. 1251, 195th N.J. Legis., 1st Sess., (1972) would have broadened the coverage of the sales tax (which had been raised from 3% to 5% in 1970); A. 1252, 195th N.J. Legis., 1st Sess. (1972), would have imposed a statewide property tax of $1.00 per $100 of equalized valuation for public school support; A. 1253, 195th N.J. Legis., 1st Sess. (1972), would have increased the corporation income tax from 5.5% to 7.25% while other bills would have increased other taxes in varying degrees. Disbursement of new revenues generally would have been used to fund public elementary and secondary education, together with the assumption by the state of the cost of various services funded by county and municipal governments, *i.e.*, courts, prosecutors, etc.

[9] The membership of the Taxation Committee in 1972 consisted of four Republicans: Apy, Vice-Chairman Foran, Mancini, Vreeland; and three Democrats: Chairman Bedell, Gorman, Perskie. The make-up of the Committee reflected unusual party alignment in the General Assembly, with neither party having a clear majority: 40 Democrats, 39 Republicans, 1 Independent.

Public hearings were held in Teaneck, Kean College, Flemington, Camden and Atlantic City. Former Governor Richard J. Hughes headed a list of prominent citizens who appeared before the Committee and urged the adoption of the Cahill program, particularly its major elements.

[10] 1972 N.J. ASSEMBLY MINUTES 553, A. 1250, 195th N.J. Legis., 1st Sess. (1972), was voted upon by the General Assembly on July 17, 1972, and was defeated by a vote of 23-52. The vote on this bill was not a partisan vote, since of the 23 votes cast for the bill, 9 were cast by Republicans and 14 by Democrats.

Soon after taking office in 1974, Governor Byrne proposed a measure of tax reform similar to that previously made by Governor Cahill. The emphasis in this program was placed upon relieving the local property tax.[11] The Taxation Committee of the General Assembly applied itself to the entire program by making significant changes in many of the bills, by holding public hearings, and, in general, by tightening the proposal to improve its operation.[12] The personal income tax bill as he key measue of the program was put on the boad and barely passed the General Asembly. There was insufficient support in the Senate to pass the income tax as it had been received from the General Assembly. A number of attempts were made to pass amended versions but all were unsuccessful. A final attempt was made in June 1975; this proposal failed to pass, and the program died.[13]

The failure to pass a fiscal program left the state in violation of the orders of the supreme court regarding the distribution of funds for the public schools. Since 1973, the Legislature had been under mandate by the court to

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In retrospect, there was more to the defeat of A. 1250 than merely the opposition to a personal income tax. The very number of bills (56) in the package, the inclusion of a statewide property tax and the broadening of the sales tax base gave rise to a great deal of opposition. Many legislators complained of the complexity of the program. The program was attacked on the same ground at public hearings. Some of the data submitted by the Tax Policy Committee was questionable. It was a combination of circumstances which defeated the program, perhaps best described as trying to do too much at once.

[11] A. 1875, 196th N.J. Legis., 1st Sess., Official Copy Reprint 1974), and A. 1876, 196th N.J. Legis., 1st Sess., Official Copy Reprint 1974), were main bils. A. 1875 proposed to impose a personal income tax at rates of 1.5% to 8% on taxable income. A. 1876 proposed to impose a "Business Stabilization Tax" on commercial and industrial property to answer the complaint made about a "business windfall" under the Cahill proposal. Numerous other bills were introduced subsequently as essential parts of the package, many similar in nature to bills in the Cahill program.

[12] The Taxation Committee in 1974 consisted of seven Democrats: Chairman Perskie, Vice-Chairman Froude, Brown, Contillo, Gorman, MacInnes, Sweeney; and two Republicans: Chinnici and Foran. Public hearings were held in East Orange, Hackensack, Atlantic City and Trenton. The majority of the testimony was opposed to the income tax.

A series of committee meetings were held and were open to the public. The committee made both substantive and technical changes in both A. 1875, 196th N.J. Legis., 1st Sess. (1974), and A. 1876, 196th N.J. Legis., 1st Sess. (1974), as well as several of the companion measures. Despite some concessions on the "Business Stabilization Tax" business groups remained adamantly opposed to it as a part of the program.

[13] 1974 N.J. Assembly Minutes 631. A. 1875, 196th N.J. Legis., 1st Sess. (Official Copy Reprint 1974), passed the General Assembly on July 15, 1974 by a vote of 41-38. A. 1875, with a Senate amendment failed passage on January 6, 1975 by a vote of 15-24. 1974 N.J. Senate Journal 633. The bill was further amended in the Senate and brought to a vote on June 16, 1975, but failed passage by a vote of 15-24. 1975 N.J. Senate Journal 334-35. The bill was given consideration by a conference and coordinating committee, was amended further and brought to a vote on July 27, 1975, but failed passage by a vote of 17-21. 1975 N.J. Senate Journal 355. Again, in retrospect, the program probably attempted too much. Although less complex than the Cahill program, there were other proposals which had varying degrees of acceptance.

provide greater equality of funding for the public schools;[14] but the court had modified its original position as to the deadline for action.[15]

With the passage of the Thorough and Efficient bill,[16] the Legislature met the objections of the court as to the formula for the distribution of funds, but the lack of any provision for full funding of that act presented the Legislature with two alternatives: provide either funding for the act, or redistribute the existing funds.

A redistribution of the minimum aid would have serious repercussions in many suburban and rural districts. In order to maintain existing levels of educational expenditure in those districts, the denial of such state funds would have required their replacement by property taxes. Despite the fact that poorer districts would be the beneficiaries of the redistribution of funds, they would not benefit to as great an extent as they would from full funding of the education act.

It was obvious to the leadership in the General Assembly that the redistribution of state aid funds was not a satisfactory solution to the problem, and it was equally clear that the patience of the court was being strained. The Legislature could expect no further relaxation of the deadline facing them. The court had indicated its acceptance of the funding proposed in the Thorough and Efficient bill,[17] and thus gave an indication as to the action the Legislature should take.

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[14] *See* Robinson v. Cahill, 118 N.J. Super. 223, 250, 287 A.2d 187, 201 (1972), wherein the court held that the then existing method for distribution of funds for public schools was unconstitutional. In rearguments of the case the trial court's previous order that a satisfactory method be provided by January 1, 1974 was not modified. Robinson v. Cahill, 119 N.J. Super. 40, 49, 289 A.2d 569, 573-74 (1972). The decision of the trial court was upheld by the supreme court, Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973), but the order of the trial court was modified to require satisfactory legislation for the distribution of funds by December 31, 1974, to take effect no later than July 1, 1975.

[15] Pursuant to argument by the appellants for relief when the December 31, 1974 deadline had passed, the supreme court on May 23, 1975 enjoined the State Treasurer and the Commissioner of Education from disbursing funds under the then existing law for the school year 1976-77, Robinson v. Cahill, 69 N.J. 133, 351 A.2d 713 (1975).

[16] 1975 N.J. SENATE JOURNAL 314; 1975 N.J. ASSEMBLY MINUTES 568. S. 1516, 197th N.J. Legis., 2d Sess. (Official Copy Reprint 1975), passed the Senate on May 27, 1975 by a vote of 23-15; and the General Assembly on September 22, 1975 by a vote of 42-32 and was approved September 29, 1975 as the Public School Education Act of 1975, ch. 212, 1975 N.J. Laws 871 (codified at N.J. STAT. ANN. § 18A:7A-1 to 57 (West 1968)).

This was the so-called "T&E" bill to meet the court's direction that the state provide a "thorough and efficient" education to all public school pupils through an equitable funding program.

[17] On January 30, 1976, the supreme court sustained the facial validity of the act. Robinson v. Cahill, 69 N.J. 449, 355 A.2d 129 (1976). This holding was predicated on the assumption that the act would be fully funded for the 1976-77 school year.

Development of a Legislative Program

The majority party leadership in the General Assembly felt that, despite the failure of passage of the Cahill and Byrne programs, it was incumbent upon them to act in view of the court's dictum. By examining every alternative for financing, and by profiting from the experience gained from the difficulties attendant upon the previous efforts, it was decided that the General Assembly should develop a legislative program from the ground up.

The task of developing the program was given to the Assembly Taxation Committee. This decision alone presented a considerable problem because, of the five committee members, four were new appointments without previous experience on the committee.[18] It was proposed by the leadership, and readily acceded to by the committee chairman, that the membership of the Legislature, as well as members of the public, should be consulted before any definitive proposal was put forth.[19]

One of the first considerations of the committee was to delineate the scope of any proposal. How large a program should be undertaken? Should the committee address itself solely to meeting the court decision on public schools? Or, should it attempt to encompass other areas? After considerable deliberation and discussion, it was decided that the imposition of any tax to provide additional revenues should encompass more than just a school financing program, and that the program should have tax reform, most notably, property tax relief. It was further agreed, however, that such a program should be limited to a more easily understandable form.[20] Once the decision as to the scope of the program had been reached, it was incumbent upon the committee to examine the available revenue sources which would provide the means for its implementation.

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[18] The committee was comprised of three Democrats: Chairman Van Wagner, Vice-Chairman Brown, and Yates; and two Republicans: Albanese and Dorsey. Only Assemblyman Brown had had previous experience on the Taxation Committee. By way of explanation, it should be noted here that the reduction in size of the committee from nine members to five members stemmed from a decision by the leadership in the Assembly that all standing committees other than Appropriations would consist of five members. This would prevent the necessity, with only a few exceptions, for a member to be on more than one committee.

[19] It was agreed that every attempt would be made to avoid the pitfalls of the two previous programs. No large number of bills would be presented. The public and members of both houses were invited to make suggestions with a view to developing a less controversial program.

[20] The cry for "tax reform" had been advanced for years. Essentially, to most people this meant a decrease in the reliance upon the property tax. The committee viewed its responsibility as one which not only would slow the increase in property taxes, but would actually provide a recognizable decline in property taxes. On the other hand, the committee was convinced the program should be more easily understandable and more direct than those previously proposed which dealt with subjects ranging from school funding to property tax appeals. In addition, there was little elasticity in existing state taxes giving rise to yearly or biennial revenue problems.

The Alternatives

This paper deals with many of the proposed school financing programs, at least those upon which action was taken by one or both houses of the Legislature. There were a number of others, however, which were given consideration by the committee in seeking alternatives. In fact this writer, together with Senator Bedell, had been the prime sponsor of one such proposal.

Generally, these proposals dealt with the use of a state-wide property tax as the basic source for public school funding.[21] The state-wide property tax for school purposes would have met the court's objections because it would have established a common rate of school tax in every district. An analysis of this approach uncovered the problem that the proposal addressed only the school financing program. Although the equalization of rates throughout the state for the public schools would have been a substantial step in that direction, it was felt that the proposal did not go far enough in the area of tax reform.

The second proposed method was a personal income tax. The problem confronting the committee in this regard was the size and type of income tax which would be acceptable and which would provide sufficient revenues.[22] The committee realized that an income tax could be adjusted to meet any

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[21] The statewide property tax for school financing is based upon the use of a common level tax rate on all property. To this would be added existing state school aid monies. The state would pool all these monies and then allocate them to all school districts on a per pupil amount. There were differences in detail but all the proposals contained the same elements. However, several would have required a constitutional amendment because they specified classification of property. *See* S. 2266, 194th N.J. Legis., 2d Sess. (1972); S. 522, 195th N.J. Legis., 1st Sess. (1972) (Miller, et al.); A. 2454, 194th N.J. Legis., 2d Sess. (1971) (Vreeland et al.); A. 512, 195th N.J. Legis., 1st Sess. (1972) (Robertson et al.); S. 1186, 196th N.J. Legis., 1st Sess. (1974); S. Con. Res. 123, 196th N.J. Legis., 1st Sess. (1974) (Bedell); A. 1644, 196th N.J. Legis., 1st Sess. (1974); A. Con. Res. 139, 196th N.J. Legis., 1st Sess. (1974) (Van Wagner et al.); S. Con. Res. 127, 196th N.J. Legis., 1st Sess. (1974) (Russo); A. 1762, 196th N.J. Legis., 1st Sess. (1974) and A. 1763, 196th N.J. Legis., 1st Sess. (1974) (Littell et al.).

Senator Miller's program took three years to develop and served as a basis for all that followed, including to some extent the property tax proposal in the Cahill program. This was based on a flat rate for all property. Senator Van Wagner's program was similar to Senator Miller's except that it provided for the taxation of various classes of property at different rates. Senator Miller as defeated for reelection and Senator hagedorn reintrduced the Miller program. Senator Russo, together with Assemblymen Doyle and Newman, proposed a program based upon a classified statewide property tax for schools, supplemented by increases in other taxes. The total program was never submitted in bill form. Assemblyman Littell's program was a flat-rate tax for schools on all property. However, his program called for the administration by the County Superintendent of Schools, with tax revenue going to the counties rather than to the State.

[22] The Committee deemed it advisable to have a rate schedule for an income tax below that proposed by either Governor Cahill or Governor Byrne for purely practical reasons.

revenue need within reason, but the problem as in providing for tax reform without placing an undue burden upon the taxpayer.

The third method for financing any program was an increase in the sales tax. As the major tax source of the state at that time, the sales tax was the only other viable alternative to a state-wide property tax or a personal income tax; no other source of revenue would have been sufficient to meet the revenue needs. There were two ways which might have been utilized to derive additional revenues from the sales tax. The most obvious was to raise the rate above the existing 5% level; the second was to broaden the coverage of the tax.[23] An examination of the basic revenue needs for school funding alone indicated that it would require a minimum of a 2% increase in the level of the tax to meet the first year's requirements. If the concept of progression under the Thorough and Efficient bill for funding the public schools was to be acceptable in order to reach a 38-40% level of state funding, it would have been necessary to increase the level of the sales tax by an additional 1% in each of the following two years, or to expand the coverage to food and clothing. There were a number of reasons for the rejection of this alternative. First, as noted above, it would be impractical to increase the sales tax to the level necessary for the funding; second, it would be virtually impossible to secure a passage of such a program in the Legislature.[24]

Another alternative was to utilize any two of the three methods under consideration. The state-wide property tax proposal, for example, was in every instance an open-end type of program. That is, the injection of additional monies at the state level could be used to lower the rate of the state-wide property tax, and thus, revenues from either a sales tax increase or a personal income tax could be utilized to substantially lower the level of the rates contained in the existing bills.[25] The major problems in adopting this combination of alternatives lay primarily in the fact that the combination

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[23] The State Tax Policy Committee had recommended that the base of the sales tax be broadened to include professional services and construction. One of the features of the New Jersey sales tax which has made it far less regressive has been its relatively narrow base compared to that found in many states. It was the committee's view that broadening the base of the sales tax was not desirable.

[24] New Jersey was already in the throes of an economic downturn. An increase in the sales tax could have had an adverse effect upon the state's economy by placing it in a disadvantageous marketing position. In addition, such an increase might have served to accelerate the departure of business from the state to a more favorable tax climate.

[25] A statewide property tax for school purposes, whether a flat rate tax or with differential rates, was designed to raise a basic amount of revenue to replace school taxes raised on individual local rates. If, for example, a statewide rate was established at a rate of $2.00 per $100 of equalized valuation, the use of revenue from an income tax or from an increase in the sales tax could be used to reduce that rate to $1.75 or $1.00 or any other level depending on the amount of revenue provided to replace it.

would not provide for any tax reform other than for the public schools, and in the fact that the state-wide property tax in itself did not have any broad support.

After full consideration of the alternatives, it was obvious that, if the committee was to initiate any program which would at once meet the court's direction, and at the same time expand the scope of such a program to go beyond the requirements of the Thorough and Efficient bill, the only revenue source which would be equitable and which would provide sufficient monies would be a personal income tax. Once that decision was made, there were other factors which had to be considered before a program could be presented to the General Assembly.

Scope of the Program

The question then became one of the chicken or the egg. Should the committee establish a level of taxation, determine the amount of revenue which would be anticipated, and then design the program to fit within that level? Or, should the committee develop a program, determine its cost, and adapt the income tax structure to meet the revenue needs? One might say the committee did both at the same time. First, the committee accepted the revenue needs for meeting the public school costs for a three-year period; second, the panel decided that there should be a program which would guarantee property tax relief in some form; third, the committee felt that there should be a certain amount of relief which would go directly to the municipal governments to relieve municipal property taxes.

The second element, that of guaranteed property tax relief to the individual homeowner, was envisioned as a homestead relief program of one sort or another.[26] Therefore, the committee determined that any homestead exemption would be fully paid for by the state in order that the burden of the property tax would not shift and further that the exemption would be direct and substantial. The general lowering of local property taxes through state aid was already before the Legislature in two separate proposals: one by Assemblyman Hamilton for a distribution of a per capita amount of state aid; and the second, a comprehensive program of revenue sharing, by As-

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[26] Homestead exemptions generally in other states and in proposals which have been before the Legislature in New Jersey since the 1950's are based upon reductions in assessment or equalized valuation. Such exemptions merely shift the burden to non-exempt properties, usually business and industry. Also, the exemption is itself diluted because the reduction in valuation forces a higher tax rate. This has been true of the veteran's exemptions and senior citizen deductions in New Jersey until the state assumed the entire cost under the present tax program.

semblyman Littell.[27] Elements from each of these proposals were extracted and combined as the best way to extend tax relief to local governments at a level which would be sufficient to provide a substantial amount of relief while remaining within the revenue range of any personal income tax which might be considered.

Mr. Hamilton's proposal was adopted for the distribution of a per capita amount to municipalities; Mr. Littell's proposal was adopted as a framework for the state to assume the full cost to municipalities for the senior citizen deductions and the veterans' exemptions.[28] Picking up the cost of these exemptions and deductions was felt to be a step toward the assumption by the state of the cost of mandated programs. This has been a concept which has been widely advocated for a number of years—a concept contained in the programs of Governor Cahill, and of Governor Byrne. In each of those instances, however, it would have been more far reaching and, of course, more expensive.

The amount that would be necessary to assume the cost of the senior citizen deductions and the veterans' exemptions was easily determined. Therefore, to complete this part of the program, it would be necessary only to decide how much money should be distributed on a per capita basis. A figure of $100 million was decided upon for per capita distribution which, with the assumption of the senior citizen deductions and veterans' exemptions, would provide municipalities with approximately $136,500,000 in state aid money.[29]

The next question dealt with the problem of providing direct property tax relief to the individual homeowner. Various methods were considered. Many different methods were considered. Each one was applied to key municipalities throughout the state to determine the effect it might have in those municipalities.[30] Several methods were decided upon as possible al-

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[27] *See* A. 1663, 197th N.J. Legis., 1st Sess. (1976) (Hamilton et al.); A. 2196, 196th N.J. Legis., 1st Sess. (1974) (Littell et al.). The Littell bill was a comprehensive "revenue sharing" bill which would have distributed $180,000,000 to municipalities and $254,000,000 to counties on a formula based on need. It supplemented a school aid bill, A. 1273, 196th N.J. Legis., 1st Sess., (1974), to be financed from a dedicated personal income tax. The distribution under the total program would have been approximately $850,000,000.

[28] Qualified veterans received a $50 exemption from property taxes and qualified senior citizens received a $160 property tax deduction, of which the state paid for one-half. The total cost of the veterans' exemptions and the balance of the senior citizens' deductions were borne by the municipalities.

[29] In 1976, the cost of veterans' exemptions was $22,715,196 and the cost to municipalities of senior citizens' deductions was $13,851,558, for a total of $36,566,754.

[30] One of the most obvious ways to construct a homestead bill was to have a flat amount of reduction in assessment statewide with the state paying for loss of revenue. This was discarded because of the wide variance in assessment practices. Translating the same into equalized valuations would have been extremely costly and would have made the rate of deductions unpalatable politically. Flat dollar amounts were also discarded as inequitable.

ternatives, and they were then applied to every municipality in the state to determine both equity and cost.

The program finally adopted was one which combined the elements of providing property tax relief for every homeowner, with a variable which would provide additional relief in areas where property taxes were the highest. The cost of this program was felt to be within the necessary limits, and the program was felt to be equitable and substantial.[31] The total cost of the program was estimated, and it then remained to be seen how a personal income tax could be tailored to meet this cost.[32]

Designing the Tax

Once the program had been delineated, it was necessary to decide the type of an income tax and the levels of that tax which would be necessary to meet the expenditure needs. For practical reasons, it was agreed that the revenue level of the tax should be kept below one billion dollars. The program which had been developed would have been below that amount. Despite the fact that thecommittee had not considered revenue for general state operations, that group did realize that it would be necessary to provide replacement for state revenues from taxes which would be repealed; otherwise an automatic deficit would be built into the state budget. The addition of these amounts, however, kept the program within the one billion dollar level.

The committee had before it two basic income tax concepts:

1) the graduated personal income tax which had been proposed by Governor Byrne in 1974; and
2) a gross income tax with a flat rate somewhat similar to the Pennsylvania income tax, which had been introduced by Mr. Hamilton in 1974.

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[31] The homestead program finally agreed upon a combined guaranteed property tax rebate to all homeowners with an additional amount based upon property tax levels in the municipality.

The formula which emerged was as follows: $2.00 per $100 of valuation on the first $10,000 of equalized value or 50% of the equalized value, whichever was less, plus 25% of the equalized tax rate multiplied by the first $10,000 of equalized value or 50% of the equalized value whichever was less. Thus, a home with an equalized value of $20,000 or more in a municipality in which the equalized tax rate was $4.00 per $100 would receive $2.00 per $100 on the first $10,000 or $200 plus $1.00 per $100 (25% of $4.00) on the first $10,000 or $100 for a total homestead rebate of $300. The total cost of this program was estimated to be approximately $375,000,000 with the average homestead rebate to be about $275.

[32] The three basic elements had been calculated for cost: state school aid $378,000,000, revenue sharing $136,000,000, and homestead rebates $375,000,000, for a total of $889,000,000. It should be noted here that the Committee never considered using any of the income tax revenue for the State General Fund, nor at this time did it consider the loss of revenue from repealed taxes, since there was no indication of just what would be repealed.

Each of these proposals was examined in great detail. There were elements of each which appeared to be worthy of consideration. Although the extent of that graduation did not appear to be acceptable, the graduation in the governor's tax program was felt to be a proper method. From Mr. Hamilton's proposal, the concept of a gross income tax was accepted in order to eliminate some of the loopholes which exist in any tax patterned upon the federal income tax.[33]

Although Mr. Hamilton's tax as proposed was a flat-rate tax, his plan provided for certain basic deductions which would create a graduated tax. He proposed a $1,000 personal exemption for a taxpayer and each dependent; an exemption of $400 per person for rent paid up to $1,200. These exemptions were designed to ease the burden upon the lower middle, and middle income taxpayer, and in effect to eliminate the tax for lower income people. Thereupon the committee set out to adapt those parts of each of the tax proposals which the committee felt should be retained and arrived at a modest graduation based on gross income.

Deliberations

A number of legislators and many members of the general public attended committee meetings during the committee's deliberations on the tax proposal. This is not to say that the committee and other members of the Legislature did not receive many proposals and suggestions during the formative stages previously discussed.[34] Once the elements of the program had been established and matters began to appear in the press, there was a great increase in the number of people attending meetings to make their views known.

As might be expected, the proposals ranged from no income tax whatsoever and repeal of the Thorough and Efficient bill all the way to a graduated income tax which would eliminate local property taxes entirely. Again, as might be expected, the answer lay somewhere in the middle.

The committee had seriously considered doing away with property taxes entirely and replacing them with an income tax. The property tax for 1976

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[33] One of the major objections to the income tax proposals of Governor Cahill and of Governor Byrne, heard at the public hearings throughout the state and at committee meetings held during the consideration of this program, was the inequity of the federal income tax. These objections came primarily from individuals who contended that the rich benefited from loopholes and that the working man, the middle income taxpayer, was required to pay more than his share. The special treatment of capital gains, depreciation on commercial real estate and tax exempt securities were most often cited.

[34] As soon as it became known that the committee was undertaking the formulation of a tax program, many legislators offered suggestions, letters were received from many organizations and individuals, and committee meetings were well supplied with comments. These were in addition to the formal programs which were considered.

generated approximately three billion dollars in revenue. Obviously, to replace this entirely would require an income tax far greater than that in any other state. The effect that this proposal would have on local governments had to be considered by the committee. If the state generated all the money, did it not then follow that the state would tell every municipality exactly how much a locality could spend and for what purposes? In effect, New Jersey would have only one government. Naturally, this proposal was not given a great deal of consideration.

At the other end of the spectrum, inaction would result in one of two problems. There would be a redistribution of state aid money for the public schools subject to the court's decision, which would have a disastrous effect upon the property taxes in many municipalities in the state; and, even in those localities which would receive more money under such a proposal, there would be little or no property tax relief.[35]

The committee felt obligated to provide additional revenues for state support of the public schools and to provide some direct relief to the property taxpayer; and, therefore, serious consideration of proposals by individuals and organizations was limited to those which would implement these goals in one way or another. One group which naturally had a considerable stake in the proceedings was tenants. They were ably represented by both tenant organizations and by members of the Legislature who championed their cause.[36] A second well represented group was senior citizens. Previous As-

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[35] If the Legislature had failed to provide additional funds to implement the provisions of Chapter 212 of 1975, minimum aid and save harmless aid would have been redistributed with the total amount of the 1975-76 level. Substantially more than 50% of the school districts in the state (331) would have received less money under the redistribution in 1976-77 than they had received in 1975-76. Even the City of Newark would have received more than $1,000,000 less. The impact would have varied greatly from district to district.

For example, the City of Englewood would have lost more than 60% of its aid; the City of Garfield would have lost 78%; Bordentown Township more than 40%; Haddonfield more than 75%; Nutley more than 80%; Edison Township more than 65%, and so on. The fact that the school tax already represented the major element in the tax rate in most of the affected municipalities indicates the effect on the property owner in such cases.

[36] The provisions of Assemblyman Hamilton's bill, A. 1513, 197th N.J. Legis., 1st Sess. (1976), in its original form had provided for a $400 personal exemption for each tenant, up to $1,200 per family and up to $1,200 exemption for property taxes. The exemption for property taxes was removed in favor of a homestead rebate, a substantive improvement for the property owner. Thus, the committee believed there should be an improved provision for tenants.

Representatives of tenants' groups, particularly the Bergen County organization, and Assemblyman Baer of Bergen County appeared before the committee at length with proposals. After sifting through a number of ideas, the committee adopted a tenant credit against the income tax as the most equitable method. A differential was included for senior citizen and disabled tenants. See N.J. STAT. ANN. § 54A:4-3 (West 1977), providing for a $65 tenant credit plus $35 for senior citizens and the disabled.

sembly taxation committees under Assemblymen Bedell and Perskie had had a great deal of contact with senior and disabled citizen groups who were seeking relief for those on fixed incomes. Those committees, therefore, had laid the groundwork for the consideration of the present program.[37]

One of the difficulties, which presents itself in dealing with the problems of the senior and disabled citizens in any program, is to provide benefits which are equitable, not only to the recipients themselves, but also to the other taxpayers. As a result of much deliberation, a differential was established in the homestead exemption for senior and disabled citizens, and an additional tax credit for senior and disabled tenants was included in the income tax bill.[38]

Naturally, all levels of local government were interested in the deliberations and each group sought to receive as much as possible. The committee, however, was forced to operate within the confines of a limited amount of revenue, and thus, could not do many things which it would have liked to do. For example, there was no program within that framework for aid to county government.[39]

In the deliberations as to the details of each element of the program, many individuals and many groups made proposals. Many of these proposals were well taken, but for one reason or another—usually revenue restrictions—these proposals were able to be adopted.

In the deliberations on the level of taxation which would be proposed, the committee felt that it must take into consideration the problems attendant upon the proposals made previously by Governor Byrne—and before that,

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[37] For a number of years probably the largest number of bills introduced in the Legislature were to improve existing legislation or to institute new programs for senior citizens and for the disabled. The Taxation Committee, beginning under Chairman Bedell and continuing under Chairman Perskie, attempted to develop a program to give relief to the elderly homeowner. Numerous meetings were held by the staff with various senior citizen groups to attempt to get a consensus. Public hearings were held on constitutional amendments. However, there were differing views among the various groups, and many proposals were beyond the fiscal ability of the state at that time. The most vocal leader of the senior citizen groups was Herbert Miller of Bergen County, while the leader of the disabled citizen groups was Harry Miller of Mercer County, since deceased.

[38] An act concerning exemptions from taxation, providing for homestead exemptions for citizens and residents of this State, and supplementing chapter 4 of Title 54 of the Revised Statutes, ch. 72, 1976 N.J. Laws 403 (codified at N.J. Stat. Ann. § 54:4-3.82 (West Supp. 1977-1978)).

[39] Representatives of the Association of Counties appeared before the committee requesting a program of aid to counties. The committee considered aid to counties, but found there were no funds available. Also, because county government revenue depends so greatly upon revenues from the property tax, the committee felt that property tax relief was inherent in the program elements, and thus, was reaching the property owner. Therefore, it would not serve the purpose of the program to reduce any of the funds for those elements to provide aid to counties.

by Governor Cahill.[40] It was generally agreed that there should be a modest graduation rather than a flat-rate tax. What this graduation should be and how it would affect the average taxpayer, was the next point to be considered. The committee proposed to raise a certain amount of money to cover the elements which had been agreed upon, namely, school, homestead, and revenue sharing, and at the same time replace any revenues lost to the state from the repeal of existing taxes.[41]

It was the idea of the committee, and acceded to wholeheartedly by the leadership, that the committee should attempt to establish a level of taxation that would provide a break-even point at or near the median level of family income in the state. That is, all families in the state with the median income and below would receive as much, or more, in benefits from the property tax reductions as they would be responsible for under the personal income tax. After experimenting with numerous tax tables, the committee developed one which would meet the criteria which it had set for itself.

The level decided upon was a tax graduated from 2% to 4% at intervals of .5%. This tax would have raised approximately nine hundred fifty million dollars in the first full year of its existence. The program would have provided the revenues necessary to fund the elements decided upon and would have provided a break-even point at the median family income level of $17,000 for a family of four.

The proposal was presented to the leadership. The leadership felt that the committee had established a fair and equitable program, and proposed that the plan be presented to the General Assembly. The mechanics of drafting the legislation were undertaken and the proposal was presented to the General Assembly in March, 1976.

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[40] There were two considerations in determining a rate schedule for any proposed income tax. First, it was felt that the schedule should be less than the 1% to 14% range of the Cahill program or the 1.5% to 8% range of the Byrne program. Second, because it had been decided to use a gross income tax, the high rates would not be necessary to generate the needed revenue.

[41] The passage of an income tax would require the repeal of the Tax on Capital Gains and Unearned Income and the Unincorporated Business Tax to prevent double taxation. Also, the committee felt the Retail Gross Receipts Tax should be repealed in answer to many requests from legislators as well as retailers. It was assumed that the commuter income taxes, the Emergency Transportation Tax and the Transportation Benefits Tax would be repealed. The repeal of these taxes would result in the following loss of revenue: Unearned Income Tax - $55,000,000; Unincorporated Business Tax - $20,000,000; Retail Gross Receipts Tax - $9 million; a total of $84 million from the general operating revenues of the State. Also lost would be $41 million from the Emergency Transportation Act and $13 million from the Transportation Benefits Tax, monies used to upgrade transportation in the New York-New Jersey and the New Jersey-Pennsylvania commuter areas. Were these revenues not replaced, there would have been a serious shortfall in the amount available for the state's operating budget.

Passage in the General Assembly

Once the legislation had been drawn by the committee and released for action, it was presented as a package of three primary bills, namely, the Gross Income Tax bill, the Homestead bill, and the Revenue Sharing bill.[42] At the last minute, there were some relatively minor compromises made on the Homestead bill, and the three major bills, together with the companion legislation, passed, after a long and tumultuous debate, in the early morning hours of March 15, 1976.

There were two factors bearing upon the program, not directly involved in the revenue needs, which had a significant bearing upon the acceptance of the program. The first of these was the concept of dedication of the proceeds of the income tax to property tax relief.[43] The second was the concept of "capping" governmental expenditures.[44] A third factor which had a bearing upon revenues was equally significant: the elimination or modification of certain business taxes to promote a better economic climate in the state.[45]

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[42] A. 1513, 197th N.J. Legis., 1st Sess. (Assembly Comm. Substitute 1976) (Gross Income Tax); A. 1330, 197th N.J. Legis., 1st Sess. (Assembly Comm. Substitute 1976) (Homestead Rebates); A. 1663, 197th N.J. Legis., 1st Sess. (Assembly Comm. Substitute 1976) (Revenue Sharing).

[43] There was considerable sentiment for the dedication of the proceeds of the income tax to property tax relief in order that, that relief would be guaranteed. Proposals had been made in the past for dedication to education, *i.e.*, Bateman bill in 1960 and others. However, Assemblyman Littell's revenue sharing program initiated the idea of dedication to property tax relief. He had introduced a proposed constitutional amendment as part of that program, A. Con. Res. 191, 196th N.J. Legis., 1st Sess. (1974), and reintroduced it as A. Con. Res. 140, 197th N.J. Legis., 1st Sess. (1975). Despite some opposition at the required public hearing, the resolution was adopted in the General Assembly on June 10, 1976 by a vote of 50-9. 1976 N.J. ASSEMBLY MINUTES 355-56.

[44] A. 1738, 197th N.J. Legis., 1st Sess. (2d Official Copy Reprint 1976), placed a cap of 5% on municipal expenditures and a cap of 5% on a county's tax levy. This idea was advanced in the Byrne package but had not been examined closely once the income tax failed. The idea was revived for the legislative tax program to further guarantee property tax relief. Certain exceptions were put in the bill to make allowance for expenditures over which a local governing body has no control.

[45] During the 1974-75 legislative session, Assemblyman Perskie introduced a series of bills to modify certain business taxes. A. 1848, 196th N.J. Legis., 1st Sess. (an increase of 1% in the Corporate Income Tax 1975); A. 1849, 196th N.J. Legis., 1st Sess. (a repeal of the Unincorporated Business Tax); A. 3166, 196th N.J. Legis., 2d Sess. (a repeal of the sales tax on business machinery and equipment, A. 3554, 196th N.J. Legis., 2d Sess. (exemption of business machinery and equipment from the Business Personal Property Tax in the first year of acquisition); A. 3604, 196th N.J. Legis., 2d Sess. (2% investment credit of the cost of plant and equipment against the Corporation Income Tax. Also as part of the package was the repeal of the Retail Gross Receipts Tax, A. 643, 196th N.J. Legis., 1st Sess., by Assemblyman Foran. However it was necessary to increase the Corporation Business Tax by 2%, An Act to amend and supplement the "Corporation Business Tax Act (1945)," approved April 13, 1945 (P.L. 1945, c. 162), ch. 162, 1975 N.J. Laws 660 (codified at N.J. STAT. ANN. § 54:10A-5 (West 1977-78)), to balance the 1975-76 state budget.

Senate Consideration

Immediately upon the passage of the package in the General Assembly, the Senate Revenue, Finance and Appropriations Committee undertook consideration of the bills for presentation to the Senate. Almost immediately, there developed opposition to the size of the package and to the graduation of taxes. A great deal of misinformation concerning just what the program contained added to the confusion. In addition, certain individuals and groups, who had not been satisfied with the result of their representations to the Assembly, carried their campaign to the Senate.[46] The program had been developed to provide a balance between revenues and expenditures for a three-year period ending in fiscal 1979.[47] This was to be accomplished by carrying over excess revenues from the first two years to satisfy the necessary amounts for the third year. While the program was designed to balance out after three years, it was nevertheless generally felt that revenues and expenditures should continue to offset each other beyond that period if the economic situation did not deteriorate.[48]

There were fundamental differences of opinion among members of the Senate, even among those who favored the tax. One group proposed to only meet the court mandate on the public schools; another group supported the concept of a total program as passed by the General Assembly; still another

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As support for the tax program, Assemblyman Perskie and a number of other legislators insisted that the business package be adopted. Four of the bills were adopted: ch. 18, 1977 N.J. Adv. Law Serv. (repealing sales tax on business machinery and equipment.); ch. 4, 1977 N.J. Adv. Law Serv. (exempting all new business machinery and equipment from the Business Personal Property Tax); ch. 81, 1976 N.J. Laws 428 (repealing Retail Gross Receipts Tax); ch. 80, 1976 N.J. Laws 428 (repealing Unincorporated Business Tax).

[46] Individuals and groups who had appeared before the Assembly Taxation Committee and had their recommendations rejected carried their proposals to the Senate Revenue, Finance and Appropriations Committee. Most recommendations were too costly to be considered within the revenue constraints. Others wished the income tax scrapped.

[47] The original program had been designed to become effective on April 1, 1976. The extra three months' revenue would have provided a "cushion" during the gearing-up period. However, as time passed, it became apparent that the effective date would be moved forward.

It was estimated that the homestead program would remain at a relatively level rate of expenditure. The revenue sharing program was also relatively level. Therefore, the school program was the only basic element with built-in increases. It was estimated this program would cost $378,000,000 the first year, with $100,000,000 increase in each of the following two years to a level of $570,000,000 for 1979-80.

There was controversy over revenue estimates and costs. Proposals were made to flatten out the rate schedules, providing smaller incremental steps between rate changes. Personal tax credits rather than personal exemptions were proposed. These would have lessened the exemption provision for taxpayers in the increments above the base rate and provided somewhat more revenue.

[48] It was estimated that the elasticity of the tax revenues from an income tax would increase revenues in the fourth and subsequent years sufficiently to balance the program from that point on. This, of course, was predicated on maintaining a reasonable economic climate.

group supported the program but opposed dedication in order that money could be made available for general state expenditures. During the deliberations in the Senate, the General Assembly passed the proposed constitutional amendment to dedicate income tax funds to property tax relief.

The Senate could not muster sufficient support to pass the Assembly pack age in the form in which it had been received,[49] and instead, the package was reduced to provide only sufficient money for meeting the court's mandate on state school aid. In essence, the only thing which remained was a flat-rate tax with none of the tax reform features. The amended bill passed the Senate[50] and was sent to the General Assembly where it was overwhelmingly rejected.[51]

Compromise

As a result of the rejection of the Senate proposal by the General Assembly, an *ad hoc* committee[52] was appointed with members from both parties and from both houses to effect a compromise program if possible. Discussing the various options open—including options for funding the public schools by means other than a personal income tax—this committee met continually for three days. The committee could not reach a consensus on a recommended program, and, in fact, placed three proposals before the Legislature for consideration: a graduated income tax proposal, a flat-rate income tax proposal, and a proposal to increase the sales tax to cover the cost of solving the school funding dilemma.

After the defeat of the Senate proposal in the General Assembly, the bill was placed back in the Taxation Committee, and subsequent to the report of the *ad hoc* committee, the Taxation Committee undertook to develop a scaled-down program.[53] After a great deal of further consideration, the Taxation Committee scaled the program down and presented that program to the General Assembly. It was felt that all the elements of the original program should be retained.[54] To fund this program, the Taxation Committee proposed that a graduated tax should be imposed at rates ranging

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[49] 1976 N.J. SENATE JOURNAL 299.

[50] 1976 N.J. SENATE JOURNAL 357.

[51] 1976 N.J. ASSEMBLY MINUTES. 404-05.

[52] Chairman Bateman, Senators Dodd and Horn, Assemblyman Herman, Chairman Newman, Assemblywoman Curran.

[53] REPORT OF THE JOINT CONFERENCE COMMITTEE, June 24, 1976. The graduated tax proposal of 1.5% to 2.5% was made as first recommendation, supported by four of the six members. The flat rate tax proposal was supported by one member and the increased sales tax was supported by one member.

[54] It was proposed to reduce the amount distributed on a population basis under revenue sharing from $100,000,000 to $50,000,000 and to scale down the homestead rebate from an average of approximately $275 to an average of approximately $190.

from 1% to 3%. This was presented to the General Assembly and was defeated.[55]

The supreme court's order closing the public schools went into effect on July 1, 1976. This order, together with the defeat of the revised tax in the General Assembly on July 2nd, created a crisis situation. With the defeat of the bill and the closing of the schools, the Assembly leadership was determined to resolve the situation as soon as possible. Informal discussions were held with Senate leaders to determine what proposal might be expected to pass. A new proposal for a slightly graduated tax was presented to the General Assembly. After another long and tempestuous session, the bill passed the Assembly.[56]

The closing of the public schools at the direction of the court, even though schools were in summer recess, may have provided the impetus to carry the tax program through the Senate. Although there were those who proposed to defy the court, this position did not secure any widespread approval, and the bill passed the Senate.[57] It should be noted that a great deal of the opposition to the program lay as much in opposition to the provisions of the Thorough and Efficient bill as it did to the tax program. At least several members of the Legislature who voted against the income tax were not opposed to the tax per se, but were opposed to the method of distribution of school money.

Post-Passage Problems

One might expect that with the passage of the tax program[58] by both houses and the subsequent reopening of the public schools that the committee's work was completed. However, this was not the case. Numerous problems arose in the administration of the tax program–problems which neither the committee nor the administrative agencies of government anticipated, and which required additional legislation amendatory to that which

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[55] 1976 N.J. ASSEMBLY MINUTES 446. The Assembly Committee amendments to A. 1513, 197th N.J. Legis., 1st Sess. (Assembly Comm. Substitute 1976), lost by a vote of 31-36.

[56] 1976 N.J. ASSEMBLY MINUTES 488. The Assembly Committee amendments to A. 1513, 197th N.J. Legis., 1st Sess. (Assembly Comm. Substitute 1976), passed by a vote of 41-36.

[57] 1976 N.J. SENATE JOURNAL 407.

[58] One bill had been tied to the income tax and could not go into effect until this bill was enacted. This bill, S. 1546, 197th N.J. Legis., 1st Sess. (1976), provided a pass-through to tenants—50% of the property tax savings a landlord received from the reduction in school taxes. The bill passed the Senate rather easily by a vote of 21-1. 1976 N.J. SENATE JOURNAL 360.

However, when the bill reached the Assembly, it had a long and tempestuous journey though the lower house. Because the tax could not go into effect, it was incumbent upon the Taxation Committee to bring the bill to the floor quickly. However, even after long meetings and seeming agreement, many attempts were made on the floor to amend, but to no avail and the bill finally passed by the barest margin, 41-11. 1976 N.J. ASSEMBLY MINUTES 516, 157.

had been passed.[59] The majority of problems stemmed from the method for distribution of the homestead rebate, the utilization of unanticipated school aid, and the providing of additional benefits for tenants. In addition, a ruling by the Attorney General that public pensions of the State of New Jersey and its political subdivisions were not subject to the tax created an additional problem which was not resolved until February, 1977.[60] A hue and cry arose from those on private pensions and steps were taken to provide more equity in the treatment of pensions.[61] There is still a considerable amount of legislation pending.[62]

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[59] During the debate over the tax, there were proposals having an impact upon the program, yet not necessary for it to be effective. However, action on most of these was deferred until after the passage of the tax. One of the first, and having a broad interest was a bill by Senator Merlino, S. 1503, 197th N.J. Legis., 1st Sess (1976), to require unbudgeted school aid to be returned to the property owners; two bills by Senator Dugan, S. 1594, 197th N.J. Legis., 1st Sess. (1976) and S. 1601, 197th N.J. Legis., 1st Sess. (1976), to rescind the repeal of the Emergency Transportation Tax and the Transportation Benefits Tax, provide that those subject to one of those taxes and the New Jersey income tax would pay the greater amount of tax liability; a bill by Assemblyman Burns, A.2251, 197th N.J. Legis., 1st Sess. (1976), which was reported by committee substitute to make a number of adminstrative changes in the homestead law; and, a bill by Assemblyman Baer, A. 2131, 197th N.J. Legis., 1st Sess. (1976), to broaden and increase the pass-through of tax relief benefit for tenants.

Senator Merlino's bill was finally approved on November 9, 1976 as: A Supplement to the "Public School Education Act of 1975" approved September 29, 1975 (P.L. 1975, c. 212, C.18A:7A-1, et seq.), ch. 113, 1976 N.J. Laws 553.

Senator Dugan's bills were approved as: An Act to repeal sections 54A:9-22 and 54A:9-23 of the N.J. Gross Income Tax Act, now pending before the Legislature as Assembly Committee Substitute for Assembly Bill No. 1513, ch. 65, 1976 N.J. Laws 394 (codified as N.J. STAT. ANN. § 54A:9-22 (West Supp. 1977-1978); An Act concerning tax liability under New Jersey Gross Income Tax Act and the Emergency Tax Act or the Transportation Benefit Tax Act and for the disposition of the taxes collected thereunder, ch. 66, 1976 N.J. Laws 394 (codified at N.J. STAT. ANN. § 54:8A-119 to 121 (West Supp. 1977-1978)).

Assemblyman Burns' bill, A. 2251, 198th N.J. Legis., 2d Sess. (Assembly Comm. Substitute 1977) was not approved until February 15, 1977. Assemblyman Shapiro's bill, A. 2196, 198th N.J. Legis., 2d Sess. (1977) was approved August 17, 1976.

[60] 1976 N.J. OP. ATTY GEN. 26 (October 1, 1976). The opinion had been requested by the Director of the Division of Taxation who is the official responsible for collection of the tax. The decision stated: "[Y]ou are advised that a general exemption of public pensions, paid by this State, from any State tax is applicable to the New Jersey Gross Income tax."

[61] Numerous bills were introduced to meet the special treatment of public pensions dictated by the Attorney General's Opinion. It had not been the intention to exclude public pensions, nor, in fact, intended to exclude any persons, public or private, except for Social Security. However, a great deal of pressure was exerted to make an overall pension exclusion, either total or partial. S.1709, 198th N.J. Legis., 2d Sess (1977) (Merlino et al.) and A.2298, 198th N.J. Legis., 2d Sess. (1977) (Van Wagner et al.), were combined and enacted as, An Act concerning certain exclusions from gross income under the New Jersey Gross Income Tax Act, amending sections 54A:5-1 *and* 54A:6-10 and *repealing* 54A:6-12 of the New Jersey Statutes, ch. 40, 1977 N.J. Adv. Law Serv. This act gives an exclusion of any pension income in the amount of $10,000 for a married couple filing jointly, $5,000 for a married couple filing separately, and $7,500 for a single taxpayer.

[62] Bills are before the Taxation Committee to lower the age on pension exemptions such as A. 3459, 198th N.J. Legis., 2d Sess. (1977) (Van Wagner) extended the exemption to

The members of the Legislature, and those serving on the Taxation Committee particularly, have been continuously deluged with questions concerning the income tax and all other aspects of the program. Many press reports and reports from "informed" parties misinterpreting both the content of the legislation and the intent of the Legislature misled the public. Often these newspaper accounts and reports by persons purporting to know the details were based on earlier, outdated amendments and changes. Although the tax has been in effect for one year, and the taxpayers have already filed their individual tax returns, there still is a great deal of misunderstanding which probably will continue for some time.

Conclusion

The tax program which ultimately passed might have been better, and in fact the program passed in March, 1976, by the General Assembly was a better program than that which finally emerged. Despite this fact, those responsible for devising the total tax program should not apologize for it, but, instead, should be proud of their work. Even though it does not do everything one might like it to do, when compared with programs in other states, it is far less burdensome than most.[63] The tax is modest. It is equitable. It does not provide loopholes for the rich, nor does it visit itself upon the poor. The property tax rebate program is the most liberal in the country. In addition to providing rebates for property taxes paid, the money reverting to individuals will provide a stimulus to business in the state. The tenant pass-through provision ensures that tenants will participate in property tax reductions. By the state's assuming the cost of veterans' exemptions and senior citizen deductions, the dilution of these exemptions and deductions will be eliminated because they will no longer be a local responsibility.

Although there has been criticism of the dedication of revenues from the income tax, the public generally approves of it, for dedication guarantees that the tax revenues will be used to lower property taxes or offset possible

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non-pension retirement income such as A. 3280, 198th N.J. Legis., 2d Sess. (1977) (Dorsey). In addition, there are others which have been passed by both houses such as A. 2358, 198th N.J. Legis., 2d Sess. (1977) (Van Wagner) which broadens the coverage of the homestead rebate program. Other bills covering these and other aspects of the program have been introduced in the Senate.

[63] The threshold for increasing the percentage of tax liability is higher at $20,000 in the New Jersey tax than in any other state's tax. In fact, many states with a graduated tax impose the maximum rate at less than $20,000; for example, Missouri at $9,000, Minnesota at $20,000, Oregon at $5,000 and California at $18,000. Additionally, the New Jersey rates are much higher.

increases in the future. Similarly, the legislation placing expenditure "caps" is in accord with what the general public wishes.

Local "caps" on expenditures were felt to be necessary to insure that increased state aid would, in fact, be reflected in lower property taxes.[64] Otherwise, the entire concept of the income tax as it was devised would be violated.

Government must learn to live within its means and to utilize existing revenues in the most efficient manner possible. In the past there has been a tendency at all levels of government to increase a tax or reduce an exemption to find money for some new purpose. "Cap" provisions of existing New Jersey law have put a significant measure of control over yearly increases in government spending. Perhaps government will be forced to learn to get more for every dollar it expends. If nothing more than this is accomplished, the New Jersey Legislature has taken a significant step toward tax reform in the state of New Jersey.

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[64] In the first year under the new program, the signs are very favorable. Property tax rates have gone down in varying degrees in more than 50% of the municipalities, and for the first time in the memory of most people, the total property tax levy in the state has decreased in 1977 from that in 1976 by almost $90,000,000. When this is combined with the direct property tax rebates to homeowners of $260,000,000, the actual reduction in property taxes amounts to almost $350,000,000.