A SURVEY OF TAXATION IN TEXAS

Part IIB - Analysis of Individual Taxes Concluded

Prepared by the

STAFF OF THE TEXAS LEGISLATIVE COUNCIL

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of the

52d Legislature of Texas

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The duty of the Texas Legislative Council is:

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(f) To report to the Legislature its recommendations from time to time and to accompany its reports with such drafts of legislation as it deems proper."

The object of this staff research report is to assist the Legislative Council in carrying out this responsibility. Any recommendations concerning the subject of this research report that the Council may make will be transmitted to the 53d Legislature.

TRANSMITTAL NOTE

This research report is submitted to provide background information and some general analyses of the assigned problem for the use of the Texas Legislative Council, its Study Committee on Taxation, and the Legislature of the State of Texas. This is a staff research report for which only the staff assumes responsibility. The Council staff stands ready to assist the Council, the study committee, and the Legislature in any additional work on this subject.

The 52d Legislature, through H. C. R. 69, requested a study of the tax structure and a report to the 53d Legislature. The Council, at its first meeting, directed its staff to proceed with such a study. Later, upon recommendation of the study committee, it agreed that the survey of individual taxes, already begun by the preceding Council, should be completed as a basic step to any other approach or study of the tax structure as a whole.

Part IIB - Analaysis of Individual Taxes Concluded completes this part of the survey. The preceding volumes in this series are: A Survey of Taxation in Texas: Part I - Comparative Tax Revenue Analysis--Texas and Selected States; Part II - Analysis of Individual Taxes; and Part IIA - Analysis of Individual Taxes Continued.

This report is the result of the combined efforts of the Council staff. Arthur J. Pehrkon, senior staff research associate who participated in the planning of the research here presented, was called into the armed services, and Millard H. Ruud, assistant executive director, supervised the completion of the study. Other participants on various taxes were Joe Grady Moore Jr., William C. Foster, Thomas I. Dickson, and Albert W. Worthy Jr. Bob Cherry also assisted in the early work on one of the taxes. All made substantial contributions, and some were responsible for an individual tax research.

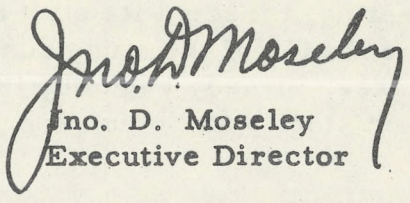
Briefly, this report contains an examination of the history and workings of the state taxes not examined in previous reports in the series. No attempt is made to determine who bears the burden of the taxes examined, what other taxes are imposed upon the persons affected by the individual tax, or the fairness of the tax rate.

In making this study, the staff consulted the laws of Texas, the available technological and tax data, the reports of state agencies, and a great deal of other literature on the subject. Officials and employees of various state agencies, especially tax-collecting agencies, were consulted.

The staff wishes to express its appreciation to the Comptroller of Public Accounts, the Texas Highway Department, the Secretary of State, and their staffs and the various other state officials and employees consulted for their invaluable co-operation, information, and help. This assistance greatly facilitated the preparation of this report.

This survey has emphasized to the staff the importance of a thorough study of taxation and the fact that this is only a part of such a long-range study. It is hoped, however, that this survey may be of assistance to the Legislative Council and its study committee and the Legislature of the State of Texas.

Respectfully submitted,



Jno. D. Moseley
Executive Director

INTRODUCTION

Part IIB - Analysis of Individual Taxes, concluding this portion of A Survey of Taxation in Texas, has been prepared to present an analysis of the remaining individual state taxes currently levied in Texas and not previously reported. For convenience, a descriptive word index of all three volumes of the individual tax studies has been included in this report as Appendix A. A table of contents for the series follows:

Analysis of Individual Taxes

Part II

Part IIA

Part IIB

This report follows the general pattern established in the volumes on individual taxes which have preceded it. The introductions to Volumes I and II and IIA discuss in detail the over-all scope and the limitations on this study. In general, the focus of the survey has been on the individual tax, with only incidental and occasional consideration of the relationship of each tax to the entire tax structure and to the other taxes now being levied. In earlier volumes, each chapter was devoted to a single tax, so

presented that it was complete within itself and did not necessarily require reading in the context of the remainder of the report. In some of the chapters of this report, groups of taxes having similar characteristics are presented together. The final chapter, to round out the tax picture, deals with a number of fees and taxes, each of which yields only a small amount of revenue but which collectively are important. This report continues, however, the purpose of making each portion of the study complete so that the report could serve as a convenient reference for those interested in one or another but not all of the taxes discussed. A concomitant of this approach has been some repetition and duplication of material presented.

Except for the final chapter, therefore, this report presents each tax or group of related taxes independently in a separate chapter, but so organized that similar information pertaining to various taxes may be generally compared by reference to s single section of each chapter of the series. Thus, in this report, as in previous volumes, the initial historical section section of each chapter is designed to orient the reader in the environment in which the tax operates and to summarize the statutory changes which have preceded the current law. Following are sections dealing specifically with administrative organization, assessment methods and procedures, and collection and enforcement. The concluding section, entitled "Summary and Problem Areas," summarizes those matters of policy or practice which appear to warrant consideration.

Chapter VI, concluding this report, presents in brief summary a wide variety of fees and taxes. Because of their large number and relatively small revenue production, it was felt that detailed treatment was not warranted in this survey. Section 1 of this chapter groups together the large number of fees collected; Section 2 groups together several minor occupation taxes; and Section 3 discusses the oleomargarine tax. A general summary of the importance of these taxes and the problems raised by them is found in Section 4.

Throughout this analysis of individual taxes, the enormity and complexity of the subject matter has made necessary summarizations and deletions of material. It is recognized that there may be, as a result, instances of oversimplification, misleading brevity and occasional omissions. For these reasons and because the approach has been limited to each tax as a unit, this series may not be considered as exhaustive but rather the initial step in a study of the Texas tax structure. It is hoped, nevertheless, that this initial step may independently afford the Legislature information which may aid it in its work.

Contents

CHAPTER I

BUSINESS TAXES BASED ON GROSS RECEIPTS

SECTION 1 -- HISTORICAL AND LEGAL DEVELOPMENT

Preceding chapters have been devoted to analyses of individual taxes. This chapter, however, will discuss a group of ten which includes taxes on the following companies: telephone, utility, well-servicing, motor carriers, textbook publishing, express, telegraph, pullman, collection, and car.[1] These may well be presented as a unit because they have a number of common characteristics. First, all taxes included in this group are levied on a type of business activity and all are based on "gross receipts" of the business taxed. Second, most of them are included in the same statutory framework and so are governed by the same administrative provisions. Third, the day-to-day administration of the taxes is handled by the same unit, the Gross Receipts Division of the Comptroller's Office. Fourth, the gross receipts basis has been prominent in public utilities taxation, although it has not been limited to that type of business.

Treating the taxes within this group as a unit avoids repetition of background information and yet allows adequate clarification of the differences among them.

Federal, state, and local governments have wrestled continuously with the problem of the most desirable basis upon which to tax businesses. One of the first taxes to become widely accepted on the state level was the property tax. After it had become firmly established, the states sought complementary taxes to compensate for some apparent inequities. It is clear that certain types of industries require more physical property in relation to earning power than others, and the contention arose that property gives only a limited indication of ability to pay.

To supplement property taxation, state governments generally chose net income, intangible assets, or gross receipts taxes. The gross receipts method has often been preferred because of its relative simplicity.

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[1] Legal bases for the taxes considered in this chapter are in Tex. Civ. Stat. (Vernon 1948) arts. 7047(41), 7058, 7059, 7060, 7060a, 7061, 7062, 7063, 7066b, and 7070. In addition to the gross receipts taxes, some companies also pay a "beginner's tax" levied in art. 7073.

Taxation of Public Utilities

Since most of the taxes considered in this chapter are collected from public utilities, a discussion of the characteristics of public utilities and their taxation may be helpful. Business enterprises commonly classed as public utilities have generally received special consideration by government at all levels. The common law of England early recognized that certain businesses could not be permitted to operate entirely without regulation. This conclusion was reached chiefly by attributing to these businesses certain unique social and economic characteristics and from the belief that public dependence upon them was more acute than upon other industries. The theory was also developed that these businesses were obligated to render service to the public generally and without discrimination. Since non-discriminatory service was required, governmental regulation and supervision were deemed necessary. Public utilities today are also characterized by need for relatively large amounts of capital and capital equipment to begin and sustain production. Utilities are therefore generally distinguished from other businesses which operate more or less freely and competitively. In contrast, public utilities operate under numerous constitutional, statutory, and judicially-determined restrictions. They are often controlled by regulatory commissions. Among the common characteristics of public utilities which facilitate their taxation are the trend toward large corporate units, which simplifies tax administration; restrictions on rates to prevent excessive prices, which makes it possible to tax utilities without having all the tax passed on to the consumer; and the relatively large investment per dollar of income received, which makes public utilities and railroads particularly vulnerable to property taxes. In addition to gross receipts and property taxes, license fees and franchise taxes have also played important roles in public utilities taxation.[2]

In Texas, gross receipts taxes on public utilities have developed through several stages, beginning in the latter part of the 19th Century. Since that time, they have reflected the vicissitudes of political and economic pressures, the impact of numerous legal decisions, and the trend of public opinion.

Gross Receipts Taxes as Occupation Taxes in Texas

The Texas Constitution provides that the state may levy poll, income, property, and occupation taxes.[3] In addition, it gives the Legislature "the

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[2] Information concerning development and taxation of public utilities is based largely on E. W. Clemens, Economics and Public Utilities (New York: Appleton-Century-Crofts Inc., 1950).

[3] Tex. Const., Art. VIII, sec. 1.

power to require other subjects or objects to be taxed in such manner as may be consistent with the principles of taxation fixed in this Constitution."[4] On the basis of the latter provision, the courts have upheld taxes of types other than the four specifically listed in the Constitution.[5] However, most taxes based on gross receipts have been labeled by statute as occupation taxes to stay within the four types referred to in the Constitution, since direct gross receipts taxes are not given specific recognition. There seems to be little difference between a direct gross receipts tax and an occupation tax based on gross receipts. The former is simply a tax levied on the gross income; the latter is a tax levied on the privilege of engaging in a particular occupation and measured by gross income. Nevertheless, the distinction makes a difference in Texas because of special constitutional requirements relating to occupation taxes. For instance, one-fourth of all occupation tax revenues must be set aside to support the public free schools.

There has apparently been no litigation questioning the state's power to assess direct gross receipts taxes, and they were levied from time to time during the early history of business taxation in Texas. Regardless of the statutory label, it seems that gross receipts taxes have generally been considered occupation taxes under Texas law.[6]

Early Gross Receipts Taxes in Texas

As early as 1864, Texas assessed an "income tax" at the rate of two per cent of gross receipts on liquor dealers, wholesale and retail merchants, druggists, insurance companies, railroads, lawyers, dentists, and other persons and companies.[7]

Gross receipts, along with property value, continued to be a basis for taxing railroads throughout most of the remainder of the 19th Century. Although railroads were assessed on the basis of gross receipts during this

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[4] Tex. Const., Art. VIII, sec. 17.

[5] The Legislature has plenary power to select methods of taxation to raise revenue. Therefore a tax need not be specifically mentioned in the Constitution to be valid, but any type of tax may be enacted if not specifically prohibited. State v. Wynne, 134 Tex. 455, 133 SW 2d 951 (1939).

[6] The direct gross receipts tax on railroads enacted in 1905 (Acts 29th Leg., R. S. 1905, ch. 141) was considered an occupation tax although it was not labeled as such in the enactment. See Galveston, Harrisburg, and San Antonio Railroad Company v. Texas, 210 U. S. 217 (1908).

[7] Acts 10th Leg., 2d C. S. 1864, ch. 11, p. 7. For a history of gross receipts taxation of insurance companies, see Texas Legislative Council, Staff Research Report No. 52-1, A Survey of Taxation in Texas: Part IIA - Analysis of Individual Taxes Continued (1952), pp. 45-99. Since the gross premiums tax was discussed in the previous volume, it is not covered here.

period, the state had considerable difficulty in applying this assessment base to other public utilities. The property and income taxes were generally considered the most acceptable forms of taxing corporations in Texas before 1870,[8] but gross receipts taxes were assessed from time to time in addition to the property tax. A tax of this type on insurance companies was in effect from 1864 to 1870, and by 1871 a gross receipts tax had been levied on both railroad and telegraph companies.[9] Since the rate was uniformly two per cent of gross receipts on both types of companies, the contention arose that with combined property and gross receipts taxes, the railroads were carrying a heavier tax burden than the telegraph companies and that a rate difference should be made in the gross receipts tax. Governor Davis suggested that this apparent inequity be corrected by increasing the rate on telegraph companies to five per cent of gross receipts.[10] The Legislature, however, ignored the suggestion and decreased the rates on both telegraph and railroad companies to one per cent.[11] Partly as a result of the difference of opinion between the governor and the Legislature, the gross receipts tax was later repealed, leaving only the property taxes on these businesses in force.[12] Although a gross receipts tax on railroads, steamboats, and stages was subsequently readopted,[13] the bitter controversy produced by an attempt to extend the tax to telegraph companies evidently discouraged any extensive movement toward assessing a similar tax on other public utilities during the next two decades.

During the 20-year period between 1870 and 1890, special occupation taxes were assessed on a number of public utilities. Gas, electric light, telephone, and express companies were assessed an annual fee in the form of an occupation tax, and the companies just mentioned--railroad, steamboat, and stage--were taxed on the basis of gross receipts. For a time, the basis of the telegraph tax took into consideration the number of messages transmitted, and dining and sleeping car companies were subject to a tax based on the number of miles traveled.[14] During this period, the state also enacted a capital stock tax on certain types of public utilities.[15]

It is clear that there was no agreement during the 1870's and 1880's as to what constituted the most desirable and effective method of taxing public utilities.

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[8]E. T. Miller, A Financial History of Texas (Austin: Texas University Press, 1910), p. 170.

[9]Acts 12th Leg., C. S. 1870, ch. 82, sec. 3, p. 199.

[10]Miller, op. cit., p. 171.

[11]Acts 12th Leg., 1st C. S. 1871, ch. 52, sec. 7, p. 47. See also the amendment, ch. 55, p. 60.

[12]Acts 12th Leg., 2d C. S. 1871, ch. 68, p. 55.

[13]Acts 16th Leg., 1st C. S. 1879, ch. 43, p. 39.

[14]See Acts 17th Leg., R. S. 1881, ch. 55, sec. 3; Acts 17th Leg., 1st C. S. 1882, ch. 17, sec. 3; Acts 21st Leg., R. S. 1889, ch. 32, sec. 1; and Acts 23d Leg., R. S. 1893, ch. 102, sec. 1.

[15]Acts 18th Leg., R. S. 1883, ch. 73, sec. 1.

Extensive Development of Gross Receipts Taxes

Taxation of gross receipts advanced, particularly in the field of public utilities, during the 1890's. Taxes on express companies and dining and sleeping car companies were converted to gross receipts taxes in 1895 and 1897, respectively.[16]

In 1905, a tax was assessed on the intangible assets of a number of business activities, including railroads; telegraph companies; interurban railroads; express companies; chair, refrigerator, stock, and tank car companies; and all other railroad car companies except sleeping, palace, and dining car companies.[17] On the same day the Legislature approved gross receipts taxes on railroads; express companies; sleeping, palace, and dining car companies; telegraph and telephone companies; gas, water, and electric light and power companies; collecting and commercial agencies; textbook publishers; railroad car companies; exchange dealers; surety and guaranty companies; wholesale dealers in certain mineral oils; pipeline companies; and owners of producing oil companies.[18] Apparently to prevent taxation of the same companies by both methods, it was provided that companies paying the intangible assets tax were not subject to the gross receipts tax. However, it was also provided that the gross receipts tax was to be levied in addition to all other taxes unless specifically provided otherwise. Although these provisions could possibly be reconciled, they were apparently in conflict. The resultant confusion was considerably cleared by the Legislature in 1907 when it exempted the types of businesses involved in the conflict, except railroads, from the intangible assets tax but made them liable for the gross receipts taxes.[19]

Although the gross receipts taxes of 1905 were short-lived, certain features of them and certain conditions surrounding them deserve attention because of their later influence. All businesses taxed by the gross receipts method by the 1905 Legislature, except railroads, were covered by one act. Common administrative and enforcement provisions were included. This presaged the treatment in the 1907 act which is still the basic gross receipts tax act. The current pattern, and one which orginated in 1905, is to group gross receipts taxes together for administrative purposes but to allow a limited number of variations from the pattern.

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[16] Acts 24th Leg., R. S. 1895, ch. 32, p. 37; Acts 25th Leg., R. S. 1897, ch. 120, p. 170.

[17] Acts 29th Leg., R. S. 1905, ch. 146, p. 351.

[18] Acts 29th Leg., R. S. 1905, ch. 148, p. 358; ch. 141, p. 336 (railroads).

[19] Acts 30th Leg., 1st C. S. 1907, ch. 18, sec. 25, p. 479.

The Basic Tax Statute: 1907

The 1905 law was repealed by the gross receipts tax act of 1907. Much of the gross receipts tax act was eventually incorporated into the Revised Civil Statutes of 1925 and is the basic gross receipts tax law today. In 1907, interurban railroads, terminal railways, liquor dealers, and pistol dealers were added to the list of occupations taxed by the 1905 law.[20]

The rates for telephone companies, textbook publishers, express companies, and collecting and commercial agencies were not changed,[21] but those for several other taxes were.[22] Rates on telegraph companies were decreased to 2 3/4 per cent, while those on railroad car companies were increased to 3 per cent and those on sleeping, palace, and dining car companies to 5 per cent.[23] A 1-per-cent rate was initially levied on the gross receipts of terminal companies.[24] A distinctive rate feature based on population of the town or city served was applied to street and interurban railroad companies and to gas, water, light, and power companies.[25] The principle of a graduated rate based on population has continued to play an important role in the assessment of gross receipts taxes and is presently applied to telephone, telegraph, and utility companies.[26]

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[20] Acts 30th Leg., 1st C. S. 1907, ch. 18, p. 479. The history of liquor taxation in Texas is traced in Texas Legislative Council, Staff Research Report No. 52-1, A Survey of Taxation in Texas, Part IIA - Analysis of Individual Taxes Continued (1952), ch. V.

[21] Rates remained constant at 1 1/2 per cent on telephone companies (sec. 14), 2 1/2 per cent on express companies (sec. 1), 1/2 per cent on collection and commercial agencies (sec. 4), and 1 per cent on textbook publishers (sec. 13). The occupation tax on collection and commercial agencies will hereafter be referred to as the tax on collecting agencies.

[22] The 1907 rates established for railroad car companies; sleeping, dining, and palace car companies; terminal companies; collecting agencies; and textbook publishers have never been amended. After some 45 years, they are still in effect.

[23] Acts 30th Leg., 1st C. S. 1907, ch. 18, secs. 2, 5, and 7. Hereafter in this discussion, railroad car companies will be referred to as car line companies and sleeping, palace, and dining car companies will be referred to as Pullman companies.

[24] Ibid., sec. 16.

[25] Ibid., secs. 3 and 10. Hereafter gas, water, and electric light and power companies will be referred to as utility companies.

[26] Texas courts have sustained classifications unless they were wholly without reasonable basis. They have upheld rate classifications based on differences in population. See North Fort Worth Amusement Co. v. Card, 23 SW 2d 778 (Tex. Civ. App. 1930); Ex Parte Mehlman, 75 SW 2d 689 (Tex. Crim. App. 1934). See also 28 Tex. L. Rev. 829 (1950) for a discussion of bracket bills in Texas.

If a new company taxable under the law began business on or after the first day of a quarter, a uniform levy of $50, payable in advance, was imposed for that quarter,[27] and the regular rates applied thereafter. Commonly referred to as the "beginner's tax," this levy is still in effect.

Responsibility for computing and paying the tax was delegated to the company concerned, and payment and reports were to be made quarterly to the State Treasurer and the Comptroller respectively. On acceptance and clearance of the quarterly payment, the Treasurer was authorized to issue a receipt.[28] The report to the Comptroller was required to be submitted with an affidavit of the company's officer attesting the truth of the statement. If the Comptroller was not satisfied with a report, he could require the company to submit additional reports containing specific information.[29] Failure to comply with this request made the company guilty of a misdemeanor, and upon conviction, it could be fined from $200 to $500. If the Comptroller felt that a company had submitted a false report, he could give written notification to the governor, who was authorized to instigate an audit of the company's books by a state revenue agent.[30] The method by which audits were to be effected differed from provisions in the 1905 law and was unusual in that the governor was involved.

Generally, penalties provided by the 1907 act were more severe and more numerous than those included in the 1905 law. Most of them in the latter ranged from $50 to $100 for failure to report and pay within 30 days from due date, with an additional $25 penalty for each day of delinquency beyond the permitted 30. In contrast, the 1907 law specified a maximum penalty of $1,000 for failure to report and a separate fine of 10 per cent of the tax for failure to pay within 30 days.[31] In addition, a company which failed to pay the tax could not continue to conduct business in Texas.[32]

Although the tax law specifically stated that no business was to be granted a permit to do business in Texas if such taxes were not paid, it included no provision for the issuance of a permit if the tax was paid. These additional measures in the 1907 act greatly strengthened the penalty provisions.

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[27] Acts 30th Leg., 1st C. S. 1907, ch. 18, sec. 17, p. 479.

[28] Ibid., sec. 21.

[29] Ibid., sec. 23.

[30] Ibid., sec. 24.

[31] Ibid., secs. 18 and 19.

[32] Ibid., sec. 21.

The gross receipts tax of 1907 was levied in addition to all other taxes on the industries specified, although industries paying the gross receipts tax were exempt from the levy on intangible assets.[33] Transportation and Pullman companies which paid gross receipts taxes were exempted from the franchise tax.[34]

No specific allocation of tax receipts was made in the law, but because it was termed an occupation tax, one-fourth of the revenue was earmarked for the Available School Fund by constitutional provision.[35]

The taxes levied by the 1907 law were all collected and enforced through the combined efforts of the State Treasurer, Comptroller, Governor, Attorney General, revenue agents, and the courts of Travis County. However, there were certain deviations concerning tax bases and exemptions, and these will be considered in the following discussion.

The 1907 statute has generally served as the basis for administration of the present gross receipts taxes. Amendments have usually resulted from one of two considerations--first, a continuing search for the particular types of businesses most appropriately taxed by the gross receipts method and for a just rate for each type and, second, measures to effect a more efficient administration.

Developments From 1907 to 1930

There were no amendments to the 1907 gross receipts tax law for a decade after its enactment, but two of the taxes therein were declared unconstitutional--the railroad tax in 1908 and the terminal companies tax in 1917. Probably because its validity was being tested, the 1905 gross receipts tax on railroads was not replaced in the 1907 law as were the other taxes. In 1908, the United States Supreme Court held that the tax amounted to an "attempt to regulate commerce among the States" and so violated the commerce clause of the federal Constitution.[36] The court recognized the power of the states to tax property used in interstate commerce at its actual value as a going concern. Whatever the form and measures used, if the state tax amounted to an ordinary tax on property, it was constitutional, the court said. In view of the fact that Texas also had a tax on the property of the railroads, the court declared that

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[33] Ibid., secs. 22 and 25.

[34] Ibid., ch. 23, sec. 13, p. 502.

[35] Tex. Const., Art. VII, sec. 3.

[36] Galveston, Harrisburg, and San Antonio Railway Co. v. Texas, op. cit.

the gross receipts tax was not used as a more workable index to reach the going-concern value of the property and hence was not a permissible property tax.[37]

In 1917, the tax on terminal companies was declared unconstitutional.[38] This decision represented the first step in eliminating certain businesses from the 1907 gross receipts tax program. The court stated that its decision was based on the United States Supreme Court case mentioned above and concluded that interpretations of the commerce clause permitted a state to tax interstate commerce measured by gross receipts if gross receipts were selected as the means of measuring the taxable income of the carrier. Since the taxable value of terminal companies' property was also being taxed by the ad valorem and franchise levies, the court held the tax invalid on the grounds that it was in addition to the other taxes and therefore a burden on interstate commerce.

In 1908, one year after this decision, the first major change in administration of the gross receipts tax was made. Primarily, it concerned annual permits,[39] which were issued by the Secretary of State upon verification that all state taxes had been paid. If a permit holder became 30 days

[37] As is well known, the problem of which state taxes fall under and which outside the prohibitions of the commerce clause has troubled the courts throughout our history. The suggestion by the four dissenting justices in the Galveston Railway case that the answer is not as simple and clear-cut as Mr. Justice Holmes declared in the case seems to be borne out by the decisions of the Supreme Court since 1908. So far as the verbal formula is concerned, a state tax has been held invalid if it is "on" interstate commerce, Case of the State Freight Tax, 15 Wall. 232, 272 (U. S. 1872); and later, invalid if it was a "direct burden" on interstate commerce. (New Jersey Bell Telephone Co. v. State Board, 280 U. S. 338, 346 (1929). In Western Livestock v. Bureau of Revenue, 303 U. S. 250 (1938), concerned with the fact that interstate commerce should neither be discriminated against nor in favor of, Mr. Justice Stone tried to restate the formula in terms of a "multiple burden" or "cumulative burden" test. If the state tax were one which taxed a particular activity or transaction which another state could tax with equal right, then it was invalid. However, in Freman v. Hewit, 329 U. S. 249 (1946), Mr. Justice Frankfurter, by employing the test whether the tax was "directly on" interstate commerce, created doubts concerning the "multiple burden" test, at least so far as a state sales tax is concerned. This entire problem is extensively examined in Powell, More Ado About Gross Receipts Taxes, 60 Harv. L. Rev. 501, 710 (1947); Dunham, Gross Receipts Taxes on Interstate Transactions, 47 Col. L. Rev. 211 (1947); 26 Tex. L. Rev. 341 (1948). There is authority that a state may levy a gross receipts tax relating to interstate commerce if the tax is apportioned. See Western Livestock v. Bureau of Revenue, op. cit., and Greyhound Lines v. Mealey, 334 U. S. 653, 663-664 (1948).

[38] Houston Belt & Terminal Co. v. State, 108 Tex. 314, 192 SW 1054 (1917).

[39] Acts 35th Leg., 4th C. S. 1918, ch. 84, p. 177.

delinquent, the Comptroller was to notify the Secretary of State, who in turn was to inform the delinquent taxpayer that if the tax were not paid to the Comptroller within 10 days, the permit would be suspended. If the company continued to transact business after the permit had been suspended, it was liable for penalties of not less than $50 nor more than $500 for each day's business transacted in violation of the law. Responsibility for bringing suit was placed on the Attorney General.[40]

The second step in eliminating certain businesses from the gross receipts tax program came in 1923, when it was provided that the tax on textbook publishers would expire on September 1, 1929.[41] The third step was the repeal of the tax on interurban railways in 1927.[42] The reason given for the repeal was that the tax had become an unjust burden because of the dire financial conditions of these businesses.

By the close of 1929, then, the gross receipts tax on railroads and terminal companies had been declared unconstitutional, and taxes on interurban railway companies and textbook publishers had been repealed.

Developments During the 1930's

During the 1930's, legislation concerning gross receipts taxes generally consisted of amendments to adjust rates. The first amendment was enacted in 1930,[43] when graduated rate scales were provided for utility companies operating in incorporated cities of 2,500 or more, and the original rate was increased. The statute also offered implied exemptions for all unincorporated cities, regardless of size, and cities of exactly 10,000 population.[44] The tax was not to be collected twice from revenue obtained from the sale of the same commodity. If the commodity was produced by one company and distributed by a second, the latter company alone would pay the tax.

In 1930, too, the occupation tax on textbook publishers was re-enacted.[45] The tax statute was passed as a new law and not as an amendment to the gross receipts tax act of 1907. If it had amended the Revised Civil Statutes

[40] Ibid., sec. 4.

[41] Acts 38th Leg., R. S. 1923, ch. 167, p. 352.

[42] Acts 40th Leg., R. S. 1927, ch. 286, p. 431.

[43] Acts 41st Leg., 5th C. S. 1930, ch. 34, p. 168.

[44] Rate classifications according to population brackets were so arranged in the statute that no rate was provided for businesses in cities of exactly 10,000. The same type of error was made in establishing graduated rates for the telephone tax in 1936 and for the tax on telegraph companies in 1945.

[45] Acts 41st Leg., 5th C. S. 1930, ch. 37, p. 175.

of 1925, which grouped gross receipts taxes under a single title, administrative provisions applicable to other gross receipts taxes would also have been applied to the textbook publishers' tax. Since it is separate, questions have arisen as to which administrative provisions are pertinent.

The new tax generally paralleled the old, but a new exemption was provided for some corporations organized by the students and faculties of state-supported schools. No penalties were provided.[46] In addition, no provision was made for a beginner's tax as in the other gross receipts levies. Indications are that although no such provision was included and although the act was not an amendment to the original gross receipts tax law, textbook companies are required by administrative policy to pay the beginner's tax.

In 1931, the tax on express companies was amended to require quarterly instead of annual payments. This made the collection procedure for the tax the same as for other gross receipts taxes.[47] The wording of the statute was changed to assess the tax on business carried by "steam railroad," and the tax base was broadened to include not only revenue from intrastate express and freight charges but from all other intrastate sources.

In an effort to make enforcement of these taxes more effective and to aid in the recovery of delinquent taxes, the powers of the State Tax Board and the State Tax Commissioner were expanded, and the administrative procedure for audits was revised in 1933.[48] The act provided that all gross receipts tax delinquencies were to be reported by the Comptroller to the State Tax Commissioner within 30 days after due date and that the Tax Commissioner, the Tax Board, or their authorized representatives had authority to investigate the companies. Venue and jurisdiction in all suits resulting from audits were in the courts of Travis County.[49] If a company refused

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[46] Acts 35th Leg., 4th C. S. 1918, ch. 84, p. 177.

[47] Acts 42d Leg., R. S. 1931, ch. 222, p. 376.

[48] Acts 43d Leg., R. S. 1933, ch. 192, p. 581.

[49] The pertinent provision reads, "The venue and jurisdiction of all suits arising hereunder is hereby conferred upon the courts of Travis County." (Emphasis added.) Tex. Civ. Stat. (Vernon, 1948) art. 7076. Jurisdiction relates generally to the power of a court or class of courts to act in certain types of cases, while venue is concerned with the appropriate court to try a particular case among several courts which may have jurisdiction. Venue is usually determined by geographical considerations. For practical purposes, this provision apparently affects only venue. In Magnolia Petroleum Co. v. State, 190 SW 2d 581 (Tex. Civ. App. 1945), the court upheld the provision as to venue and assumed, but did not decide, that if the article attempted to confer exclusive jurisdiction on Travis County courts, it would violate Tex. Const., Art. V, sec. 8, which grants district courts jurisdiction over suits in behalf of the state to recover penalties.

to permit examination of its records, the Secretary of State was authorized to suspend the corporation's charter immediately, effective until the examination was complete.[50]

In 1936, rates for the tax on telephone companies were graduated according to federal census population figures.[51] This was the first application of graduated rates to telephone company taxes, and it effected a general rate increase. Rates on telegraph and utility companies were also increased in 1936.[52]

These amendments stipulated that no city or other political subdivision could impose an occupation tax or charge of any sort on telephone, telegraph, or utility companies except as a franchise tax.[53]

The rates increased in 1936 were lowered the next year[54] on the grounds that validity of the tax was under contest in the federal courts.[55] In addition, the amendment exempted receipts from business from and on behalf of the federal government for which the Postmaster General prescribed the rates. No further amendments were enacted in the 1930's, and the gross receipts tax rates in effect in 1936 remained unchanged until 1941.

Developments During the 1940's

Rates on telephone companies and utility companies were increased by the Omnibus Tax Bill in 1941, and utility companies operating in cities of from 1,000 to 2,500 were made subject to the tax.[56] The amendment to the utilities company tax stipulated that cities could exact a reasonable charge, not to exceed two per cent of gross receipts, from all public utilities if designated a rental or other special tax and if not otherwise unlawful. The amendment followed the holding of the Texas Supreme Court that the provision prohibiting cities from levying a gross receipts tax on utility companies did not prevent cities from making a charge for street rental.[57] In addition, utility companies operating in cities of 3,000 or less and paying an occupation tax based on gross receipts from sale of gas, water, and electric light were

[50] This audit procedure is still in effect. Tex. Civ. Stat. (Vernon 1948) art. 7076.

[51] Acts 44th Leg., 3d C. S. 1936, ch. 495, art. iv, sec. 1, p. 2040.

[52] Ibid., secs. 2 and 3, p. 2040.

[53] Tex. Const., Art. VIII, sec. 1, permits a city, town, and county to levy an occupation tax at one-half the rate imposed by the state. However, the Legislature may bar the imposition of a tax in these cases, and that is apparently the function of the provision mentioned here.

[54] Acts 45th Leg., 2d C. S. 1937, ch. 36, p. 1918.

[55] Ibid., sec. 4.

[56] Acts 47th Leg., R. S. 1941, ch. 184, arts. iv and v, p. 269.

[57] Fleming et al v. Houston Lighting and Power Co., 135 Tex. 463, 138 SW 2d 520 (1940).

exempted from the chain store tax.[58]

Also as part of the Omnibus Tax Bill of 1941, a gross receipts tax was levied on motor bus companies, motor and contract carriers, and companies servicing oil and gas wells.[59] These taxes differed from the gross receipts taxes of 1907 in collection procedure, exemptions, and penalties.

Although ostensibly the 2.2-per-cent rate on motor carriers was levied on motor buses, motor carriers, and contract carriers, the tax was in effect assessed primarily on contract carriers, since the others were usually exempt by virtue of the provision that carriers paying an intangible assets tax did not have to pay the gross receipts tax. It should be noted that the motor carrier tax provision did not amend the Revised Civil Statutes of 1925 as did the well-servicing companies tax. This has been significant because no penalties were provided for failure to submit reports or payments, and the penalty provisions in the original statute were not made expressly applicable. Therefore only certain penalties provided by prior acts covering all gross receipts taxes could conceivably be employed.

Rate for the well-servicing company tax was set at 2.2 per cent of gross receipts. The tax was assessed on companies engaged in the business of servicing oil and gas wells when such service was rendered in connection with the cementing of casing seat, shooting or acidizing the formations, or surveying and testing the sands. Although uniform penalties were provided for all taxes based on gross receipts by the Revised Civil Statutes of 1925, to which the article levying this tax was an amendment, special penalty provisions for violations of the well-servicing tax were enacted.

After the rate adjustment and addition of the two new types of businesses in 1941, no further amendments were made until 1945, when a new rate structure was prescribed for telegraph companies.[60] Instead of the flat rate, a graduated scale of rates similar to that imposed upon telephone and utility companies was provided. Since the highest rate assessed under the new structure was less than the previous flat rate, the change effected a considerable decrease in the tax.

There were no further amendments during the 1940's. That decade brought about the inclusion of two new types of businesses, upward adjustment of rates for telephone and utility companies, and downward adjustment of rates for telegraph companies.

[58]This tax was included in Acts 44th Leg., 1st C. S. 1935, ch. 400, sec. 5(a), p. 1589.

[59]Acts 47th Leg., op. cit., arts. xiv and xvi. The occupation tax on motor bus companies and motor and contract carriers will hereafter be referred to as the motor carrier tax. The occupation tax on companies servicing oil and gas wells will be referred to as the well-servicing tax.

[60]Acts 49th Leg., R. S. 1945, ch. 299, p. 471.

Recent Developments

Rate adjustments enacted as part of the Omnibus Tax Bill of 1950 affected taxes on telephone companies, motor carriers, well-servicing companies, and utility companies.[61] The change was a general increase of 10 per cent, effective only until August 31, 1951.[62] However, the rate increases were made permanent by the next regular session of the Legislature.[63] Penalty provisions were enacted for the motor carrier tax. In 1951, too, the duty of issuance and revocation of gross receipts permits was transferred from the Secretary of State to the Comptroller,[64] and a one-dollar payment was required with each annual application to defray the cost of issuance.

Summary

During the last 50 years, the state has employed the gross receipts method of taxation rather extensively. Although it was first assessed primarily on public utility companies, the tax has been extended to cover several industries not generally considered public utilities. Throughout their history, the taxes have been assessed on businesses partly engaged in interstate commerce, and questions concerning the taxes and their validity have been before state and federal courts. Texas now collects gross receipts taxes from telephone, telegraph, express, car line, and Pullman companies. All these are involved in interstate business, but Texas taxes them only on their intrastate receipts.

The taxes on telephone, utility, and well-servicing companies and motor carriers account for more than 90 per cent of the total revenue from gross receipts taxes included in this discussion.[65] As has been noted, no revenue is received from the gross receipts tax on terminal companies because the levy was declared unconstitutional in 1917. Nevertheless, it was included in the Revised Civil Statutes of 1925 and has never been expressly repealed.

It is interesting to note that since the original enactment in 1907, the gross receipts taxes on car line companies, pullman companies, and collecting agencies have not been amended, and the taxes on express and textbook

[61] Acts 51st Leg., 1st C. S. 1950, ch. 2, p. 10.

[62] Ibid., arts. iv, v, xiii, and xv. Also see Acts 51st Leg., 1st C. S. 1950, ch. 4, sec. 29, p. 33, which exempts telephone co-operatives from all excise taxes and levies a $10 annual fee.

[63] Tex. Civ. Stat. (Vernon Supp. 1952) arts. 7060, 7060a, 7066b, and 7070.

[64] Ibid., arts. 7080, 7081, and 7082.

[65] Comptroller of Public Accounts, Annual Report of the Comptroller of the State of Texas - 1951.

publishing companies have been amended only once.

Though no or few amendments have been made to some of the gross receipts taxes, the most important of them, from the standpoint of revenue produced, have been given recent legislative attention. Gross receipts taxes on utility companies, well-servicing companies, and motor carriers--all of which are relatively important revenue-raisers--were included in the Omnibus Tax Bill of 1941 and in the general tax rate increase measures in 1950 and 1951.

Administrative procedure has developed with the addition of new types of businesses to be taxed on the basis of gross receipts. The form of enactment of the gross receipts taxes added in the last two decades has created problems. Several of the laws did not have complete administrative provisions. This apparently created a void, since, as has been pointed out in earlier discussion, the statutes did not amend the basic gross receipts tax law so that its administrative provisions would be applicable. A further problem was created when one new tax which did amend the basic statute duplicated existing penalties.

SECTION 2 -- ORGANIZATIONAL FORM

Primary responsibility for administering the gross receipts taxes is assigned to the Comptroller of Public Accounts. Certain additional duties connected with these taxes are assigned by law to the State Treasurer, the Attorney General, the State Tax Board and Commissioner, and the Governor. Effective administration of the gross receipts tax laws, therefore, appears to depend on close and integrated relationships among these officials. Actual practice, however, is simplified by minimizing the duties of the State Treasurer and the State Tax Board and Commissioner and by dispensing entirely with the performance of any function by the Governor.

Comptroller

Responsibilities delegated by the gross receipts tax laws to the Comptroller are exercised by the Gross Receipts Tax Division, which is responsible not only for the ten taxes discussed in this chapter but also for those on oil, gas, gas-gathering, pipe lines, sulphur, carbon black, cement, and stock transfers. The division has the duty of collecting gross receipts taxes, including such functions as checking reports, keeping records of tax accounts, and issuing and revoking the permits required of businesses subject to gross receipts taxes.

In addition to the division office in Austin, there is a Gross Receipts Tax Division field force in ten district offices throughout the state. This force is presently composed of 14 auditors who spend most of their time on oil and gas tax enforcement. Accordingly, they have little time to devote to the collection and enforcement of the gross receipts taxes discussed in this chapter.

State Treasurer

All gross receipts tax laws, except that on well-servicing, require payment to the State Treasurer, who is also responsible for issuing receipts. In operation, most remittances come first to the Comptroller and are subsequently sent to the Treasurer. The receipts are in fact prepared by the Gross Receipts Division and merely signed by the Treasurer. This practice meets formal legal requirements and is undoubtedly more conducive to efficient administration than a further decentralized operation would be.

Attorney General

The Attorney General has authority to bring suits for delinquent taxes and penalties. In addition, he prescribes the form of the gross receipts tax permits issued by the Comptroller and is to be notified if the Comptroller suspends a

permit held by a delinquent taxpayer. If taxpayers continue to operate after their permits have been suspended, or if any person in the state conducts a business on which gross receipts taxes are due without first obtaining this permit, the Attorney General is responsible for bringing suit for the penalties authorized by law.[66] Venue of cases involving the gross receipts taxes is placed in the courts of Travis County.

State Tax Board and Commissioner

The State Tax Board is an ex-officio agency consisting of the Comptroller of Public Accounts, the Secretary of State, and the Attorney General.[67] The Comptroller is ex-officio Tax Commissioner[68] and the administrative agent of the board. So far as the gross receipts taxes are concerned, he is vested with essentially all the authority given the board plus several other powers.

Since the duties given the State Tax Board are primarily concerned with enforcement and bringing suit for delinquent taxes,[69] its activities seem to overlap rather extensively with those of the Attorney General. However, few delinquent tax cases have been initiated by the board in recent years, and the primary responsibility for conducting tax litigation rests with the Attorney General.

Another important power given to the State Tax Board and Tax Commissioner is their authority to investigate taxpayers' books. This authority can be very useful if there is reason to believe that a business is not paying its full gross receipts tax. Since the Comptroller is also the Commissioner, this power can be used to advantage.

Governor

If the Comptroller believes a person subject to a gross receipts tax has made a false or incomplete report, he is required by statute to notify the Governor of this fact. It is the Governor's duty to have the Comptroller check the concern's records. If any discrepancy is found, the Comptroller requires a supplemental report. There is a penalty for failure to furnish this additional information.[70] The function of the Governor in this procedure is purely

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[66] Tex. Civ. Stat. (Vernon, 1948) art. 7083.

[67] Ibid., art. 7098.

[68] Ibid., art. 7098a.

[69] Ibid., arts. 7076 and 7076a.

[70] Tex. Pen. Code (Vernon, 1948) art. 137.

ministerial, and the duties of the Comptroller are mandatory. Nevertheless, these provisions, so far as gross receipts taxes are concerned, have fallen into disuse.

Consolidated Administrative Authority

While the gross receipts tax laws establish a complicated and decentralized administrative organization with several divisions of authority, actual practice is simpler and more consolidated. The Comptroller, in his dual role as Comptroller and Tax Commissioner, is given the primary responsibility for administering the taxes. Functions of the Treasurer are perfunctory, and the duties of the Attorney General, while important, play a small part in the everyday administration of the tax laws.

SECTION 3 -- ASSESSMENT

Although the administration of gross receipts taxes conforms to a standard pattern, assessment methods vary with each tax. Therefore, the bases, exemptions, and rates of each tax will be considered separately. The taxes are presented here in the order of their present importance as revenue sources, with the largest revenue-producer first.

Telephone Companies

Approximately 250 companies pay the gross receipts tax on telephone companies, and revenue from the tax totaled $3,824,834 during the fiscal year 1951-1952. The tax is based on the "gross amount" received from charges for the use of lines and telephones and for the lease or use of any wires and equipment within the state.[71]

Exemptions and Deductions

Although no exemptions were provided in the basic statute in 1907, gross receipts from telephone co-operatives were largely exempt by a letter opinion of the Attorney General concerning a rural telephone union.[72] The opinion held that co-operatives received "assessments" to cover operating expenses rather than "charges." However, revenue received by co-operatives from "toll charges" for handling long distance calls for other telephone companies was held to be "gross receipts" and taxable. As a result of this opinion, telephone co-operatives were taxed only on the basis of receipts from toll charges.

The method of taxing co-operatives was changed by the Telephone Co-operative Act of 1950, which provided that they "shall be exempt from all other excise taxes."[73] The question then arose as to whether the gross receipts tax was an excise tax. Since the Attorney General had previously held the gross receipts tax on public utilities an excise tax, thereby exempting utility co-operatives,[74] it has been assumed that the gross receipts tax on telephone companies is also an excise tax and that all receipts from telephone co-operatives are exempt.

In 1951, the gross receipts tax on telephone companies was amended by providing that the tax shall not "apply to any telephone line or lines owned and operated by a co-operative, non-profit, membership corporation."[75] It appears that this amendment would exempt all receipts from

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[71] Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7070.

[72] See Atty. Gen. Letter Op. dated September 3, 1930, from R. D. Cox Jr., Assistant Attorney General, to George H. Sheppard, Comptroller of Public Accounts.

[73] Tex. Civ. Stat. (Vernon, Supp. 1950) art. 1528c, sec. 29.

[74] Op. Tex. Atty. Gen. No. 0-913 (October 6, 1943).

[75] Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7070.

local exchange calls carried exclusively over lines of the co-operative. However, it is still not clear whether receipts from long-distance toll calls paid to co-operatives by other telephone companies are totally exempted by the amendment. The allocation of receipts from toll calls is based on toll compensation agreements between telephone companies,[76] and it is not possible to determine accurately whether a telephone co-operative's proportion of a particular call is for the use of their lines, building facilities, or collection activity. Therefore, there is a possibility that exempting telephone lines of co-operatives does not exempt all their receipts. However, if the use of the term "telephone lines" was intended by the Legislature to include all receipts, the amendment in effect restates the exemption given co-operatives in the Telephone Co-operative Act of 1950. Since its passage, co-operatives have not been paying on either their assessments or toll charges.

In addition to the specific exemption granted telephone co-operatives, all telephone companies are permitted several deductions from total gross receipts. First, only intrastate receipts are taxable,[77] it being well established that a state cannot assess a tax that burdens interstate commerce.[78] Taxation which burdens or regulates interstate commerce constitutes an invasion of the powers of the Congress. Also, the law seems to restrict the tax to one on charges for service within the state. The practice has been to accept the company's division of its receipts into intra- and interstate business, and interstate receipts are not even reported. Second, federal excise taxes collected are deducted from total gross receipts, and the amount is not included in the quarterly report of gross receipts. Third, several types of receipts are not considered as "charges" or as receipts "from the lease or use of wires or equipment" and are not reported. Bases for such deductions have originated in numerous interpretative letters and opinions of the Attorney General. The following rules have been adopted:

1. Receipts derived from advertising included in telephone directories are not taxable because directories are not "equipment" in the same sense as instruments and lines.
2. Commissions earned by telephone companies for collecting telegraphic accounts on messages sent by telephone are not taxable because the commission is paid for collecting, not for the use of telephone equipment in sending the message.
3. Uncollected charges are not considered taxable because they have not been paid. "Payment" must be made before the tax is levied.

[76] Texas Legislative Council, Staff Research Report No. 51-7, Long Distance Telephone Rates in Texas, pp. 24-25.
[77] Op. Tex. Atty. Gen. No. 0-1878 (May 9, 1940).
[78] Cooney v. Mountain State Tel. & Tel. Co., 294 U. S. 384 (1935).

4. Service connection or installation charges are not charges for the use of equipment and are not subject to the tax.
5. Receipts from radio broadcasting stations for the use of telephone lines to transmit out-of-state programs are not taxable because this activity has been construed to be interstate commerce by the United States Supreme Court.
6. Toll charges paid to other telephone companies for use of their facilities in intrastate calls are deductible from total receipts.[79]

A list of exemptions is not published by the Comptroller's Office, and the responsibility for finding what they are is placed largely on the telephone companies.

Rate

The tax rate varies according to population, determined by the last preceding federal census, and the corporate status of the locale in which business is conducted as follows:

Population Bracket	Rate of Tax in Per Cent of Gross Receipts
Outside of incorporated towns and in incorporated cities of less than 2,500	1.65
Incorporated cities of more than 2,500 and not more than 10,000	1.925
Incorporated cities of more than 10,000	2.5025

Gross receipts derived from "doing business. . . within" rural areas, that is, "outside of incorporated cities and towns," and within incorporated cities and towns of less than 2,500 population are taxed at a rate of 1.65 per cent. Moreover, army camps and similar installations which have a population in excess of 2,500 but which are unincorporated, pay the rural area rate.[80] In an unincorporated

[79] These receipts were declared deductible by a Conference Opinion of the Attorney General's Department dated November 19, 1934, from Scott Gaines, Assistant Attorney General, to George H. Sheppard, Comptroller of Public Accounts; Atty. Gen. Letter Op. dated June 4, 1935, from Hubert T. Faulk, Assistant Attorney General, to Geo. H. Sheppard, Comptroller of Public Accounts; Atty. Gen Letter Op. dated July 22, 1936, from Letcher D. King, Assistant Attorney General, to George H. Sheppard, Comptroller of Public Accounts.

[80] Op. Tex. Atty. Gen. No. 0-6914 (November 8, 1945).

community which obtains telephone service through an exchange located in an incorporated city, the tax rate is also 1.65 per cent, or the rate applicable to unincorporated communities. Thus, the population and corporate status of the community served, rather than the population and corporate status of the place where the telephone exchange is located, determine the rate.

Gross receipts derived from business conducted within incorporated towns and cities of between 2,500 and 10,000 population are taxed at 1.925 per cent. Apparently the question has never been raised, but it is interesting to note that rates are not provided for telephone companies conducting business in incorporated cities with a population of exactly 2,500. Probably, under present administrative procedure, the lower of the two possible rates would be assessed. Since the rate varies between incorporated and unincorporated communities with a population of more than 2,500, the tax administrator is required to obtain records of city incorporations and dissolutions in Texas to enforce necessary rate adjustments.

Gross receipts derived from business conducted within incorporated cities which by the last preceding federal census had more than 10,000 population are taxed at a rate of 2.5025 per cent.

Several general problems arise when population brackets are used to determine the tax rate. For example, reference to "the last preceding federal census" has caused some administrative difficulty. The problem has arisen where a city's population either increased or decreased substantially during the ten years between federal censuses. The current law apparently freezes the population for tax purposes during the ten-year periods unless an interim federal census is requested. When an incorporated city has requested an interim census, it has been the practice of the Comptroller to use the new population figure as the basis for selecting the applicable rate. However, the Comptroller does not request special censuses. Since the statute merely refers to the "last preceding Federal Census," the present administrative practice is to use the most recent one, whether interim or decennial.

Another problem has developed as a result of the fact that there is no federal census for communities which incorporate in the ten-year period between censuses. Since these situations are not covered by statute, administrative practice has been to ignore the change of status and levy the lower rate until a census becomes available. This administrative policy is based chiefly on a letter from a Census Bureau official stating that federal census figures for unincorporated communities are to be considered only estimates.[81] Therefore, businesses operating in communities which incorporate between censuses are not taxed at the higher rate until they have been included in a federal census--either interim or decennial--as an incorporated city.

[81] Letter dated November 14, 1950, from Howard G. Brunsman, Population and Housing Division, Bureau of Census, Department of Commerce, to Robert S. Calvert, Comptroller of Public Accounts.

Another aspect of the problem is the effective date for the census. The Attorney General has held that the date of the preliminary announcement by the federal census director is the effective date.[82] With this opinion as a guide, the Comptroller announced that the 1950 population figure would be effective July 1, 1950.

Since graduated rates are partly dependent on the corporate status of the community, the Comptroller must be aware of annexations to incorporated cities. With lower rates on gross receipts for unincorporated areas, annexations are especially important if action is taken by cities of more than 10,000. In these instances rates rise from the minimum to the maximum, and continued application of the lower rate might result in considerable loss to the state.

The tax rates on utility and telegraph companies are also graduated on the basis of population and corporate status of the community served. The problems mentioned above in connection with graduated rates on telephone companies have also arisen in the administration of these taxes, and the problem discussed in the next paragraph seems present in all three. As these common problems are discussed in connection with the telephone tax, they will not be examined again but should be kept in mind when reading the material on the other two taxes.

The graduation of the rate of the tax on telephone companies as well as that on utilities and telegraph companies, on the basis of the population and corporate status of the community in which the receipts are earned may raise the question whether this classification complies with the requirements of the Fourteenth Amendment and of sections 1 and 2 of Article VIII of the Texas Constitution.[83] The equal protection clause of the federal Constitution and the equal and uniform requirements of the Texas Constitution do not prevent the Legislature from classifying subjects for purposes of taxation. However, the classification used must not be unreasonable and arbitrary but must be just and reasonable and related to the purposes for which the classification is made; that is, the differences in treatment prescribed by the classification must rest upon differences which exist between the persons who fall into the categories prescribed.[84] The classification employed in the utilities tax as it applied to a gas utility was attacked in Dallas Gas Co. v. State[85] as being so arbitrary, discriminatory, unreasonable or unreal that it violated the constitutional provisions mentioned above. Pointing out that it is the courts' duty

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[82] Op. Tex. Atty. Gen. No. 0-2745 (November 1, 1940).

[83] Section 1 provides "Taxation shall be equal and uniform." Section 2 provides "All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax..."

[84] Texas authorities are collected and discussed in Note, 13 Tex. L. Rev. 469, 476-478 (1935).

[85] 261 SW 1063 (Tex. Civ. App. 1924).

to uphold the constitutionality of acts of the legislature unless they are clearly in violation of the state or national constitution, the court sustained the classification. The court pointed out that a gas utility has a monopoly in the community it serves, that "experience has demonstrated that the cost of installation and efficient operation of a gas plant is such that a considerable volume of business is required to justify its existence," that the volume is generally in proporation to the number of inhabitants served, and that "usually the larger the volume of business done the more economically such occupation can be pursued and the more profitable it thus becomes."[86] The court concluded that these factors sustained the legislature's graduation of rates and its implicit judgment that the taxation of gas utilities in cities of less 10,000 was so "economically impracticable" that they should be exempt. The rationale in the Dallas Gas Co. case seems instructive in the formulation of the classification in a graduated rate and in the determination of the soundness of classifications already adopted. It indicates that attention must be given to the business facts of the activity being subjected to a graduated gross receipts tax.

Utility Companies

The gross receipts tax on public utilities was included in the 1907 act and has been amended several times. Presently, approximately 110 utility companies pay the tax, and the revenue received during the fiscal year 1951-1952 was $3,436,462.

According to the law, the taxpayers are:

> each individual, company, corporation, or association owning, operating, managing, or controlling any gas, electric light, electric power, or water works, or water and light plant, located within any incorporated town or city, in the State and used for local sale and distribution in said town or city.

The "gross amount" received from charges for utility services in each city or town is reported quarterly and upon this the tax is based.[87] The tax specifically refers to gas, electric light, electric power, or water "works" and to "water and light plants," but, according to the administrator, there is no practical distinction between the terms "works" and "plants." No litigation seems to have developed from the use of the term "water and light plants," and the administrator considers the term only a partial restatement of the services already mentioned. There is again, however, a lack of precise language.

The law deals with the "works" or "plant located within any incorporated town or city in the state." The administrator considers this to include any property or line of service, and if any property which offers service to the community is within the city, the location requirement is satisfied,

86 Ibid., p.1069.
87 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7060.

even though the generating plant or other central facilities may be outside the city limits.

Exemptions and Deductions

Only two exemptions are specifically stated in the statute, but others are implied by its terminology. Water, gas, and electric utilities owned and operated by cities, counties, or water improvement or conservation districts are exempt. Likewise, the tax is not levied more than once on the same commodity. When the commodity is produced by one company and distributed by a second, the tax is paid only by the distributor.

By the terminology used in the law, utilities operating in unincorporated communities do not fall within the scope of the tax. Likewise, utility companies operating in towns of 1,000 or less, whether incorporated or unincorporated, are exempt because no rate is set by the statute for sales in such communities.

An additional exemption has been provided through the interpretation of the term "distribution" as not including the sale of gas within a city to a single consumer. "Distribution" was held to mean "the transfer of possession of gas to various individuals or concerns in the city."[88] In Utilities Natural Gas Co. v. State, the gas company was held to have used its facilities to make a "local sale" but not a "distribution" when it delivered the gas by its pipeline to the steam generating plant of the electric power company located within the city.

In 1939, the Attorney General held that rural electric associations organized under the Electric Co-operative Corporation Act, enacted two years previously were also exempt from the gross receipts tax.[89]

In accord with the prevailing administrative practice for most gross receipt taxes, deposit moneys and rent from meters are deductible. Since receipts from sales by plants to suburbs outside incorporated cities are also deductible, the Comptroller must be aware of current annexations. A list of authorized deductions is not presently being distributed by the Comptroller, and the responsibility for determining them falls upon the utility companies.

Rate

As with the tax on telephone companies, the utility tax rate varies according to population. Unlike the telephone levy, the utilities tax is not due until the community is incorporated and population of the incorporated city exceeds 1,000 according to the last federal census. The reason for the tax distinction between telephone and telegraph companies and utility companies

88 Utilities Natural Gas Co. v. State, 128 SW 2d 1153, 1155(Tex. Comm. App., 1939).

89 Op. Tex. Atty. Gen. No. 0-913 (July 17, 1939).

in cities of 1,000 population and below is not known, but it is thought that few utility companies are presently exempt on this condition. Too, there are no available data on the number of exempt private water companies located outside cities and serving industries or irrigation projects.

For utilities operating within incorporated towns and cities having populations of more than 1,000, the following rates apply:

Population Bracket	Rate of Tax in Per Cent
1,001 to 2,499	.484
2,501 to 9,999	.891
10,000 or more	1.66375

Strictly construed, the wording of the law does not prescribe a tax rate for incorporated cities which have exactly 2,500 inhabitants. There have been instances where utilities located in incorporated towns of exactly 1,000 population have claimed and received exemptions from the tax. However, present administrative procedure indicates that the minimum rate would be assessed utilities in cities of exactly 2,500. The administrative problems mentioned in considering the graduated rates on telephone companies are also present in administration of the utility tax.

Well Servicing Companies

The well-servicing tax was originally enacted as part of the Omnibus Tax Bill of 1941 and has been amended twice, both amendments providing rate adjustments.[90] During the fiscal year 1951-1952 approximately 60 companies paid the tax, and the revenue totaled $828,125. This tax is unique in the fact that the assessment is based on monthly instead of quarterly receipts, and the law directs that the tax be paid to the Comptroller rather than to the Treasurer.

Payments are due on the 20th of each month and are based on the "gross amount" received from any services furnished or duties performed in certain oil and gas well operations during the preceding calendar month. The taxable services are those

> performed in connection with the cementing of the casing seat of any oil or gas well or the shooting or acidizing the formations of such wells or the surveying or testing of the sands or other formations of the earth. . .

Exemptions and Deductions

Although the act contains no specific exemptions or deductions a number of questions have arisen in this regard. For example, the tax has

[90] Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7060a.

been held to apply only to services performed within the state.[91] Numerous questions have arisen as to whether gross receipts from certain types of services are taxable with most problems resulting from the varied technological processes used servicing oil and gas wells. Several court cases and numerous Attorney General's opinions have been required for clarification, and several of the more important questions will be noted.

The tax is assessed on receipts collected for "furnishing any service... in connection with (1) cementing..., (2) shooting or (3) acidizing..., (4) surveying or (5) testing of the sands...in ... oil or gas wells." Interpretation of several phrases of the statute has been necessary. In attempting to clarify the phrase, "furnishing any service," a distinction has been made between the terms service and sale. The Attorney General has held that the tax is levied on certain services and not on the sale of materials to oil and gas wells.[92] Following this reasoning, the opinion stated that the cost of cement was deductible from gross receipts obtained for cementing the casing seat of an oil or gas well. In acidizing, the cost of the acid used is deductible. This view was approved in Western Co. v. Sheppard, which held that the tax was to be levied on the services rendered and was not to include the value of materials used.[93] The base of the tax is determined as the difference between the "fair and reasonable market value" of the materials delivered at the well head and total gross charges. A number of elements may be included in the "fair and reasonable market value" as stated by the court; for example, the original cost of materials, cost of transportation, and reasonable profit are deductible. The use of this formula has been particularly helpful in determining the tax base for the first three types of services taxed -- (1) cementing, (2) shooting and (3) acidizing.

Several questions have also arisen in determining whether particular services involving (4) surveys and (5) tests are included in the phrase, "furnishing any service." Among the services which have been in dispute are dip surveys, depth determination, core analyses, and testing of pressures at various points in the well. These are considered taxable services relating to either surveying or testing of the sands or other formations.[94] Additional questions arose concerning deductions to be allowed from the taxable services. For example, whether the cost of cutter heads, charges for service hours, trucking charge, royalty payments to persons owning patents on equipment, and salaries were deductible from taxable services. The Attorney General has advised that these costs are not deductible.[95] With the court decision elaborating permissible deductions from receipts for cementing, acidizing,

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91 Western Co. v. Sheppard, 181 SW 2d 850 (Tex. Civ. App., 1944).

92 Op. Tex. Atty. Gen. No. 0-3627 (June 27, 1941).

93 Western Co. v. Sheppard, 181 SW 2d 850, 856-857 (Tex. Civ. App., 1944).

94 Ops. Tex. Atty Gen. No. 0-3698 (August 7, 1941), No. 0-4188 (January 31, 1942). Also, see, Sheppard v. Rotary Engineering Co., 208 SW 2d 656 (Tex. Civ. App., 1948).

95 Op. Tex. Atty. Gen. No. V-1353 (November 20, 1951).

and shooting and with the recent opinions relating to tests and surveys, guidelines have been established to answer many future questions concerning the meaning of "furnishing any service."

The statute states that the taxable services, as described previously, must be done "in connection with" either cementing, shooting, acidizing, surveying, or testing. An effort has also been made to clarify the phrase, "in connection with" the service. The Attorney General has stated that any service performed as a necessary step toward the fulfillment of a taxable service should be considered "in connection with" the service and that the gross receipts from it are taxable.[96]

The statute also requires that these taxable activities be in connection with "oil or gas wells." The term "oil or gas wells" has been defined, in some instances, as oil or gas wells which ultimately prove productive. Contrary to this contention, an Attorney General's Opinion declared that the Legislature intended the phrase to refer to any well which was drilled for the purpose of discovering oil or gas.[97]

The questions arising under the well servicing tax emphasize the very technical nature of the business being taxed. These examples also indicate that operational procedures employed in well servicing present numerous obstacles, many of which may have been unforeseen when the tax was enacted. Technological advances have been especially rapid during recent years and will probably continue. Largely as a result of these difficulties, the tax has been contested on the basis that it is so vague and indefinite as to render it invalid. The court decided that although the application of the well servicing tax might prove difficult in certain situations, the language used in the enactment was sufficiently definite and certain.[98] This study indicates that any tax on a complicated and varied technological process may create assessment problems unless the tax law takes into full account the techniques of the business and unless the tax is kept current with technological change.

Rates

The well servicing tax act currently applies a rate of 2.42 per cent to all taxable receipts. No problems have arisen concerning the correct application of the rate once the taxable receipts have been determined.

Motor Carriers

The gross receipt tax on motor carriers, like the well servicing tax,

[96] Op. Tex. Atty. Gen. No. 0-3784 (August 7, 1941).
[97] Op. Tex. Atty. Gen. No. 0-3698 (August 7, 1941).
[98] Western Co. v. Sheppard, 181 SW 2d 850, 856 (Tex. Civ. App., 1944).

was originally enacted in 1941. The act has been amended twice since for the purpose of increasing the rate.[99] During the fiscal year 1951-1952, approximately $108,826 was collected from about 225 reporting companies.

The tax is levied quarterly on all "motor bus companies," "motor carriers," or "contract carriers" which receive compensation and use the public highways of the state. Briefly, the term "motor bus companies" includes every enterprise owning vehicles engaged in the business of transporting persons, and "motor carriers" includes every company operating any vehicle used in transporting property for the general public between two or more incorporated cities.[100] The term "contract carrier" is defined as any motor carrier transporting property other than as a common motor carrier.[101] In effect, contract carriers are motor carriers which transport property for a specific person or persons under contractual agreement rather than for the general public. However, a motor carrier transporting property under more than five separate contracts is not considered a contract carrier. Therefore, a motor carrier transporting property for the general public or under more than five contracts is classified as a common carrier.

In practice, responsibility for differentiating between and regulating contract and other carriers rests with the Texas Railroad Commission.[102] The commission decides the proper type of permit to issue each carrier when a regulatory permit is necessary. Carriers issued "contract carrier permits" become subject to the tax, and the Attorney General has decided that holders of temporary certificates of convenience and necessity and holders of special commodity permits are also liable.[103]

The tax is based on

> the gross amount received from intrastate business done within this State in the payment of charges for transporting persons for compensation and any freight or commodity for hire, or from other sources of revenue received from intrastate business within this State. . .[104]

99 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7066b (a), Tex. Civ. Stat. (Vernon, 1948) art. 7066b (b) (c) (d), 7066b-1.

100 The term "motor bus company "is defined in the Tex. Civ. Stat. (Vernon, 1948) art. 911 (a) sec.1 (c); the term "motor carrier" is defined in Tex. Civ. Stat. (Vernon, 1948) art. 911 (b), secs. 1, 1a, and 1b. Arts. 911(a) and 911(b) also assess fees on motor bus companies and motor carriers. The collection of these fees is considered in more detail in another chapter of this report

101 The term "contract carrier" is defined in Tex. Civ. Stat. (Vernon, 1948) art. 911 (b).

102 Tex. Civ. Stat. (Vernon, 1948) arts. 911 (a) and 911 (b).

103 Op. Tex. Atty.Gen. No. 0-3546 (June 7, 1941).

104 The term "intrastate business" has been given a statutory definition as applying to that portion of revenue obtained from transportation regulated by the Railroad Commission of Texas. See Tex. Civ. Stat. (Vernon, 1948) art. 7066b-1.

Unlike most other gross receipt taxes, the tax is levied not only on "charges" for service, but also on "other sources of revenue." It is not known whether any tax is being paid on "other sources of revenue" by motor carriers, and the meaning of the phrase has received neither judicial nor administrative interpretation.

Exemptions and Deductions.

The statute specifically provides an exemption for all companies engaged exclusively in transporting timber in its natural state and carriers of persons or property paying an intangible assets tax under state law. Since motor bus companies and motor carriers are presently subject to the intangible assets tax,[105] contract carriers are the only regular taxpayers. However, since the intangible assets tax is assessed annually, all motor bus companies and motor carriers have heretofore paid a gross receipts tax when beginning business and have continued doing so each quarter until the first of the next year, when the intangible assets tax became due.

A question concerning exemptions from the motor carriers tax was recently considered by the Texas Court of Civil Appeals. The motor carriers tax act provides that

> ...carriers of persons or property who are required to pay an intangible assets tax under the laws of this State, are hereby exempted from the provisions of this ...Act.[106]

On the other hand, the intangible assets tax law contains the following statement:

> Whenever any individual, company, corporation or association... shall pay in full, and within the year for which same may be assessed, all its State and county taxes for that year upon all its intangible properties as determined, fixed and assessed under the provisions of this chapter...(it)...shall thereby be relieved from liability for and from payment of any and all occupation taxes measured by gross receipts for or accruing during that year under any law of this State...[107]

It was contended that the motor carriers' gross receipts tax act should be interpreted as exempting any person liable for the intangible assets tax. In conformity with this contention, the exemption would apply whether or not the tax was paid upon the due date. This interpretation was accepted by the District Court of Travis County. However, the state maintained that the two provisions should be read together and should, therefore, be construed to mean that carriers become liable for the gross receipts tax when they default in payment of

105 Tex. Civ. Stat. (Vernon, 1948) art. 7105.
106 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7066b (a).
107 Tex. Civ. Stat. (Vernon, 1948) art. 7116.

the intangible assets tax. The Attorney General had ruled that carriers would owe both taxes and any accrued penalties in connection with either of them.[108]

The Court of Civil Appeals ruled that a motor carrier company delinquent in payment of the intangible assets tax was also liable for the gross receipts tax.[109] The court relied on a joint construction of the two statutory provisions and on a previous decision dealing with a related question which stated ". . . relief from liability for the gross receipts tax is absolutely conditioned upon payment of an intangible assets tax for the year during which such relief is sought."[110]

Among carriers not expressly exempt but not taxed because no permit is required are motor vehicles that operate exclusively within incorporated city limits.[111] Private motor vehicles used to transport the merchandise of the owner are not taxed, since there are no receipts upon which to base the tax and the transportation is not for hire.

No specific deductions are authorized, but federal taxes included in the company's charge and collected by the company are not considered as part of gross receipts.

Rate

A flat rate of 2.42 per cent of gross receipts applies to all companies on which the tax is assessed.

Express Companies

The gross receipts tax on express companies was among the public utility occupation taxes originally enacted in 1907.[112] Since that date, the law has been amended once. Presently only one express company is paying the tax, which totaled $71,972 during the fiscal year 1951-1952.

The tax is assessed quarterly on all companies "doing an express business by steam railroad or by water in this State," and is based on

> the gross amount received from intrastate business done within this State in the payment of charges from express and freights, or from other sources of revenue received from intrastate business. . . .

108 Op. Tex. Atty. Gen. No. V-1010 (February 21, 1950).
109 Calvert v. Johnson, 246 SW 2d 932 (Tex. Civ. App., 1952, err. ref'd).
110 Texas Consolidated Transportation Co. v. State. 210 SW 2d 891, 895 (Tex. Civ. App., 1948, err. ref'd.).
111 Tex. Civ. Stat. (Vernon, 1948) art. 911 (b), sec. 1 (a), (b).
112 Ibid., art. 7058.

Exemptions and Deductions

Although no exemptions are specifically provided in the enactment, questions have arisen as to whether "other sources of revenue" includes receipts from express carried by air or by diesel engine. Railway Express Agency, the only express company presently paying the tax, provides both diesel railway and air express service. The Attorney General recently ruled that this company's gross receipts derived from transportation of freight by air were taxable.[113] However, companies engaging solely in air express or shipping freight by air in conjunction with another business are not liable for a tax on gross receipts from this service. Evidently no payments are being received from express carried by water, and the courts have held that the law does not apply to express business handled by electric interurbans.[114]

No specific deductions are permitted, but federal excise taxes collected by express companies in their charges are not reported as gross receipts for tax purposes.

Rate

The rate for the tax is 2.5 per cent of gross receipts.

Telegraph Companies

An occupation tax based on the gross receipts of telegraph companies has been in effect since 1907.[115] Since the original enactment, several amendments have been passed, most of which have affected the rate. Presently, three telegraph companies pay the tax, which produced $58,708 during the fiscal year 1951-1952.

The quarterly assessment is based on

> ...the gross amount received from all business within this State.... in the payment of telegraph or aerogram charges..., and from the lease or use of any wires or equipment...

The tax is assessed on each company "owning, operating, managing, or controlling any telegraph lines in this State, or.... what is known as wireless telegraph stations, for the transmission of messages or aerograms" and charging for such transmissions.

Exemptions and Deductions

The enactment provides no specific exemption, but one deduction is

113 Op. Tex. Atty. Gen. No. V-1408 (February 20, 1952).
114 North Texas Transfer and Warehouse Co. v. State, 108 Tex. 235, 191 SW 550 (1917).
115 Tex. Civ. Stat. (Vernon, 1948) art. 7059

mentioned, and several others have since been allowed. The deduction includes receipts from business transacted for agencies of the federal government, for which rates are prescribed by the Postmaster General. This provision is unusual in that no other gross receipts tax statute provides for deduction of receipts obtained from federal business. This provision no longer accords with the facts, since the Federal Communications Commission rather than the Postmaster General has regulated rates for telegraph companies since 1934.[116]

Additional exclusions similar to those granted telephone companies are permitted, e.g. receipts from clock rentals, interstate business, and federal taxes collected.

Rate

Like the tax rates on utilities and telephone companies, those for telegraph companies vary according to the population and corporate status of the place in which business is conducted. Population is determined according to the preceding federal census and thus is subject to the same qualifications and presents the same assessment problems discussed in connection with the telephone tax. Too, the question concerning rates for businesses in towns of exactly 2,500 appears again.

The following rate schedule is applied:

Population Bracket	Rate of Tax in Per Cent of Gross Receipts
Outside of incorporated places and in incorporated places of less than 2,500	1.5
Incorporated places of more than 2,500 and less than 10,000	1.75
Incorporated places of more than 10,000	2.275

Pullman Companies

The occupation tax based on the gross receipts of Pullman com-

[116] Communication Act of 1934, 48 Stat. 1102 (1934), 47 U. S. C. 3 (1946 ed.); repealed by Act of July 16, 1947, c. 256, sec. 1, 61 Stat. 327, with savings clause continuing authority of Federal Communications Commission "to prescribe changes, classifications, regulations and practices including priorities applicable to Government communications." See, 47 U. S. C. secs. 1-6, 8. (Supp. IV, 1951).

panies has not been amended since it was enacted in 1907.[117] Only one company is presently assessed the tax which during the fiscal year 1951-1952 yielded $51,740.

The quarterly tax is levied on "every sleeping car company, palace car company, or dining car company doing business in this State" and on each concern "leasing or renting, owning, controlling or managing any palace cars, dining cars, or sleeping cars within this State for the use of the public, for which any fare is charged." The tax is based on the gross receipts earned by such companies from "any and all sources whatever within this State" except from buffet service.

Exemptions and Deductions

Although no Pullman companies were specifically exempted from the gross receipts tax, the enactment provides that the assessment is in lieu of all other taxes on Pullman companies except the capital stock tax. But because the capital stock tax on Pullman companies was dropped in the statutory revisions of 1911 and 1925, the Attorney General has held that it has been repealed.[118] Therefore, Pullman companies pay only the gross receipts tax.

Although the only deduction specifically mentioned in the enactment was receipts from buffet service, other receipts such as those collected as federal taxes or earned in interstate business are not taxable. The types of services referred to by the term "buffet" are not known, but it is thought to have included such services as refreshment counters at railroad stations.

Rate

A flat rate of five per cent is levied on the gross receipts reported quarterly by each Pullman company. The rate is considerably higher than that levied on railroad car companies.

Textbook Companies

An occupation tax based on the gross receipts of textbook companies was originally enacted in 1907 but expired in 1929.[119] The tax was re-enacted in 1930[120] and has not been amended. Some 58 companies paid the tax during

[117] Tex. Civ. Stat. (Vernon, 1948) art. 7063.

[118] Letter dated March 6, 1925, from Assistant Attorney General Ernest May to S. H. Terrell, Comptroller of Public Accounts.

[119] For the original enactment, see Acts 30th Leg., 1st C.S. 1907, ch. 18, p. 479, sec. 13. For the enactment which stipulated the expiration date, see Acts 38th Leg., R.S. 1923, ch. 167, p. 352.

[120] Tex. Civ. Stat. (Vernon, 1948) art. 7047 (41).

the fiscal year 1951-1952, and total revenue amounted to $46,565.

Each company which owns, controls, manages, or maintains agencies for any business engaged in publishing, printing, and selling textbooks used or which will be used in the schools of the state is assessed a gross receipts tax. The tax is based on the gross receipts from business conducted within the state.

Exemptions and Deductions

The law specifically exempts all corporations organized by the students and faculties of state-supported institutions selling books and supplies to students. If no capital stock is issued, no dividends are paid, and the corporation's by-laws provide that its assets pass to the state institution upon dissolution.

Several questions have arisen as to which books are considered textbooks and taxable under the act. For example, textbook publishers raised the question of tax liability for receipts from the sale of books to elementary and secondary schools other than those adopted by the Textbook Committee of the State Board of Education. The latest Attorney General's opinion concerning this problem stated that the term "textbooks" includes all books normally considered textbooks and is not limited to those books adopted by the board as texts.[121] However, receipts from the publishing of miscellaneous books sold to school libraries have been declared exempt by an opinion of the Attorney General.[122] Therefore, it has been established that receipts from publishing or selling textbooks used for instruction by the teachers in schools within the state are taxable.

An additional question has been raised concerning the phrase "the Schools of this State." Although receipts from the sale of books to primary and secondary state-supported schools are presently considered taxable, it is not certain whether receipts from the sale of textbooks used in state and private colleges and universities, or private primary and secondary schools are taxable. Apparently this question leaves an extensive area open to uncertain tax liability. A recent audit made by the Comptroller gives no indication that the tax is being paid on receipts from the sale of textbooks used in private schools and colleges.

Although the statute does not expressly authorize any deductions, publishing companies are allowed to deduct exchange costs involved in re-

[121] Op. Tex. Atty. Gen. No. 0-2400 (July 8, 1940).
[122] Letter dated September 5, 1930, from Assistant Attorney General H. Grady Chandler to Comptroller of Public Accounts.

purchasing old books.[123]

Rate

A uniform rate of one per cent of gross receipts is provided.

Collecting Agencies

Collecting and commercial agencies were assessed an occupation tax based on gross receipts in 1907, and the tax law has never been amended.[124] Approximately 128 companies submitted reports during the fiscal year 1951-1952, and the state's receipts totaled $12,327.

The tax is assessed on each company which owns, operates, manages, or controls any (1) collecting agency, (2) commercial agency or (3) commercial reporting credit agency within the state and is based on charges for collections, reports, and business conducted.

The courts have defined a "commercial agency" as a corporation engaged in collecting information on the financial standing of persons engaged in business and reporting the information to subscribers for compensation.[125] However, the court was of the opinion that tax liability "should not be determined solely from the fact that in one instance the information furnished pertains to those engaged in business, while in the other it pertains only to customers or purchasers." Therefore, in certain instances, persons reporting the credit record of retail customers are also liable for the tax. For example, if a concern collects information at its own expense on the credit rating of purchasers or customers and sells the information to retail merchants, thereby building a profitable business, the court labeled the business taxable. Commercial agencies are presently considered to be those which report the credit of either retail merchants or retail customers, but to be taxable the business must be established primarily for profit.

The statute refers to a "commercial reporting credit agency" as the second type of commercial activity taxed. However, there is no clear line distinguishing a commercial reporting credit agency from a commercial agency as defined above. Both are involved in collecting and reporting credit information, and their receipts are taxable.

"Collection agencies" are the third type of business activity men-

123 Tex. Atty. Gen. Letter Op. dated April 13, 1937, from Assistant Attorney General John J. McKay to Comptroller of Public Accounts.

124 Tex. Civ. Stat. (Vernon, 1948) art. 7061.

125 Merchants Red Book Co. v. State, 125 SW 2d 279 Tex. Com. App., 1939), answer to certified question conformed to, 126 SW 2d 705 (Tex. Civ. App., 1939).

tioned in the statute. Since there are no indications of any litigation pertaining specifically to the definition of collection agencies, the reasoning of the court in Merchants Red Book Co. v. State may be followed as a guide. Therefore, collection agencies are apparently businesses engaged in collecting accounts from either retail merchants or consumers and receiving compensation for this service. At present, these are the types of collecting agencies paying the tax.

Exemptions and Deductions

No exemptions or deductions are specifically provided or implied, nor have any been allowed by administrative or judicial action.

Rate

The rate is .5 per cent, this being the lowest flat rate provided by any gross receipts tax law.

Car Companies

A gross receipts tax on railroad car companies was levied as part of the occupation tax law of 1907, and the enactment has not been amended.[126] About 20 companies are now paying the tax, which produced approximately $8,800 during the fiscal year 1951-1952.

The tax is levied on all foreign companies owning and leasing or charging mileage for the use of stock cars, refrigerator and fruit cars, tank cars, coal cars, furniture cars, or common box and flat cars, operated within the state. The tax is based on the "gross receipts from such rentals, or mileage, or from other sources of revenue received from business done within this State...." By administrative decision, "business done within this State" refers only to intrastate receipts. For example, no tax is levied on receipts paid to car companies by railroads when the cars are engaged in interstate traffic. Since rental charges paid to independent car companies are usually determined on a mileage basis,[127] accurate records are kept by both the railroad and the car company concerning the disposition of each car, and inter- and intrastate receipts can be distinguished.

Exemptions and Deductions

The statute refers specifically to corporations "residing without this State, or incorporated under the laws of any other State or territory, or nation, ..." Car companies, then, which "reside within the state" or are incorporated in Texas apparently are not liable for the tax; residence of a corporation is generally considered to be the place of incorporation. However, it has not

126 Tex. Civ. Stat. (Vernon, 1948) art. 7062.

127 C. J. Fagg, W. W. Weller, and A. B. Strunk, The Freight Traffic Red Book (New York, Traffic Publishing Co., Inc., 1942), pp. 807-810.

been the policy of the administrator to investigate whether corporations paying the tax are foreign or domestic. Several companies have paid the tax under protest -- one for some 15 or 20 years -- but no suit has ever been filed. If the tax is imposed only on car companies not incorporated in Texas, there may be some doubt as to its constitutionality.

Although most railroad companies own the types of cars mentioned in the statute and occasionally lease the cars to other railroads for use in Texas, no railroads are now paying the tax. Apparently, there are conflicting provisions concerning their tax liability. A provision of the intangible assets tax specifically relieves railroads from liability for all occupation taxes measured by gross receipts when the intangible assets tax is paid.[128] On the other hand, the statutes provide that gross receipts taxes are to be collected in addition to all other taxes unless specific exemptions are provided in the tax statute.[129] Several questions may be raised from these provisions. Are railroad companies taxable on receipts obtained from leasing cars to other railroads? Do railroads owe the gross receipts tax only when the intangible assets tax becomes delinquent? Does the provision in the intangible assets tax give railroads permanent exemption from gross receipt taxes?

Rate

The rate is three per cent of the gross receipts reported.

Beginner's Tax

Most companies required to pay gross receipt taxes, since 1907, have been assessed a beginner's tax for the initial quarter of operation.[130] Eight companies paid the tax in the fiscal year 1951-1952, with receipts of $405. Penalties are collected if the tax is delinquent.

The tax is assessed only once on each company as the first quarterly payment by express companies, telephone companies, collecting agencies, textbook companies, telegraph companies, utility companies, car lines, and Pullman companies. The only businesses covered in this study which are exempt from the beginner's tax are motor carrier and well servicing companies. Because of their collection procedures, they pay the gross receipts taxes for the first quarter. The beginner's tax is levied at a flat rate of $50, regardless of the size or nature of the business.

Summary of Assessment

During the fiscal year 1951-52, approximately 860 companies paid gross receipts taxes, from which the state received almost $8,500,000.

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[128] Tex. Civ. Stat. (Vernon, 1948) art. 7116.
[129] Ibid., art. 7078.
[130] Ibid., art. 7073.

This represented an increase of more than 8 per cent over the previous fiscal year and of more than 180 per cent in the last seven years. The taxes are assessed on various industries but are generally based on gross receipts from specific activities of each business. The beginner's tax is assessed on newly-established businesses liable for gross receipts taxes except motor carrier and well servicing companies. Quarterly reports and payments are required of all taxable industries except well servicing companies, which are assessed monthly.

Although only a few direct exemptions were provided in the initial laws, a number of exemptions have developed from Attorney General's opinions, court decisions, and subsequent revisions. Deductions are occasionally provided by law, and additional deductions have evolved through administrative practices and numerous Attorney General's opinions.

The rates vary between a high of 5 per cent to a low of .44 per cent. For utilities, telegraph companies, and telephone companies, the rates vary according to population and the corporate status of the community; other rates are not graduated.

From this presentation, it may appear that considerable difficulty is encountered by both taxpayer and administrator in determining the numerous deductions now permitted from total gross receipts. Actually, however, these taxes are self-assessed, with each company arriving at the amount to be reported as taxable gross receipts. Report forms provide space only for the taxable amount; deductions are not listed and may be verified only through audits. Thus for administrative purposes, the amounts reported as taxable are generally accepted as valid unless there is an evident discrepancy. This procedure will be considered in more detail in a later section.

SECTION 4 -- COLLECTION AND ENFORCEMENT

The legal provisions and administrative practices for collecting and enforcing each of the ten gross receipt taxes are essentially alike. Accordingly, this section on collection and enforcement will consider the general features, special attention being given to variations when they appear. Most of the procedural and statutory variations are found in the motor carriers and well servicing taxes which have had relatively short histories, largely separate from those of the other taxes under consideration.

Collection

Legally gross receipts taxes are payable to the State Treasurer, with the exception of the tax on well servicing which is payable to the Comptroller. However, current administrative practice is to channel gross receipts payments and reports first through the Comptroller's office.

Most payments are received by mail and are processed through the Mail Division of the Comptroller's office, where register sheets are prepared. Reports and register sheets are then forwarded to the Gross Receipts Division, where reports are checked for correct computation. This check involves multiplying the amount of gross receipts indicated on the report by the rate. Usually no effort is made to verify the amount of gross receipts reported, but occasionally the current report is compared with past reports. If there is a substantial decrease in gross receipts reported, further action may be taken. Ordinarily, the administrator will first attempt to settle the discrepancy by direct correspondence, but supplemental reports or audits by the field force are sometimes found necessary.

After the computation has been checked and the payment accepted as correct, receipts and deposit records are prepared and forwarded to the Treasurer with the deposits. The receipts, already signed by the Comptroller, are countersigned by the Treasurer and returned to the Gross Receipts Division for mailing. Thus the statutory provisions that require payments to be sent to the Treasurer and reports to the Comptroller have been reconciled in favor of a more efficient procedure.

Gross receipts taxes, except for those on well servicing and motor carrier companies, have the same due date and cover the same taxable period. Payments are due quarterly on the first days of January, April, July, and October. Although the tax is based on gross receipts for the quarter ending on these due dates, the payment is for the following quarter, or actually in advance. The usual provision states:

> Said individuals, companies, associations or corporations, at the time of making said report, shall pay the State Treasurer an occupation tax for the quarter beginning on

> said date (i.e., the date on which the report is due,) equal to....Per Cent of said gross receipts, as shown by said report;...[131]

For example, a payment due on April 1 is based upon gross receipts for January, February, and March but is for the following quarter -- April, May, and June. In effect, the occupation tax on gross receipts is paid on the basis of receipts in one quarter for the privilege of engaging in the taxed occupation during the next quarter. Since these taxes are always paid in advance, no gross receipts tax can be collected for the first quarter in which the business operates. A $50 beginner's tax is assessed for this period.

The first exception to the general collection procedure is found in the motor carriers tax, which is not paid in advance. Although payments are due quarterly, the tax is paid for the quarter ending immediately prior to the due date. For example, a payment due on April 1 is based upon and paid for January, February, and March. The gross receipts tax rather than a beginner's tax is assessed for the first quarter of operation. The requirement that companies paying gross receipts taxes report on the day immediately after the end of the quarter covered is unrealistic because it requires these companies to have all the necessary information available the day the quarter ends. Some of the gross receipts taxes allow a 30-day grace period in which no penalties will accrue. This amounts to delaying the date on which the report is required.

The well servicing tax also employs a different collection procedure. Reports and payments are due on the 20th of each month rather than quarterly and cover the calendar month prior to the one in which they are due. A payment due on April 20 is based upon and paid for the month of March. The well servicing tax is not paid in advance and the first month's operation is taxed on the basis of the gross receipts collected during this period. No beginner's tax is paid.

Permits

One device used to identify and control gross receipts taxpayers is the permit. Firms liable for gross receipts taxes must secure a gross receipts permit, in addition to charters or other permits required. To obtain the permit, an application must be filed with the Comptroller on forms prescribed by that official. Applications require the date, name and address of the company, type of business, and a sworn and notarized statement that all gross receipts taxes have been paid. The gross receipts permit is then issued

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[131] The express companies gross receipts tax law, Tex. Civ. Stat. (Vernon, 1948), art. 7058.

by the Comptroller on a form prescribed by the Attorney General and must be posted at the principal office of the company in view of the public.[132] Permits must be renewed annually prior to December 31, and a charge of $1 is made to defray the cost of issue.

Reports and Records

Reports to the Comptroller must accompany each tax payment. Quarterly reports are required of all businesses paying gross receipt taxes except well servicing companies, for which reports are due on the 20th of each month. Report forms are prescribed and prepared by the Comptroller. Companies paying gross receipts taxes usually receive these forms at the same time they receive the receipt for the previous payment from the Comptroller. Additional forms may be obtained upon request and the Comptroller includes report forms in letters to delinquent taxpayers. A different report form has been prepared for each type of business taxed, but all request essentially the same type of information, including date of the report, name of the reporting company, amount of taxable gross receipts, and the amount of taxes to be paid. All reports must be sworn to by a responsible officer of the company and notarized. Some report forms list exemptions and deductions, but the amount deducted is not itemized on the form. In effect, the report only requires a statement of what the company considers to be its taxable receipts.

If for any reason the Comptroller is not satisfied with the original report, he may request supplemental reports, which must be sworn to and notarized in the same manner as the original.[133] Additional reports are also required when a discrepancy is found in the course of an audit.[134] However, supplemental or additional reports are seldom requested.

As a general rule there is no requirement that gross receipts taxpayers maintain any special records for inspection by the Comptroller or any other state official. However, large concerns, which are most likely to be audited, maintain satisfactory records, so this lack may not produce any serious problems. The well servicing tax statute is the only one that specifically requires companies subject to the tax to keep "a complete record of the

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[132] Tex. Civ. Stat. (Vernon, Supp. 1952) arts. 7080, 7081, and 7082. Until 1951, these permits were issued by the Secretary of State. Tex. Civ. Stat. (Vernon, 1948) art. 7080. The change to the present arrangement was recommended by the State Tax Board with the approval of the Secretary of State, who is a member of that Board. Thirty-eighth and Thirty-ninth Annual Reports of the State Tax Board, for the years 1947 and 1948, p. 25. The change has also been discussed by the State Auditor. See "Audit Report, Secretary of State" (August 31, 1950), pp. 24-27.

[133] Tex. Civ. Stat. (Vernon, 1948), art. 7079.

[134] Tex. Pen. Code (Vernon, 1948) art. 137

business transacted, together with any other information the Comptroller may require..." This information must be kept two years and be open to inspection by the Comptroller, the Attorney General, or their authorized representatives.[135]

Audits

By statute, several state agencies are responsible for initiating or conducting audits of gross receipts taxpayers' records. The Governor has the authority to request audits; the Comptroller and the State Tax Board have the power to make them. When the Comptroller discovers that a company has failed to make a full statement of taxable receipts, he is to report this in writing to the Governor. In turn, the Governor must immediately require the Comptroller to conduct an audit of the company.[136] The State Tax Board, which is composed of the Secretary of State, Attorney General, and the Comptroller, [137] also has the authority and duty to aid in the collection of delinquent gross receipts taxes.[138] However, the Comptroller generally has sufficient authority to conduct audits, and aid from the State Tax Board and notification to the Governor are seldom necessary.

The common practice is for audits to be initiated and conducted by the Gross Receipts Division of the Comptroller's Office. The division employs about 14 field men throughout the State. The division also administers and is primarily concerned with the oil, natural gas, and other natural resources production taxes, so only about 10 per cent of the field work is devoted to gross receipts taxes. As a result, there is little time for audits, and the few made are usually of the larger concerns. During the calendar year 1951, 119 audits of gross receipts taxpayers' records were made. Of these, 55 were of telephone companies, 25 of motor carriers, 19 each of well servicing and utilities companies, and one of a collecting agency. Approximately one-eighth of the companies paying gross receipts taxes in 1951 were audited during that year. Attention was devoted primarily to the three classes producing most revenue -- telephones, utilities, and well servicing companies. The time required for each audit varies considerably with the type of company. The 19 audits of well servicing companies, for example, required more time than the 55 telephone company audits. It may seem from this tabulation that all gross receipts taxpayers are audited at least once every eight years, since

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[135] Tex. Civ. Stat. (Vernon, 1948) art. 7060a, sec. 2.

[136] Tex. Pen. Code (Vernon, 1948) art. 137.

[137] Tex. Civ. Stat. (Vernon, 1948) art. 7098.

[138] Ibid., arts. 7076 and 7076a.

approximately one-eighth are audited each year. This is not the case, however. Larger taxpayers are the ones receiving attention. These may be audited annually, while others are never audited.

Coverage

In the collection and enforcement of taxes, coverage is concerned with two significant factors. There is, first of all, the problem of assuring that all persons liable for the tax pay it. Second, there is the problem of insuring that taxpayers pay the correct amount.

Administrators of the gross receipts taxes, like all tax administrators, must locate certain taxpayers. Some who are legally liable fail to make themselves known, either to avoid the tax or because they are not aware of their liability. Some of those aware of the tax will not pay it voluntarily but wait for notification.

The difficulty of locating companies liable under the gross receipts tax laws varies with the type of business. If there are only a few concerns engaged in the business and these are well-known, no problem arises. For example, there are only three telegraph companies, one express company, and one Pullman company operating in Texas. But a problem arises in locating and maintaining contact with the 200 or more motor carriers and telephone companies and the more than 100 collecting agencies and utility companies. Some companies liable for the motor carriers tax can be located through the Railroad Commission from which they have obtained the required certificates of necessity for operation. In addition, the Intangible Tax Division can identify motor carriers who become liable for the gross receipts tax as a result of failure to pay the intangible assets tax. Other taxable motor carriers must be located through records of past payments and by field personnel. Names of many taxable textbook companies appear in records maintained by the State Textbook Committee. Moreover, textbook companies must hold certificates from the Comptroller showing that they have paid all due gross receipts taxes before they are allowed to place bids with the Textbook Committee.

If a number of companies engage in a taxable business and no other state agency maintains records of their activities, the collector must resort to any available device. This involves checking telephone books, various trade journals and other directories. Collecting agencies may be located by checking the yellow pages of telephone directories, a task which can be performed by field personnel. A recently published list of telephone companies in the state has been used to check coverage of these businesses. For well servicing companies, the Gross Receipts Division has an unusual source of information. In making audits of oil and gas production taxpayers, division auditors note payments to well servicing companies, whose names are then

cross-checked with gross receipts tax records. Clearly, locating businesses subject to these taxes but not making payment is a continuous and painstaking process.

For the telephone, telegraph, and utility gross receipts taxes, there is the additional problem of ascertaining which companies are subject to the tax and the rate to be assessed. These three taxes are levied at rates graduated according to the population and corporate status of the community served. Moreover, there are exemptions for certain types of businesses owned by local units of government. Accordingly, the Gross Receipts Division must investigate such factors before it can decide whether the concern is subject to the tax or is paying at the proper rate. Among other problems, this involves a continuous check for annexation of new communities and incorporation of small cities. In addition, current records must be kept on the populations of communities served by concerns paying the tax.

While present practices may not in some instances adequately protect the state from evasion or false reporting, a water-tight system of checks probably is not feasible. Under certain conditions, the amount collected would not equal the cost of the audit or the time involved in locating delinquents. However, expanded facilities for investigations might produce more revenue and insure a more equitable and just enforcement of the tax. In addition, the mere possibility of periodic audits of all taxpayers would undoubtedly influence the accuracy of reports and payments.

Penalties

A variety of penalties is provided for failure to pay gross receipts taxes or for violation of the gross receipts tax laws. These penalties include fines and revocation of the right to do business.

In 1918, the Legislature provided that all companies paying gross receipts taxes must obtain gross receipts permits.[139] This enactment was not an amendment to any general law but an act applicable to all gross receipts taxes, regardless of when enacted. Therefore, all businesses discussed in this chapter must obtain a permit whether required by the act imposing the tax or not.[140]

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[139] Acts 35th Leg., 4th C.S. 1919, ch. 84, p.177; Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7080.

[140] Concerns that conduct boxing and wrestling matches and gas pipeline companies are assessed taxes based on their gross receipts but are not issued gross receipts tax permits. Tex. Civ. Stat. (Vernon, 1948) art. 6060; Tex. Pen. Code (Vernon, 1948) art. 614-616.

The "permit to transact business" issued by the Comptroller to gross receipts taxpayers should not be confused with the "charter" or "permit to do business" issued by the Secretary of State to incorporated businesses incident to the state's power to regulate corporations. "Charters" are granted to all corporations incorporated under Texas law; "permits to do business" are granted to corporations organized in other states or nations. These two grants of rights and privileges bear no relation to gross receipts permits, which are issued to both incorporated and unincorporated businesses subject to gross receipts taxes.

The Comptroller issues the permit and may suspend it if the concern fails to pay gross receipts taxes. If the tax is not paid within 30 days after it comes due, the Comptroller is required to notify the delinquent taxpayer that unless the tax is paid within 10 days from the date of the notice, the permit will be suspended. If the tax, with accrued penalties, is not received within 15 days after notice is mailed, the Comptroller notes on his records that the right of this concern to transact business has been suspended. He must then notify the Attorney General of this action and publish in a newspaper in the county of the concern's place of business, or if there is no such newspaper, in a newspaper of statewide circulation, notice to that effect.[141] If the company continues to do business without the permit, or if any company enters business without such a permit, it becomes liable for a penalty of $50 to $500 for each day business is transacted.[142] In addition, any person wilfully aiding a corporation to transact business unlawfully is liable for fines ranging from $50 to $250 for each day.[143]

There is some question as to the usefulness of the gross receipts permit. It serves as a registration device; all taxpayers must secure a permit. However, a list of taxpayers might as easily be compiled from tax receipts. It may be considered an enforcement tool. The permit must be displayed, and enforcement personnel can check on business concerns to determine if a permit has been secured. Here again, it seems that tax receipts could serve the same purpose. Of course, fines are provided for operating without a permit, but money penalties are also provided for delinquency in most cases, and the Attorney General may file for these regardless of the permit. Since tax payment is a prerequisite to securing the permit, it does not assist enforcement personnel in locating businesses evading the tax. Whether or not suspension deprives a business of any right or privilege is not clear. In contrast, forfeiture of the right to do business granted in the

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[141] Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7082.

[142] Tex. Civ. Stat. (Vernon, 1948) art. 7083.

[143] Tex. Pen. Code (Vernon, 1948) art. 138.

form of a charter or permit issued by the Secretary of State deprives a corporation of "its right to sue and defend in the courts."[144]

A penalty applicable to incorporated gross receipts taxpayers provides for forfeiture of charters on permits to do business. When a corporation refuses to open its books to the State Tax Board or the State Tax Commissioner, the commissioner notifies the Secretary of State of the concern's refusal.[145] Since the Comptroller is ex-officio Tax Commissioner, he has the authority to notify the Secretary of State to suspend the charter until the examination is complete. This appears to be a strong sanction, but it is rarely utilized.

In addition to revocation of gross receipts permits, corporate charters, and permits to do business, concerns subject to the gross receipts tax on motor carriers may lose their certificates of public convenience and necessity granted by the Railroad Commission if they fail either to make reports or to pay taxes due. The commission is authorized to void the certificates upon notification by the Comptroller that the company is delinquent.[146]

The statutes also provide monetary penalties for companies failing to report or pay the gross receipts taxes. Unlike the previously-mentioned penalties which are applicable to all taxes based on gross receipts, monetary penalties may apply to certain gross receipts taxes and not to others. Sometimes the law does not make clear which penalties are to be assessed.

The gross receipts tax act of 1907 provided monetary penalties for all taxes covered in the act. Failure to report within 30 days after due date makes the delinquent liable for a fine not exceeding $1,000.[147] This penalty provision has seldon been used. The penalty for failure to pay within 30 days after the tax becomes due is 10 per cent of the delinquent tax.[148] This type of penalty allows for no discretion in that the penalty will be the same if the payment is 31 days or two years delinquent. On the other hand, the penalty is given in a percentage figure, which graduates the fine according to the quantitative seriousness of the offense. If a business fails or refuses to make supplemental reports required by the Comptroller, a fine of from $200 to $500 may be assessed.[149]

[144] Ross Amigos Oil Co. v. State, 138 SW 2d 798 (Tex. Sup. Ct., 1940); Tex. Civ. Stat. (Vernon, Supp. 1950) art. 7091.

[145] Tex. Civ. Stat. (Vernon, 1948) art. 7076.

[146] Tex. Civ. Stat. (Vernon, Supp. 1952), art. 7066b.

[147] Tex. Civ. Stat. (Vernon, 1948) art. 7074.

[148] Ibid. art. 7075

[149] Tex. Pen. Code (Vernon, 1948) art. 137.

It seems clear that these three penalties apply to all gross receipt taxes enacted in 1907. However, a question has arisen as to whether they cover gross receipts taxes subsequently enacted.

Three gross receipts taxes have been enacted since 1907, and each presents a different problem. The first gross receipts tax on textbook publishers was enacted in 1907 and later repealed. The tax, as re-enacted, did not specifically amend the original gross receipts tax act included in the Revised Civil Statutes of 1925, and no provision was made for penalties. Since the emergency clause inferred that the tax was actually a re-enactment of the previous tax on textbook companies, perhaps these penalties would apply regardless of the form of its enactment. It has been a practice of the Comptroller's Office to accept the textbook publishers tax as an amendment to the original gross receipts tax and to assess the penalties provided in that act. However, this particular point has not been adjudicated, and it is not known whether these monetary penalties are clearly applicable.

The gross receipts tax on motor carriers was included in the Omnibus Tax Bill of 1941. Like the textbook publishers tax, the section of the Omnibus Tax Bill which provided for the motor carriers tax was in the form of a new and independent law and not in the form of an amendment to the basic gross receipts tax law. No penalties were provided. Not until 1951 were any direct penalties on delinquent taxes collected from these companies. The present statute provides a penalty of 10 per cent on all delinquent taxes. In addition, past due taxes draw interest at a rate of 10 per cent per year. Unlike the 10 per-cent penalty on other gross receipts taxpayers, this provision allows no statutory 30-day grace period after due date. The penalty is supposed to accrue on all past due taxes. In this instance, the tax is due on the first day of each quarter for the preceding quarter. A strict interpretation would assess a 10-per-cent penalty, regardless of whether the company is one day or one year delinquent, in addition to the 10-per-cent interest penalty. Since it is unrealistic to expect a company to compile and report quarterly receipts on the first day of a new quarter, these taxpayers are in practice granted a 30-day grace period. The fine is graduated according to amount of the tax and the length of time past due, but the 10-per-cent penalty might appear unduly heavy on concerns paying only a few days late. Unlike the general penal provisions, the one for this tax provides no penalty for failure to submit reports.

The well servicing tax was also included in the Omnibus Tax Bill of 1941. Unlike the motor carriers tax, it was in the form of an amendment to the basic gross receipts tax law in the Revised Civil Statutes. It also contained penalty provisions of its own. It is not clear whether these penalties are in addition to or substitutes for the general penal provisions. However, the practice has been to apply only the special penalties which require fines of from $25 to $500, each day's violation constituting a separate offense. Furthermore, delinquent well servicing taxes draw interest at one

per cent per month from the due date. Since these taxes are not due until the 20th of each month for the preceding month, taxpayers are allowed sufficient time to tabulate gross receipts and make their reports. However, with a minimum penalty of $25 per day plus one per cent of the delinquent tax per month, heavy penalties may accumulate quickly.

It is evident, then, that most gross receipts taxes, especially those on motor carriers and well servicing companies, are strongly supported by penalty provisions. However, it is not clear which, if any, monetary penalties may be assessed textbook publishers for failure to pay the tax. As a general rule, only mandatory penalties have been collected regularly.

Enforcement

Action for recovery of delinquent taxes and penalties may be instituted by the Attorney General and the State Tax Board. Venue for all suits is in the courts of Travis County.

In connection with its power to bring suits for recovery of penalties against violators of the gross receipts tax laws, the State Tax Board and its chief administrator, the State Tax Commissioner, have rather extensive powers. They may call on the heads of all state departments and agencies for assistance. The board or commissioner is even authorized to investigate the books and records of the tax-collecting departments of the state government and of all concerns doing business in the state.[150] However, the board is seldom involved in enforcing these taxes, since the Comptroller usually has sufficient authority to administer the taxes and the Attorney General is empowered to recover delinquent payments and penalties by suit brought in the name of the state.

No Administrative Fund

No part of the revenues received from these taxes is especially earmarked for administrative costs. Expenses are paid from moneys provided the Gross Receipts Division by legislative appropriation. The absence of an administrative fund is noted not to imply that such funds are either necessary or desirable but only to indicate the difference in financing administration of these and many other taxes.

No Refund Provision

No provision is made in any of the gross receipts tax statutes for refunding payments, or parts of payments, made in error. This has produced particularly acute problems in connection with payments for companies assessed on a graduated

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[150] Tex. Civ. Stat. (Vernon, 1948) art. 7076.

rate scale. On several occasions, payments have been based on higher rates than those applicable, and no statutory authority exists to permit the Comptroller to return the overpayment or to credit it to future payments.

Allocation of Revenues

Because the taxes discussed in this chapter are designated occupation taxes, one-fourth of the revenue thus collected is allocated to the Available School Fund. The remaining three-fourths of the utilities, telephone, well servicing, and motor carriers taxes is credited to the Omnibus Tax Clearance Fund, while the remainder of all others goes to the General Revenue Fund.

SECTION 5 -- ANALYSIS OF OPERATION

Administrative Costs

To determine the administrative cost of each tax under consideration would be extremely difficult. However, an estimate on the expense for administering all the gross receipts taxes can be made. The Gross Receipts Division of the Comptroller's Office administers several taxes other than those included in this study. About three office workers are now employed full-time in that division to administer the gross receipts taxes, and about one-tenth of the time of the 14 field men is devoted to them. In addition to salaries, there are numerous minor costs for forms, office supplies and rent. On occasion, the state has incurred litigation expense, but this cost has been minor and is not included. Motor carriers, utility, and well servicing companies have recently been the most expensive in this regard. No attempt has been made to determine compliance costs, depreciation of equipment, and similar expenses.

The administrator estimates that approximately ten per cent of the time of the division is involved in administering the ten gross receipts taxes under consideration. Since appropriations of the division for the fiscal year 1950-1951 were $193,940,[151] it would appear that about $19,000 is being spent annually for collecting and enforcing these taxes. Thus the estimated administrative cost is considerably less than one per cent of the annual revenue. This revenue-cost ratio is unusually low.

Legislative policy toward appropriations to tax-collecting agencies is frequently concerned with a determination of how much additional revenue could be realized by increased collection or enforcement activity made possible by higher appropriations. It is probably true that the full revenue potential of the gross receipts taxes as a group is not being realized.

Analysis of Rates

First, an analysis and comparison will be made of the rates levied by the various tax laws under consideration. Second, rates levied on a particular industry by the Texas tax and the rates levied by other states imposing similar taxes will be considered. In the latter comparison, particular attention will be given to the telephone, utility, and telegraph taxes because of the unusual methods used for graduating these rates. Since gross receipts taxes are often only one of several means by which subject companies are taxed, the relative burden of each rate and the significance of rate variations are difficult to evaluate. Any meaningful presentation of these additional factors would require analysis of elements outside the immediate scope of this study. All general statements are made with this limitation.

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[151] Acts 51st Leg., R. S. 1949, ch. 615, p. 1208.

The gross receipts taxes assessed by Texas, except those on telegraph, telephone, and utility companies, are levied at flat rates varying from .44 to 5 per cent. Those for collection agencies and textbook publishers are relatively low, while the rate for Pullman companies is 5 per cent, the highest flat rate. Rates for car line companies, express companies, motor carriers, and well servicing companies vary from about 2.4 to 3 per cent.

Telephone Company Rates

Telephone tax rates in Texas, graduated according to the population and corporate status of the community served, range from 1.65 to 2.5025 per cent. Minnesota appears to be the only other state that taxes telephone companies by a graduated scale based on population. But several states, including Maine, Vermont, and Wisconsin, assess graduated rates according to annual gross receipts. Most states employ rates which vary between 2 and 8 per cent. The difference between maximum and minimum rates in Texas is less than 1 per cent, but in most other states the difference is as much as 3 to 5 per cent. In Wisconsin, rates are graduated from 2.5 to 8 per cent. The Wisconsin telephone tax is notable also because it is graduated according to "exchange service," with rates ranging from 2.5 to 6 per cent, and "toll service," with rates from 2.5 to 8 per cent. Both scales vary according to revenue received by the exchange rather than to population and corporate status of the community served, as in Texas.

Most states levying gross receipts taxes on telephone companies assess flat rates, which vary from .25 per cent in Oregon to 7 per cent in Rhode Island. However, a large number of states, including Connecticut, Illinois, Ohio, and West Virginia, levy flat rates from 2 to 4 per cent.

In summary, Texas is one of several states which levies graduated rates on telephone companies but one of the few states which determines the rate by population rather than by total gross receipts. The rate in Texas provides for a relatively small difference between maximum and minimum and tends to be lower than that collected by most states.[152]

Utility Company Rates

Although several states apply the same tax rate to gas and electric light and power companies, a number assess different rates. For example, Maryland assesses electric light and power companies at 1 per cent and gas

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[152] The information used in comparing the gross receipts tax rates in various states was obtained largely from Commerce Clearing House, State Tax Guide, 1948, pp. 3000-3175.

companies at 1.5 per cent. North Carolina assesses water and electric companies at 6 per cent of gross receipts, while gas companies are subject to a rate of either 4 or 6 per cent, depending upon total receipts. Several other states, including Washington and Montana, either levy different rates on gas and electric light and power companies or assess a tax on only one of the two types of companies. Texas is one of the few states which assesses a utility tax rate graduated according to the population and corporate status of the community served. Virginia also applies a graduated rate to such companies, but the scale is based on annual receipts. The rates by which rural co-operatives are taxed in North Dakota are somewhat unusual in that a flat rate of 1 per cent is assessed during the first five years of operation and 2 per cent thereafter. Wisconsin taxes electric co-operative associations at a flat rate of 3 per cent of gross receipts, and indications are that other utility companies pay property taxes instead of gross receipts assessments. Oregon and Oklahoma also specifically tax electric co-operatives' gross earnings or gross receipts. These states all contrast with Texas, which specifically exempts rural electric co-operatives.

The rate on utility companies in Texas ranges from .484 to 1.66375 per cent. Although the range is narrower, the rates are generally in line with those imposed by several other states. It should be noted that rates vary widely among the states, with 6 per cent assessed by North Carolina and .4 per cent levied by Arkansas.[153]

It is evident that Texas assesses a rate well within the range levied by other states. In summary, Texas is one of several states assessing a similar rate on both gas companies and electric power and light companies but one of the few applying a graduated rate scale.

Telegraph Company Rates

Tax rates on telegraph companies in Texas are graduated according to the corporate status and population of the community served and range from 1.5 to 2.275 per cent of gross receipts. Maine also assesses a graduated rate on telegraph companies, but the scale is based on total receipts. Maine's graduated rate also differs from that of Texas in that the maximum rate is considerably higher and the difference between maximum and minimum rates is much greater. However, most states tax these companies by flat rates. In fact, several states that provide a graduated rate scale for other utility taxes do not provide such scales for telegraph companies. Although a tabulation of the rates levied by various states indicates no distinct

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153 The assessment in Arkansas is termed a "fee" rather than a tax as in most states.

pattern, with rates ranging from below 1 per cent up to 6 per cent, Texas is well within the middle group.

Other Gross Receipts Tax Rates

Since all other gross receipts taxes are levied at flat rather than graduated rates and since several of the other taxes are not assessed by other states, all remaining tax rates may conveniently be considered together. Texas assesses a uniform rate of 5 per cent on Pullman car companies. Most other states levying gross receipts taxes on such companies also charge a flat rate. Of approximately ten states assessing the tax, the rates vary from 1.5 to 10 per cent, the Texas rate being near the middle of the two extremes.

Texas' 3-per-cent tax on railroad car companies is somewhat higher than other state rates. Most states assess a flat rate of about 2 per cent.

A relatively large number of states assess a gross receipts tax on express companies. Nebraska and Arizona provide such a tax, the express business being the only public utility company taxed by the gross receipts method in those states. Although several states, such as Minnesota and Montana, differentiate between freight and express companies and provide separate rates, Texas taxes both railway freight and express in the same way. Excluding Minnesota, which imposes a rate of 9 per cent, most state gross receipts taxes range from 2 to 6 per cent. The Texas rate of 2.5 per cent is among the lowest.

Most states taxing public utility companies by the gross receipts method do not levy this type of tax on motor carriers. However, West Virginia assesses a gross receipts tax similar to that of Texas at a rate of 1.5 per cent, which is somewhat less than the 2.2 per cent levied in Texas.

Since available sources indicate that there are few if any states that assess gross receipts taxes on well servicing companies, textbook publishers, and collection agencies, no detailed comparisons can be made of these rates.[154]

Analysis of Returns

Annual collections at five-year intervals since 1925 and for 1951 and 1952 from the gross receipts taxes and collections as a percentage of the state's annual revenue are shown in Table Utility - 1. Over the years, collections from

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[154] Tennessee assesses a gross receipts tax on collection agencies at a rate of .33 per cent of annual collections. North Carolina, Alabama, and Louisiana assess an annual fee on commercial and collection agencies but it is not based on gross receipts.

Table Utility-1

Current Gross Receipt Tax Rates - Collections and Per Cent of State Tax Returns for Selected Years

Companies	Tax Rates (1)	Number of Companies (2)	COLLECTIONS (3) 1930	1935	1940	1945	1950	1951	1952(4)
Express	2.5	1	148003	47922	46677	94744	79315	69079	71972
Telegraph	1.5 1.75 2.275	3	78182	51108	53928	13222	62521	66377	58708
Utilities	.484 .891 1.66375	113	385223	524450	962961	1356768	2151189	3051567	3436462
Collection Agencies	.5	128	3535	4344	3507	4381	10643	11182	12327
Car Lines	3	22	4140	2265	4032	7332	5460	5376	8800
Textbooks	1	58	11244	22865	23079	16817	43468	72835	46565
Telephone	1.65 1.725 2.5025	247	513856	429722	742849	1131254	2531514	3256220	3824834
Pullman	5	1	72538	35040	33418	52426	48611	48093	51740
Well Servicing	2.42	63				200212	483045	886223	828125
Motor Carriers	2.42	225				70836	112118	80589	108826
Total Gross Receipt Taxes			1216721	1117716	1870451	2947992	5527884	7547541	8448359
Total State Taxes			77642721	82604228	121524457	168386666	346484840	407780680	----
Per Cent of State Taxes			1.6	1.4	1.5	1.8	1.6	1.9	

(1) Rates in effect September 1, 1952.
(2) Number of companies reporting as of October 1, 1851.
(3) Collections during fiscal year September 1 to August 31 of years indicated.
(4) Preliminary figures obtained from Gross Receipts Division of Comptroller's Office

SOURCE: Annual Reports of the Comptroller of Public Accounts of the State of Texas, 1930, 1935, 1940, 1945, 1950, 1951. Also from specific unpublished data gathered by State Comptroller.

Table - Utility - 2 Gross Receipts Taxes 1907-1952
(Rounded to Nearest One Dollar)

Tax	1907	1908	1909	1910	1911	1912	1913
Beginners (1907)		1,300	700	4,000	2,065	2,500	4,665
Car Lines (1907)		661	3,332	1,838	2,124	2,049	2,203
Collecting Agencies (1907)	2	547	516	529	598	615	699
Express (1907) RR & Express	40,788	62,439	57,477	64,620	73,209	64,091	82,436
Motor Carriers (1941)	-------	--------	-------	-------	--------	-------	-------
Pullman (1907)	19,605	28,501	28,943	33,845	35,659	38,070	43,455
Telegraph (1907)		8,901	13,427	14,659	17,606	21,478	22,778
Telephone (1907)	65,473	85,339	76,680	81,351	93,899	87,746	126,503
Text Book (1931) (Publishing, Text and Law Book)	4,164	4,639	8,799	6,403	6,329	6,176	5,857
Utilities (1907)	12,756	20,960	20,418	22,924	26,792	29,327	33,150
Well Servicing (1941)	-------	--------	-------	-------	-------	-------	-------
Total		213,287	210,292	230,169	258,281	252,052	321,746

Tax	1914	1915	1916*	1917	1918	1919	1920*
Beginners	7,585	6,875		7,790	11,310	21,020	
Car Lines	2,157	4,489		2,185	2,884	3,130	
Collection Agencies	742	1,127		1,041	1,060	1,260	
Express	80,358	73,082		98,366	113,079	000	
Motor Carriers	-------	--- ---		--------	--------	--------	
Pullman	43,076	39,628		53,830	56,020	67,267	
Telegraph	22,201	24,272		32,951	38,007	43,708	
Telephone	136,983	150,729		163,751	176,909	195,706	
Text Book	12,725	7,817		8,159	7,980	8,863	
Utilities	32,118	44,008		45,664	47,459	59,890	
Well Servicing	-------	--------		--------	--------	---- --	
Total	337,945	352,027		414,507	454,708	400,844	

Table - Utility -2 Gross Receipts Taxes (Continued-Page 2)

Tax	1921	1922	1923	1924	1925	1926	1927
Beginners	8,870	16,935	13,185	8,640	11,364	10,772	10,310
Car Lines	5,710	2,921	8,390	7,892	6,849	6,239	14,553
Collection Agencies	2,039	2,293	2,422	2,591	2,885	2,998	3,146
Express	198,392	163,211	153,905	158,619	165,264	163,589	172,167
Motor Carrier	------	-------	-------	-------	-------	-------	-------
Pullman	118,984	79,044	68,563	73,909	72,201	70,128	76,857
Telegraph	63,351	54,491	49,943	51,331	57,354	66,752	72,165
Telephone	264,273	277,632	298,385	314,581	350,071	384,210	415,493
Textbook	22,262	18,283	14,611	9,880	26,049	27,640	22,200
Utilities	101,516	116,487	112,416	227,473	154,532	116,650	180,434
Well Servicing	------	-------	-------	-------	-------	-------	-------
Total	785,397	731,297	721,820	854,916	846,569	898,978	967,325

Tax	1928	1929	1930	1931	1932	1933	1934
Beginners	5,300	11,106	5,934	15,966	19,125	15,814	11,122
Car Lines	7,713	5,326	4,140	3,249	2,388	2,223	2,351
Collection Agencies	3,100	3,145	3,535	3,335	2,373	1,872	2,607
Express	171,918	000	148,003	276,603	45,560	48,287	49,117
Motor Carriers	-------	------	-------	-------	------	------	------
Pullman	77,140	77,482	72,538	60,619	43,314	32,986	32,894
Telegraph	75,877	81,317	78,182	67,836	49,827	42,808	47,782
Telephone	451,731	508,948	513,856	496,483	435,180	381,572	407,524
Text Book	17,598	12,976	11,244	23,162	16,746	16,738	17,881
Utilities	188,278	208,327	385,223	628,896	529,320	518,470	498,828
Well Servicing	-------	-------	-------	-------	-------	-------	-------
Total	998,855	908,627	1,222,655	1,576,149	1,153,833	1,060,770	1,070,106

Table - Utility - 2 Gross Receipts Taxes (Continued-Page 3)

Tax	1935	1936	1937	1938	1939	1940	1941
Beginners	Not Listed	Not Listed	385	260	155	105	105
Car Lines	2,265	4,369	3,476	3,745	3,160	4,032	2,809
Collection Agencies	4,344	2,833	2,905	2,963	3,021	3,507	3,327
Express	47,922	51,078	52,723	52,421	48,845	46,677	35,289
Motor Carriers	---	---	---	---	---	---	7,435
Pullman	35,040	38,052	40,628	36,826	33,402	33,418	34,362
Telegraph	51,108	55,781	37,251	98,207	55,396	53,928	135,264
Telephone	429,722	464,557	608,466	683,080	704,260	742,849	837,006
Text Book	22,865	28,202	27,970	23,662	18,744	23,079	18,419
Utilities	524,450	587,274	799,546	876,050	894,424	962,961	1017,107
Well Servicing	---	---	---	---	---	---	24,917
Total	1,117,716	1,232,146	1,573,350	1,777,214	1,761,407	1,870,556	2,116,040

Tax	1942	1943	1944	1945	1946	1947	1948
Beginners	210	165	55	310	55	320	355
Car Lines	2,483	3,414	4,725	7,332	5,474	14,136	40,422
Collection Agencies	3,559	3,615	3,710	4,381	5,682	7,297	8,721
Express	51,173	37,909	82,655	94,744	99,314	105,873	111,184
Motor Carrier	24,734	65,067	84,490	70,836	73,193	68,696	77,305
Pullman	43,257	62,618	61,580	52,426	45,441	62,485	57,203
Telegraph	64,324	73,828	65,645	13,222	88,551	70,013	66,214
Telephone	994,628	1,122,503	1,239,998	1,313,254	1,453,671	1,540,065	1,844,774
Text Book	21,447	20,816	20,702	16,817	25,325	31,998	43,916
Utilities	1,241,628	1,207,496	1,278,574	1,356,768	1,463,048	1,617,721	1,849,622
Well Servicing	116,398	68,391	83,338	200,212	190,063	230,933	340,283
Total	2,563,841	2,701,822	2,925,472	3,130,302	3,449,817	3,749,537	4,439,999

Table - Utility - 2 Gross Receipts Taxes (Continued-Page 4)

Tax	1949	1950	1951	1952+
Beginners	415	100	315	405
Car Lines	39,870	5,460	5,376	8,800
Collection Agencies	10,799	10,643	11,182	12,327
Express	95,921	79,315	69,079	71,972
Motor Carriers	99,927	112,118	80,589	108,826
Pullman	51,624	48,611	48,093	51,740
Telegraph	63,247	62,521	66,377	58,708
Telephone	2,136,115	2,531,514	3,256,220	3,824,834
Text Book	61,660	43,468	72,835	46,565
Utilities	2,031,375	2,151,188	3,051,567	3,436,462
Well Servicing	424,391	483,045	886,223	828,125
Total	5,015,344	5,527,984	7,547,856	8,448,764

+ Preliminary figures obtained from Gross Receipts Div., Comptroller's Office
* Figures not available.
SOURCE: Annual Reports of the Comptroller of Public Accounts 1908-195

gross receipts taxes have represented from 1 to 2 per cent of the state's total annual revenue.

Table Utility - 2 shows receipts from gross receipts taxes from 1907 to 1952. Except for the depression years of the early 1930's, a constant upward trend in receipts is evident. Moreover, a marked increase has occurred during the last decade. The recent rapid increase is partly a result of the inclusion of two additional gross receipts taxes in 1941 when the motor carriers and well servicing taxes were enacted. Both taxes have produced increasing amounts of revenue, and the well servicing tax has been a particularly lucrative source during recent years. Indications are that increased efforts by the Gross Receipts Division to enforce this tax contributed importantly to the increase.

A substantial increase is also seen in telephone and utility tax receipts, which have both grown from about $1 million to more than $3 million during the last ten years. The tax on collection agencies has also shown a considerable percentage increase. Receipts from car line companies have fluctuated most widely, $2,000 to $40,000, while the beginner's tax has totaled from $55 to $405 annually since 1941. The tax on textbook publishers has also fluctuated rather widely since 1945, ranging from $16,817 to $72,835. The beginner's tax, during the first 30 years of the gross receipts tax program, was fairly lucrative, but since the mid-1930's it has produced very little revenue.

The express companies tax amounted to more than $100,000 in 1947 and 1948 but has since declined to approximately the pre-World War I level, averaging from $60,000 to $80,000 annually. During the early years of the gross receipts tax program, the express companies tax was one of the most productive, usually ranking second only to the utilities tax. The express companies tax remained relatively important until 1932. Receipts for the years after 1932 showed a drastic decline and have never since exceeded one-half the amount received in 1931.

The Pullman and telegraph companies taxes have not shown important increases in revenue as have several of the others. Since 1921, when the Pullman tax totalled more than $100,000 and the telegraph tax about $63,000, receipts from these levies have either remained stable or decreased. The Pullman tax yielded the state $51,740 and the telegraph tax $58,708 during the fiscal year 1951-1952.

In summary, revenue from gross receipts taxes has shown a general increase, particularly during the last decade. The recent increase is largely a result of the inclusion of two additional taxes and increased collections from telephone and utility companies. Although several of the smaller taxes have likewise yielded increased revenue, receipts from Pullman companies, telegraph companies, and express companies have generally remained relatively stable or decreased.

SECTION 6 -- SUMMARY AND PROBLEM AREAS

The purpose of this section is to summarize the more important aspects of the taxes included in this chapter. Special attention is given to problems arising in connection with them, together with some of the possible approaches to these problems.

Areas in which problems appear are:

1. Conflicting and unrealistic penalty provisions.
2. Absence of a clear understanding on what is included in taxable gross receipts.
3. Lack of statutory provision for credits or refunds.
4. Inadequate statutory requirements for reports and records.
5. Adequacy of enforcement.
6. Relatively low yields from some taxes.
7. Administrative procedures.
8. Graduated rate scales.
9. Miscellaneous problems relating to particular taxes.

Each of the first seven problem areas involves all, or at least several, of the gross receipts taxes. The last focuses attention on problems concerning a particular tax or only a few taxes.

Penalties

The original legislative intent was to treat gross receipts taxes as a group, with uniform administrative procedures and penalties. When enacted in 1907, all gross receipts taxes were included in the same act and all were later placed in the same chapter of the Revised Civil Statutes of 1925. Since 1925, however, the tax on textbook publishers has been re-enacted, and the gross receipts method of taxation has been extended to well servicing and motor carrier companies. These actions were taken without adequate attention to the framework of the gross receipts tax laws.

The textbook publishers and the motor carriers acts were not passed in the form of amendments to the basic gross receipts tax law in the Revised Civil Statutes but as independent laws without penalty provisions. Subsequently, penalties have been provided for the motor carriers tax statute but not to that concerning textbook publishers. However, penalties have been collected from textbook publishers by the administrator, and no litigation has followed. The oil well servicing act amended the basic law, but it also provided a set of penalties different from those required for other gross receipt taxes. It is not clear whether the new penalties are cumulative or whether they substitute for the general penal provisions.

In view of this, it seems desirable to clarify the relationship of the gross receipts tax laws to one another and to review the penalty provisions in these laws to determine whether they should be standardized. Common penalties would simplify the administration of these taxes somewhat and help avoid questions of the fairness of levying different penalties for the same offense. However, detailed examination might reveal sufficient reasons for a different system of penalties for some taxes.

Another penalty problem was noted on the motor carriers tax. The date on which reports and payments are due is the day after the last day of the quarter for which they are made. This means that gross receipts obtained by motor carriers during January, February, and March are to be computed and payments mailed not later than April 1, allowing only one day for companies to compute and pay the tax. This procedure makes compliance difficult, if not impossible, for many of the large companies. Although most other gross receipts tax laws have this requirement, they, in effect, give a 30-day grace period, since no penalties accrue until 30 days after delinquency. While this is a rather roundabout approach, it does allow sufficient time for the taxpayers to calculate and pay the tax. The problem arises because this 30-day grace period was not given motor carriers when penalties were provided for that tax law in 1951. However, the administrative practice has been to give motor carriers the 30 days allowed other taxpayers, since this seemed the only practical solution. It does not seem that the statute should force on an administrator the necessity of bending the letter of the law to make it work, and attention could be given to correcting this situation. One approach would be to change the due date for quarterly gross receipts taxes by giving taxpayers a month after the close of the tax quarter in which to pay. This approach would preclude the necessity of any grace period and the practice of permitting certain taxpayers to be delinquent without liability for any penalty.

It would seem desirable that the penalties for all gross receipts taxes be easily applied and bear a relation to the seriousness of the delinquency. Present percentage penalties which apply to most gross receipts taxes increase in proportion to the size of the delinquent tax, but no consideration is given to the elapsed time since due date. Except for motor carrier and well servicing companies, payments only a day or two late are now penalized on the same percentage scale as delinquencies of six months or a year. On the other hand, penalties on well servicing companies include a fine of from $25 to $500 for each day of delinquency, plus one per cent of taxes due per month. The penalty accumulates so rapidly that in some instances the assessed penalty exceeds the tax on which it is collected; thus it may be questioned whether the penalties are unrealistically severe. An additional contrast between penalties on motor carriers and well servicing companies and penalties for other gross receipts taxpayers is that the two former taxes do not provide penalties for failure to report. On the other hand, the initial legislative intent in 1907 was apparently to distinguish between and give more consideration to taxpayers who reported but failed to pay than to those who did neither. This policy would seem to encourage reporting even when taxpayers were unable to pay.

One approach to these problems could be, for example, to make the penalties uniform by first including all gross receipts taxes in one act as a unit and providing one type of penalty applicable to all. Second, all gross receipt taxpayers could be allowed one month after the close of the tax period before payments and reports were due. Third, a ten per cent penalty for all delinquent gross receipts taxes might be prescribed, with taxes and penalties drawing interest at six per cent. A variation of the latter would be to make past-due payments incur a penalty of two per cent if paid during the first ten days after due date, and an additional eight per cent thereafter. As in the first penalty mentioned, taxes and penalties could draw interest at six per cent. If desired, a smaller percentage penalty for delinquency and interest could be provided in cases when taxpayers reported but failed to pay. These suggested approaches would provide uniform due dates and penalties and would reflect more accurately the seriousness of the offense as to the amount due and the time delinquent.

Taxable Gross Receipts

Some taxpayers have found difficulty in determining what to include in their taxable gross receipts. In most of the gross receipts tax statutes, the base is expressed as the "gross amount received from all business within this state." This general designation is usually followed by some limiting phraseology such as "charges from express and freights," receipts from "lease or use of any wires or equipment", or "payment of charges for transporting persons for compensation and any freight or commodity for hire." Some of the statutes, however, include "other sources of revenue" from intrastate business in taxable receipts, and the use of this phrase has created certain problems. For example, until the Attorney General rendered an opinion, it was not known whether receipts from air freight collected by express companies were included as "other sources of revenue." Other questions might be expected as a result of using this indefinite phrase as part of the tax base.

Problems in determining taxable gross receipts have also arisen from advances in technology making the language in some of the present statutes obsolete. For example, "aerograms" is used for telegrams, and reference is made to transportation by "steam railroad" but not by Diesel. Each situation has been dealt with as it has arisen, thus producing a patchwork of statutes and rulings. However, it might be desirable to review each tax statute to make the terminology current.

It would appear that a review of the Attorney General's opinions, court decisions, and administrative rulings dealing with taxable receipts, deductions, and exemptions might also be desirable to assure that they conform with current legislative thinking and business practices.

Here are some examples of the things that may deserve examination. The tax law on textbook publishers is so worded as to raise several questions. At present, most revenue comes from companies selling books approved by the Textbook Committee of the Texas Education Agency. Private primary and secondary schools, of course, are not required to use the same books as public schools. Are receipts from sales of books to these schools taxable? Although not part of the public school system, they could be considered "schools of this State." No mention is made of college and university textbooks. However, there is an exemption for non-profit bookstores organized by students and faculties of "any State-supported institution of learning." The language of this exemption is not conclusive that receipts from sales of textbooks used in state-supported colleges and universities are to be included in reported gross receipts, but it, along with the ambiguous phrase, "schools of this State", does raise the question. A legislative restatement of the taxable receipts would simplify the task of the administrator considerably.

The use of "the gross amount received from said service furnished or duty performed" as the base for the well servicing tax has produced a marked difference between this and other gross receipts taxes. The Court of Civil Appeals has held:

> The major portion of the gross receipts for the overall undertaking was for the materials furnished and used; and the charge for "servicing" the well with such materials constituted only a minor portion of the total aggregate or gross charge...If the Legislature, cognizant of these matters, had intended to levy the tax both on the cost of materials used in performing such service and on the service performed in acidizing the well, it could easily have so provided.
>
> Thus the taxable gross receipts exclude "original cost of materials, cost of transportation, insurance, demurrage, evaporation, wear and tear on equipment, pro rata cost of overhead, a reasonable profit on the sale, and any other reasonable or necessary element of cost entering into the value of such materials delivered at the well head. . ."[155]

This interpretation places responsibility on both the taxpayer and the administrator to assure that all taxable gross receipts are reported and that full deductions are made. It also necessitates that the well servicing company separate each charge into two components, the cost of

[155] Western Co. v. Sheppard, 181 SW 2d 850, 856, 857 (Tex. Civ. App. 1944, err. ref.)

materials and the charge for the service. In some cases, a determination is required for disputed items as to the category in which they belong. A determination of these elements may account for the greater time required for audits of well servicing companies as compared with audits of most other gross receipts taxpayers.

After more than ten years of interpretative development, many of the questions concerning well servicing appear to be settled. A reasonably concrete formula has been developed for determining both taxable services and deductible expenses. These determinations might well be examined and those deemed satisfactory given statutory expression.

Credit for Over-payments--Refunds

No provision is made for refunds to the gross receipt taxpayers who inadvertently pay more than the tax due. This problem has been particularly acute in the administration of taxes with graduated rates. The question arises each time a telegraph, telephone, or utility company computes its tax on the basis of a higher rate than the one provided by the scale. At present, there is no statutory authority under which overpayments, once accepted, can be credited or refunded to the taxpayer. The addition of a provision allowing credits or refunds of overpayments would make the gross receipts tax provisions more just.

Reports and Records

Reports by gross receipts taxpayers contain little information beyond the amount of taxable receipts and a calculation of the amount due. Exemptions and deductions are not reported, and the reports in most cases do not indicate to the taxpayer the authorized deductions. More informative and necessarily more detailed reports may have some merit. They would seem to be particularly helpful in view of the limited number of field audits now conducted. Each report would probably require more office audit time and thus increase the work load of collection and enforcement personnel. However, a more complete report coupled with sufficient office workers might assure more accurate payments. Those concerned with administration of the gross receipts taxes have already devoted some attention to revising present report forms to at least list permitted deductions and exemptions. Limitations of time and personnel have thus far prevented a full-scale revision.

The tax on well servicing companies, enacted some 30 years after most of the other gross receipts taxes, is the only one for which taxpayers are specifically required to maintain records. By implication, the Comptroller as ex-officio Tax Commissioner has authority to require that records be kept in that he has inspection powers. Most large concerns undoubtedly maintain satisfactory records. It might be desirable, however, to require the maintenance

of records by all companies subject to gross receipts taxes. As with more complete reports, the value of records depends on their use. Present personnel limitations may be such that even if adequate records were available, regular audits would not necessarily be possible.

Adequacy of Enforcement

The Gross Receipts Division is responsible for administering seven taxes other than those discussed in this chapter. Since these taxes usually account for less than six per cent of the total receipts of the division, it is understandable that most of the money allocated is spent for collecting and enforcing the other taxes which raise more revenue. It has been estimated that the amount spent annually for enforcing the gross receipts taxes is $19,000 or less than .3 per cent of the annual revenue collected from them. In relation to enforcement costs for other taxes, this figure indicates that a relatively small portion of the amount collected is spent on enforcement. Throughout this study no attempt has been made to determine a desirable administrative cost-revenue ratio, and it is not intended to imply that it is always necessary to spend a certain per cent of collections from a tax for enforcement. Obviously, some taxes require less expenditure in relation to revenue for collection and enforcement than others. Nevertheless, this low enforcement cost-revenue ratio may indicate that increased enforcement activity can produce significant amounts of additional revenue.

As a general rule, the state should make a diligent effort to collect all taxes due it, thereby realizing their full revenue potential and avoiding discrimination against the taxpayer who pays without being forced. There is, of course, the possibility of carrying enforcement to the extent that the additional enforcement nets less revenue than it costs and where harrassing the taxpayer is not worth the returns. No exact advance determination can be made on how much greater the enforcement effort should be for the gross receipts taxes, but it appears that a greater effort may be justified.

Returns

In some instances, the average annual payment per company is relatively small. For example, an average of less than $100 is received annually from collecting agencies and about $400 from each car line. The tax liability of some collection agencies is reported as less than $1 quarterly, an amount hardly worth the administrative cost per unit, especially if an audit or a field trip is required to secure payment. In all taxes, the amounts paid by some taxpayers are exceedingly small, but these are balanced by larger payments, and the total is significant. The tax on collecting agencies produced only $12,327 during the fiscal year 1951-52, and that on car lines produced only $8,800. Some questions might be raised as to the merit of

these taxes in the state revenue system. Are collection and enforcement procedures sufficiently perfected to assure maximum collections? If not, would the increased revenue resulting from more complete coverage exceed the additional revenue realized in view of the low per-unit return? Do the taxed occupations represent businesses in which taxable gross receipts are inherently low?

Some pitfalls await those who attempt to answer these questions. Average per-unit collections from motor carriers are also relatively low, being less than $500 during the fiscal year 1951-1952. Total tax revenue was $80,589, however, a more significant amount than either of the two examples cited above. Businesses paying this tax are chiefly carriers who do not pay the intangible assets tax, and thus it may serve to equalize the taxes levied upon carriers as a class. In dealing with the motor carriers tax, this factor must be considered. As a further example, revenue from the "beginner's tax" was only $405 in the fiscal year 1951-52, representing payment of taxes plus penalties by eight concerns. This is an extremely low yield, yet this tax is required from some businesses subject to the gross receipts taxes for their first quarter or partial quarter of operation. It is used as a method for getting these concerns to start paying a gross receipts tax.

Revenue, then, is not the sole factor upon which a tax should be evaluated. Nevertheless, some of the gross receipts taxes may deserve review with an eye to their revenue-producing values.[156]

Administrative Procedures

Although the statute provides for payment of all except the well servicing company tax to the Treasurer and for the issuance of tax receipts by him, payments and reports are actually processed by the Comptroller. Receipts, however, must go from the Comptroller to the Treasurer for signature and back to the Comptroller for mailing. It would appear that the simpler procedure used in most other taxes, whereby the Comptroller issues receipts over his signature, might be considered.

The provision requiring that the Governor be notified of tax delinquencies and request audits is unique in Texas tax statutes. Since the Comptroller now has authority, as ex-officio Tax Commissioner, to examine the books and records of any taxpayer in the state, this indirect procedure may be thought to be obsolete. Consideration might be given to deleting this provision.

Graduated Rate Scales

Gross receipts tax rates on telephone, telegraph, and utility companies

156A similar problem involving the small revenue-producing potential of certain miscellaneous taxes is considered in the final section of Chapter VI.

are graduated according to the population and corporate status of the locale in which business is conducted. As a result, numerous administrative problems have arisen and several additional responsibilities have been placed on the tax administrator. These problems were discussed in Section 3. Questions have arisen as to which type of federal census is applicable and the effective date of the census. In addition, the administrator must constantly keep informed of newly-incorporated cities, annexations, and all decennial and special censuses.

The comparison of Texas tax rates with those of other states in section 5 shows that the rate base used in Texas is not the one generally used. Several states graduate their rates on the basis of the total taxable gross receipts. This rate classification avoids some administrative problems which are present where population and corporate status of community in which the receipts are earned are employed in the rate classification. Both rate structures, of course, require the reporting of total taxable gross receipts; but the one graduating rates on the basis of receipts eliminates the need for getting information on two additional factors. If population and corporate status are used to graduate the rate so as to adjust the tax to approximate ability to pay on the assumption that "usually the larger the volume of business done the more economically such occupation can be pursued and the more profitable it thus becomes,"[157] it seems that graduating the rate directly on the basis of total taxable gross receipts might accomplish the legislative objective as well as simplify some of the administrative problems. This possibility may deserve legislative consideration. Before any change is made, however, it seems desirable that a more detailed examination be made to determine whether all of the legislative policies inherent in the present classification can be attained through a changed classification. Also, for purposes of obtaining a sound tax policy and of insuring the constitutionality of the rate, a graduated rate should be formulated only after a careful consideration of the business environment in which the tax will operate. In case consideration is given to graduating the rate on the basis of total taxable gross receipts, another word of caution seems in order. The period for the total gross receipts upon which the graduated rate is based may need to be co-ordinated with the periods at which the tax becomes payable; if the same periods are not used, then special rules may need to be provided to guide computation of the tax.

There is another important factor to be taken into account in any consideration of a tax graduated according to total taxable gross receipts. Stewart Dry Goods Co. v. Lewis[158], involving a Kentucky tax on independent and chain

[157] Dallas Gas Co. v. State, 261 SW 1063, 1069 (Tex. Civ. App. 1924). As pointed out in section 3, this was part of the rationale used in this case to sustain the constitutionality of the utility tax as applied to a gas company.

[158] 294 U.S. 550, 557, 566, 569 (1935).

stores graduated according to total gross receipts, seems to indicate that any tax with a rate graduated on this basis violates the equal protection clause of the Fourteenth Amendment. The majority stated that the tax was "unjustifiably unequal, whimsical and arbitrary" because in its operation "it exacts from two persons different amounts for the privilege of doing exactly similar acts because the one has performed the act oftener than the other." Mr. Justice Cardozo, in a vigorous dissent, asserted that the tax was not "arbitrary discrimination, but an attempt to proportion the payment to capacity to pay and thus to arrive in the end at more genuine equality."[159] A recent Kentucky case suggests that the language of the majority is no longer the law and that the dissent states what is now the correct view.[160] Although the question has not arisen in Texas, Dallas Gas Co. v. State looks in the direction of sustaining such a classification in the proper case.[161] It is clear, however, this is a question not free of doubt.

In addition to the question concerning the basis upon which to establish graduated rates, a problem has arisen from the lack of precise terminology in outlining present rate scales. In several instances, as mentioned previously, no rates have been provided for cities of exactly 2,500 or 10,000 population. To avoid the possibility of any loss to the state in the form of litigation costs and to promote clarity, inclusive terminology might be used in establishing rate categories, and more direction might be given concerning the use of census figures.

Miscellaneous Problems Relating to Particular Taxes

Deductions from Telegraph Tax

The telegraph tax exempts receipts from services for federal agencies, for which rates are prescribed by the Postmaster General. However, all powers, duties, and functions of the Postmaster General with respect to telegraph companies were transferred to the Federal Communications Commission in 1934.[162] Rather than incur the possibility of changes in the federal statutes voiding state law, consideration might be given to altering the exemption so that it refers to no specific federal agency.

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[159] One commentator criticized the decision, saying, "The invalidation of the tax seems to ignore economic actualities underlying it." 48 Harv. L. Rev. 1434 (1935).

[160] Paducah Automotive Trade Ass'n v. City of Paducah, 211 SW . 2d 660, 666 (Ky. App. Ct. 1948).

[161] 261 SW . 1063, 1069 (Tex. Civ. App. 1924).

[162] 47 U.S.C. §1, Pocket Part, 1951.

Capital Stock Tax on Pullman Companies

The statutes provide that the gross receipts tax on Pullman companies is in lieu of all taxes other than a capital stock tax of 25 cents on each $100. Since the capital stock tax was deleted from the Revised Civil Statutes of 1925, this exemption is no longer meaningful, and Pullman companies are presently paying only the gross receipts tax.[163] Consideration might be given to deleting the provision mentioning the non-existent tax.

Terminal Companies Tax Unconstitutional

[164] Although the terminal companies tax was declared unconstitutional in 1917, it has never been repealed and is still carried in compilations of the laws. Although no particular injury flows from its retention, it contributes to the length and complexity of our body of law, and it might be desirable to repeal this tax statute expressly.

Car Companies

The gross receipts tax on car companies appears to be levied only on out-of-state concerns. Although the tax is still occasionally paid under protest and was paid under protest for some 15 or 20 years by one taxpayer, it has never been challenged in the courts. However, the constitutionality of the tax base might be questioned as discriminatory in favor of domestic car companies, which are apparently exempt. To avoid the possibility of the tax being declared unconstitutional, it might be desirable to obtain legal advice concerning what action, if any, should be taken.

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[163] See Tex. Atty. Gen. Letter Op. dated March 6, 1925, from Texas Assistant Attorney General Ernest May to S. H. Terrell.

[164] Houston Belt and Terminal Co. v. State, 108 Texas 314; 192 SW 1054 (1917).

CHAPTER II

POLL TAX

SECTION 1 - HISTORICAL AND LEGAL DEVELOPMENT

The poll tax, which is today one of the more controversial taxes, has been levied in several different forms. It is necessary, therefore, to examine a poll tax in general turning to the particulars of this tax in Texas. It may be helpful to review the arguments which have been made for and against its use.

The poll tax can be regarded from at least three separate angles. It can be viewed as a capitation tax, as a commutation tax, or as a tax prerequisite to civic participation, usually voting. However, it need not be in only one of these forms; it may manifest itself in more than one.

A Capitation Tax

A capitation tax, or a head tax, as it is sometimes called, is usually a flat-rate levy applicable to individuals as such. The term probably comes from the Latin "capitatis humanus," which was the title given to this form of tax by the Romans. Although it is laid on the individual, the law has usually exempted certain persons from its operation. Some of these exemptions have encompassed sizable segments of the population. For example, it was long the practice to exclude women. While slavery was legal in the United States, slaves were excluded. Today exemptions are effected by setting age limits, excusing the mentally incompetent and the crippled, and by other means.

The principal argument for the capitation tax is that, since all persons benefit from governmental activities, they should bear a portion of governmental expense. In addition, it is contended, this tax establishes a particularly close pecuniary relationship between the individual and the state--a relationship not attainable through indirect taxation. Indirect taxes, although they might be paid by practically everyone, do not make themselves known in so definite and obvious a manner. This contention presumes that a broad area of direct taxation creates wider citizen interest and leads to better and cheaper government.[1]

Two main arguments are advanced against the poll tax as a head tax. The first is that it is difficult to administer, a deficiency which it is claimed far outweighs its value as a source of revenue. The second is that the tax does not take into consideration ability to pay and, therefore, violates a basic principle of taxation.[2]

Opponents of the capitation tax point out that it is almost impossible

[1] Harold M. Groves, Financing Government (New York: Henry Hoft and Co., 1945) p. 347.

[2] Ibid., pp. 347-348.

to collect, even if supposedly adequate provisions for collection are provided. The tax must be fairly small if it is to be paid by rich and poor alike, and it is not, therefore, worthwhile for the state to proceed against delinquents. Penalties can be provided or overdue poll taxes can be made to constitute a lien on property, but these devices are not practical and do not in fact eliminate delinquency. By collecting the poll tax along with the general property tax, it is possible to obtain payment from property owners. However, this method vitiates the main argument for the tax--that it provides a direct levy on those who do not normally pay direct taxes. It is a generally recognized fact that the poll tax is one of the most widely avoided of all taxes which purport to be revenue-raisers, and it can be argued that this situation tends to break down civic morality, since it opens an easy path to direct and conscious violation of the law.

The poll tax is regressive because it takes no cognizance of the ability of the taxpayer to pay. One of the most frequently advanced principles of taxation is that taxes should fall most heavily on those most able to pay. To persons holding this point of view--and, of course, a substantial segment of the American population does not adhere to this taxation principle exclusively--the poll tax is a poor tax. It is argued that for a primitive community in which most persons are of approximately equal wealth, a poll tax is fair, while in the modern industrial state with its vast differences in economic well-being it is unjust.

A Commutation Tax

A commutation tax is that form of poll tax paid as a substitute for service to the state. It is used most commonly in connection with road building. This concept evolved from the practice of requiring local male residents within proper age limits to spend several days each year working on the roads. Later, the obligation could be "commuted" by a money payment. However, even as late as 1889, most states in this country were still dependent on statute labor, and six states made no provision for money payment.[3]

Today several states allow local units of government to levy road poll taxes. Delinquents are subject to a designated number of days' work on the roads. In this way, road work serves as a sanction for failure to pay the tax, and the original process is reversed. The commutation tax for road purposes is most prevalent in the South and West and in rural areas.[4] It operates on the principle that the individuals who benefit from and use the roads should contribute to their construction, either in money or in labor.

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[3] Charles L. Dearing, American Highway Policy (Washington: The Brookings Institution, 1941), p. 42.

[4] CCH, State Tax Guide All States, (2d ed.) arts. 200-950 (1951).

However, the era in which road construction depended almost solely on common labor has passed, and this activity has become largely mechanized. Accordingly, the practice of each male citizen to serve a few days on the road gang has become less important, and the road poll tax has faded with it.

Another form of commutation tax was that which might be paid in lieu of housing and boarding the local school teacher for a part of the school year. The school poll tax may have had its origin in this practice.[5] Although no longer general in the western world, it was at one time an accepted practice to pay a specific amount in lieu of rendering military service. It may be that the poll tax originated in this manner.[6] At least as late as the Civil War in the United States, it was possible to make a money payment instead of serving in the armed forces.

A Prerequisite to Civic Participation

The aspect of the poll tax which currently receives the most attention is its use as a prerequisite to participation in certain civic activities, particularly voting. Indeed, the poll tax is often popularly thought of as a tax on the privilege of voting. This idea is undoubtedly fostered in the public mind by relating the word "poll" in the name of the tax to the word "poll," a place to vote. However, this similarity results from a common ancestry rather than an historical connection between the poll tax and suffrage. "Poll," is an old English term meaning head, and this particular levy was so tagged before its payment was made a prerequisite to voting. In the United States, poll tax as a prerequisite to voting has been confined to the South, where it came into general use around the turn of the century.

Several arguments have been advanced in favor of a poll tax payment as a prerequisite for voting. It has been asserted that it keeps the Negro and the "poor and shiftless white" from going to the polls and casting a ballot on candidates or issues about which they know nothing. However, public arguments on the subject have generally assumed a slightly different tone, regardless of the real motive.

The poll tax has been touted as a method for purifying the election process. It would obviate the possibility, it has been argued, of vote-selling on election day. Persons willing to sell their votes would probably not be sufficiently interested to pay a poll tax considerably in advance of an election and, moreover, the poll tax requirement would raise the price of votes until it became prohibitive. Politicians, it was contended, would not buy poll taxes in advance because they could not

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[5] Groves, op. cit., pp. 346-347.

[6] Laura Snow, "The Poll Tax in Texas: Its Historical, Legal, and Fiscal Aspects" (unpublished master's thesis, The University of Texas, 1936), p. 1.

depend on the people for whom they bought them to vote right a few months later. Also, its advocates said, the poll tax requirement for voting could provide a form of registration, a portion of the yield being used to defray the costs of maintaining the registration system.

Opponents of the poll tax as a prerequisite for voting have emphasized its disfranchising effects. A great deal has been written on this subject by persons who look with horror on what they believe to be the result of the poll-tax voting laws in the South--the disfranchising of the Negro, the Latin-American, and the poor white. The Latin-American issue has been especially important in Texas. But the most important and the most frequently expounded argument is that poll tax payment as requisite to suffrage prevents the Negro from voting and is part of a general plot in the South to keep the Negro in a condition as closely akin to slavery as is possible. It is said to be a white supremacy device.[7]

It is, of course, impossible to estimate accurately the actual effect of the poll tax as a disfranchising device. On this subject, one authority has stated:

> The fiction has prevailed that the poll tax deters Negro participation, but the tax has counted for little in comparison with other restraints. The poll tax, insofar as it has deterred voting, has operated primarily to keep whites away from the polls.
>
> Certainly the tax weighs less as an element in southern electoral apathy than the complex of factors that make up the one-party system, of which the tax itself may be one. With equal certitude, it may be said that the tax keeps some people from voting. To determine how many, though, is another matter. The poll tax is only one of many influences on electoral participation. The assignment of a weight to one of these influences--the poll tax--is somewhat like trying to decide what proportion of the score of a football team can be attributed to the efforts of any one player.[8]

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[7] For a good brief statement of the anti-poll for voting arguments, see Harold M. Groves (editor), Viewpoints on Public Finance (New York: Henry Holt & Company, 1947), pp. 369-373.

[8] V. O. Key Jr., Southern Politics (New York: Alfred A. Knopf, 1949), pp. 598 and 599. See also, Donald S. Strong, "The Poll Tax: The Case of Texas," The American Political Science Review, vol. 38, 1944, pp. 693-709.

General History of the Poll Tax

As has already been indicated, the poll tax is of ancient vintage. It was known to the Greeks and was apparently used rather extensively in Rome. The Mohammedans levied of the classical period such a tax on Jews and Christians to compensate for the fact that they, because of their religious viewpoints, were not permitted to serve in the military. The head tax was used in medieval England and was an important source of revenue in colonial America.[9]

Popularity of the poll tax is decreasing but it was once widely used in the United States. As late as 1900, almost all states had a poll tax law of one type or another. In the first two decades of the present century, several states formally abandoned the poll tax. A few more have done so more recently, but 37 states still have poll tax statutes.[10]

Between 1889 and 1902, ten Southern states made the poll tax a prerequisite for voting. They were Florida (1889), Mississippi (1890), Tennessee (1890), Arkansas (1893), South Carolina (1895), Louisiana (1898), North Carolina (1900), Alabama (1910), Virginia (1902) and Texas (1902). Professor Key declares that one significant reason for this development was the activity of the Populists and other purportedly radical parties composed chiefly of poor whites. Another was the fact that competition between the parties in this period tended to encourage Negro voting. Each side was striving to get the Negro vote to tilt the scales in its favor--a situation which was bound to bring repercussions.[11] However, four Southern states have subsequently abandoned the poll tax requirement for voting. They are North Carolina (1920), Louisiana (1934), Florida (1937), and Georgia (1945).[12]

[9] Snow, op. cit., pp. 1-4. The poll tax was first introduced in England in in 1377 and was again imposed in 1379. It applied to all persons, except beggars, over the age of 15 and was graduated according to rank. There was some difficulty in ascertaining age and "a rather insolent attempt to ascertain the age of a young girl" is credited with being the immediate cause of the Kentish rebellion of 1381. Groves, op. cit., p. 16.

[10] CCH, State Tax Guide, op. cit., p. 2602.

[11] Key, op. cit., ch. 25.

[12] Ibid., pp. 578-579. However, in South Carolina and Tennessee, payment is not a prerequisite to participation in the Democratic primaries. Tennessee, in adopting this revision in 1949, also exempted women and veterans.

The poll tax requirements for voting vary considerably from state to state concerning liability for the tax, time of payment in relation to time of elections, and cumulative provisions. Basic rates range between $1 and $2. [13]

History of the Poll Tax in Texas

In Texas, the poll tax dates back to the Republic, the first poll tax law having been adopted in 1837. This law instituted a $1 tax on all free males between 21 and 55. The $1 rate was retained throughout most of the days of the Republic, but other changes were made during that period. For example, the maximum age for payment of the tax was at one time removed and at another time dipped as low as 45. An act of 1841, designed to encourage the organization of volunteer mililary companies in the frontier counties, exempted members of such companies from the tax. Just before Texas became a state, the rate was lowered to 50 cents. None of these acts provided a penalty for failure to pay the tax. [14]

During the era between 1845 and the adoption of the Constitution of 1876, the state poll tax laws underwent constant revision. In 1846, the rate was again raised to $1 and the age bracket set at 21 to 60. This act exempted Indians and persons who were mentally incompetent--exemptions which have been essentially retained in all subsequent poll tax acts. During the next several years, maximum age fluctuated between 50 and no limit. The amont was changed from $1 to 50 cents and back again, the Civil War eliminating a tendency to make the tax more lenient. An act of 1871 first stipulated that receipts from the tax be used for support of the public free schools. Since that time, at least a portion of poll tax revenue has been earmarked for that purpose. In addition, the 1871 law imposed a penalty for failure to pay the tax. It provided that no taxpayer could receive money due him from the state or county until he had paid any delinquent poll taxes.

Another significant development during this period was granting cities the right to levy a poll tax. Cities with populations of 1,000 inhabitants or more were allowed to collect a $1 poll tax on males older than 21, mental incompetents excepted. A further provision of this law allowed failure to pay the city tax to create a lien on property. A similar clause was inserted into the state poll tax law some years later.

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[13] Ibid., pp. 579-589.

[14] Snow, op. cit., pp. 20 and 21; Edmund T. Miller, A Financial History of Texas, 1915, p. 45. The laws involved can be found as follows: Acts of the Republic of Texas, 1st Congress, Regular and Called Sessions, 1837, p. 259, sec. 8; Acts of the Republic of Texas, Fourth Congress, R. S. 1840, p. 9, sec. 13; Acts of the Republic of Texas, Fifth Congress, R. S. 1840-41, p. 112, sec. 12; Acts of the Republic of Texas, Ninth Congress, R. S., p. 95, sec. 1.

From 1846 to 1876, there was--as there has always been--widespread evasion of the poll tax.[15]

The poll tax question was prominent at the convention which formulated the Constitution of 1876. There seems to have been little controversy concerning levy of a poll tax, but the difficulty came from differences of opinion over a proposal advanced by the Committee on Suffrage that poll tax payment be made a prerequisite to voting. Republican members of the convention and the Grangers were strongly opposed to this suggestion. It was viewed as a method for disfranchising the Negro, and many areas with heavy Negro populations favored the idea strongly. However, the Constitution of 1876, as it was eventually adopted, did not contain a provision making poll tax payment requisite to casting a ballot. It did provide that the Legislature could levy a poll tax (Art. VIII, sec. 1) and that a $1 poll tax should be collected for the support of education (Art. VII, sec. 3).[16]

In 1876 the Legislature levied a poll tax of $2, the highest rate Texas has ever had. Receipts from this tax, levied on males from 21 to 60 with the usual exceptions of Indians and the mentally incompetent, were to be equally divided between the public schools and general revenue. Three years later, an attempt was made to reduce evasion by making it possible for the tax collector to levy on real or personal property for delinquent poll taxes. A similar and earlier provision for cities has already been mentioned. During these years, counties were also allowed to collect a poll tax. At first, they were permitted to levy the tax at a $1 rate, but within a short time the maximum was reduced to 25 cents. This reduction was made in 1882 by the act which set the present basic state and county poll-tax rates. The state tax was fixed at $1.50, $1 allocated to the schools and 50 cents to general revenue. Also during this period, the exemptions were extended to include persons who were blind, deaf and dumb, or who had lost one hand or one foot.[17]

15 Snow, op. cit., pp. 22-25; Miller, op. cit., pp. 113, 141, 171. The applicable laws of this period are as follows: Acts First Leg., R.S. 1846, p. 246, sec. 2; Acts Second Leg., R.S. 1848, ch. 122, p. 151, Sec. 2; Acts Seventh Leg., R.S. 1858, ch. 160, p. 258, sec. 2; Acts Ninth Leg., R.S. 1862, ch. 71, p. 50, sec. 2; Acts 12th Leg., C.S. 1870, ch. 82, sec. 2; Acts 12th Leg. 1st C.S. 1871, ch. 51, p. 43, secs. 2, 18; Acts 14th Leg., 2d C.S. 1875, ch. 100, p. 113, sec. 82.

16 Snow, op. cit., pp. 26-36.

17 Snow, op. cit., pp. 36-40; Miller, op. cit., pp. 219, 316. Important laws of the period on this subject are Acts 15th Leg., R.W. 1876, ch. 146, p. 242, sec. 2; Acts 16th Leg., R.S. 1879, ch. 50, p. 46, and ch. 134, p. 143, sec. 2; Acts 17th Leg., C.S. 1882, ch. 17, p. 18, sec. 2.

In 1891, the Legislature passed a law which made delinquent county poll-tax payers liable for road work. Such persons could be required to work three days per year in addition to their liability under other enactments. However, anyone summoned to work on the roads could satisfy the summons by payment of $3, one of which was earmarked for the schools and the remainder for the county road and bridge fund. [18]

From 1876 to 1902, there was constant agitation for an amendment which would make payment of the poll tax necessary for voting. Numerous resolutions were introduced in the House and Senate with that intent. The fight for adoption of the necessary constitutional amendment was led, during the 1880's and 1890's, by Senator A. W. Terrell, whose name is well known in connection with the historic election laws of 1903 and 1905. By 1901, the movement had become so strong that the Legislature passed a proposed constitutional amendment, and it was adopted, in 1902, by an overwhelming majority. [19]

No single factor accounts for acceptance of the poll tax as a prerequisite for voting. Obviously, the movement had been underway a long time, and such an issue, constantly pressed, has a way of eventually gaining public favor. However, it would appear that at least three important elements were involved. In the first place, there was the desire to purify the ballot. This was one of the reasons most often advanced by supporters of the proposed constitutional amendment. Apparently, they felt that "vote-buying" and other fraudulent election practices would be substantially reduced by adding to the cost of vote-purchasing and by having more carefully regulated election administration. Second, there was a desire to disfranchise the Negro. [20] And third, there was the essentially defunct Populist Party. The Populist or People's Party was an important element in the politics of many sections of the United States during the 1890's. The party was radical in its views and received its main backing from struggling farmers and from labor. This organization was anathema to many of the politicians of that day. [21] Thus some proponents of a poll tax requirement for voting saw in it a method of disfranchising the people who had formed the backbone of the Populist party. [22]

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[18] Acts 22d Leg., R.S. 1891, ch. 97, p. 149, sec. 23.

[19] Snow, op. cit., pp. 40-46.

[20] Donald S. Strong, "The Rise of Negro Voting in Texas," The American Political Science Review, XLII (June, 1948), pp. 510-522.

[21] Roscoe C. Martin, The People's Party in Texas (Austin: The University of Texas Press, 1933).

[22] Ibid., pp. 46-50.

The constitutional amendment of 1902 which made payment of the poll tax a prerequisite for voting contained a self-enacting clause. However, further provisions were needed to make it operative. These were provided by the Terrell Election Law of 1903. [23] This act was short-lived, being superseded, in 1905, by the second Terrell Election Law. [24] The 1905 act contained most of the provisions which presently govern the poll tax in Texas. Until the poll tax was made a prerequisite for voting, the law contained fewer than a dozen lines. The chief administrative problem was evasion. But in the first part of this century, the poll tax administrator had to shoulder an added burden. The tax became involved with elections, and its problem increased a hundredfold. Extensive administrative regulations were provided, election frauds were revealed; and their problems arose. Now a study of the poll tax requires substantial attention to election problems, and a study of elections likewise necessitates much attention to the poll tax.

From 1903 to 1905, Texas experimented with a requirement that the poll tax be paid before a person could serve on a petit jury. [25] The state discovered that several courts were having trouble finding jurors and that many citizens were refusing to pay poll taxes for the specific purpose of avoiding jury service. This development ended the experiment.

Since 1905 there have been numerous revisions in the poll tax laws. These have been concerned primarily with coverage and with administrative provisions. Several administrative changes have resulted from election frauds. However, most of the revisions from 1905 to the present have been so minor that they do not merit detailed consideration. They have been concerned with such matters as altering the manner of preparing poll tax books, temporarily exempting veterans from poll-tax payment as a requirement for voting, and adding disabled veterans to the list of the permanently exempted. The only major changes came at the end of the second decade of this century.

Between 1918 and 1920, two important events produced changes in the poll-tax laws. The first and lesser of these, in terms of the number of people affected, was that aliens lost the voting privilege. [26] The alien remained subject to the poll tax, however, and after several years, it was discovered that aliens were still using tax receipts to vote. Accordingly, the Legislature in 1929 made administrative changes designed to end this practice. [27]

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[23] Acts 28th Leg., R.S. 1903, ch. 101, p. 133.
[24] Acts 29th Leg., 1st C.S. 1905, ch. 11, p. 520.
[25] Acts, 28th Leg., 1st C.S. 1903, ch. 9, p. 15; Acts 29th Leg., R.S. 1905 ch. 107, p. 207.
[26] Acts 35th Leg., 4th C.S. 1918, ch. 60, p. 137.
[27] Acts 41st Leg., R.S. 1929, ch. 109, p. 248.

Primarily, the new law required clearly identifiable poll tax receipts for aliens.

Much more important was the adoption of the 19th Amendment to the federal Constitution, providing that no person could be denied the vote because of sex. Texas had already granted women the right to vote in primary elections and had exempted them from payment of the poll tax for the 1918 primaries.[28] However, the 19th Amendment also made it possible for women to vote in the general election. No law then in force required them to pay a poll tax, although the tax was required of voting male citizens. The Legislature quickly modified the poll tax laws to make them applicable to women as well as to men.[29]

Just as persons who favored a poll tax for voters were not satisfied with the decision of 1876 and continued to agitate for an amendment to the Constitution, those opposed to the voting poll tax have attempted to have it repealed. Their efforts finally were of some avail when both Houses of the Legislature in 1949 passed a proposed constitutional amendment for "repealing the provision making the payment of a poll tax a qualification of an elector."[30] However, this amendment was resoundingly defeated at the polls; so the section requiring payment of a poll tax for voting remains in the Texas Constitution.

In 1951, the 52d Legislature, as a result of certain election difficulties during recent years, revised and recodified Texas election laws. However, no fundemental changes were made in the articles relating to poll taxes. For the most part, the provisions of the 1905 Terrell Election Law, as modified by frequent amendments, were reiterated in the 1951 act.[31]

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[28] Acts 35th Leg., 4th C.S. 1918, ch. 34, p. 61

[29] Acts 36th Leg., 4th C.S. 1920, ch. 6, p. 10.

[30] Acts 51th Leg., R.S. 1949, p. 1489.

[31] Tex. Civ. Stat. (Vernon, Supp. 1952) Election Code. Arts 5.01-5.24 are the most important provisions relation to the poll tax. See also Tex. Civ. Stat. (Vernon, 1948) arts. 1030 and 6758.

SECTION 2--PRESENT ADMINISTRATION--ORGANIZATIONAL FORM AND LEGAL BASIS

The poll tax is a levy on the individual as such, with little formal reference to wealth, occupation, or any of the other factors which are frequently used as taxing criteria. The state demands $1.50 of everyone liable for the tax and gives counties permission to collect up to 25 cents and cities up to $1 from the same persons. Accordingly, three units of government may be collecting a poll tax simultaneously. Poll tax administration is also complicated by its close connection with elections. Indeed, the greatest administrative problems arise from the voting aspect of the tax rather than from its revenue aspects. One additional, though not major, complication derives from the legal provision allowing counties to require road work of certain delinquent poll-taxpayers. These varied aspects multiply the problems of handling the tax and involve in its administration persons and agencies who usually have little, if anything, to do with taxation.

The County Tax Collectors

The county tax collectors are key figures in poll tax administration. They are charged with an extensive and highly responsible assortment of functions. Besides accepting payments, except for city poll taxes, they prepare and safegaurd many of the more important records required by Texas election laws. For performing these functions, these officials receive a fee. For violations by collectors, penalties range from minor fines to five years' imprisonment.

To facilitate poll tax payment in more populous areas, tax collectors for counties containing cities of 10,000 or more are required to appoint a deputy to assist with collection. This deputy must maintain an office in a convenient sector of the city during the entire month of January each year. To promote full utilization of this additional collection facility, the collector must publish notice of the authority of the deputy and the location of his office.[32] In addition, the assessor may establish collection substations and may provide, at such times and places as he deems advisable, duly sworn deputies to collect the tax and issue receipts.[33]

The relation of the poll tax to the election process has produced an organizational peculiarity which probably appears in no other tax. As a result of "get-out-the-vote drives" conducted by various public and private organizations, a great number of extra persons assist in tax collection.

[32] Tex. Civ. Stat. (Vernon, Supp. 1952 Election Code, Art.5.19.
[33] Ibid, Art. 5.11; Op. Tex. Atty. Gen. No. 0-1522 (December 29, 1939).

Representatives of civic organizations and some merchants have been noticeably active in this regard.[34] Accordingly, many more persons are involved in the process than would be apparent from a mere reading of the law. These citizens do not collect the tax in the legal sense, but they do take applications and payments to be turned over to county collectors.

Other Agencies Concerned with Poll Tax Administration

Although county tax collectors bear the greatest load in the handling of the poll tax, they are not the only persons charged with important functions under the law. County commissioners' courts, the Comptroller, and the various election committees also enter the picture, as do law enforcement agencies.

The county commissioners' court is charged with responsibility for having poll tax receipts and certificates of exemption printed and delivered to the county tax collector early enough for collection of the tax. The law specifies the form of receipts and certificates and the manner in which they are to be processed.[35] Thus the function assigned the commissioners' court permits the exercise of descretion only as to the printing contract, and in this it must follow the general law on printing contracts let by counties.

The Comptroller has no authority to collect poll taxes directly from the taxpayers. However, the largest portion of the tax goes to the state, and it is the Comptroller's duty to obtain the state's share from county collectors. The law provides that the Comptroller shall furnish county tax collectors with appropriate forms for monthly reports on several state taxes collected at the county level. Among these is the poll tax.[36] The Comptroller has assigned this function to the Ad Valorem Division, which usually perform administrative duties in connection with state tax collected by county tax collectors.

Also concerned with poll tax administration are several officials regulating the conduct of elections. County tax collectors must supply voting lists in a prescribed form to the board which furnishes election supplies.[37] These lists are used by precinct polling officials to check

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[34] The Attorney General has declared that it is legal for a civic organization to maintain booths with notaries public for encouraging citizens to fill out poll tax applications. Op. Tex. Atty. Gen. No. 0-6954 (December 10, 1945).

[35] Tex. Civ. Stat. (Vernon Supp. (1952) Election Code, Arts 5.14 and 5.16.

[36] Tex. Civ. Stat. (Vernon, 1948) art. 7260.

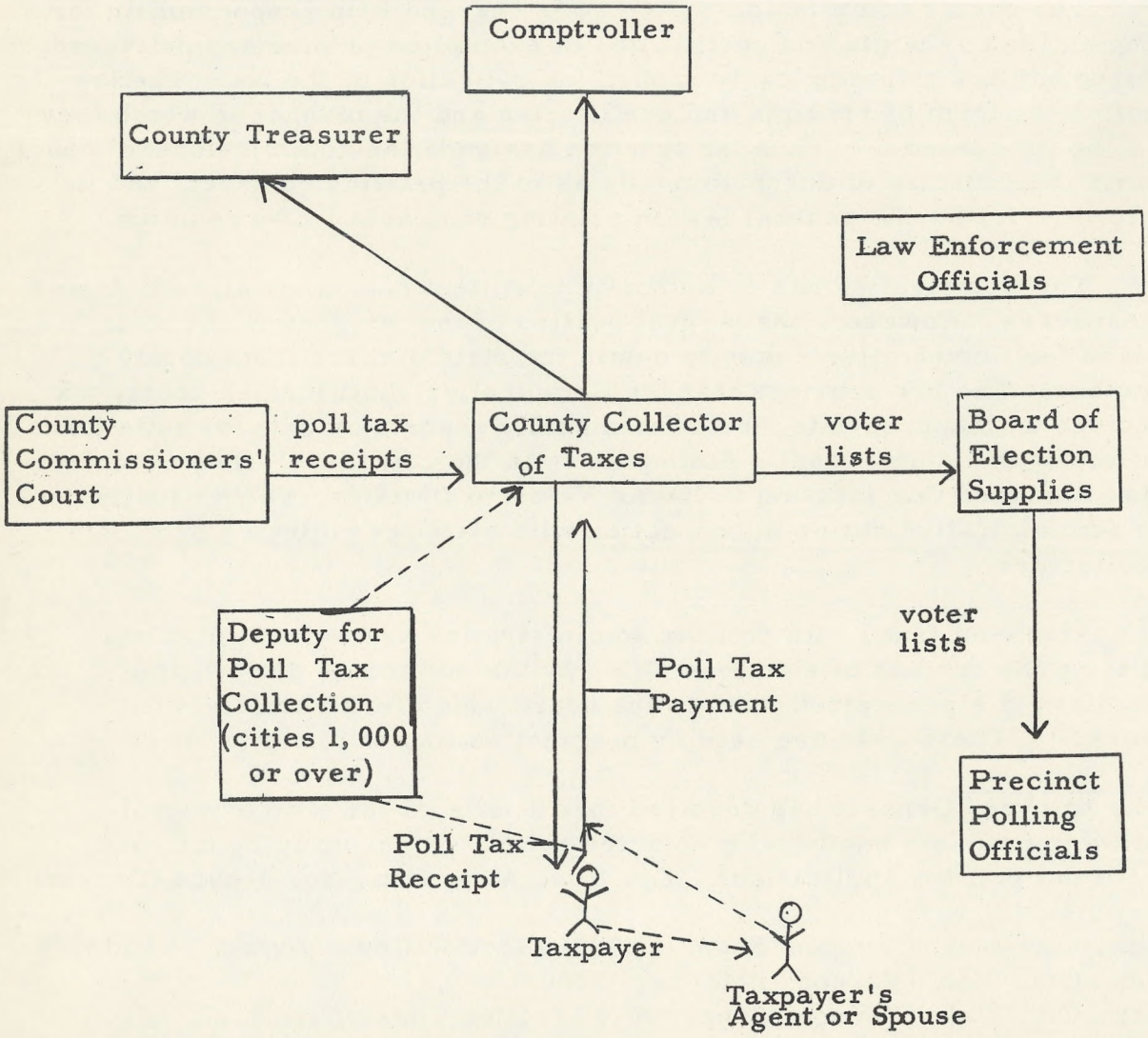
[37] Tex. Civ. Stat. (Vernon, Supp. 1952) Election Code, Art. 5.22.

voters and to identify those who have lost or mislaid poll tax receipts. These officials also stamp the receipts to indicate that a person has voted.

In addition to the agencies and officials already mentioned, the law enforcement machinery may be utilized if poll tax or election irregularities are discovered, and the statutes enumerate a number of actions which are deemed crimes. Since one of the primary features of the poll tax in Texas is its close association with the voting laws, questions on the poll tax have figured prominently in a number of suits involving alleged election frauds. The process of poll tax administration is outlined in Chart Poll 1.

Chart Poll 1

AGENCIES AND OFFICIALS INVOLVED IN POLL TAX ADMINISTRATION



Policy-making Responsibility

Responsibility for policy decisions is not clearly assigned to any of the various organizations connected with poll tax administration. Apparently the policy with reference to any part of the process is largely determined by the agency or official performing the duty. However, the Comptroller does supply county assessor-collectors with instruction books to guide them in the handling of several taxes, including the poll tax. In so far as there is policy coordination, it is done by the Comptroller. Largely, these instructions merely set out or summarize pertinent statutes. The Comptroller, after receiving an opinion on the matter from the Attorney General, has made at least one major ruling dealing with the manner of poll tax assessment. Beyond that, he has confined himself largely to prescribing report forms.

When a question arises which persons concerned with the poll tax cannot or do not wish to answer themselves, it has been customary to request an opinion from the Attorney General. As a result, the Attorney General has had frequent requests for rulings concerning the poll tax, most of which have come from county tax collectors. Thus he has fallen heir to the task of making administrative interpretations on doubtful points.

Administrative Decentralization

From the foregoing discussion, the decentralization of poll tax administration is evident. The several agencies administering the law have only incidental contact with each other, one agency often having little knowledge of what another is doing. Some cross-checking is done through Comptroller audits of county collectors' books, but this is purely a limited inquiry into duties already performed and does not represent positive administrative co-ordination. The organizational complexity and lack of centralized poll tax administration hinders a complete understanding of the actual operation of the poll tax law.

A thorough presentation would require contacts with a variety of state and county officials, particularly the latter. The limitations of this study preclude such an examination.

Administrative Organization and the Poll Tax Laws

The poll tax statutes have seldom created special machinery for administering and collecting the tax. Instead, they make use of existing agencies--the Comptroller at the state level and county tax collectors, county commissioners' courts, election judges, road overseers, and officials at the local level.

SECTION 3--ASSESSMENT

Tax or Fee

There has been a difference of opinion as to whether the Texas poll tax is really a tax or merely a charge on voting. Although it exhibits tax characteristics, particularly since it renders substantially more revenue than administrative costs and is mandatory, it is regarded by the average citizen as a voting charge.

Let us assume that a specific payment is required of all persons who desire to vote. This levy could be either a charge to defray registration and election costs or a qualification for voting. In other words, it could be either a fee for services rendered or payment for the exercise of a privilege. Thus it might resemble a charge for collecting garbage or a liquor store license.

However, if the statute requires payment without reference to the franchise and no delinquency penalty is provided, the levy, though formally a tax, would be paid voluntarily, if at all. To make the tax enforceable, the Legislature might provide sanctions and penalties for non-payment. If no aggressive collection procedures were instituted and no attempt were made to collect from delinquents, the payment, though a tax, would still be voluntary. Should sanctions and penalties be so formulated as to apply only to part of those liable, payment in some cases would remain voluntary.

These possibilities and their variations are clear. In form, the Texas poll tax meets the stated requirements for a tax, and legally it is a tax. It is also a requisite for voting and, in practice, operates chiefly as a charge on the privilege of voting.

Assessment

Except for the $1 constitutional levy for school purposes, the poll tax rate is determined by the Legislature, and counties and cities may, by statutory authorization, levy poll taxes not to exceed 25 cents for counties and $1 for cities. The present state rate is $1.50. The highest total rate that could be collected is $2.75.[38] The tax paid by many persons is lower because several Texas counties and most cities do not levy poll taxes. State and county poll taxes are collected by county tax assessor-collectors, but cities must administer their own.

38 Constitution of the State of Texas, Art. VII, Sec. 3; Tex. Civ. Stat. (Vernon, 1948) arts. 1030, 7046.

At one time, the poll tax was assessed along with the ad valorem tax, and its payment could be demanded when the ad valorem tax was paid.[39] This procedure caused one writer to comment in 1916 that the "condition exists in this state that only owners of real property are sure to be reached" by the poll tax.[40] In 1947, the Comptroller decided that, because of the cost and difficulty of this procedure, separate assessment of poll taxes would be desirable. Although the prevailing practice of assessing and collecting both taxes simultaneously had been established by the Comptroller, he asked the Attorney General whether or not the long-standing rule could be changed. The Attorney General replied that if it was necessary to assess poll taxes, they could be assessed when paid, and that the Comptroller has authority to prescribe the contemplated regulation.[41] County tax assessor-collectors were accordingly informed that after 1947 all poll taxes would be assessed at the time of payment and were reminded that:

> "This in no way relieves the taxpayer from the payment of the poll tax, nor relieves the Assessor-Collector of the duty of collecting it."[42]

While this ruling in no way affected formal tax liability or collection duties, it did terminate the only positive method being utilized for the assessment and collection of poll taxes. This method was, of course, deficient in that it reached only to property tax payers. Now the tax is collected only when the taxpayer appears voluntarily to pay it.

Coverage

Poll tax liability is complicated by its relationship with suffrage. The levy must be regarded from several angles--as a tax, as a requisite for voting or holding office, and as it applies to county road work. Subjects of the tax and exemptions from it are not uniform; they vary among the three aspects. The current law required that

> A poll tax shall be collected from every person between the ages of twenty-one (21) and sixty (60) years who resided in this State on the first day of January preceding its levy. Indians not taxed, persons insane, blind, deaf or dumb, those who have lost a hand or foot, those permanently disabled and all disabled veterans of foreign wars, where such disability

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[39] Op. Tex. Atty. Gen. No. 2266 (January 6, 1921).

[40] Miller, op. cit., p. 318

[41] Op. Tex. Atty. Gen. No. V-95 (March 20, 1947). The question of whether or not the poll tax requires an assessment has been discussed in :Op. Tex. Atty. Gen. (February 28, 1941); Stuard v. Thompson, 251 SW 277 (Tex. Civ. App., 1923); Parker v. Busby, 170 SW 1942 (Tex. Civ. App., 1914).

[42] Undated letter of instruction from the Comptroller to tax assessor-collectors.

is forty per cent (40%) or more, excepted. [43]

This short passage represents the accretion of a long period of changes.

Every Person

As has been mentioned, "every person" has not always been subject to payment of the poll tax. In the earliest laws, only free males within stated age brackets were liable. Slaves were excepted until the immediate post-Civil War period. From then until the women's suffrage amendment was added to the federal Constitution, males within the age brackets were liable. To meet the situation created by adoption of the 19th Amendment in 1920, the Legislature was called into special session. After the Attorney General ruled that the Texas Constitution did not prohibit levying a poll tax on women, the statutes were amended to include them. [44]

Age Limits

The age brackets of 21 to 60 have been established through long usage and are now enshrined in the state Constitution. Prior to 1871, they fluctuated widely at the upper limit, but remained stationary at the lower. Since that time, both upper and lower limits have remained stable.

In addition to those not liable for the poll tax as a result of the legal age limits, several exemptions are allowed. These are Indians not taxed and certain physically or mentally handicapped persons with a partial exemption for members of the state militia. Despite the variety of the exemptions, it is doubtful that they represent a large number of persons.

Indians Not Taxed

One of the oldest exceptions from the poll tax is for Indians not taxed, although the "not taxed" has not always appeared in the law. "Indians not taxed" were excluded from the census utilized for the apportionment of national expenditures among the original American colonies under the Articles of Confederation. They were also excluded from the formula for apportionment of Congressmen and direct taxes under the federal Constitution of 1879 and the Fourteenth Amendment. This provision in Texas statutes dates from 1846 and may have been an accepted practice before then. It seems reasonable to assume that it was borrowed from federal law. Today not all Indians are exempt because those subject to other taxes are also liable for

[43] Ibid., art. 5.09.

[44] Op. Tex. Atty. Gen. No. 2250 (September 17, 1920); Acts 36th Leg., 4th C.S. 1920, ch. 6, p. 10.

the poll tax. The "not taxed" phrase has generally been interpreted to mean Indians who have not severed their tribal connections and are residing on a federal reservation, and that others should pay.[45]

Physical and Mental Disabilities

Exemptions for persons with physical or mental disabilities seem to adhere to the general principle that persons suffering special hardships should receive some tax relief. Except for the 40 per-cent disability exemption allowed veterans, these provisions date back at least to the 1880's.

Exemption of the mentally incompetent first appeared in 1846. In the earliest laws, idiots and persons non compos mentis were usually referred to; today it is only the insane. An insane person is not, in the usual sense, the same as a moron or idiot; so under current law morons and idiots would presumably be subject to the poll tax.

The determination of whether or not an individual falls within the exemption authorized for those who have lost sight, hearing, or speech, is based upon facts of the individual case. The courts and the Attorney General have tended to rule strictly in cases of blindness, making an exemption for this cause difficult to obtain.[46]

At one time, a person had to be minus either both hands, both feet, or one hand and one foot to obtain a disability exemption. The present exemption provision which applies to those who have lost a hand or a foot, has been interpreted to require total loss of the member. Partial loss does not qualify; neither does a useless hand or foot.[47]

Interpretations of the permanent disability provision have also tended to be strict. Here again, the question is essentially one of fact, but interpretation is more difficult because of the indefiniteness of "permanent disability." Several cases have arisen on this matter, and the general rule seems to be that if a person is capable of earning a living, he cannot be considered permanently disabled.[48] This common-sense rule lends itself to legal determination more easily than would purely medical criteria.

[45] Op. Tex. Atty. Gen. No. 0-2802 (October 9, 1940); Op. Tex. Atty. Gen. No. V-664 (August 23, 1948). The Attorney General, in the last opinion cited, declared that tax, status did not affect their voting eligibility and that the Alabama and Coushatti Indians were eligible voters to the same extent as members of any other race.

[46] Op. Tex. Atty. Gen. No. 0-2559 (July 24, 1940); McCormick v. Jester, 115 SW 278 (Tex. Civ. App. 1909).

[47] Bigham v. Clubb, 95 SW 675 (Tex. Civ. App. 1909).

[48] McCormick v. Jester, 115 SW 278 (Tex. Civ. App, 1909) Hilber v. Schweppe, 234 SW 152 (Tes. Civ. App., 1921) Huff v. Duffield, 251 SW 298 (Tex. Civ. App., 1923).

The last disability exemption was added to the poll tax laws in 1941, excluding veterans of foreign wars with a disability of 40 per cent or more.[49] The meaning of this new exemption was not entirely clear, and the Attorney General was requested to rule on the matter. He declared that the phrase "disabled veterans of foreign wars" applied equally to all veterans regardless of overseas service. He also stated that the Comptroller could prescribe the method to be used in determining 40 per-cent disability.[50] Ordinarily, Veterans' Administration determinations of disability are used.

Texas law specifically exempts members of the state militia from any poll tax in excess of the $1 for school purposes. This exemption originated to encourage enlistments when the Legislature, in 1841, exempted from payment of the poll tax all members of volunteer companies in frontier counties. Since the militia is usually a part of the National Guard, members retain their exempt status even when called into active federal service. Other United States military personnel are not exempt.[51] Some additional state guard units may also benefit from the militia exemption. During World War II, Texas created a defense and safety unit, originally called the Defense Guard but later named the Texas State Guard. Active members of the Texas State Guard were entitled to the militia exemption.[52]

The number of persons benefiting from this exemption varies with the size of the state militia. Since its expansion and contraction is affected by the international situation and by national policies, the number of eligible persons is largely beyond the control of the state government.

Constitutionality

Poll tax exemptions are of questionable constitutionality insofar as they are construed to apply to the $1 school levy. The Constitution requires that

> One-fourth of the revenue derived from the State occupation taxes and poll tax of one dollar on every inhabitant of the

[49] Acts 47th Leg., R.S. 1941, ch. 639, p. 1406
[50] Op. Tex. Atty. Gen No. 0-4283, (January 12, 1942).
[51] Op. Tex. Atty. Gen. No. 0-3053 (February 18, 1941); Op. Tex. Atty. Gen. No. 0-4381 (February 11, 1942).
[52] Op. Tex. Atty. Gen. No. 0-5045 (May 28, 1943).

> State, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools. . .[53]

In interpreting this provision, the Attorney General has ruled that purported exemptions for Indians not otherwise taxed, the blind, and others are unconsititutional.[54] A court decided that a man who had lost one foot could be exempted from the statutory poll tax but not from the $1 constitutional levy.[55] It would seem that payment of the $1 poll tax constitutionally earmarked for the support of the free public schools is compulsory for all persons within the specified age group.

Applicability to County and City Poll Taxes

As the law stands today, exemptions from the state poll tax apply for county and city poll taxes as well. Apparently, this has been implied for counties, but the city poll tax law passed in 1875 provided that every male person over 21, idiots and lunatics excepted, was subject to the city poll tax.[56] This provision was not revised until 1931 when cities were authorized to levy a tax on every inhabitant from 21 to 60, except persons exempted from the state poll tax.[57] From 1875 to 1931, cities could, on their own initiative, exempt persons in addition to those specifically permitted by statute.[58]

Payment of the Poll Tax

Texas election laws provide alternate methods for payment of the poll tax. It may be paid personally, by either spouse for the other, by mail, or by an agent. When it is assessed against the taxpayer with property taxes, there are special considerations. Personal payment raises no particular problems, except, of course, the ever-present possibility of fraud. Other methods are protected with special safeguards. No matter who pays the tax, it must be paid in accordance with statutory requirements as to the time and place.

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53 Constitution, Art. VII, sec. 3.

54 Op. Tex. Atty. Gen. No. 0-6236 (November 4, 1944).

55 Tondre v. Hensley, 223 SW 2d 671 (Tex. Civ. App., 1949). See also Solon v. State. 114 S.W. 349 (Tex. Crim. App., 1908).

56 Acts 14th Leg., 2d C.S. 1875, ch. 100, p. 113, sec. 82.

57 Acts 42d Leg., R.S. 1931, ch. 223, p. 377.

58 Op. Tex. Atty. Gen. (February 7, 1905).

By Spouse

The earlier election laws did not permit payment of the wife's poll tax by the husband or the husband's by the wife. Each spouse was required to appear personally or through an agent, or if the tax was assessed with the property tax, to pay through the mails with the ad valorem tax payments. In 1941, however, the Legislature relaxed this requirement to permit either to pay for both.[59]

Assessment With Property Taxes

The traditional method for payment of the poll tax was with the ad valorem tax and it was assessed at the same time. This practice was supported by a number of court decisions and Attorney General's rulings beginning early in this century.[60] The present law reads as follows:

> Where a property taxpayer residing either within or without a city of ten thousand (10,000) inhabitants or more, has a poll tax assessed against him or his wife or both, he may, at the same time that he pays his property tax by bank check or money order also pay the poll tax of himself and wife, or either. Exemption certificates shall be mailed with the property tax receipt upon the payment of the property tax, when said property tax receipts are mailed to the taxpayer.[61]

This wording seems to continue the separate assessment and collection of poll and property taxes which was instituted by the Comptroller in 1947.

By Agent

Until 1951, payment of the poll tax through an agent was permitted almost exclusively to persons living outside cities of 10,000 or more.[62]

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59 Acts 47th Leg., R.S. 1941 ch. 132, p. 183. The present provision is contained in Tex. Civ. Stat. (Vernon, Supp. 1951) Election Code, Art. 5.11.

60 Stuard v. Thompson, 251 S.W. 277 (Tex. Civ. App., 1923); Op. Tex. Atty. Gen. No. 0-1561 (November 7, 1939); Op. Tex. Atty. Gen. No. 0-135 (January 27, 1939); Op. Tex. Atty. Gen. No. 0-5246 (May 4, 1943); Op. Tex. Atty. Gen. No. 0-6076 (November 28, 1944). An exception to this rule was that the collector could receive delinquent property taxes without delinquent poll taxes. Op. Tex. Atty. Gen. No. 0-6596 (June 11, 1945).

61 Tex. Civ. Stat. (Vernon, Supp. 1952) Election Code, art. 5.12.

62 Tex. Civ. Stat. (1925) arts. 2961, 2962; Op. Tex. Atty. Gen. (May 18, 1915). The exception to this rule was that a resident of a city of 10,000 or more inhabitants could make use of an agent if he was going to be out of the city between October 1 and February 1. Op. Tex. Atty. Gen. No. 0-1840 (January 18, 1940).

In that year, the provision was extended to include cities .[63] The agent must have written authorization to act for the taxpayer and the information needed for the receipt.[64] He cannot, however, receive the tax receipt; it may be delivered only to the taxpayer, either in person or by mail.

Questions have arisen as to who may act as the agent of a poll taxpayer. The Attorney General has ruled that there is no objection to a public official acting as an agent, provided he is not a candidate for office.[65] The right of agency does not permit a candidate or a person with a special interest in a question to be voted on to pay the poll tax for another. That is strictly forbidden.[66]

By Mail

Not until 1941 was payment of poll taxes by mail authorized for all taxpayers.[67] Prior to that date, payment could be made by mail only if the tax had been assessed at the same time as taxes on real or personal property. The tax remittance must be accompanied by a sworn statement containing all the information needed for the poll tax receipt, and may be signed by either spouse. The tax receipt will be mailed to the taxpayer's last known address unless he requests that it be held for delivery to him personally.[68]

Due Date

The poll tax is due annually and may be paid between October 1 and February 1.[69] Tax receipts are dated as of the date payment is

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63 Tex. Civ. Stat; (Vernon, Supp. 1952) Election Code, art. 5.11.

64 Op. Tex. Atty. Gen. No. 0-2181 (April 20, 1940). However, a poll tax may be paid by an agent without written authority after January 31. Op. Tex. Atty. Gen. (Feb. 26, 1913).

65 Op. Tex. Atty. Gen. (January 22, 1915).

66 Tex. Civ. Stat. (Vernon, Supp. 1952) Election Code, art. 5.13; Op. Tex. Atty. Gen. No. 0-5875 (March 10, 1944).

67 Acts 47th Leg., R.S. 1941, ch. 132, p. 183; Tex. Civ. Stat. (Vernon, Supp. 1952) Election Code, art. 5.11.

68 Tex. Civ. Stat. (Vernon, Supp. 1952) Election Code, art. 5.11.

69 Ibid., art. 5.09.

received, even though the receipt may be issued at a latter date.[70] The validity of a poll tax receipt issued on Sunday has been questioned on several occasions. According to the Attorney General, this procedure is satisfactory and the receipt valid.[71] Like other taxes, poll taxes may be paid after due date, but payment after January 31 does not qualify the taxpayer to vote.[72]

Place of Payment

Payment of the poll tax must be made in the taxpayer's county of residence. Payment in any other county is purely voluntary--a gift which does not satisfy the statutory requirement.[73] Residence is defined for voting purposes, as the place where a single man usually sleeps at night or the place where a married man's wife resides, unless he is permanently separated from her.[74] This peculiar phraseology has been interpreted to mean the same thing as "domicile" in the legal sense of that word.[75]

Because poll tax payment is a prerequisite to voting, provision is made for persons who change residence after payment of the poll tax but prior to an election. The tax payer, unless he resides in a city of 10,000 or more, may present his tax receipt at the polls and swear that he is the person to whom it was issued, that he has lived in his new county of residence for at least six months, and that he has been a resident of Texas for at least twelve months. If he has moved to a city of 10,000 or more, he must present his receipt to the tax collector at least four days before the election in which he wishes to vote and have his name added to the list of qualified voters. The same rule applies to exemption certificates.[76]

The Poll Tax As a Prerequisite to Civic Participation

To this point, the discussion has been confined primarily to the question of liability for the poll tax without reference to the taxpayer or the exemptee as a voter, as a holder of public office, or in any other public capacity. Consideration of the poll tax in these other aspects produces

[70] Dickison v. Morris, 211 SW 2d 387 (Tex. Civ. App., 1948); Op. Tex. Atty. Gen. No. 2832 (February 13, 1931); Op. Tex. Gen. No. 0-195 (January 24, 1939).
[71] Op. Tex. Gen. (January 22, 1915); Op. Tex. Atty. Gen. No. 0-4815 (January 8, 1943).
[72] Op. Tex. Atty. Gen. No. 0-1498 (October 10, 1939).
[73] McCharen v. Mead, 275 SW 117 (Tex. Civ. App., 1925); Linger v. Balfour, 149 SW 795 (Tex. Civ. App., 1912).
[74] Tex. Civ. Stat. (Vernon, Supp. 1952) Election Code, art 5.08.
[75] For further discussion of this matter, see; Attorney General of Texas, Texas Election Laws (1952), pp 43-46.
[76] Tex. Civ. Stat. (Vernon, Supp. 1952) art 5.15.

several new questions.

The present law provides that:

> Every person...(not subject to any specifically stated disqualification)... shall be deemed a qualified elector, provided that any voter who is subject to pay a poll tax under the laws of this State, shall have paid said tax before offering to vote at any election in this State...[77] Every person who is a qualified voter otherwise and who is exempt from paying a poll tax shall be entitled to a vote without being required to pay a poll tax...[78]

Since the levy is legally a tax, and since its features as a requisite for civic participation have often developed separately from its tax provisions, variations have arisen between the two aspects of the poll tax. These variations, though not contradictions, are of sufficient importance to merit attention. They also indicate some of the problems which arise in connection with the use of the poll tax as a prerequisite to civic activity.

Lack of Cumulative Provision

It should be pointed out initially that Texas has no cumulative provision in its law requiring poll tax payment for voting. A cumulative provision is one which requires that a potential voter have paid poll taxes for which he was liable in previous years as well as that for which he is currently liable. Three states requiring poll tax payment for voting have cumulative provisions--Alabama, Mississippi, and Virginia. In Alabama, the cumulative provision applies for the entire period of liability; that is, a person of 40 would have to prove that he had paid his poll tax every year since he was 21. In Mississippi, the cumulative provision applies to two years preceding election. In Virginia, the law specifies years preceding election.[79]

Voting

In order to vote, a person otherwise qualified must either pay a poll tax or be exempted. To engage in some other activities, such as signing certain petitions, he must be a qualified elector and so must have satisfied the

77 Ibid., art. 5.02.

78 Ibid., art. 5.10. Since there are a number of cases wherein the citizen can vote without paying a poll tax, mere proof of non-payment, without proof that payment was necessary, does not constitute prima facie evidence of disqualification. Willow Hole Independent School Dist. v. Smith, 123 SW 2d 708 (Tex. Civ. App., 1938).

79 V.O. Key, Southern Politics (New York: Alfred A. Knopf, 1949), pp. 580-581.

poll tax requirement.[80] This rule is applicable to state and county poll taxes but not to those levied by cities.

Payment of city poll taxes has always been necessary to vote in city elections.[81] Moreover, interpretation of election laws once required payment of a city poll tax, if levied, to qualify a voter for any election--national, state, or city.[82] The Legislature, apparently dissatisfied with this requirement, passed a law in 1941 providing that the city poll tax could not be made a prerequisite for voting in any except city elections.[83] This provision, retained in the present law, has deprived city poll taxes of much of their force. The emergency section of the 1941 act directed attention to "the fact that many cities in Texas have passed an ordinance requiring a city poll tax..." Less than ten per-cent of the cities today require such payment.

There is, following the general principle opposing taxation without representation, an additional limitation on city power to levy a poll tax. The Constitution provides that, in city elections "to determine expenditure of money or assumption of debt," only property taxpayers shall be entitled to vote.[84] However, it further provides that "...no poll tax for the payment of debts thus incurred, shall be levied upon the persons debarred from voting in relation thereto." This provision is intended to prevent city property taxpayers from increasing the city's debt through an election in which they alone can vote and then providing for its payment, at least in part, by a poll tax on persons without property who had no voice in the debt assumption.

Several groups are entitled to vote without paying the poll tax. Clearly, anyone specifically exempt from the poll tax and otherwise qualified to vote is a legal elector. Accordingly, the blind, the deaf, and the disabled may cast their ballots. Others, however, may vote without paying a poll tax.

As an outgrowth of the attitude which prevailed toward the close of

80 Op. Tex. Atty. Gen. No. 0-3266 (March 14, 1941).
81 Op. Tex. Atty. Gen. (January 19, 1904). See also Op. Tex. Atty. Gen. No. 0-323 (February 17, 1939); Op. Tex. Atty. Gen. No. 0-554 (March 27, 1939). This would not be so if the voter moved into the city after the due date. Op. Tex. Atty. Gen. (June 19, 1913).
82 Powell v City of Baird, 128 SW 2d 786 (Tex. Sup. Ct., 1939); Op. Tex. Atty. Gen. (February 25, 1913); Op. Tex. Atty. Gen. No. 0-969, (June 21, 1939).
83 Acts 47th Leg., R.S. 1941, ch. 117, p. 156.
84 Tex. Const. Art. VI, sec. 3.

World War II, the Constitution was amended to exempt veterans from payment of the poll tax in order to vote for 18 months after discharge. This amendment, which was adopted at the election of August 25, 1945, did not exempt such persons from tax liability, but only from the necessity of paying it before voting.[85] This, then, is a case where persons legally liable for the tax were able to vote without paying it.

In addition, the time element has given some persons a free vote. The most familiar exemple concerns persons who become 21 after the first day of January. They may vote without paying a poll tax. A less familiar instance concerns persons who have entered Texas after January 1 and are otherwise qualified; they are entitled to vote without the payment of the poll tax.

In contrast to those exempt from the poll tax as a prerequisite to voting, certain persons must pay the poll tax but may not vote. A few examples are illustrative. Aliens are subject to the poll tax but are not entitled to vote. At one time, certain aliens, essentially those who had taken action indicating their intent to acquire citizenship, were entitled to vote in Texas. But as a result of the anti-foreign feeling after World War I, this privilege was rescinded. Since that time, an elector in Texas has had to be a full fledged citizen. Also liable for the tax but not entitled to vote are members of the regular armed forces of the United States, that is, those who are not members of the Texas militia or of the armed forces reserve. As has already been pointed out, members of the national military forces are not exempt from the payment of the poll tax, but under the Constitution and statutes they are not entitled to vote.[86]

In these instances, the nature of the levy as a tax comes to the fore. If persons liable for tax payment may not vote, it is clearly a tax and not simply a fee. In most cases, however, it operates as a voting fee rather than a tax. If no adequate enforcement is attempted, it can be reasonably assumed that few besides those able to vote and wishing to do so will make the payment; others will simply ignore it.

Holding Office

In some cases, poll tax payment is a requisite for holding public office.

85 Tex. Const., Art. VI, sec. 2a. Op. Tex. Atty. Gen. No. 0-7034. (January 17, 1946).

86 Tex. Civ. Stat. (Vernon, Supp. 1952) Election Code, Art. 5.01. Texas Constitution, Art. VI, Sec. 1.

The decision in each instance must be made according to the particular public office. The Attorney General has been called upon from time to time to decide whether an incumbent of a certain position must be a poll tax payer.

A few Attorney General's rulings will illustrate the problem. A person must hold a poll tax receipt to qualify for election as a trustee in a common school district.[87] On the other hand, once the candidate has been elected, he need not continue to pay the poll tax.[88] While the trustee of the common school district must pay his poll tax to qualify for service, his counterpart in the independent school district need not.[89] The candidate for county school superintendent does not have to pay the tax to qualify.[90] Neither does the candidate for county commissioner or for justice of the peace.[91] The Attorney General has avoided the question of whether a legislator must be a poll taxpayer. He declared that the Legislature was the judge of the qualifications of its members and that he could not render an opinion on the matter.[92] However, since the Constitution requires that a legislator be a qualified voter, it would seem reasonable that he should either pay or be exempt.[93]

Undoubtedly, many cases can arise questioning a person's right to hold a public position of trust or profit without paying a poll tax. This is another of the problems which arise because the poll tax is used not only as a source of revenue but also as a passport to the ballot box.

Jury Service

The law also establishes the poll tax as a qualification for some jurors. For grand juries, members must be qualified voters, which means that they are required to hold poll tax receipts. One exception is

87 Op. Tex. Atty. Gen. No. 0-425 (March 13, 1939).
88 Op. Tex. Atty. Gen. No. 0-2303 (May 3, 1940).
89 Op. Tex. Atty. Gen. No. 0-553 (March 27, 1939).
90 Op. Tex. Atty. Gen. No. 0-4716 (July 24, 1942).
91 Op. Tex. Atty. Gen. No. 0-4634 (June 23, 1942); Op. Tex. Atty. Gen. No. 0-2362 (May 25, 1940).
92 Op. Tex. Atty. Gen. No. 1702 (November 22, 1939).
93 Tex. Const., Art. III, sec. 6 and 7.

permitted. If the number of persons in the county who have paid poll taxes is inadequate to fill a jury panel, the court may waive this requirement.[94] On the other hand, failure to pay a poll tax cannot disqualify an individual for petit jury service.[95] It will be recalled that the Legislature required poll tax payment for petit jurors in 1903. However, it was soon discovered that courts were having difficulty obtaining adequate jury panels, and the requirement was dropped two years later.

Exemption Certificates

The nature of the poll tax payment as a prerequisite for voting and the fact that some otherwise qualified voters are exempt makes the issuance of exemption certificates necessary. However, only exemptees living in cities of 10,000 or more must obtain certificates. They must be secured annually before February 1 in all except two cases.[96] Persons not 21 years of age on January 1 or not in the state at that time who subsequently become eligible voters must secure exemption certificates regardless of where they live and at least 30 days prior to the election.[97] Exemption certificates are valid for one year from the January 31 after their issuance.

94 Tex. Code Crim. Proc. (Vernon, 1948) art. 339. Several cases have arisen in connection with poll tax payments as a requirement for grand jury service. They have been primarily concerned with the determination of whether an adequate number of poll taxpayers were available. Conklin v. State 162 SW 2d 416 (Tex. Crim. App., 1942); Williams v. State 174 S. W. 2d 261 (Tex. Crim. App., 1943).

95 Tex. Civ. Stat. (Vernon, 1948) art. 2133; Tex. Code Crim. Proc. (Vernon, 1948) art. 579. Since poll tax payment is not a qualification for trial jurors, no question of error can be brought in connection with such payment by the jurors. Outlaw v. State 69 SW 2d 120 (Tex. Crim. App., 1934); Franks v. State, 138 SW 2d 109 (Tex. Crim. App., 1940); Prewitt v. State, 167 SW 2d 194, (Tex. Crim. App., 1942); Kincheloe v. State, 175 SW 2d 593 (Tex. Crim. App., 1943).

96 The method to be used in determining a city's population is not prescribed by statute. See McCormick v. Jester, 115 SW 278 (Tex. Civ. App., 1909). The distinction between cities of 10,000 or more and other areas for exemption certificates is a long-standing one. See Acts 29th Leg., 1st C.S. P1905, ch. 11, sec. 19, p. 250; Op. Tex. Atty. Gen. No. 2545 (April 3, 1924); Op. Tex. Atty. Gen. No 0-2434 (June 29, 1940).

97 Tex. Civ. Stat. (Vernon, Supp. 1952) Election Code, art 5.17.

Annual renewal of exemption certificates has not always been required. Beginning in 1930, the Legislature experimented with a system of permanent exemption certificates.[98] By 1945, it noted that the names of many deceased persons were cluttering the exemption lists and creating a problem for tax assessor-collectors, and a change was made to annual certificates.

As late as 1948, the Texas Supreme Court construed the provision requiring annual renewal of exemption certificates as directory rather than mandatory, since there was no requirement that the vote cast by a person holding an out-of-date certificate should not be counted.[99] The 1951 Election Code clarified this situation, and current certificates are required.[100]

98 Acts 41st Leg., 5th C.S. 1930, ch. 26, p. 157. See also Op. Tex. Atty. Gen. No. 0-3218 (March 14, 1941).

99 Thomas v. Groebl, 212 SW 2d 625, 632 (Tex. Sup. Ct., 1948).

100 Tex. Civ. Stat. (Vernon, Supp. 1952), Election Code, art. 5.16; Op. Tex. Atty. Gen. No. V-1382 (December 19, 1951).

SECTION 4--COLLECTION AND ENFORCEMENT

Collection

Poll taxes are collected during the four-month period from October 1 to February 1. Although county tax assessor-collectors and their deputies are primarily responsible for collection, other persons assist in the function. Various organizations and individuals interested in assuring a large number of qualified electors maintain booths or contact prospective voters. These persons receive money and distribute forms to obtain the information necessary for receipts. Payments and notarized forms are then delivered to the tax collector, who prepares receipts and mails them directly to taxpayers. Although a four-month period is allowed for poll tax payment, collections are concentrated in January, the final month.

Evidence of Tax Payment or Exemption

To administer the poll tax, county tax collectors must be supplied with three separate forms--ordinary poll tax receipts, alien poll tax receipts, and exemption certificates. Responsibility for assuring that a sufficient number of these forms are available to the collector prior to October 1 each year is placed upon the county commissioners' court.[101] These supplies are included in class "D" stationery, and contracts for their printing are governed by general law.[102]

Receipts and certificates are numbered serially and must be kept in "well-bound" books in such manner that an exact carbon copy is reproduced for each original. Poll tax receipts and exemption certificates are usually bound in books of 100 or 150. At one time, consecutively numbered receipts were required for each precinct rather than for the whole county, but this precedure was discontinued because of the difficulty of anticipating the number of receipts necessary for each precinct and the added expense.

Since evidence of poll tax payment and exemption are vital to the conduct of elections, receipts and exemption certificates have more significance than ordinary tax receipts. A plethora of rules and provisions have been devised to govern their distribution and use.

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101 Tex. Civ. Stat. (Vernon, Supp. 1952) Election Code, art. 5.18.
102 Tex. Civ. Stat. (Vernon, 1948) arts. 2358-2367.

Receipts

Ordinary tax receipts are issued to most poll taxpayers. Because they are utilized for voting, however, they must contain the following information: (1) receipt number, (2) name of county, (3) name of taxpayer, (4) date of payment, (5) amount of payment, (6) year for which paid, (7) age of taxpayer, (8) sex of taxpayer, (9) whether the taxpayer is a citizen and, if so, how his citizenship was acquired, (10) place of birth, (11) length of residence in Texas, (12) length of residence in county, (13) occupation, (14) address, and (15) precinct number and, if in a city, ward number. A receipt must also bear the signature and seal of the tax collector. [103]

Non-voting Receipts

The most common poll tax receipt not entitling the holder to vote is that issued to aliens. The distinguishing feature of these receipts is the word "alien" printed across their face in two-inch outline type.[104] This method for identifying alien poll taxpayers was not adopted until 1939, although aliens were deprived of the right to vote shortly after World War I. Receipts issued to some other poll taxpayers do not entitle the holder to vote, but no comparable method of identification is provided. Persons convicted of felonies, for example, though constitutionally barred from the ballot box (subject to such exceptions as the Legislature may prescribe) are not exempt from the poll tax. In the more obvious cases, however, the receipt will contain sufficient information to enable election officials to determine the prospective voter's qualifications, and in some instances special marking of receipts is required. For example, receipts issued for late tax payments must be stamped "Holder not entitled to vote." The print size for this stamp is not prescribed, but presumably, it must be distinctive enough to come immediately to the attention of election officials.

Exemption Certificates

Persons not subject to the poll tax who wish to vote must secure certificates of exemption if they reside in cities of 10,000 or more. These certificates contain approximately the same information required for tax receipts, but a statement of the reason for exemption is substituted for the amount paid, and the certificate indicates that the exemptee has sworn he is a qualified voter.[105] The latter requirement results from the fact that

103 Tex. Civ. Stat. (Vernon, Supp. 1952) Election Code, art. 5.14.
104 Ibid.
105 Ibid., art. 5.16.

exemption certificates are used only for voting, while some poll tax receipts are issued to persons not eligible to vote. Persons who become 21 after January 1 and qualified electors entering the state after January 1 must secure exemption certificates regardless of where they live.

Duplicates

County tax collectors are not authorized to issue duplicate tax receipts.[106] This does not deprive the taxpayer of his voting right, since he may sign an affidavit of his payment before the election judge. Duplicate exemption certificates may be issued, however, under the original number and substantially in the same form, except that the exemptee's date of birth must be added.[107]

The Poll Tax in Election Administration

Voter List

County tax collectors must prepare three separate lists for election purposes--one of poll taxpayers, one of alien poll taxpayers, and one of exemptees. These lists must be prepared alphabetically by precincts and furnished to election supplies boards before April 1 each year. At least four days before any election, the tax collector must supply supplemental lists of those who have subsequently obtained exemption certificates or who have changed residence.[108] Voter lists must give the receipt or certificate number, name, precinct number, age, length of residence in the state, county, city and ward, occupation, race, and address for each person included.

To facilitate the preparation of voter lists, most counties provide an additional copy of receipts and certificates which may be removed from record books. These copies are arranged alphabetically by precinct and the lists compiled.

Receipts and Certificates in Election

Generally speaking, persons who desire to vote must present either a poll tax receipt or an exemption certificate to election officials. There are at least three exceptions of major importance. Exemptees residing outside cities of 10,000 or more need not secure exemption certificates unless they become residents or reach 21 years of age after

106 Op. Tex. Atty. Gen. No. 0-5881 (April 18, 1944).
107 Tex. Civ. Stat. (Vernon, Supp. 1952) Election Code, arts. 5.16 and 5.17.
108 Ibid., art. 5.2.

January 1. Moreover, ex-servicemen, during the 18-month period in which they are not required to have paid the tax in order to vote, do not need exemption certificates.[109] Presentation of the actual receipt or certificate is also waived if the prospective voter has lost or mislaid it or left it at home. In this situation, the voter must sign an affidavit stating the disposition of the instrument.

Several court decisions have dealt with the presentation of tax receipts at the polls. If a person pays the tax but does not receive a separate receipt, he is not deprived of the right to vote.[110] A voter's failure to present a poll tax receipt or sign an affidavit, when neither is demanded by the election officials, does not invalidate a ballot; nor is the ballot invalid if the voter shows a receipt for other than the proper year and is permitted to vote with it.[111] An error on the receipt does not deprive the holder of his right to vote.[112] The rule generally applied is that payment of the tax meets the requirement, regardless of the condition of the receipt.

Records and Reports

Books in which duplicate copies of poll tax receipts and exemption certificates are bound must be kept in a safe place for at least three years. They may be removed for examination only when the tax collector is present and are to be burned by the county judge at the end of three years.[113] Since no records except receipts and exemption certificates are required, these are the only records of poll tax payments.

The tax collector is required to make to the Comptroller, at the close of each month, sworn and itemized reports of ad valorem, poll, and occupation taxes collected during the month. An extension to the 25th of the next month is granted for reports covering December and January. These reports, accompanied by tax receipt stubs, must be presented to the county clerk, or to the auditor in counties having that official, before being forwarded to the Comptroller. The clerk or auditor is required to examine the report and receipt stubs within two days and certify the report's correctness.[114] Taxes due the state are required to be forwarded

109 Atty. Gen. of Texas, Texas Election Laws (1952), p. 49.
110 Huff v. Duffield, 251 SW 298 (Tex. Civ. App., 1923).
111 Ramsey v. Wilhelm, 52 SW 2d 757; (Tex. Civ. App., 1932); Neil v. Pile, 75 SW 2d 899 (Tex. Civ. App., 1934).
112 Tondre v. Hensley, 223 SW 2d 671 (Tex. Civ. App., 1949); Op. Tex. Atty. Gen. (August 31, 1916); Op. Tex. Atty. Gen. No. 0-1966 (March 21, 1940).
113 Tex. Civ. Stat. (Vernon, Supp. 1952) Election Code, art. 5.23.
114 Tex. Civ. Stat. (Vernon, 1948), art. 7260.

to the State Treasurer, but the Ad Valorem Division of the Comptroller's office occasionally receives a remittance mistakenly sent. The collector's report is forwarded to the Ad Valorem Division, where it is checked for accuracy of computation, transcribed by hand into a ledger, and filed. When the report is finally approved, the collector is credited with his authorized fees.

In addition to monthly reports, the tax collector makes an annual report to the Comptroller of poll tax receipts and exemption certificates issued during the previous fiscal year. This report must be approved by the county clerk and the county commissioners' court. From these reports, the Ad Valorem Division prepares an annual recapitulation for the entire state.

The final step in processing poll tax payments is a post-audit of county records by the Ad Valorem Division. This division reviews county records on all county-collected state taxes under its jurisdiction, which means the ad valorem, poll, and motor vehicle sales taxes. The audits are made by 18 field auditors, organized into eight teams. Prior to September 1, 1952, these auditors operated from the Austin office, but on that date, they were assigned to four districts, two teams in each. Districts were formed on the basis of work load estimates computed from records maintained since 1939. Districts are so established as to require approximately the same number of audit days. Because the time required to audit a county's records varies from 2 days for one team in many counties to 60 days for two teams in the largest ones, the size of the districts varies considerably. These auditors check poll tax receipts to assure that they agree with reports made to the state and cancel unissued receipts. Because they are primarily concerned with tax revenues, they do not investigate voting rosters and other election records.

Poll Tax Calendar

The following table illustrates the chronological steps in poll tax collections, indicating dates for the performance of specified duties.

January 1, 1947 -- Persons residing in Texas on this date, who are not otherwise exempt, become liable for the poll tax.

October 1, 1947 -- Before this date, the county commissioners' court must have the poll tax receipt books in the hands of the county collector of taxes.

October 1, 1947 - January 31, 1948 -- In this period, the tax is supposed to be paid. (These collections will be reported by the Comptroller for the 1948 fiscal year which runs from September 1, 1947, through August 31, 1948).

February 1, 1948 - January 31, 1949 -- The poll tax paid in the above period may be used for voting.

Enforcement

A chronic poll tax administrative problem is delinquency. In 1940, as a fairly recent example, the population of Texas between 20 and 60 years of age was approximately 3,449,000. In that presidential election year, about 1,260,000 poll tax receipts were issued. Even allowing for exemptions and the fact that an extra age group of those 20 years old is included in the population figures, payment was probably made by no more than 40 per cent of those liable. The percentage naturally fluctuates, depending on the number and type of elections to be held, but evasion of the poll tax probably averages as high as 50 per cent.

The Legislature, in an 1891 road law, made delinquent county poll taxpayers subject to road work. The tax collector is supposed to provide county or precinct road superintendents with a list of delinquents, who may be summoned for three days' work on the roads. The summons may be satisfied by a $3 payment in lieu of service. Although this provision is still in effect, it is probably rarely utilized.[115]

In reality, the requirement that a poll tax receipt be obtained as a qualification for voting probably acts as the strongest aid to enforcement. Those who wish to vote are compelled to pay the tax or obtain an exemption certificate when required. Should this feature be discontinued and present enforcement policies followed, poll tax delinquency might conceivably approach 100 per cent.

Penalties

Penalties for violations of poll tax laws are mostly concerned with insuring honest elections rather than with obtaining revenue. Of course, if loss of the voting privilege is treated as a penalty for non-payment, there is one sanction for failure to pay which has at least moderate degree of effectiveness.

In addition to the loss of the right to vote for failure to pay, a person's property may be levied on for the amount due. County tax collectors are authorized to levy on personal or real property for state or

115 Acts 22d Leg., R.S. 1891, ch. 97, sec. 23, p. 149. The Attorney General has ruled, however, that persons over 45 cannot be required to work on the roads for failure to pay. Op. Tex. Atty. Gen. No. 1822 (September 20, 1917).

county taxes for which the owner is delinquent, including the poll tax.[116] The combined state and county poll tax could accrue at the rate of no more than $1.75 yearly, and it seems unlikely that any collector would proceed against a taxpayer for this amount if other state and county real estate or personal property taxes were paid. This "delinquency" penalty, then, probably has little effect so far as the revenue aspects of the poll tax are concerned even though delinquent poll taxes are sometimes placed on delinquent property tax rolls. Its wholesale disuse means it is inoperative as a sanction.

Taxpayers and Others

If a taxpayer makes a false statement to secure a receipt, he may be punished, upon conviction, by confinement from one to three years in the state penitentiary.[117] It is unlawful for a poll taxpayer to "sell, pledge, loan, or deposit his poll tax receipt or certificate of exemption" for any consideration.[118] Both the seller and the purchaser are liable for a fine not to exceed $500. However, "either of the parties to such wrongful act may be compelled to appear and testify. . . against the other." This article provides for conviction of only one person, since the one testifying is absolved through his testimony. Thus only one of the violaters is in reality subject to punishment. If both could be convicted, either could refuse to testify against the other on the constitutional grounds of self-incrimination. A violation of the provisions governing payment of the poll tax through an agent is also punishable by a fine of not more than $500.[119] Should the holder of a poll tax receipt or certificate entrust it to another person for safe keeping and that person refuse to return it, the refusal makes him liable for a fine of $500.[120] The same penalty is provided for persons who loan or advance money for the payment of a poll tax or induce others to pay poll taxes by money grants.[121] Should a candidate or any other person pay or procure another to pay a citizen's poll tax except as provided by law, he may be

116 Tex. Civ. Stat. (Vernon, 1948) art. 7272.
117 Tex. Pen. Code (Vernon, 1948) art. 200a-2.
118 Ibid., art. 205.
119 Ibid., art. 201.
120 Ibid., art. 202.
121 Ibid. and art. 204. See also Longoria v. State, 71 SW 2d 268 (Tex. Crim. App., 1934); Nave v. State, 193 SW 668 (Tex. Crim. App. 1917).

punished by confinement in the penitentiary for from two to five years.[122]

Penalties for persons voting with other than their own tax receipts or exemption certificates vary, depending upon whether evidence of tax payment is used personally or in absentia. An individual attempting to use another's receipt or certificate at the polls may be punished by confinement in the penitentiary for from three to five years.[123] For attempting the same use when casting on absentee ballot, the penalty is a fine of $1,000 or less or imprisonment in the county jail for two years or less, or both.[124]

Tax Collectors

The relationship between poll tax payment and suffrage requires that collection methods and procedures be subjected to exceptional scrutiny to assure proper preparation of tax receipts and voting lists. Willful violation of the provisions and regulations controling issuance and recording of poll tax receipts is punishable by a fine of $100 to $500.[125]

More stringent penalties are prescribed for violations which might be termed fraudulent where elections are concerned. A tax collector who unlawfully delivers a receipt or certificate of exemption may be fined from $500 to $1,000 and dismissed from office.[126] Delivery of a blank receipt or certificate or delivery of a receipt or certificate made out to a fictitious person is punishable by a sentence of from three to five years.[127] When this penalty was added in 1939, the Legislature noted that blank receipts and certificates were being issued in the state and that the practice should be halted so that the will of the electorate would not be subverted by the actions of "unscrupulous persons." Failure to conform with the statutory requirements concerning the mailing of receipts subjects tax collectors to a fine ranging from $25 to $200.[128]

Utilization of Penalties

In tax administration, penalties are usually designed to assure maximum collections. So long as the poll tax was considered solely a revenue measure, this general theory prevailed. Since its alignment with the ballot, penalties are obviously utilized for other purposes, and collections are of secondary importance.

122 Ibid., art. 203. See also Johnson v. State 177 SW 490 (Tex. Crim. App., 1915).
123 Ibid., art. 239.
124 Ibid., art. 238.
125 Ibid., arts. 198, 200a-1.
126 Ibid., art. 199.
127 Ibid., art. 200.
128 Ibid., art. 205a.

Disposition of Poll Tax Revenue

One dollar of each $1.50 poll tax is constitutionally earmarked for the public free schools. The remaining 50 cents is allocated to the General Revenue Fund.[129] No special provision governs the disposition of poll taxes levied by counties or cities. However, certain assessing and collecting fees are deducted from gross collections before these dispositions are made.

129 Tex. Civ. Stat. (Vernon, 1948) art. 7046.

SECTION 5 -- RESULTS OF OPERATION

In considering results of operation of the poll tax, factors other than those normally discussed -- rates, revenues, and administrative costs -- must be examined. The necessity for attention to these other elements arises from the nature of the poll tax as a voting charge. Its connection with suffrage affects all phases of administration and cannot be easily ignored. . .

Rates

As has been noted, the poll tax in Texas may reach a total of $2.75. The state levies $1.50; counties may levy up to 25 cents; and cities may levy up to $1. However, few cities collect the tax, and the total is generally $1.75. Of the six other states requiring payment of a poll tax as a voting requisite, three have state rates of $1, two prescribe rates of $1.50, and one collects $2. Three of these states permit county levies, and one permits cities and towns to collect a poll tax. Table Poll I shows poll tax rates for other states making poll tax payment a requisite for voting.

Poll Tax Rates for States Requiring Poll Tax Payment to Vote -- Texas Excluded*

State	Annual State Rate	Maximum Rate for Other Units
Alabama	$1.50	
Arkansas	1.00	
Mississippi	2.00	$1.00 (counties)
South Carolina	1.00	
Tennessee	1.00	1.00 (counties)
Virginia	1.50	1.00 (counties, cities, and towns)

SOURCE: V. O. Key Jr., Southern Politics (New York: Alfred A. Knopf, 1949), p. 581.

* Special commutation taxes excluded.

Some other states also have poll taxes on the books but not as voting prerequisites, and some of them permit local units of government to collect poll taxes. Although some of these states prescribe rates as high as $5, the usual rate is $1 or $2.

Returns

Revenue from the poll tax has been increasing constantly but erratically since the levy was adopted. At the same time, it has represented a declining percentage of total state revenue. Table Poll 2, showing revenue at ten-year intervals since 1846, indicates the increase in absolute amounts.

Poll Tax Revenue in Texas, Ten-Year Intervals, 1846--1946

Year	Amount*	Year	Amount*
1846	$ 15,000	1906	$ 724,000
1856	22,000	1916	916,000
1866	58,000	1926	1,667,000
1876	211,000	1936	1,685,000
1886	342,000	1946	1,769,000
1896	484,000		

* Figures rounded to nearest $1,000.

SOURCE: Edmund T. Miller, A Financial History of Texas (Austin; University of Texas Press, 1916), p. 409; Annual Reports of Comptroller.

In 1946, revenue was about 118 times as much as a century before. In 1881, however, poll tax revenue accounted for 23 per cent of all state revenue; by 1910, it represented about 10 per cent; and by 1915, it contributed only slightly more than 6 per cent.[130] In no year since 1937 has it accounted for more than 1 per cent of total revenue. In 1950, poll tax revenue afforded only .35 per cent of the revenue which entered state coffers. Although this percentage appears almost negligible, it represented approximately $2,000,000. A 20-year review of poll tax revenue is presented in the following table.

130 Miller, op. cit., p. 265.

Texas Poll Tax Revenue, 1932-1951

Year	Revenue*	Year	Revenue*
1932	$1,554,000	1942	$1,608,000
1933	1,032,000	1943	1,229,000
1934	1,642,000	1944	1,905,000
1935	1,117,000	1945	1,437,000
1936	1,685,000	1946	1,769,000
1937	1,085,000	1947	1,592,000
1938	1,555,000	1948	2,256,000
1939	1,207,000	1949	1,395,000
1940	1,712,000	1950	1,993,000
1941	1,133,000	1951	1,521,000

SOURCE: Annual Reports of the Comptroller, 1932-1951.

While poll tax payments have increased over the years, there has also been an increase in population. Table Poll 4 shows the number of poll tax receipts issued during the years indicated as compared with the population of the state.

POLL TAX RECEIPTS ISSUED COMPARED TO POPULATION

Year	Receipts Issued	Population	Receipts Issued as % of Population
1930	1,116,432	5,824,715	19.1
1940	1,259,787	6,414,824	19.6
1950	1,552,945	7,711,194	20.1

SOURCE: Texas Almanac, 1952-1953, pp. 65 and 488.

This table would indicate that the number of receipts issued is just about keeping pace with the population increase. On the basis of these limited figures, no more can be said, since the number of poll tax payers varies so widely from year to year as a result of interest in election.

Variations in Poll Tax Revenue

Numerous factors influence poll tax revenue. For example, as with other taxes, the initiative and aggressiveness of tax collection and enforcement officials will be reflected in returns. Activity of these

officials is conditioned by the statutes under which they operate. Other forces, however, many of them political, influence the poll tax.

In this discussion, some of the more common influences on poll tax revenue are mentioned. No attempt is made to analyze each element fully, but reference is sometimes made to sources containing more extensive analyses. It is well to remember that, although a correlation may be established, there is not necessarily a causal relationship between receipts from the poll tax and the factor discussed. A thorough evaluation of the complex relationships that affect voting in the state, and hence the poll tax, is beyond the scope of this study and has not been attempted. The following observations are presented with these limitations.

Political Questions

Requiring poll tax payment as a condition of suffrage naturally produces four-year cyclical fluctuations. In presidential election years, payments are highest, with a marked decline the next year, an increase during interim election years, another decline the third year, and a sharp increase in the year of the next presidential election. The payment pattern since 1928, with that year expressed as 100 per cent, is illustrated in Chart Poll 2.

In addition to general elections, other political factors affect poll tax revenue. Forthcoming bond, tax, special district, or municipal elections may produce localized increases in the number of taxpayers in non-general-election years. Occasional by-elections to fill vacancies are also held. One issue that tends to keep poll tax revenue in some counties at a relatively high level is the sale of alcoholic beverages. In some counties and in some political subdivisions, these elections are held as often as permitted by law because of the almost equal division of voter opinion. Residents in these areas must always be prepared to vote if the opposition succeeds in calling an election on any of the several questions permitted under the Liquor Control Act.

Socio-Economic Factors

A variety of economic and social factors also influence poll tax revenues. The constant and rapid concentration of population affects the total number of poll taxes paid. The general health of the economy and the current status of socio-economic classes also play a part. Many of these factors can best be illustrated by an analysis of payments by counties.

As a general rule, poll tax payments tend to decline percentagewise as population becomes more dense, but a large number of Texas counties deviate from the general pattern. Chart Poll -3 demonstrates the trend by expressing poll tax payments as a percentage of total population for all 254 counties in 1948 and 1950. The trend lines are essentially parallel, with a higher percentage making payment in 1948, a presidential election year, than in 1950. Several reasons may account for this variation. It might be argued that inhabitants of sparsely populated areas are more politically conscious than their urban neighbors. The voters are often personally acquainted with the candidates and therefore more interested in election results. Localized issues may tend to receive more attention in relatively less populated areas. Thus the divisions of opinion are sometimes more clearly drawn. On the other hand, it may be that the mechanical procedure for collecting poll taxes is more manageable in the less populated counties, and campaigns to secure maximum payments more effective.

Not only does the density of population affect poll tax payments but the racial composition of the population exerts its influence. Counties with large Negro or Latin-American populations usually have a low proportion of poll tax payments. An analyst of these factors has demonstrated that although this correlation exists, other factors, more difficult to evaluate, may account for this phenomenon. No absolute and invariable rules can be formulated. [131] He points out that where Negroes represent less than five percent of the total population between 21 and 60, poll tax payments tend to be approximately 25 per cent higher than in counties where the Negro population is more than 40 per cent. As the proportion of Negro population rises, the percentage of poll taxpayers decreases. In counties with large Latin-American populations, a similar relationship exists, but it cannot be so clearly drawn.

The economic well-being of an area also affects poll tax payments, but this element is difficult to measure because of the danger of emphasizing incorrectly the various criteria. [132] It is generally accepted, however, that poll tax payments fluctuate directly, but not proportionately, with economic activity. The record of poll-tax payments during the 1930's offers some proof of this contention. (See Chart Poll -2).

Collection Activity

It would seem that tax collectors compensated on a fee basis would be anxious that poll tax payments be made by all eligible voters. Such

131 Key, op. cit., pp. 613-615.
132 Ibid., pp. 614-617, 600-603.

Chart Poll-2

Fluctuations in Poll Tax Receipts
In Texas, For Years 1928-50, 1928=100

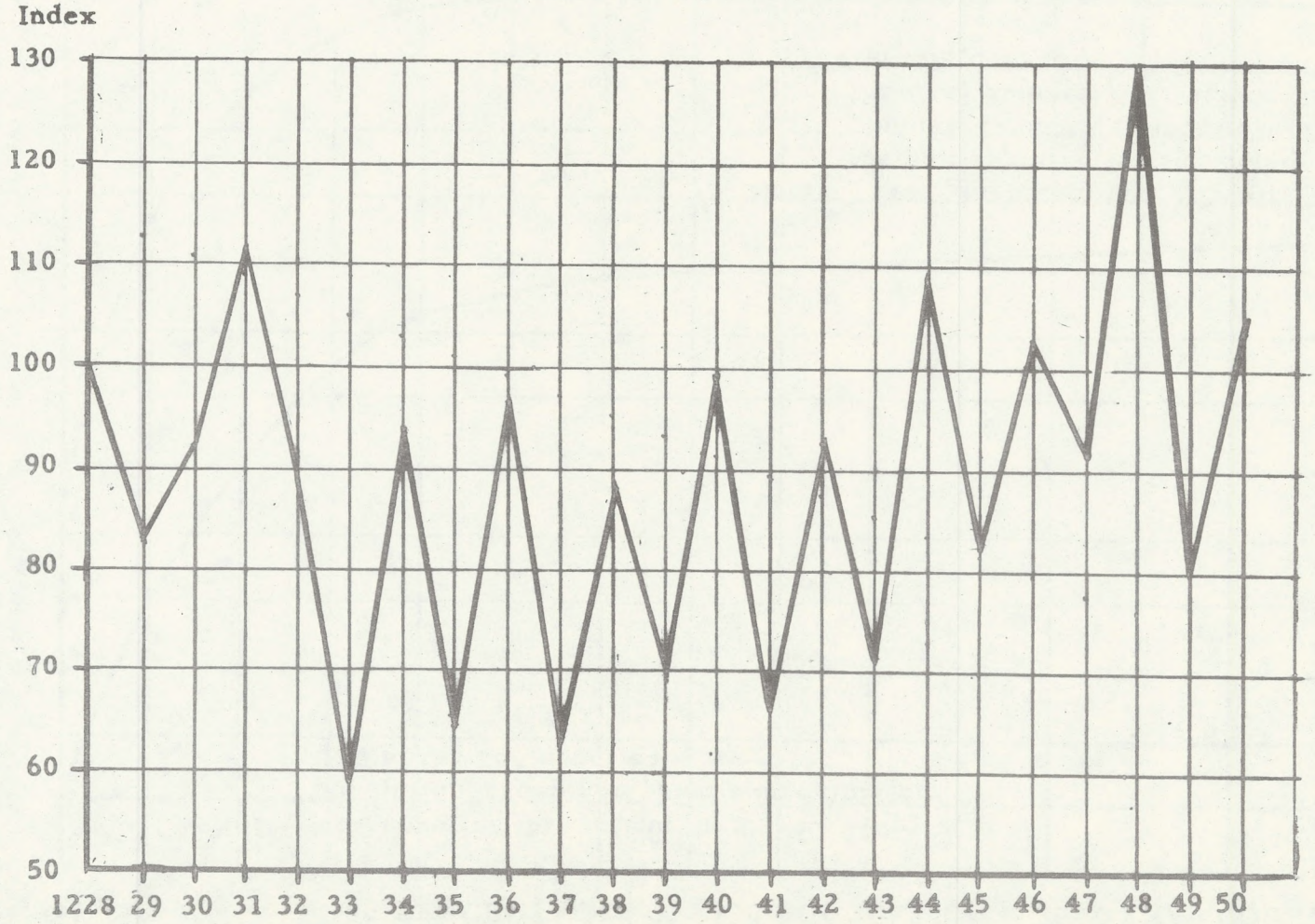
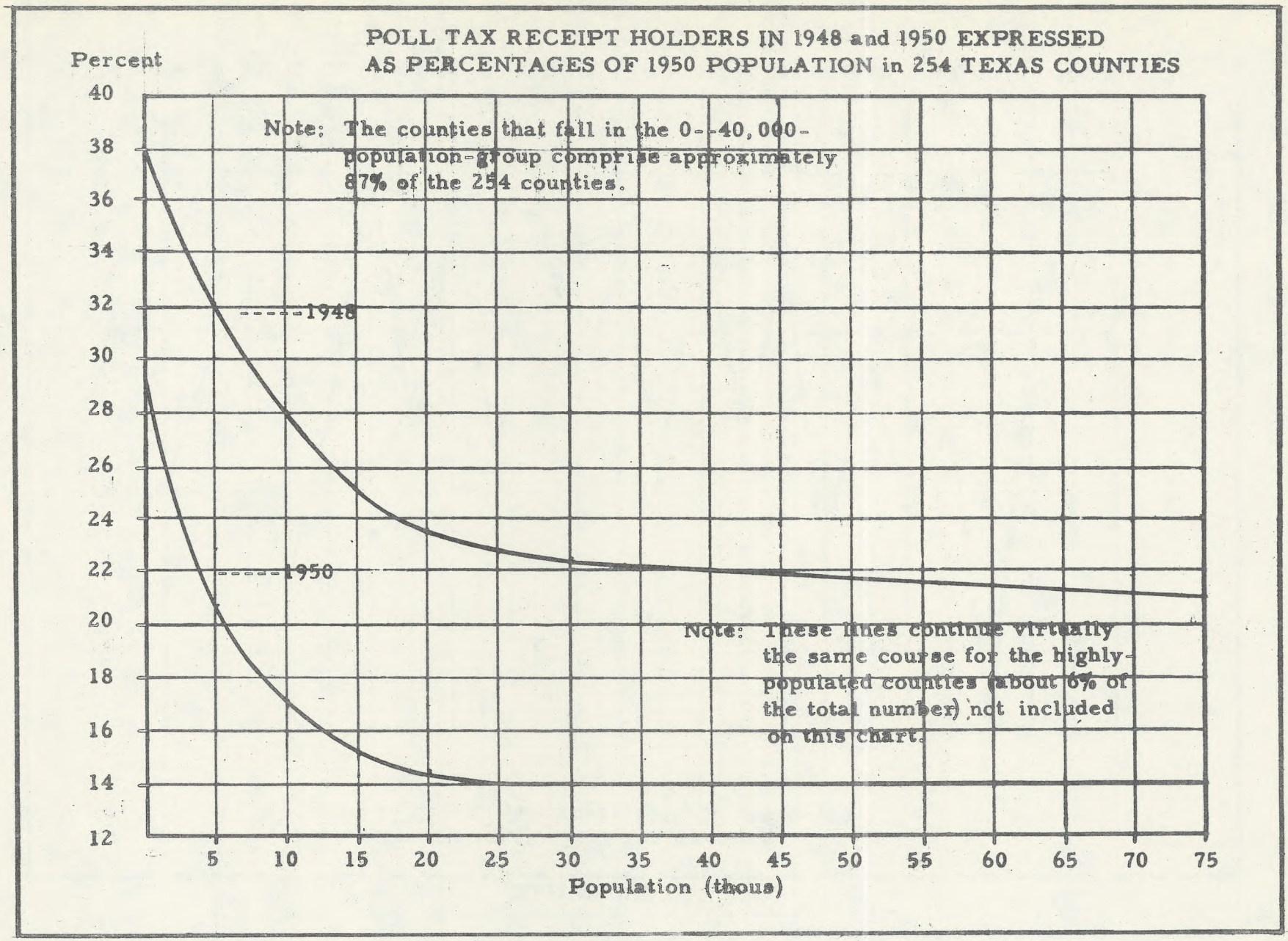


Chart Poll-3


POLL TAX RECEIPT HOLDERS IN 1948 and 1950 EXPRESSED AS PERCENTAGES OF 1950 POPULATION in 254 TEXAS COUNTIES
Percent
40
38
36
34
32
30
28
26
24
22
20
18
16
14
12
Note: The counties that fall in the 0--40,000-population-group comprise approximately 87% of the 254 counties.
-----1948
-----1950
Note: These lines continue virtually the same course for the highly-populated counties (about 6% of the total number) not included on this chart.
5
10
15
20
25
30
35
40
45
50
55
60
65
70
75
Population (thous)

payments could be a flexible area in which the collector could increase or decrease his fees of office. Generally, counties with populations of 20,000 or less may use the fee system. Of the approximately 150 counties now in this category, probably about 60 utilize this method for compensating officials. Not all collectors in these counties, however, are hard-pressed to secure sufficient funds and thus some would have no special incentive to encourage poll tax payments. In fact, a review of poll tax payments in counties permitted to use the fee system indicates that this device does not increase poll tax payments appreciably.

Local Poll Taxes

Total poll tax revenue received by all units of government is influenced by the fact that some counties and most cities do not levy the authorized tax. Since a city poll tax may be a requisite for voting only in city elections, there is little incentive to levy it and less to pay it. However, a county poll tax, when levied, must be paid to vote in state and national as well as county elections. Accordingly, all except 17 counties now levy the 25 cents allowed by law. On the other hand, somewhat less than 10 per cent of the cities collect a poll tax, and the yield for each city is from .3 to 1 per cent of total revenues, excluding utility and bond income.

Alien Poll Tax Payments

Since payment of the poll tax by an alien does not entitle him to vote, it would be reasonable to assume that few aliens make the payment. Actually the number of receipts issued to aliens, though not exceptionally high, is higher than would be expected. In 1948, for example, more than 2,700 aliens paid the poll tax. Most of these were in counties in the southern and central areas of the state where the Latin-American population is large.

No absolutely valid explanation can be given for these payments. Some aliens may feel that they should pay the tax because of a desire to help support the schools. It is possible that many are not aware that payment does not entitle them to vote. It has been suggested that some labor unions require members to pay poll taxes, and this may be a partial explanation. Another suggestion is that some school boards require teachers to be poll tax holders, and some alien teachers may pay for this reason. Whatever the reasons, a number of aliens do pay the poll tax.

Administrative Costs

Because administrative duties in connection with the poll tax are performed by county officers, primary administrative costs are incurred at the county level. Tax collectors are compensated from revenue collected at the rate of 15 cents for each voting poll tax receipt, alien poll tax receipt, or certificate of exemption, and 5 cents for each supplemental assessment.[133] If the county does not use the fee method, this amount is deposited in the Officers' Salary Fund. Since the current system makes all poll tax assessments supplemental, that is, not assessed on regular tax rolls, the collector receives a total fee of 20 cents for each receipt issued. For non-voting poll tax receipts, except those issued to aliens, the collector is authorized only the 5 cents for assessment. If both the state and the county levy the poll tax, the county pays 1/7 and the state 6/7 of the 15 cents collection cost. The 5 cent assessment cost and the 15 cent fee for each exemption certificate are borne entirely by the state.

In addition to the deductions authorized for each receipt or certificate issued, county assessor-collectors receive five per cent of the first $20,000 of state taxes collected and two per cent of all state collections in excess of this amount.[134] Poll tax receipts are included in computing the total amount collected. County collectors also receive five per cent of the delinquent poll taxes they collect.[135]

Payments to the counties for 1945 through 1949 are shown in Table Poll 4. These payments range between 10 and 15 per cent of gross receipts.

PAYMENTS TO COUNTIES FOR POLL TAX ADMINISTRATION DUTIES, 1945-1949

Year	Gross Receipts*	Payments*	Percentage
1945	$2,384,000	$296,000	12.4
1946	2,314,000	270,000	11.7
1947	2,659,000	368,000	13.8
1948	1,668,000	236,000	14.2
1949	2,342,000	348,000	14.9

* Figures rounded to nearest 1,000.
SOURCE: Reports of the Comptroller of Public Accounts, 1946-1950.

133 Tex. Civ. Stat. (Vernon, Supp. 1952) Election Code, art. 7.10, and Tex. Civ. Stat. (Vernon, 1948) art. 7209.
134 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 3939.
135 Tex. Civ. Stat. (Vernon, 1948) art. 7331.

However, these amounts do not represent the cost of administering the poll tax. Nor do they, strickly speaking, represent the cost to the state of local poll tax collection. It is not possible, on the basis of the available evidence, to determine whether the payments made by the state to local assessor-collectors approximate the costs these officials incur in administering state poll tax laws. Too, the payments are not intended to cover only administration of the poll tax as such but also the costs which result from related election law duties. The law providing for the payment of fees to county assessor-collectors clearly contemplates that these fees shall reimburse them for the expense of making election lists of poll-tax-paying voters and other similar duties.

Besides the compensation granted for county collection and administration, some poll tax administrative cost is included in expenditures of the Ad Valorem Division of the Comptroller's Office. Since this division is also responsible for other state taxes collected at the county level -- chiefly ad valorem and motor vehicle sales taxes -- that portion devoted to poll tax costs is difficult to isolate.

Section 6 -- SUMMARY AND PROBLEM AREAS

Consideration of the poll tax in the general framework of this study has been complicated by its hybrid nature. Originally a revenue-producing measure, the poll tax has been at the center of election administration since the turn of the century. In this section, several of the problems which have arisen in connection with the poll tax are presented. However, no attempt is made to evaluate the poll tax in any of the various contexts.

Problems related to the poll tax are concerned with:

(1) A high rate of delinquency.

(2) The requirement that aliens pay the tax and the special procedures necessitated thereby.

(3) Lack of complete audits of county records by Comptroller.

(4) The necessity for prompt adjustment of election procedure if the poll tax should be abolished.

Delinquency

From the taxation point of view, the main problem of the poll tax is that such a large number of the people who are legally obligated to pay it fail to do so. During 1951, the state received about $1.5 million from the tax. Yet there are more than 4,000,000 Texans between 21 and 60. The state should have received about $6 million in poll tax revenue. If it were desired to increase poll tax payments to obtain greater revenue for the state, there are several devices which might be used.

Changing the final date for payment of the poll tax to one nearer the primary and general elections would probably increase payments. The reasoning here is that a greater interest in political matters develops as elections get closer. People are, therefore, more inclined to pay the tax than they would be earlier. This would take into account the fact that there is little inducement now to pay a past due poll tax which does not permit voting. Although this approach may have tax revenue advantages, it is not known whether it would be consistent with principles of the election laws.

A very effective method for increasing poll-tax payments would be to require the payment of the tax for other privileges. For example, a poll tax receipt could be requisite to obtaining a drivers' license, registering a car, or enrolling children in the public free schools. Requirement of poll tax payment in the latter case might be considered particularly appropriate in view of the fact schools receive much of the poll tax revenue. Since the money benefits school children, it might be argued that their parents ought to be particularly responsible for payment of the tax. Probably the major

argument which can be advanced against this suggestion is that it would complicate the administration of several important governmental activities and harass citizens through imposition of rather severe penalties to insure payment of a very small tax.

Another method of increasing poll tax payments would be to reinstate the practice of assessing the poll tax at the same time as the ad valorem tax. It may be assumed that this practice would add to the rolls of poll-tax-paying citizens, especially in non-election years.

Alien Poll Taxes

If the poll tax is viewed solely as a tax, then logic does not require that only those qualified to vote should pay the tax. If, on the other hand, the poll tax is treated purely as a voting requisite, there would seem to be no reason for requiring it of persons not legally entitled to vote. Counties now go to considerable trouble and expense to print special poll-tax receipts for such aliens as may voluntarily pay the tax. From the viewpoints of making the tax a requisite for voting or using it as a voter registration device, payment by aliens serves no purpose.

If it is not constitutionally possible to exempt aliens from all the tax (see below) or not considered desirable for other reasons, the next step is to seek ways of simplifying administration of alien poll taxes. Possibly one method would be to substitute a rubber stamp for the printing of special receipts. The intent of the law is not to separate aliens for poll-tax-paying purposes but for voting purposes. This could be achieved by any clear method of marking alien poll tax receipts, whether by printing, stamping, or some other device. Although this problem may not be major, it may still deserve legislature attention.

Unconstitutional Exemptions

Although the Attorney General and the courts have ruled that the Legislature may not exempt from the $1 poll tax persons other than those exempted by the Constitution,[134] the Legislature has continued to provide such exemptions. The Legislature may allow exemptions from the 50-cent poll tax levied by statute but not from the $1 required by the Constitution for all persons between 21 and 60. Also, the Legislature cannot provide that persons subject to the Constitutional poll tax may vote without

134 Op. Tex. Atty. Gen. No. 0-6236 (November 4, 1944); Tondre v. Hensley, 223 SW 2d 671 (Tex. Civ. App., 1949).

paying it.[135] The one exception, that relating to veterans, is specifically provided for in the Constitution.[136] Assessor-collectors of taxes have been notified that they must collect the $1 poll tax from persons who are supposedly exempted by statute -- Indians not taxed, the insane, the blind, the deaf or dumb, persons who have lost a hand or foot, and veterans of foreign wars with a 40 per cent or more disability. However, the continuation of these unconstitutional exemptions in the law leads to some confusion, and it is possible that these exemptions are sometimes allowed.

This problem may deserve legislative attention. Two possible approaches would be either to remove the unconstitutional exemptions from the law or to give them validity by proposing a constitutional amendment authorizing them.

Auditing County Records

Under the present auditing system, local collectors' poll tax receipt books are checked, but these are not compared with voter lists. It is therefore possible that the voter lists will contain names for which there are no duplicate receipts and that this discrepancy will not be found. It is possible for a local official to destroy a receipt book and not account for the money or to give away a book of poll tax receipts. Obviously, this may open the way for either embezzlement of state and local money or for election fraud. It would seem that an extension of auditing practices to include checking available records, particularly voters' lists against copies of poll tax receipts, would insure that the state receives its full share of poll tax revenues. There is no indication of any election frauds, but even a sample audit might provide more accurate accourting for the tax and keep the process clean. However, it might also be mentioned that a full check, which might bring to light election fraud as well as tax embezzelement, would involve assigning the Comptroller a role foreign to his usual job.

Adjustments Required of Tax Abolished

Abolition of the poll tax as a voting prerequisite has been a political issue in recent years. Rejection of the constitutional amendment providing for its repeal was most recently defeated in 1949. This defeat has perhaps temporarily removed the question from the political arena. Federal legislation on the subject appears unlikely in the immediate future and may never be enacted. Nevertheless, it would be well for the

135 Tex. Const., Art. VI, sec. 2.
136 Ibid., Art. VI, sec. 2a.

legislature to be prepared, to take well-considered and judicious action should the poll tax cease to be a voting prerequisite. The entire election procedure is based upon the poll tax and should it be abolished, immediate action would be necessary. A procedure so vital to democratic processes needs to be adjusted only after careful and full consideration.

CHAPTER III

MOTOR VEHICLE REGISTRATION TAX

SECTION 1 -- LEGAL AND HISTORICAL DEVELOPMENT

Today all states register and license motor vehicles -- it is taken for granted. In many states motor vehicle registration is an important source of revenue; in all of them it is important in policing the roads.

Motor Vehicles and Roads

Obviously motor vehicle registration is inextricably connected with the development of an automotive industry and of public roads. The motor vehicle has come into general use in recent decades, with the greatest emphasis on its development in the United States. The first cars, steam driven models, were invented in the middle of the eighteenth century. However, it was not until the latter part of the nineteenth century that the high speed internal combustion engine, which has made possible the modern growth of the automotive industry, was developed by Gottlieb Daimler in Germany. With this advance the new mode of transportation could come into its own. [1]

Development of the Motor Vehicle in the United States

The automotive industry, during the early years of its history in the United States, had to overcome several major difficulties. There was the problem of making a satisfactory auto, one that could be counted on to run most of the time. This was a technical problem which was solved fairly rapidly. About 1910 automobiles were advanced enough mechanically to be classed as a means of transportation rather than as a rich man's toy. However, a serious deterrent to large-scale production was the lack of good roads. Also, in the early stages, the growth of commercial motor transportation was held back by high initial costs.

Despite these difficulties, the growth of the automotive industry and the use of motor vehicles in the United States is a miracle of the modern age. At the turn of the century, annual production of automobiles was a little over 4,000 vehicles, and value of production was approximately $4,900,000. [2] By 1905

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[1] "Motor Car," Encyclopaedia Britannica, vol. 15 (1945 ed.), pp. 880-881.

[2] The sources of these and the following figures are: The World Almanac, 1951, p. 660; Automobile Manufacturers Association, Automobile Facts and Figures (1951) pp. 4, 21; Encyclopaedia Brittanica, op. cit.

automobile production had passed the 24,000 mark with a value of some $38,700,000. At this time also, commercial motor vehicles started to come onto the market. In 1904, the first year of production, only 700 units, all trucks, were made. However, the production of trucks and busses has become continuously more important, with the percentage they constitute of the total number of motor vehicles in operation increasing from 1.8 in 1905 to 17.6 in 1950.

By 1916 the total production of cars, trucks and busses passed the one million mark. In 1920 more than two million motor vehicles were produced and in 1923 over four million. The depression cut production back to 1,371,000 in 1932 but, even during the thirties, the industry managed to produce over four million vehicles on each of two separate years. After the war cut civilian production to almost nothing, the industry again reached its stride with a post-war boom which surpassed all previous records. In 1950 over eight million new cars, trucks and busses, valued at over ten billion dollars, came onto the market.

Development of Roads in the United States

Of course, the motor vehicle industry could not have developed in this manner without a concomitant growth of roads. Agitation for the creation of more and better roads was already under way before the automobile became popular. Around 1890 interest in road improvement became intense. It was fostered by the need for easy access to railroad stations, there being by this time a railway system covering the nation, by the bicycle craze of the period, and by the inauguration of rural free mail delivery, accompanied by the requirement that good local roads be made available before the service would be installed.[3]

Starting with New Jersey in 1891, several states provided monetary assistance to local governments for the development of better roads. This gave a definite boost to road building which, at this time, was almost entirely a local function. Two additional important events occurred during the last decade of the nineteenth century -- the federal government set up an agency to make studies of roads, and the National Good Roads Association came into being. The Good Roads Association provided much of the early driving force for the good roads movement.[4]

While the automobile had nothing to do with the beginning of the general interest in improving the roads, it has had a great deal to do with

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[3] Frank M. Stewart, Highway Administration in Texas (Austin: University of Texas, 1934) pp. 9-10.

[4] Ibid., pp. 10-11.

the continuation of that interest in the present century. Early roads were almost purely local, that is, they were built by local authorities to serve local communities. However, with improvements in transportation the pressure became strong for a system of intercity roads. This was a task which could be handled only by the states. States started to set up highway departments and by the end of 1917 after several slow states were spurred on by the passage of the 1916 federal aid bill, every state had such a department. [5] From that time on increasing expenditures, particularly by state and national governments, have gone into systems of state and nation-wide highways. [6]

Growth of Motor Vehicle Registration in the United States

The development of motor vehicle registration in the United States has resulted in part from a desire to regulate the operation of motor vehicles and to protect their owners, and in part from an increasing need for revenue accompanying the expansion of the highway systems. The one idea was soon followed by the other.

One of the important justifications for registering and licensing motor vehicles is to provide the means of identification necessary if vehicle owners are to be required to adhere to regulations on the use of the roads and if ownership rights in vehicles are to be protected. On this basis the first registration acts were passed. Normally they came into existence at the same time that the enacting state adopted a general code covering the use of automobiles. It was not until several years had passed that most motor vehicle codes went out and a series of separate enactments on safety, registration, title recordation, and so on became the order of the day.

First Registration Law

New York, in 1901, was the first state to require the registration of motor vehicles. [7] In passing this law New York placed itself among the world pioneers in motor vehicle registration. Probably the first registration law was passed by France in 1899, only two years before, as a regulatory measure. [8] Under the provisions of the New York law, all owners

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[5] Thomas H. MacDonald, "Fifty Years of Accomplishment on State Highways," State Government, Vol. XXIII, No. 6, (June, 1950), pp. 124-128.

[6] Facts and Figures on Government Finance, 1950-1951, pp. 94,138.

[7] Laws of New York, 124th Leg., R. S. 1901, ch. 351, sec. 2, p. 1313.

[8] James W. Martin, "The Motor Vehicle Registration License," The Bulletin of the National Tax Association, Vol. XII, No. 7 (April, 1927), p. 193

had to file their names, addresses and a description of the vehicle. The registration was good for the duration of the ownership. In order to identify the car the owner had to paint his initials on the back in letters three inches high. The registration fee was a flat rate of one dollar and the 1901 revenue from this source was one thousand dollars.[9]

State Adoption of Registration Systems

By the end of 1905, the banner year in terms of the number of original registration laws adopted, 24 states had passed motor vehicle registration laws. The Southwest and the mountain states seem to have been largely outside of this movement. The industrial states were the most active.[10] In 1903 the device of numbering cars came in, the number being assigned at the time of registration. Registration numbers soon became general. These early laws normally provided for a simple registration good for the ownership or the life of the car and the fees charged were one or two dollars.[11] They were primarily regulatory rather than revenue raising in intent.

Registration as a Revenue Raising Measure

By the end of 1914 every state required the registration of motor vehicles, and registration laws demonstrated many of the features which can be found in such laws today. There was a general movement toward annual registration, this being the result of a rapid growth in the number of vehicles with the accompanying difficulty of assuring that all were registered. Also, there was a resort to registration for revenue-raising purposes. By 1915 all but four states required annual registration and by 1920 it was a universal requirement.[12] With annual registration came the use of colored license plates, the colors being changed each year. Periodic reductions on a decreasing scale were instituted for those registering during the year instead of

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9 Harold F. Lusk, Effect of Registration and Certificate of Title Acts on the Ownership of Motor Vehicles (Bloomington: Indiana University, 1941) p. 8; Griffenhagen & Associates, Highway Finance and Taxation in New York (prepared for the Citizens Public Expenditure Survey, Inc. of New York State, 1950) p. 111.

10 Lusk, Op. cit., p. 10; Martin, Op. cit., p. 194.

11 Lusk, Op. cit., pp. 8-12

12 Public Roads Administration, Highway Practice in the United States (Washington: Government Printing Office, 1949) p. 30; James W. Martin, "The Motor Vehicle Registration License," The Bulletin of the National Tax Association, Vol. XII, No. 8 (May, 1927), p. 232.

at its beginning. Of course, this last provision included only those vehicles previously unlicensed or licensed within the registration year. Also during this era there was a general increase in fees. The states keeping the flat rate system made the annual fee higher. In 1906 New Jersey, which had been the second state to pass a registration law, and Ohio and Vermont provided for graduation of the tax by horsepower. The Ohio act, the first passed, placed a fee of five dollars on any vehicle having a horsepower of 30 or less and added three dollars for each additional ten horsepower. Graduation by weight soon came into use. In addition, legislatures began to classify vehicles by type, different rate scales being applied to each. Commercial vehicles came off best in the early days and passenger cars were taxed more heavily as luxuries. The idea of using registration as a source of revenue, as a means of making the highway user pay for the roads, was on the way to becoming widely accepted. It even went to the stage that the registration tax was, in several states, substituted for the property tax on motor vehicles. Sometimes, to allow for decreases in value, rates were reduced in accordance with the age of the vehicle.[13]

In the period from 1915 through the 1920s the use of vehicle registration as a means of obtaining income for the state was on the increase, and the complexities and distinctions which had started to come into the laws during the previous years became more marked. Fees were graduated in many instances by weight, horsepower or other measures. However, by 1927 horsepower was no longer used for trucks, even though 20 states had used it in 1917, and carrying capacity was fast losing ground to weight as the most general device for determining truck rates. Horsepower was even going out for automobiles, with only 18 states applying this measure in 1927 as opposed to 37 in 1917. Weight was becoming more popular here also. Distinctions between various types of vehicles came to be more numerous, with different rates being attached to each. Indeed by 1917 every state but two distinguished between various types of vehicles and after that date the distinctions became even finer. The favoring of commercial vehicles as against private automobiles was being reversed. With the spread of various doctrines on the proper method of taxing through registration a bewildering variety of bases had entered the tax picture;[14] this is still the situation today.

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13 Lusk, op. cit., pp. 11-12; William J. Shultz, American Public Finance (New York: Prentice-Hall, 1938) pp. 522-523; Harold M. Groves, Financing Government (New York: Henry Holt and Co., 1945, Revised Edition) p. 337; Martin, Op. Cit., Vol. XII, No. 7, (April, 1927), pp. 194-196, Vol. XII, No. 8, (May, 1927), p. 233.

14 Shultz, Op. Cit., pp. 522-523; Martin, Op. Cit., (April, 1927), pp. 197-200.

Administration of Motor Vehicle Registration

Not only was the general rate picture undergoing substantial change during the first quarter of this century but the administration of motor vehicle registrations was receiving much attention. In the original laws the tendency was to give the Secretary of State the administrative duties connected with registrations. Thirty-two states did so, although in seven of these the real work was done on a local level. It might be pointed out that twelve of the original registration laws, including that of Texas, made registration a local function, but since 1917 every state has required registration with a state office. In a short while the trend away from registration with the Secretary of State became apparent. By 1927 only 22 states still had this provision and ten had registration with a highway department. Others required registration with separate registration bureaus or with the tax department.[15]

Several other points might be mentioned. Provision was very early made for out of state people. By 1916 all states except three, Texas being one of the three, had made some arrangement for foreigners within their borders. Also dealers in most states were able to take advantage of special provisions allowing them to buy a certain minimum number of plates for a set sum and then to obtain additional plates at reduced rates. Moreover, the problem of transferring vehicles was taken up in practically all state laws, the normal rule being that registration would go with the vehicle.[16]

Registration and Highway Finance

Problems of motor vehicle registration are tied in with the broader issue of highway finance. In the early days roads were financed by local property taxes and by the road tax. When the states entered the road building field they allocated available moneys to this purpose. However, some of them soon began earmarking certain "user" taxes for highway building. Registration taxes came first and were followed by gasoline taxes. By 1916 all but six states allocated registration fees to the roads

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[15] Martin, Op. Cit., Vol. XV, No. 8 (May, 1927), p. 228

[16] Ibid., pp. 232-237.

and by 1920 the practice was universal.[17] The allocation of registration fees for road purposes did not mean that all of the money was expended by the state. In 1927 four states gave the entire amount to the counties, 21 divided it between the state and the counties, and 24 kept it all for the state. Where registration income was given over to the counties, in whole or in part, a number of methods for distributing it were devised. One basis for distribution was the number in each county; another, the population; and a third, the percentage of collections from that county.[18]

General adoption of the gasoline tax, which today brings in far more state revenue than does the registration tax, influenced strongly the history of motor vehicle license fees. The period from 1919 to 1929 saw a gasoline tax law enacted in every state and, with this new and profitable source of revenue, the pressure for continued increases in registration charges was lessened. Registration fees became less important to state highway financing programs. The effect of gasoline taxes is significantly illustrated by the fact that after 1929 registration taxes dropped from their position as producers of the greater portion of the income from motor vehicle owners.[19] Some states have even kept flat rate registration charges at amounts sufficiently low that they bring in only minor revenues.

The presence of gasoline and registration taxes, both of which were paid by the motor vehicle user, has brought into being certain justifications for the collection of both in the same jurisdiction. The general tenor of the argument is that the registration tax supplements the gasoline tax, making up for certain of its deficiencies. It is noted that roads and road police have to be maintained at a level adequate to handle peak loads, those loads which appear when the "Sunday drivers" are out. Accordingly, it is fair to make these people pay something over and above the gasoline tax, particularly as they actually pay only a very small portion of that.[20] In addition it is pointed out that the correlation between gasoline consumption

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17 James W. Martin, "The Motor Vehicle Registration License," The Bulletin of the National Tax Ass'n. Vol. XIII (October, 1927), p. 10.

18 Ibid., p. 11

19 Public Road Administration, op. cit., p. 30; James W. Martin, The Motor Vehicle Registration License," The Bulletin of the National Tax Association, Vol. XII, No. 7 (April, 1927), p. 205.

20 California Senate Interim Committee on State and Local Taxation, State and Local Taxes in California: A Comparative Analysis (1951), p. 413

and certain other factors important to the maintenance and policing of highways, such as the weight and size of vehicles, is inexact. A registration tax can, therefore, be used to compensate for this alleged weakness in the gasoline tax.[21] Of course, none of the arguments over the registration "tax" need take into account the values of registration itself because registration can be accomplished on a fee basis, that is with a charge merely adequate to cover cost, and be just as effective as if connected with a tax.

Registration Systems Settle Down

The period from 1930 through 1950, has not been characterized by innovations in motor vehicle taxation. Most of the initial experiments had been completed by or before 1930 and the trends which had been established largely continued in the ensuing period. Organizations interested in registration taxes, such as the National Highway Users Conference and the National Tax Association, had settled on weight as the best measure for registration tax assessment and plugged continuously for this method. That state legislatures in general seemed to agree is indicated in a tendency to drop other measuring devices, such as horsepower, for that of weight.

Probably the most notable deviation from the established trend comes in connection with rates. The tendency toward reduction of registration charges continued until 1940. However, in the following ten year period this trend was reversed and registration rates have started to rise again. The average per vehicle registration fee for the entire country has risen about one-third between 1940 and 1950.

The History of Motor Vehicle Registration in Texas

The First Texas Registration Law

The first Texas law requiring registration of motor vehicles was passed in 1907.[22] Prior to 1907 twenty-six states had passed vehicle registration acts, and in that year Texas and two others joined the group. The Texas law required each owner to register his vehicle with the county clerk in his county of residence. At that time the vehicle would be assigned a number, the clerk being charged with numbering all vehicles in the order of their registration. This number would have to be displayed on the machine in figures no less than six inches high. Registrations did not have to be renewed. A 50-cent fee was provided to reimburse the county clerk for his efforts.

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21 Edward W. Reed, The Arkansas Tax System (Fayetteville: University of Arkansas, 1950) p. 80.

22 Acts 30th Leg., R. S. 1907, ch. 46, p. 193, sec. 1.

The Basic Act of 1917

However, the registration law which ties in with this particular study was passed in 1917 as a part of the act establishing the State Highway Department.[23] There is a history of agitation for improved roads in Texas which dates back to the 19th century and which led directly to the adoption of the State Highway Department law.[24]

The early activity for good roads legislation was not as strong in Texas as in many other states but was, nonetheless, clearly evident in the 1890s. Population was increasing, most of it rural, the railroads were being developed and cotton crops were good, all of which created pressure for better roads. The farmers who were having great difficulty in getting their products to the tracks for shipment and the railroads who would gain from greater traffic were all in favor of action for road improvement. The towns would also benefit by the extension of their trade areas.[25]

Before 1917 state legislation directed at the improvement of the roads had been merely facilitative of local action. But some success in facilitating local road work did not reduce efforts to bring about direct state action. The Texas Good Roads Association, the railroads, the farmers and the ever-growing class of automobile owners were demanding more roads and roads of improved construction.[26] As early as 1903, and in every legislature from 1903 to 1917, a bill was introduced for the creation of a state highway agency.[27] The first bills provided for financing the highway department out of the general revenue. As early as 1913, a bill passed both houses which would have earmarked a three-dollar automobile tax for the support of a "highway commission". However, it was vetoed by the Governor.[28] Two years earlier consideration had first been given to earmarking motor vehicle license charges for the construction and maintenance of state highways, these moneys to be spent under the supervision of a State Highway Department.[29]

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23 Acts 35th Leg., R. S. 1917, ch. 190, p. 416, secs. 16-25.

24 For a more extended discussion of this subject see The Texas Legislative Council Staff Research Report on State Highways, Ch. 7.

25 Stewart, Op. cit., pp. 12-13

26 Ibid., pp. 15-22.

27 Ibid., p. 22-23.

28 Ibid., p. 24

29 Texas Highway Department, History of the Texas Highway Department (undated), p. 3

The pressure for a highway department continued but its creation in the year 1917 is attributed largely to the passage, in 1916, of the federal road assistance act. Since a state had to have a highway department to supervise the expenditure of federal funds before a grant could be made, Texas had to take action quickly or be left out in the cold. The Governor called attention to this fact in his message to the Legislature and noted that the party platform demanded the creation of such a department. A measure which had been sponsored by the Good Roads Association was introduced in the House by Representatives Tillotson and Bland. Tillotson had introduced similar bills several times before, and Bland was President of the Texas Good Roads Association. This bill finally became the State Highway Department law of 1917.[30]

As a result of the late adoption of a general state registration system, Texas law did not have to develop through many of the stages which have already been mentioned in discussing the growth of registration systems over the country at large. The 1917 Texas registration act was designed to raise revenue, this revenue being earmarked for the support of the public roads. Furthermore, the law contained many of the features, such as the graduation of rates, which had already been worked out by other states. It was admittedly drafted after a study of other state laws and after federal authorities had been consulted.[31]

While the 1917 act providing for motor vehicle registration in Texas has undergone substantial changes between that time and this, it is still noteworthy not only because it represents the beginning of State regulated registration in Texas but also because it sets forth the essential outlines of the system which is still in existence. Accordingly, the act deserves careful attention.

The law of 1917 required every motorcycle or motor vehicle owner to register his vehicle annually with the State Highway Department.[32] The Highway Department was required to maintain records of all registrations and to give the registrant a certificate and numbered license plates. The license plate was to be replaced each year by one bearing a different color combination.[33]

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[30] Stewart, Op. cit., pp. 25-27.

[31] Ibid., p. 26

[32] Acts 35th Leg., R. S. 1917, ch. 190, p. 416, sec. 16.

[33] Ibid., secs. 17, 18.

Each person registering a vehicle had to pay a charge. For motorcycles a flat rate of three dollars was established. Motor vehicles, except those intended for commercial use and carrying a gross total load of more than 1,000 pounds per wheel, were charged 35 cents per horsepower, the horsepower to be determined according to the standard established by the Association of Licensed Automobile Manufacturers. However, no motor vehicle was to be registered for a sum less than $7.50. Horsepower was the usual way of graduating automobile fees at this time. Commercial motor vehicles were to be taxed according to a schedule based on carrying capacity per wheel. This scale increased the charge $20 for every 2,000 pounds up to 6,000 after which the additional tax graduated steeply. Above 10,000 the rate was $500 for each 1,000 pounds or fraction thereof.[34]

Certain vehicles, while they had to be registered, were exempted from the payment of fees. These were vehicles owned and operated by municipalities, counties, the State of Texas and the government of the United States.[35] The 1917 law also contained special provision for the transfer of registered vehicles, for dealers' licenses and for out-of-state vehicle owners.[36]

The revenue obtained from the registration of motor vehicles was to be divided between the state and the county from which the collection was made, one half to each.[37] However, at the time commercial motor vehicles were registered the owners were to make a statement of the counties in which the vehicles would operate. The Highway Department was to divide the county portion of the fee among the counties on the basis of the miles of road in each.[38]

The share of registration tax receipts kept by the state was to be put into a special "State Highway Fund" and to be expended by the Highway Department for public roads. The part turned over to the counties was to be put in a special fund in each county for use on public roads under plans approved by the Highway Department.[39]

The actions of the Legislature in 1917 presaged a continuing stream of laws on motor vehicle registration. In the years 1918 to 1951, inclusive,

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34 Ibid., sec. 16.

35 Ibid., sec. 17.

36 Ibid., secs. 20, 21 and 22.

37 Ibid., sec. 23.

38 Ibid., sec. 16

39 Ibid., sec. 23.

something over fifty acts primarily concerned with vehicle registration have been passed. There have been several additional acts affecting registration in one way or another, such as those requiring safety devices before vehicles may be registered.

The Period of Assessment Experimentation, 1918-1928

While the 1918 to 1928 decade saw many changes in the registration laws its outstanding characteristic was constant experimentation with the manner of assessing registration taxes. Changes were made with bewildering frequency. Finally, in 1929, the law was passed which established essentially the present day manner of figuring registration levies.

By 1918 the Legislature had decided that the system of central registration was too costly and declared that the duty of collecting registration fees should be given to the county collectors of taxes. For their services the county collectors were to receive one-half of one per cent of their collections.[40]

While Texas was not the only state making use of local officials in administering motor vehicle registrations, this move toward administrative decentralization was not in accord with the national pattern. Also, in 1918 the provision on periodic reductions of fees was changed. It will be recalled that the full annual amount had to be paid in the first six months of the year but would be reduced by half for the second six months. This was changed to a one-fourth reduction for each quarter.[41] The action was one step in the process which eventually brought the periodic reduction provisions to a one-twelfth deduction for every month.

The following year, 1919, saw some changes in classifications and fees. Commercial motor vehicles were divided into two types--commercial motor vehicles and interurban commercial motor vehicles. Commercial motor vehicles were those with a net carrying capacity of more than one ton, whether for hire or not, used in carrying freight, while interurban commercial motor vehicles were those with a net carrying capacity of more than one ton used in carrying passengers or freight for hire between cities, towns or villages in the state.[42]

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[40] Acts 35th Leg., 4th C. S. 1918, ch. 73, p. 161.

[41] Acts 35th Leg., 4th C. S. 1918, ch. 71, p. 157, secs. 2, 3.

[42] Acts 36th Leg., R. S. 1919, ch. 113, p. 174, sec. 1.

The entire basis of registration fees for these vehicles was changed. The annual fee came to be determined by the net carrying capacity rather than by the weight in pounds per wheel as provided in 1917. The schedule adopted for annual license fees was as follows:

Net Carrying Capacity in Pounds	Commercial Motor Vehicles	Interurban Commercial Motor Vehicles
2001-4000	$ 16	$ 32
4001-6000	32	64
6001-8000	48	96
8001-10000	80	160
10001-and up	$100 for each additional 1000 pounds or fraction thereof.[43]	

In addition to the annual registration fee there was another levy based on the number of miles the vehicle traveled and graduated by net carrying capacity. This mileage charge applied to commercial and interurban commercial motor vehicles having a carrying capacity greater than 500 pounds per wheel. The law makes it clear that its purpose was to defray the extra costs resulting from the operation of large vehicles over the roads.[44] This law bears some resemblance to the "ton mile tax", the use of which is currently an important issue in the field of highway user taxation. The charges were graduated by approximately 2000-pound intervals starting with one-half cent per mile between 2,001 and 3,999 pounds and reaching four cents per mile between 10,000 and 11,999 pounds. The tax was divided between the counties according to the distance traveled in each and was to be used for road and bridge construction and maintenance. The state received no portion of the mileage fee.[45]

In 1921 classifications and rates for commercial vehicles again received a general overhaul. Both the annual fee and the mileage fee were increased. In addition trailers and semi-trailers were made taxable, and several types of vehicles were exempted from registration.[46]

The distinction between commercial motor vehicles and interurban commercial motor vehicles was dropped and that between commercial motor vehicles and busses was adopted. Commercial motor vehicles were those with a net carrying capacity of over one ton designed or used for transporting

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43 Ibid.

44 Ibid., sec. 2.

45 Ibid., secs. 2 and 4.

46 Acts 37th Leg., R. S. 1921, ch. 131, p. 253.

property. The annual fee was graduated according to net carrying capacity starting with $30 for the 2,001 to 4,000-pound classification, and reaching $120 for vehicles weighing between 8,001 and 10,000 pounds. Busses were defined as passenger motor vehicles having a seating capacity in excess of seven. They had to pay the same fee as automobiles, that is 35 cents for every 100 horsepower, plus one dollar for every passenger the bus would seat over seven.[47]

Trailers and semi-trailers were separated according to tire equipment. If equipped with pneumatic tires they had to pay 15 cents for each 100 pounds gross weight; with solid tires, the fee was 25 cents a hundred pounds; and with iron, steel or other hard tires, it was 35 cents a hundred pounds. It will be noted that the weight was gross weight, that is the weight of the vehicle plus the weight of its load, rather than carrying capacity or weight per wheel which had been the weight measures used previously.[48] In requiring registration of trailers and semi-trailers Texas adopted a practice which had become fairly common by this time.[49]

The 1921 law also made the first specific exemptions. They applied to farm tractors, fire engines, road rollers, steam shovels and other road building and agricultural machinery.[50]

The mileage fee was raised in 1921 and extended to trailers as well as commercial motor vehicles. At the same time busses, which had previously been subject to the mileage fee when operating as interurban commercial motor vehicles, were no longer made liable. The increased mileage fee started at one cent a mile for vehicles with a net carrying capacity between 2,001 and 3,999 pounds and increased by one cent for each 2,000 pounds approximate until 7,999 pounds was reached. The next two jumps were to five cents and to the maximum rate of eight cents. The disposition of the funds was not changed.[51]

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47 Ibid., sec. 1.

48 Ibid.

49 James W. Martin, "The Motor Vehicle Registration License," The Bulletin of the National Tax Association, Vol. XII, No. 7, (April, 1927), p. 197.

50 Acts 37th Leg., R. S. 1921, ch. 131, p. 253, sec. 1.

51 Ibid., sec. 4.

The 37th Legislature was apparently not content with its handiwork because, in a special session held during the same year, it again revised registration rates for commercial vehicles and injected further distinctions into the classifications used.[52] The provisions relative to trailers, semi-trailers and busses were left intact. Commercial motor vehicles were separated into those using pneumatic tires and those using solid tires. In addition, the rates were graduated according to 1,000 pound rather than 2,000 pound classifications. A commercial motor vehicle with a net carrying capacity between 2001 and 3,000 pounds and equipped with pneumatic tires would be charged $30 while one with a net carrying capacity between 9,001 and 10,000 pounds would have to pay $150. Rates for solid tired vehicles ran from six to 30 dollars higher.[53]

The special session added tractors to the vehicles which had to pay a registration fee. A tractor was defined as a self-propelled vehicle for drawing other vehicles but having no carrying capacity of its own. The fees were graduated according to the weight of the tractor and advanced for each 2,000 pounds from $5 annually on those weighing between 1 and 2,000 pounds to $25 on those weighing between 8001 and 10,000 pounds.[54]

In addition to revising the annual registration fees for certain vehicles this special session dropped the mileage fee.[55] Since the mileage fee had been adopted in 1919 it had a very short life. It was the opinion of the legislature that the total of fees laid on heavy freight carrying were prohibitive and would destroy the commerce for many towns and rural communities.[56]

Some changes in exemptions were also made. The important provision was that trucks used exclusively for agricultural purposes would not have to pay registration fees although they would have to be registered. Also, motor vehicles, trailers, semi-trailers and tractors used for road building purposes, if privately owned, were exempted.[57]

Between 1917 and 1921 Texas had been traveling the road being taken by other states. There had been a national tendency to extend the division of

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52 Acts 37th Leg., 1st C. S. 1921, ch. 52, p. 166.

53 Ibid., sec. 1

54 Ibid.

55 Ibid., sec. 4.

56 Ibid., sec. 8.

57 Ibid., sec. 1

vehicles into classes, the most common being pleasure cars, trucks or commercial vehicles, motorcycles, taxis, trucks for hire, trailers, semi-trailers and traction engines. The basis for payment of the tax had become more complex. Automobiles were taxed normally according to horsepower but there were some 12 different measures used throughout the country. Trucks were most often taxed according to carrying capacity. As in Texas, some 18 states used this method. However, horsepower, type of tires, and various measures of weight were also used. About 15 different devices for measuring truck taxes could be discovered.[58]

The Regular Session of the 1923 Legislature conducted a further overhaul of motor vehicle registration rates and instituted the most complicated series of classifications and fees that ever graced the statute books.[59] Originally attention was brought to the matter by the Court of Criminal Appeals striking down the exemption for farm trucks as class legislation.[60]

The 38th Legislature did not confine its attention to commercial vehicles, as most often done, but made changes as well for motorcycles and automobiles. The annual charge for motorcycles was upped to $5, this being the usual rate in that day.[61] Automobiles were taxed according to a double classification, weight and horsepower, horsepower having been the only consideration. The horsepower fee was reduced to 17 1/2 cents, half the former rate, provided that the annual charge could not be less than four dollars a vehicle. The weight fee was started at 40 cents for each 100 pounds on vehicles weighing between 1000 and 2000 pounds and reached 75 cents a hundred on vehicles weighing over 4500 pounds.[62] The general result was to increase the registration tax on automobiles. For example, the Maxwell, which would have been subject to a $7.50 registration tax under the old system, was now subject to a $14.25 tax. The Pierce-Arrow would go from $13.30 to $33.05 and the Ford from $7.70 to $10.65.[63]

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58 James W. Martin "Th e Motor Vehicle Registration License", The Bulletin of the National Tax Association, Vol. XII, No. 7, (April, 1927), pp. 197-198.

59 Acts 38th Leg., R. S. 1923, ch. 75, p. 155.

60 Lossing v. Hughes, 244 SW 556(Tex. Crim. App., 1922). The same conclusion was reached in Ex Parte Faison 248 SW 343 (Tex. Crim. App. 1923).

61 James W. Martin, "The Motor Vehicle Registration License," The Bulletin of the National Tax Ass'n. Vol. XII, No. 7, (April, 1927), p. 197.

62 Acts 38th Leg., R. S. 1923, ch. 75, sec. 3, p. 155.

63 Dallas Morning News, March 4, 1923.

Commercial vehicles were charged according to a combination of factors--weight, tire equipment and horsepower. Gross weight rather than, as theretofore, carrying capacity, came to be the criterion. For vehicles equipped with pneumatic tires the weight charge ran from 30 cents a hundred pounds, between 1000 and 6000 pounds, to four dollars a hundred pounds, at over 22000 pounds. The fee per hundred pounds increased by ever expanding amounts as the total weight of the vehicle increased. Rates for commercial vehicles equipped with solid tires ran from ten cents a hundred to one dollar a hundred higher.[64] Before this time the commercial vehicle rate had been a specified number of dollars for each vehicle in a bracket rather than an amount for each hundred pounds. The horsepower fee was the same as that for automobiles. The total effect of these changes was to reduce the fees charged for commercial motor vehicles.

Tire equipment and gross weight continued to be the factors considered in calculating registration fees for trailers and semi-trailers but, rather than a fixed fee per 100 pounds regardless of weight, a scale of weight brackets with increasing fees was instituted. The graduation of fees was fairly steep in each direction, that is, from pneumatic, through solid to metal tires and from the lowest weight class to the highest weight class. For example, in the weight class below 6000 pounds pneumatic-tired vehicles were charged 30 cents per hundred pounds, solid-tired vehicles 40 cents and metal-tired vehicles one dollar. The minimum rate for pneumatic-tired vehicles was 30 cents a hundred while the maximum was four dollars a hundred.[65] The overall result of these changes was an increase in rates for trailers and semi-trailers, particularly those in the upper weight brackets. For example, fees charged for a semi-trailer weighing from 1400 to 1600 pounds were eight times as great as formerly if equipped with pneumatic tires, six times as great if equipped with solid tires, and three times as great if equipped with metal tires.

The rates for tractors were reduced slightly for those in the light weight group but were increased sharply for the heavier ones. The lowest charge was 25 cents a 100 pounds for tractors under 4000 pounds. The maximum was two dollars a 100 pounds for those between 16001 and 20000 pounds.[66]

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64 Acts 38th Leg., R. S. 1923, ch. 75, p. 155, sec. 4.

65 Ibid., sec. 5. In drafting the law an omission was made in that it was not stated to what the rates applied, but it may be assumed that it was intended to apply to each 100 pounds of gross weight. Literally read, the annual fee for a 6000-pound trailer equipped with pneumatic tires would have been 30 cents.

66 Ibid., sec. 6.

The seat charge on motor busses was upped from one dollar to four dollars but the horsepower charge was reduced to 17 1/2 cents from 35 cents.[67] The 1923 law failed to define "motor bus," an omission which eventually caused some trouble. Since the over seven passenger seat provision had been dropped it was assumed that this law applied to taxicabs, which thereby came to be taxed at the bus rate. However, the matter was taken up in the courts and several decisions were rendered against the state.[68] As a consequence of these decisions a bill was passed in 1929 to refund seat taxes erroneously paid under the law of 1923. The amount appropriated to cover these refunds was over $85,000.[69]

It was estimated that the 1923 rate changes would result in increased revenues from registrations of around $3,500,000 a year. At that time annual income from this source was about $5,000,000.[70]

In addition to the revisions just mentioned the Legislature altered the method for allocating registration fees between the state and the counties. The counties were to get all income from the 17 1/2 cents horsepower charges. All other registration tax moneys were to be turned over to the state.[71]

Also in 1923 a special session of the Legislature changed the system for compensating county collectors for handling motor vehicle registrations. Collectors in counties having less than 5000 population received four per cent of the charges they took in and collectors in counties having more than 5000 population received two per cent. The Legislature explained that recent changes in the registration laws had made the schedules for vehicle licenses more complicated and, therefore, the local collectors were entitled to additional income for the additional work they were required to do.[72]

In the legislation enacted before and during 1923 the chief concern was the establishment of satisfactory fees, particularly for vehicles. The increasing cost of road construction and maintenance led to continual increases in

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67 Ibid., sec. 7.

68 Campbell v. Groh., 8 SW 2d 712 (1928); Yellow Cab Co. v. Pengilly, 11 SW 2d 560 (1928). See also: Wichita Falls Traction Co. v. Raley, 17 SW 2d 157 (1929).

69 Acts 41st Leg., 3rd C. S. 1929, ch. 20, p. 503.

70 Dallas Morning News, March 8, 1923.

71 Acts 38th Leg., R. S. 1923, ch. 75, p. 155, sec. 18.

72 Acts 38th Leg., 2d C. S. 1923, ch. 37, p. 81.

registration charges as a means for financing these activities. The result of the constant search for more money was upward revision of registration rates and extension of the types of vehicles to which the charges applied. The Legislature went so high on trucks that it decided to lower the rates. However, it included such things as trailers and tractors to offset the loss. In addition to the continual consideration of rates and rate basis the legislature gave some attention to the distribution of the revenues, means of collection and exemptions from registration fees. Moreover, the regulatory aspects of registration, such as the refusal to register vehicles over certain weights and sizes were quite frequently considered.

From 1924 through 1928 motor vehicle registration rate schedules were afforded a short rest. However, additional moneys were allocated to the counties through the provision that 30 per cent of the weight fees, in addition to the horsepower fees, could be kept by them but no county was allowed to keep more than $50,000 in weight charges for any one calendar year.[73] It had been estimated that the 1923 law allowing all horsepower fees to the counties would give the counties about one-third of the total motor vehicle registration revenues. However, it was discovered that the amount received by the counties was about 29 per cent.[74] Accordingly, it is not surprising to see the formula revised upward at this time. In addition certain changes were made in the portions of the law relating to dealer's licenses, particularly the insertion of a provision allowing the use of cardboard plates, and to the transfer of second-hand vehicles.[75]

The Act of 1929

In 1929 in an act entitled "Increasing Gasoline Tax and Decreasing Registration Fees," the Legislature again revised the rates for motor vehicle registrations.[76] Most laws relating to motor vehicle registration were revoked and a thoroughly revised law was enacted in the form on which the present act is patterned.[77] The caption on this act indicates

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73 Acts 40th Leg., R. S. 1927, ch. 162, p. 235.

74 Dallas Morning News, October 17, 1924 (Letter from D. K. Martin of the State Highway Commission to the Dallas Morning News).

75 Acts 40th Leg., R. S. 1927, ch. 211, p. 296; Acts 40th Leg., 1st C. S. 1927, ch. 77, p. 205.

76 Acts 41st Leg., 2d C. S. 1929, ch. 88, p. 172.

77 Earlier in the year the same Legislature in its First Called Session had changed the reduction period from one-fourth of the year to one month, thereby allowing a one-twelfth reduction from the annual fee for every month of the year which had expired by the time a vehicle was registered, Acts 41st Leg., 1st C.S. 1929, ch. 94, p. 233. This provision was reincorporated in the 1929 law referred to above.

that Texas intended to follow the policy which was general over the nation of making the gasoline tax the primary highway user tax and reducing the charges for registering motor vehicles.

The 1929 act had been preceded by several years of active campaigning on road financing. Most attention seems to have been given to a plan for a state bond issue which was to be retired from gasoline taxes. The Regular Session in 1929, however, found itself unable to agree on an amendment providing for this plan. Nonetheless, during that session a great deal of attention was given to highway financing and the matter of reducing registration fees was considered. The Called Session which passed the gasoline tax and vehicle registration law of 1929 thus had plenty of opportunity to familiarize itself with the subject.[78]

Although the Legislature, in 1929, revoked most of the existing registration laws the general act of that year was in large part a rewrite of previously existing statutes. The major changes made related to the rate schedules. The Legislature did, however, attempt to clarify the law through better drafting and provided a complete list of definitions as the first section of the act.

The rates for passenger cars were substantially reduced by dropping the horsepower and lowering weight charges. For example, under the 1923 law a 2000-pound car would be charged 40 cents for each 100 pounds in weight and 17 1/2 cents per horsepower. Under the 1929 law the same vehicle would be subject to a tax of 28 cents a hundred pounds. Reductions up the entire scale for passenger cars were commensurate with those just mentioned.[79]

Commercial motor vehicles, to which were added truck-tractors, also lost the horsepower fee. Classifications by weight brackets and by tire equipment were retained and the tax was still computed according to gross weight. The weight charge was slightly increased in the lower brackets but decreased in the upper. For example, the fee per 100 pounds in 1923 was 30 cents for a 6000 pound vehicle equipped with pneumatic tires while in 1929 it was 40 cents. On the other hand such a vehicle weighing 22000 pounds would have been charged $1.60 per hundred in 1923 and $1.30 in 1929.[80] Probably the overall result was a reduction in registration taxes for commercial vehicles.

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78 Stewart, Op. cit., pp. 139-181

79 Acts 41st Leg., 2nd C. S. 1929, ch. 88, p. 172, sec. 5.

80 Ibid., sec. 6.

Motor busses were shifted from the horsepower and seating criteria to a schedule based on gross weight and tire equipment. This schedule was substantially higher in the lower weight brackets than that for commercial motor vehicles but was similar in the upper brackets. For example, the minimum fee for a pneumatic tire equipped bus was $1.10 as compared to 40 cents for a commercial vehicle.[81]

Fees for motorcycles, trailers and semi-trailers and tractors remained the same. However, a new item was added in that motorcycle sidecars were to be taxed at an annual rate of three dollars.[82]

In addition to the rate changes mentioned above two other points in the 1929 law might be given some attention--the modification of fees to collectors and the revised system for dividing receipts between the state and the counties. Tax collectors, instead of a percentage of the revenues they took in, were, for their services, to get a certain amount for each license receipt issued. They were to receive 50 cents a receipt for the first 1,000, 40 cents a receipt for the next 9,000, 30 cents a receipt for the next 15,000 and 20 cents a receipt for all issued over that during the year.[83]

Registration revenues were to be apportioned between the state and each county according to a schedule designed to favor the smaller counties. The county was allowed to keep all of the first $50,000 net collections and half of all net collections after that until the total county share reached $175,000. After that all net receipts went to the state.[84]

In making the changes in the manner of computing registration fees Texas fitted in with a continuing national pattern toward the use of weight as the basis for registration taxation.[85] However, the Texas method of dividing up registration fees was unique. Although a number of other states gave a portion of registration revenues to counties or other local government units none divided them by a method similar to that used in Texas. The allocation was normally made according to a percentage figure.[86]

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[81] Ibid., sec. 8a.

[82] Ibid., sec. 5.

[83] Ibid., sec. 11.

[84] Ibid., sec. 10.

[85] James W. Martin, Report of the Committee of the National Tax Association on Taxation of Motor Vehicle Transportation (Columbia: National Tax Association, 1930) p. 26.

[86] Special Taxation for Motor Vehicles, 1930 Edition (New York: Motor Vehicle Conference Committee, 1930).

The Depression Period

Between the 1929 and the 1941 sessions no general revisions in license fees were enacted. Nevertheless, the law was constantly changed and some innovations of importance came about.

The Legislature had not given up the idea of special treatment for farm vehicles and on several occasions liberalized the provisions relating to them. The first action taken was to exempt farm trailers from payment of a registration fee.[87] Then in 1933 arrangement was made for farm commercial vehicles to pay only one half of the regular fee if the vehicles were used for certain specified purposes only. The following year the definition of farm commercial vehicles was redone so as to allow farmers to pay the half fee on vehicles used in transporting workers or goods on the highways.[88]

During the period between 1929 and 1941 the Legislature also exempted school busses and other vehicles owned by school districts and operated for school purposes from payment of the fee,[89] modified the law on temporary registration by visitors to the state,[90] revised the rules on registration of second-hand vehicles being transferred,[91] passed and revoked a provision allowing a refund on vehicles destroyed,[92] and created the system whereby the state prison system manufactured license plates.[93] It can be seen that the motor vehicle registration system received the constant attention of the Legislature

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87 Acts 41st Leg., 4th C. S. 1930, ch. 21, p. 40; Acts 41st Leg., 5th C. S. 1930, ch. 23, p. 151.

88 Acts 43rd Leg., 1st C. S. 1933, ch. 27, p. 82; Acts 43rd Leg., 3rd C. S. 1934, ch. 36, p. 75.

89 Acts 43rd Leg., 2nd C. S. 1934, ch. 3, p. 5, sec. 1; Acts 44th Leg., R. S. 1935, ch. 51, p. 129.

90 Acts 41st Leg., 4th C. S. 1930, ch. 28, p. 49; Acts 41st Leg., 5th C. S. 1930, ch. 18, p. 141.

91 Acts 42nd Leg., R. S. 1931, ch. 29, p. 36.

92 Acts 42nd Leg., R. S. 1931, ch. 127, p. 215; Acts 45th Leg., R. S. 1937, ch. 489, p. 1324.

93 Acts 43rd Leg., R. S. 1933, ch. 178, p. 547.

during these years.[94]

During the depression Texas was not alone in making frequent revisions in its registration laws. It is characteristic of registration laws that state legislatures give them constant attention and in any one year a very large percentage of the legislatures meeting will make one or more changes. For example, in 1935 thirty-three states modified in one form or another their statutes affecting automotive registration.[95] During this period the general tendency was toward reducing registration fees.[96] Hard times and the taxation of gasoline had definitely pulled the reins on motor vehicle tax increases. This is clearly demonstrated by the fact that in 1913 the average tax per vehicle had been $6.51, in 1926 it had been $12.83 per vehicle and by 1938 it had dropped to $12.32 per vehicle.[97] There was, as would be expected, a movement in Texas to lower the registration tax but little along that line was accomplished.[98] However, the Legislature in

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94 Other acts relating to motor vehicle registration passed between 1929 and 1941 are as follows: Acts 41st Leg., 5th C. S. 1930, ch. 33, p. 167 (prompt payment of license fees to highway department); Acts 42nd Leg., R. S. 1931, ch. 282, p. 507 (license receipt prima facie evidence of weight of vehicle); Acts 43rd Leg., R. S. 1933, ch. 5, p. 7 (extending time for registration of motor vehicles); Acts 44th Leg., R. S. 1935, ch. 21, pr. 63 (prohibiting operation of motor vehicles without two license plates displayed); Acts 44th Leg., R. S. 1935, ch. 290, p. 683 (handling of rubber checks given in payment of registration fees); Acts 44th Leg., R. S. 1935, ch. 342, p. 800 (registration of motor vehicles transported by non-residents through the state for sale); Acts 35th Leg., R. S. 1937, ch. 158, p. 302 (specifying the conditions under which cardboard licenses may be used on newly purchased automobiles); Acts 46th Leg., R. S. 1939, ch. 4 of Subdivision III of the Title on Roads and Bridges, p. 602 (Certificate of Title Act); Acts 46th Leg., R. S. 1939, ch. 5 of Subdivision III of the Title on Roads and Bridges, p. 613 (licenses for transportation of vehicles over public roads other than by driving).

95 Motor Vehicle Legislation, the 1935 Trend (Washington: National Highway Users Conference, 1935) p. 6.

96 Ibid.

97 James W. Martin, "The Motor Vehicle R gistration License," The Bulletin of the National Tax Association, Vol. XII, No. 7, (April, 1927), p. 205; Roy F. Britton, Highway Taxation: Present Status and Probable Future Trends (Reprint from The Annals of the American Academy of Political and Social Science, Philadelphia, September, 1936) p. 3.

98 Dallas Morning News, July 28, 1934.

1935 did extend the grace period for payment of registration fees from February 1 to April 1.[99]

During the 1930s there was also a serious problem of license plate cheating. In the early part of the decade there developed a racket of selling California license plates at three dollars a pair. However, the major problem arose from counties attempting to defraud the state of its share of license receipts. This was done by small counties who would sell the plates at a discount of as high as thirty per cent. In view of the fact that each county received, under the distribution formula, the first $50,000 and one-half of everything above that until it obtained $175,000, it can be easily seen why it was to the advantage of small counties to bring in a greater volume of business by cutting the price of license plates. Of course, it was illegal for anyone to buy a plate outside of the county of his residence but quite often large county residents would go over to small counties to buy cut-rate plates, thereby depriving the state of money it would otherwise have gotten. A favorite method of discounting license plates was through the medium of county script. A county would sell this script at below face value, as a means of raising money, with the understanding that this script could be redeemed at face value in the purchase of license plates. Apparently the bulk of the script was sold to the owners of fleets of trucks and busses. By 1937 the state estimated that it was losing over a half-million dollars a year from such practices and started to crack down.[100]

The 1941 Law and Subsequent Revisions

In 1941 the Legislature again conducted an overhaul on commercial motor vehicle registration fees without, however, altering the methods for computing them.[101] The rates established in 1941 are essentially those in force today. The overall result of the changes was to decrease the fees for vehicles in the upper weight brackets, leaving those in the lower weight brackets about the same.

Commercial motor vehicle and truck-tractor license taxes were reduced in all but the lowest bracket. The amount of reduction became more substantial as upper weight brackets were reached. For instance, a commercial motor

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99 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-3b. This marked the third change since the first registration law was passed in 1917. In that year December 31 was set as the deadline for annual payment of registration fees. Acts 35th Leg., R. S. 1917, ch. 190, p. 416, sec. 16. The next change was made in 1929, when February 1 was set.

100 Dallas Morning News, March 21, 1938; Dallas Morning News, March 23, 1938; State Auditor, Special Examination of the Motor Vehicle Division of the State Highway Department of Texas, August 31, 1946, pp. 14-18.

101 Acts 47th Leg., R. S. 1941, ch. 110, p. 144.

vehicle equipped with pneumatic tires and weighing 7,000 pounds would have to pay 45 cents per hundred pounds gross weight in 1941 as opposed to 50 cents per hundred pounds before. A similar vehicle weighing 26,000 pounds would have to pay 80 cents a hundred in 1941 as opposed to $1.60 under the 1929 act. The really big vehicles, over 31,000 pounds, had their rates knocked down from $4.00 on the hundred to 90 cents.[102]

Charges on road tractors were reduced in the upper weight levels only. The rate for tractors weighing over 16,000 had been $2.00 a hundred pounds but was reduced to $1.00 a hundred.[103]

The fees for trailers and semi-trailers were also reduced in the upper weight brackets. Under the old schedule pneumatic-tired trailers and semi-trailers weighing more than 12,000 pounds faced a graduated scale which went from 80 cents to $4.00 per 100 pounds gross weight. Under the new schedule these vehicles would be charged either 60 or 65 cents a hundred pounds.[104]

Motor bus rates did not follow the trend. In every weight bracket except the top one there was an increase. The increases ran from 15 cents a hundred in the lowest weight bracket to $1.10 a hundred in the next to highest weight bracket for pneumatic-tired busses.[105]

While these reductions seem substantial on the face they were apparently not drastic in terms of their effect on total receipts. The 1942 figure for total net license fees was about $800,000 below that of the year before and the following year there was an additional drop of around $600,000. The figure for 1942 was over 23 million dollars. However, during the same few years the annual number of vehicles registered dropped by almost 130,000, the 1941 registration having been 1,920,150. The number of registrations dropped by a higher percentage than did net receipts. This is probably a result of the changing composition of motor traffic and might also indicate a paucity of vehicles in the upper weight brackets in which the major fee reductions took place. The rate cut can also be gauged by comparing it with that of 1929. Between 1929 and 1930 the drop in net receipts was over $6,300,000. At the same time the total number of vehicles registered increased by around 80,000. This is a very different picture.

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102 Acts 47th Leg., R. S. ch. 110, sec. 5, p. 144.

103 Ibid., sec. 6.

104 Ibid., sec. 7.

105 Ibid., sec. 8.

The 1941 act also made other alterations. One of these was allowing log hauling trucks the one-half agricultural reduction.[106] However, the Legislature increased the tax on diesel-powered vehicles making them pay an extra ten per cent on the tax to register.[107] There may have been the feeling, as apparent in some states, that the differential rate would tend to equalize the road user tax burden on diesel and gasoline powered vehicles.

The Legislature also conferred a sort of compact-making power on the Highway Department in order that it could enter into reciprocal agreements with other states relative to out-of-state vehicles. The Highway Department, irrespective of other provisions of the law, could make a compact with the proper authorities of other states in order that Texas citizens in those states and the citizens of those states in Texas would receive like treatment with reference to registration.[108] These would cover such things as the amount of time the citizen could remain in the foreign state without being required to register, the conditions under which foreign trucks would be allowed to operate without registering and the reciprocal acceptance of dealers' plates. While similar provisions had been contained in previous laws the authority conferred by the 1941 act was much more sweeping than that previously granted.

The decade from 1941 to the present has been no different from the earlier periods in so far as the constancy of legislative attention to the problems of motor vehicles registration have been concerned. There have been a number of changes in the registration laws, every legislature making at least one revision and usually more. Approximately 20 acts have been passed in these ten years which were directly concerned with registration. None of these have been general revisions and the rate schedules have been largely left alone. However, several modifications deserve special mention.

A new classification of street and suburban bus was established in 1947 to bring city busses under the passenger car rate and take them from under the much stiffer bus charge. Street and suburban busses were defined as those vehicles, except passenger cars and motor busses, which carried persons for hire inside the limits of cities or towns or in suburban additions thereto. Street and suburban busses came to be taxed according to weight alone with a minimum fee of 28 cents a hundred pounds for busses weighing less than 2,000 pounds and a maximum fee of 50 cents for those weighing over 4,500 pounds.[109] These busses had been subject to a minimum rate of $1.25

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106 Ibid., sec. 4.

107 Ibid., sec. 10.

108 Ibid., sec. 14.

109 Acts 50th Leg., R. S. 1947, ch. 425, p. 1007; Acts 50th Leg., R. S. 1947, ch. 431, p. 1013.

a hundred pounds at 4000 pounds or less and a maximum rate of $4.00 at over 28000. Even though it is not likely that city busses would range up into the top weight bracket, the difference is substantial.

One other minor assessment change was made during this period. In 1951 the three dollar tax on motorcycle sidecars was dropped. The Legislature noted that sidecars were no longer manufactured, that only about 37 sidecars were then registered, and that the cost of registration was greater than the revenue received. It therefore decided that the game was not worth the candle.[110]

To make it more convenient for a vehicle owner to obtain his license it was provided that tax collectors in certain populous areas should establish sub-offices for the issuance of license plates.[111] Also, to obviate confusion surrounding the time at which license plates could be displayed, and as a means of advertising that the time for new plates had arrived, the date at which tags could be attached to cars was moved up. They could now be used from the time of purchase.[112]

The Legislature delegated to the Highway Department the continuing authority to issue annual license plates.[113] For several years the legislature had been granting this authority for three year periods.[114] Obviously the new system relieved the legislature of a needless burden. The usual Texas law on license plates has allowed the Highway Department to prescribe the form of the insignia to be used. During the war, due to the acute shortage of metal, the Department veered from its normal practice and resorted to seals or tabs to be attached to license plates already on the vehicles rather than providing entirely new plates.

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110 Acts 52nd Leg., R. S. 1951, ch. 180, p. 303.

111 Acts 47th Leg., R. S. 1941, ch. 340, p. 545.

112 Acts 50th Leg., R. S. 1947, ch. 254, p. 451.

113 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 6675a-13y.

114 Acts 48th Leg., R. S. 1943, ch. 51, p. 56; Acts 49th Leg., R. S. 1945, ch. 22, p. 31; Acts 50th Leg., R. S. 1947, ch. 194, p. 346.

It was also provided that the Highway Department could issue permanent license tags to government owned and operated vehicles which, it will be recalled, were excepted from paying a fee but which had to be registered. The reason for this action was that the Department was going to much unnecessary trouble and expense in re-issuing plates to such vehicles each year when it was equally feasible to provide them with plates which would be good for the entire time they maintained their exempt status.[115]

The Legislature again increased the fees paid to tax collectors for the performance of their duties in registering motor vehicles. The general fee schedule was revised so that the collector received 60 cents each for the first 5,000 receipts issued, 50 cents each for the next 10,000, 40 cents each for the next 10,000, and 30 cents each for all additional receipts issued during the registration year.[116] This meant generally a ten cent per receipt increase. In addition the Legislature provided a 25 cent fee to collectors for the issuance of each duplicate license receipt.[117] Prior to that no provision had been made for a collector's fee for the issuance of duplicate receipts.

Certain counties, it appears, were receiving more revenue from registration fees than the Legislature felt they could efficiently apply to the construction and maintenance of roads within the county. Accordingly counties, through their Commissioners' Courts, were given the authority to transfer these moneys under certain conditions to any other fund.[118] The same Legislature also approved for submission to the people of Texas an amendment to the Constitution which appears to permit use of registration fees only under legislative act and only for traffic control and road purposes.[119] This amendment was approved by the voters.[120] The validity of the statute

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115 Acts 50th Leg., R. S. 1947, ch. 145, p. 249.

116 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 6675a-11.

117 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 6675a-122.

118 Acts 49th Leg., R. S. 1945, ch. 202, p. 273. This provision now appears in Tex. Civ. Stat. (Vernon, 1948) art. 6675a-10.

119 Acts 49th Leg., R. S. 1945, H. J. R. No. 49, p. 1049.

120 Acts 50th Leg., R. S. 1947, p. XXXVI; Art. V111, sec. 7-a. In addition to those already mentioned the years 1941 to 1951 saw the following statutes placed on the books: Acts 50th Leg., R. S. 1947, ch. 195, p. 347 (repealing Acts 41st Leg., 5th C. S. 1930, ch. 23, sec. 2a as meaningless. The provision repealed provided: "Nothing in this Act shall authorize any person to be subject to penalty of this law on account of his place of residence in this

(Footnote continued next page)

in view of this constitutional provision has apparently not been determined. Neither is it known whether any counties have acted under this provision to spend revenues from registration fees for other than traffic control and road purposes.

Summary

As indicated there is no single pattern which characterizes the development of motor vehicle registration laws in Texas. The changes have been too frequent and too varied, and the variety of problems connected with registration are too many, to allow for broad generalizations which would accurately convey the overall picture. However, certain features can be traced through and, as a means of clarifying somewhat a complicated story, the life history of several of the more important aspects will be briefly sketched.

In a study dedicated primarily to the tax factor in registration, as is this one, assessment methods and rates are of major importance. Until 1929 Texas did not settle on any system of assessment. Rather it tried several devices, singly and in combination, a development which reached its culmination in the highly complex act of 1923. Weight, horsepower, carrying capacity, tire equipment, seating capacity and mileage were all used at one time or another. However, in 1929 the Legislature settled on gross weight and tire equipment. The latter has become increasingly of less importance as the automotive industry has turned more and more to the use of pneumatic tires. While this experimentation on the method of computing rates was going on the legislature also increased the classes of vehicles to which different rate schedules were to apply and, in the early days, different assessment measures were often applied to the several classes of vehicles. Starting out with motorcycles, non-commercial motor vehicles and commercial vehicles, the growth of distinctions has continued until today separate rates apply to motorcycles, passenger cars, commercial motor vehicles and truck tractors, road tractors, trailers and semi-trailers and motor busses. In addition registration officials have to take cognizance of the

120 (Cont'd.) State, nor the occupation pursued." Acts 50th Leg., R. S. 1947, ch. 302, p. 512 (clarifying a part of the registration law prohibiting registration by local units of government so that it could not be construed to interfere with the legitimate powers of cities to control roads and traffic within their boundaries); Acts 50th Leg., R. S. 1947, ch. 364, p. 732 (amending the provisions on sale or transfer of used or second-hand vehicles); Acts 50th Leg., R.S. 1947, ch. 370, p. 749 (amending the provisions on reciprocal registration agreements); Acts 51st Leg., R.S. 1949, ch. 70, p. 117 (providing for temporary registration permits for certain out-of-state vehicles used in the transportation of grains); Acts 51st Leg., R.S. 1949, ch. 22, p. 376 (amending the provisions on permits for oversized equipment). Most of the current provisions relating to motor vehicles registration may be found in Tex. Civ. Stat. (Vernon, Supp. 1950) arts. 6675a-1--6686.

distinctions brought about by exemptions for government vehicles, the half fee for farm trucks, and the extra ten per cent of the tax rate on diesel vehicles.

The early years of registration in Texas saw a tendency to raise rates. This tendency continued until 1929. At that time it was decided to depend more on the gasoline tax and less on the registration tax for highway financing. Accordingly a cut in registration levies came about. Since then some further reductions have been effected, as in the act of 1941 and the application of passenger car rather than bus rates to street and suburban busses.

The major change in the administrative organization for carrying out motor vehicle registrations was made in 1918, the year after the basic registration act was passed. At that time the county assessor-collectors of taxes were made agents of the Highway Department for registration purposes and they took over most of the direct contact with the citizenry in this matter. Since that time there have been frequent revisions in the method of compensating county collectors for the work they are doing. Originally a percentage of the revenues they took in was allowed to these officials but eventually a per receipt method of payment was adopted in which the collection fee paid for each receipt issued decreased as the total number issued went up.

The original intent, which has been followed ever since, was to divide up the registration receipts between the state and the counties. It was required that these moneys be spent for road purposes. There have, however, been several changes in the formula by which the money was to be allocated. Originally a percentage system was devised and then all horsepower fees and 30 per cent of weight fees went to the counties. Today counties receive the full revenues they take in up to $50,000 and one-half of all others until they hit the top figure of $175,000. The methods of distribution used have generally been designed to favor the smaller rural counties. Moreover, provisions have entered the law which allow counties, under certain conditions, to divert registration income to other than road purposes.

In addition to the tax and revenue aspects of the registration laws there have been several other features which merit some reference. As has been noted, one of the values of motor vehicle registration has been its use in the regulation of motor vehicles and the policing of highways. The Legislature has not lost sight of this important aspect and there have been many laws relative to it. These have not been given much attention in the foregoing discussion due to the nature of this study but it is not amiss occasionally to remind the reader of their existence in order to keep with him a balanced perspective on the entire problem of registration from which its top aspects cannot be entirely severed.

Certain groups have been the object of several changes in the registration laws. One of these is the motor vehicles dealers and another is the out-of-state

people temporarily in Texas. As it might not be reasonable to require dealers to register vehicles which they are only going to run on the roads temporarily for demonstrations, special provisions have been made for dealers' licenses which will cover all such vehicles and which are relatively inexpensive.

To require out-of-state visitors to register their vehicles, which are already registered in their home state, would not only be considered unfair and inhospitable but would also tend to deter tourists and create difficult enforcement problems. Accordingly, the Highway Department has been given authority to enter into reciprocal agreements with other states so that their people traveling in Texas will be given the same consideration as Texans are given in their states.

SECTION 2 - ORGANIZATIONAL FORM AND ITS LEGAL BASIS

Motor vehicle registration operates as a joint state-county project. At the state level it is primarily in the hands of the Motor Vehicle Division of the Texas Highway Department, although other offices in that Department perform certain motor vehicle registration functions. At the county level the county assessor-collector of taxes is charged with administering the motor vehicle registration laws. In addition public weighers and police officials at all levels, particularly the License and Weight Division of the Department of Public Safety, have a direct connection with registration. License plates are manufactured by the prison system.

The Motor Vehicle Division

The Motor Vehicle Division, formerly the Registration Division, is the oldest branch of the Texas Highway Department, having been created when the Department was first established. Originally it was charged with almost the entire duty of administering motor vehicle registration provisions but in a very short time the Legislature changed the law so that actual field administration fell largely on the county assessor-collectors of taxes. These officials were supposed to work in conjunction with the Motor Vehicle Division. In addition to vehicle registration the Motor Vehicle Division, again in co-operation with the counties, is charged with the administration of the Certificate of Title Act. The Certificate of Title Section was originally located in the Department of Public Safety but, in 1941, it was transferred to the Highway Department.

The Motor Vehicle Division is one of the block of divisions, most of which perform housekeeping or incidental functions, located under the Chief Engineer of Operations. In the Highway Department hierarchy this official, like his counterparts for Planning, and Construction and Maintenance, is under the State Highway Engineer and his immediate assistants.

The Motor Vehicle Division itself is headed by a Director. Beneath the Director is an Assistant Director, a Chief, Certificate of Title, and a Chief, Registration. Then there are a series of operating sections such as the Dexigraph Section, the File Checking Section, the Accounting Section and the Supply Section. These are not blocked off under each chief as is often the case in administrative organizations but rather each chief is responsible for his functions as it flows through the sections. Of course, some sections are concerned primarily with registration duties and these fall naturally under the primary supervision of the appropriate chief. There is also a very small field force of around a half-dozen which is used to investigate apparent infractions of the motor vehicle registration laws by local officials.

In recent years the Motor Vehicle Division, due to its increased functions and a constantly enhanced volume of business, has been growing in size. As a result it has run out of room at its Highway Department Building quarters and has had to place sections in several other parts of the city. This, of course, magnifies the difficulties of administration.

In addition to the Motor Vehicle Division, the Accounting Division and the 25 district offices are engaged in motor vehicle registration activities. The Accounting Division keeps certain records of the monetary transactions which appear on weekly reports from county tax assessor-collectors to the Motor Vehicle Division. These include a record of overages and shortages in payment. It also sets the accounting procedures to be used by Motor Vehicle accountants and checks that Division out monthly. At the end of each registration year, the accountants connected with the district offices inventory license plates remaining to the county collectors, and see that extra plates are destroyed.

County Assessor-Collectors

The actual acceptance of fees and handing out of license plates falls on the county assessor-collector in his capacity as agent of the Highway Department. This function is performed in accordance with instructions and schedules promulgated by the Motor Vehicle Division. As is usually the case, county assessor-collectors of taxes have frequent recourse to the Attorney General for legal instructions on the problems which confront them in connection with the administration of the law.

In accordance with certain acts, and under the conditions laid down therein, tax collectors are allowed to appoint deputy collectors to take in taxes and issue receipts.[121] These deputies are entitled to handle motor vehicle registrations as well as other business. In addition, special legislation was passed to provide that in "counties" with a population between 24,500 and 24,700 the tax collector may establish a sub-office or branch office for the purpose of making sales of motor vehicle license plates.[122] The law was passed for the benefit of Liberty County. The county attorney of Liberty County had inquired of the Attorney General whether that county could establish such a sub-office.

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121 Tex. Civ. Stat. (Vernon, 1948) art. 7265. See also Op. Tex. Atty. Gen. No. 0-1447 (October 27, 1939).

122 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-13b. When passed this act applied only to Liberty County. As Liberty County had a population of 26,729 in the 1950 census, it is no longer applicable in that County. It now applies only to Montgomery County which had a population of 24,504 in the 1950 federal census. U.S. Bureau of the Census, U.S. Census Population: 1950. Vol. I, Number of Inhabitants, Chapter 43: Texas. (U.S. Govt. Printing Off., Was., D.C., 1951) Table 5, pp. 43-15.

under the authority of the motor vehicle registration laws, and the reply had been in the negative.[123] Despite the absency of general legislation making this permissible, some counties have been selling license plates at sub-offices ojtside of the county seat and even through private businesses, such as grocery stores. Because of the inconvenience to the citizen, particularly in the larger cities, resulting from handling registrations at a central point, the Motor Vehicle Division has been trying to get interest in the idea of de-centralizing registration collections and has requested an opinion from the Attorney General on the legality of such decentralization.

Public Weighers

In certain cases, specificially those of commercial motor vehicles, truck-tractors, road tractors, trailers and semi-trailers, it is required that the gross weight on which the fee is based shall be "certified by any Official Public Weigher or any License and Weight Inspector of the State Highway Department."[124] Accordingly the public weigher or the License and Weight Inspector, whichever may perform the function, enters the picture before the vehicle is licensed. Under current Texas laws there are several different types of public weighers,some of which are appointed and some of which are elected officials.

Law Enforcement Officials

Police officers at all levels are concerned with motor vehicle registration. Not only do the license plates and registration files assist them in the enforcement of many laws but they are responsible for insuring that those persons liable for registration do register before travelling the public roads.

The License and Weight Division of the Department of Public Safety is charged with apprehending vehicles on the roads which are carrying a weight in excess of that allowed by law or in excess of that for which they are registered. It also looks into violations such as failure of the operator of a commercial vehicle to have a proper license and the use of overly wide or overly long vehicles. The Division is headed by a Chief and is staffed with over 30 inspectors.

Prison System

In order to keep down cost, the Texas Prison System manufactures the state's license plates. Texas compares favorably with other states in its per plate cost.

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[123] Op. Tex. Atty. Gen. No. 0-234 (February 20, 1939).

[124] Tex. Civ. Stat. (Vernon, 1948) arts. 6675a-6, 6675a-7, 6675a-8.

SECTION 3 -- ASSESSMENT

The motor vehicle registration tax law requires "every owner of a motor vehicle, trailer or semi-trailer used or to be used upon the public highways of this State" to register annually each vehicle he owns or controls with the Highway Department through the tax assessor-collector of the county in which he resides. At the time the owner registers his vehicle he is required to pay the license fee applicable to the type and weight category of the vehicle. After registration, he is given a license plate which must be displayed upon the vehicle. The law makes a detailed classification of vehicles for license fee purposes. These classifications and the rates applied to each, exemptions, and other special categories are discussed in this section.

Assessment Procedure

County assessor-collectors of taxes are, under the motor vehicle registration laws, the designated agents of the Texas Highway Department for the collection of registration fees. Accordingly the on-the-spot "assessment" is made by these officials or their duly authorized deputies. This assessment is made in accordance with instructions and schedules received from the Highway Department. The law requires the Department to compile and furnish to the tax collectors "a complete and detailed schedule of license fees to be collected on the various makes, models and types of vehicles required to be registered."[125] The weight of any vehicle, as determined by the Highway Department, is the ruling weight. Moreover, it is within the authority of the Highway Department to determine the classification of a vehicle in the event a dispute arises over this matter.[126]

There are exceptions to the rule that the Highway Department establishes weight schedules for vehicles for registration purposes. The weight of commercial motor vehicles, truck tractors, trailers and semi-trailers is established by affidavit of the applicant for registration made to the local tax collector.[127]

General Definitions

One of the problems constantly arising in handling the motor vehicle registration system is that of proper classification, an important factor in deciding the charge to be made. For the guidance of administrators, the law

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125 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-9.

126 Tex. Civ. Stat. (Vernon, 1948) art. 6684. See also: Op. Tex. Atty. Gen. No. 0-2050 (March 18, 1940).

127 Tex. Pen. Code (Vernon, 1948) art. 827a, sec. 5a. This provision apparently supersedes Tex. Civ. Stat. (Vernon, 1948) arts. 6675a-6, 6675a-7, and 6675a-8, which provided for certification of weight for these vehicles by a public weigher or by a License and Weight Inspector of the Highway Department. The Highway Department does not have License and Weight Inspectors and the License and Weight Division of the Department of Public Safety does not perform this function.

established a series of definitions which will be noted as this discussion progresses. However, as a preliminary step cognizance should be taken of two definitions which are basic to the registration acts. The first of these defines a "vehicle" as

> ...every device in, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved only by human power or used exclusively upon stationary rails or tracks.[128]

The other, "motor vehicle," means "every vehicle, as herein defined, that is self-propelled.[129] Although the series of acts discussed in this chapter is frequently referred to as the "motor vehicle registration acts," that is somewhat a misnomer. The registration system includes some vehicles which are not "self-propelled," such as trailers and semi-trailers.

Rates

Motorcycles and Sidecars

The motorcycle is the only vehicle to which graduated registration rates do not apply. The law defines a motorcycle as a "motor vehicle designed to propel itself on not more than three wheels in contact with the ground."[130] The annual license fee is five dollars.[131]

Until recently there was also a three dollar fee for motorcycle sidecars.[132] However, the 52nd Legislature did away with this levy. It gave as its reasons the fact that sidecars were no longer manufactured and that only 37 were registered in Texas at that time. Thus the costs of registration exceeded the revenue received.[133]

Passenger Cars and Street or Suburban Busses

The sole consideration in determining the amount to be paid for passenger car and street or suburban bus licenses is weight. The law defines a "passenger car" as "...any motor vehicle other than a motorcycle or a bus, as defined in this Act, designed or used primarily for the transportation of persons."[134] A "street or suburban bus" is declared to be a vehicle,

> ...except a motor bus or passenger car as defined in this Act, which is used in transporting persons for compensation (or hire) exclusively within the limits of cities and towns or suburban additions to such cities or towns.[135]

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128 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-1(a).
129 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-1(b).
130 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-1(c).
131 Tex. Civ. Stat. (Vernon, 1952 Supp.) art. 6675a-5.
132 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-5.
133 Ibid.
134 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-1(j).
135 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-1(s).

It has been decided that the Legislature intended to tax every vehicle within the category of street or suburban bus, notwithstanding the fact that some of them, such as trackless trolley coaches, do not fit the definitions of motor vehicles, trailers or semi-trailers.[136]

The following schedule is provided in the law for passenger cars and street and suburban busses:

Weight in Pounds	Fee Per 100-Pounds or Fraction Thereof
1-2,000	$ .28
2,001-3,500	.36
3,501-4,500	.48
4,501-and up	.50

The registration weight of a passenger car or street or suburban bus is the weight generally accepted as its correct shipping weight plus 100 pounds.[137]

According to this schedule the owner has to pay more on the heavier vehicle and is also charged at a higher rate per 100-pounds when the vehicle is in the higher weight bracket. As the heavier late model cars tend to be the more expensive, this schedule also has the effect of imposing a graduated tax in proportion to the price paid for the car. For example, a 1951 Chevrolet four-door styline special weights about 3,300 pounds and has a list price of approximately $1,400. The annual license fee on this vehicle is $11.88. A 1951 Cadillac seven-passenger four-door imperial has a registration weight of 4,700 pounds and a list price of approximately $5,080. The registration fee for this vehicle is $23.50. Obviously the difference in tax is not proportionate to the difference in price even with the graduated scale. However, the difference in the registration fee on the Cadillac would be about $6.50 less if it were charged at the rate applied to the Chevrolet.

There is, of course, no clear intention in any of the registration schedules to make the vehicle owner pay a fee bearing a specific relationship to the price. However, this factor, as well as that of wear on the roads, has undoubtedly entered the minds of those who set the rates. It is logical that the man who can buy a Cadillac can afford a big registration fee more easily than the man who buys a Chevrolet. Of course, this reasoning strikes a fallacy in the purchaser of an old-model heavy car, as his tax is also based on weight with no consideration given for age of the vehicle.

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136 Dallas Ry. & Terminal Co. v. Gentle, 218 SW 2d 259 (Tex. Civ. App. 1949).

137 Tex. Civ. Stat. (Vernon, 1952 Supp.) art. 6675a-5.

More often given as a reason for rate schedules graduated by weight is the concept that heavier vehicles cause more road wear. While this idea has validity with reference to heavy trucks or other large vehicles, there is little evidence that a differential rate in the weight area of automobiles can be justified on these grounds.[138]

Commercial Motor Vehicles or Truck-Tractors

Registration charges for commercial motor vehicles and truck-tractors depend on both weight and tire equipment. However, differentiation as to tire equipment is now relatively unimportant due to the use of pneumatic tires on most of today's vehicles. A commercial motor vehicle is defined as a

> ...motor vehicle (other than a motorcycle or passenger car) designed or used primarily for the transportation of property, including any passenger car which has been reconstructed so as to be used, and which is being used, primarily for delivery purposes, with the exception of passenger cars used in the delivery of the United States mails.[139]

A truck-tractor, according to the motor vehicle registration statutes, is a

> ...motor vehicle designed or used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.[140]

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138 For further discussion of this matter see the Texas Legislative Council Staff Research Report on State Highways, Ch. IV.

139 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-1(i). The special provision relating to the classification of passenger cars carrying U.S. mails over-ruled an opinion of the Attorney General in which such vehicles were held to be commercial motor vehicles. Op. Tex. Atty. Gen. No. 0-732 (May 24, 1939). The test as to whether a passenger vehicle should be registered as a commercial motor vehicle used to be the primary purpose to which it was put, a question of fact to be settled by the local authorities. Op. Tex. Atty. Gen. No. 0-6349 (May 19, 1945). However, in 1941 the law was changed so that now a passenger car would have to be reconstructed before it could be registered as commercial. Motor Vehicle Division of the Texas Highway Department, Motor Vehicle Registration Manual, p. 13. This, of course, also applies to vehicles registered as farm commercial. Op. Tex. Atty. Gen. No. 0-3936 (December 19, 1941); Op. Tex. Atty. Gen. No. 0-6349 (May 12, 1945).

140 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-1(d).

The annual license charges for commercial motor vehicles and for truck-tractors are graduated as follows:

Gross Weight in Pounds	Fee Per 100-Pounds or Fraction Thereof Equipped with Pneumatic Tires	Equipped with Solid Tires
1-6,000	$ .40	$ .50
6,001-8,000	.45	.60
8,001-10,000	.55	.70
10,001-17,000	.65	.80
17,001-24,000	.70	.90
24,001-31,000	.80	1.00
31,000-and up	.90	1.20

"Gross Weight," for registration purposes, includes the weight of the vehicle fully equipped plus its "net carrying capacity.[141] The net carrying capacity of a commercial motor vehicle is the heaviest amount to be carried on the vehicle, except that in no case shall it be less than the manufacturer's rated carrying capacity.[142]

There is such variety in types of trucks that it is difficult to give any sort of rounded picture of the costs of license plates for them. However, a few examples will at least indicate how commercial licenses vary. About the lightest of the Studebaker 1951 truck line has a shipping weight of 1,980 pounds and a rated load capacity of one-half ton.[143] Accordingly, for registration purposes, this vehicle weighs 2,980 pounds and the annual license fee would be $12.00. One 1951-model Dodge truck has a shipping weight of 4,075 pounds and a rated capacity of tow and one-half tons. At a weight of 9,075 pounds this truck would carry license plates costing $50.05. One of the Federal trucks has a rated load capacity of six tons and a weight of 9,995 pounds. The registration fee on this vehicle would be $154.

Road Tractors

Weight is the guiding factor in assessing registration fees on road tractors. A road tractor is defined as a

> ...motor vehicle designed or used for drawing other vehicles or loads, and not so constructed as to carry a load independently or any part of the weight of the drawn load or vehicle.[144]

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141 The statute states specifically that the weight of the vehicle shall be its weight "fully equipped with body, and other equipment." The phrase "other equipment" has been interpreted to mean accessories normally attached to the vehicle and of practical use in operation and does not include tools for loading and unloading freight. Cook v. State, 128 SW 2d 48 (Tex. Crim. App. 1939).

142 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-6.

143 Weight for commercial motor vehicles, truck-tractors, road tractors, trailers, and semi-trailers is determined in terms of actual weight as decided upon by certain public officials. In addition the net carrying capacity, as previously defined, may be above the rated carrying capacity.

144 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-1(f).

The annual license schedule for road tractors is as follows:

Gross Weight in Pounds	Fee per 100-Pounds or Fraction Thereof
1-4,000	$ .25
4,001-6,000	.50
6,001-8,000	.60
8,001-10,000	.75
10,001-and up	1.00[145]

Some examples will help illustrate the method used in arriving at license charges on road tractors. International Harvester, in its Farmall line, puts out a tractor, model M, with a gross weight of 4,460 pounds. The charge for annual registration at this weight would be $22.30. The same company has a crawler tractor with a gross weight of 22,600 pounds. At that weight the annual charge would be $226. These examples do not represent the extremes.

Trailers or Semi-trailers

The rates for registration of trailers and semi-trailers are graduated according to the gross weight of the vehicle and its tire equipment. A trailer is a "...vehicle designed or used to carry its load wholly on its own structure and to be drawn by a motor vehicle."[146] A semi-trailer is defined as a vehicle

> ...so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests upon or is carried by another vehicle.[147]

There being no exemption for house trailers, they are taxed along with all other kinds. While the motor vehicle registration acts make no special mention of house trailers they are defined in the Certificate of Title Act as follows:

> The term "House Trailer" means a vehicle without automotive power designed for human habitation and for carrying persons and property upon its own structure and for being drawn by a motor vehicle.[148]

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[145] Tex. Civ. Stat. (Vernon, 1948) art. 6675a-7.

[146] Tex. Civ. Stat. (Vernon, 1948) art. 6675a-1(g).

[147] Tex. Civ. Stat. (Vernon, 1948) art. 6675a-1(h).

[148] Tex. Civ. Stat. (Vernon, 1948) art. 1436-1(2a).

The following is the schedule for trailers and semi-trailers:

Gross Weight in Pounds	Fee per 100-Pounds or Fraction Thereof: Equipped With Pneumatic Tires	Equipped With Solid Tires
1-6,000	$ .30	$ .40
6,001-8,000	.40	.50
8,001-10,000	.50	.60
10,001-17,000	.60	.80
17,001-and up	.65	.90

Gross weight, when used with reference to trailers and semi-trailers, means the actual weight of the trailer as certified by a public weigher or a License and Weight Inspector plus its net carrying capacity. The net carrying capacity. The net carrying capacity is the weight of the heaviest load which will be carried on the trailer except that it shall not be less than the manufacturer's rated carrying capacity.[149]

There is an almost endless variety of trailers on the roads today with sizes ranging from small two-wheelers pulled behind an automobile to large van-type semi-trailers used on regular transport routes. A trailer with a gross weight of 3,000 pounds would cost only nine dollars to register. The American Coach Company's large 1951 Mastercraft house trailer weighs 6,795 pounds. Adding an estimated 1,000 pounds for carrying capacity, the registration weight would be 7,795 pounds and the license would cost $39. Some of the larger trailers run into substantial gross weight figures. For example, one Utility semi-trailer with a rated capacity of 18 tons has a body weight over 5,400 pounds. The minimum tax for that trailer would be $243.10.

In view of the fact that the law makes provision for the registration of separate portions of combination vehicles it has been ruled that each section of a combination, such as a truck-tractor and trailer, has to be registered separately. This holds true even though they are used together exclusively.[150]

Motor Busses

After a series of experiments with such things as seating fees, motor busses were, in 1929, brought into the weight and tire equipment group. A motor bus is any

> ...vehicle, except those operated by muscular power or exclusively on stationary rails or tracks, which is used in transporting persons upon the public highways of this State for compensation (or hire) whether operated over fixed routes or otherwise; except such of said vehicles as are operated exclusively within the limits of incorporated cities and/or towns or suburban additions to such cities and/or towns.[151]

149 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-8.

150 Op. Tex. Atty. Gen. No. 0-3328 (May 26, 1941); Op. Tex. Atty. Gen. No. 0-3642 (July 3, 1941).

151 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-1(n).

The registration fees for motor busses and for street and suburban busses are computed on different bases, with the street and suburban busses paying the lesser amount. The distinction between them is made not because of the nature of the behicles but because of the places in which they operate. A motor bus travels on the public highways, whereas a street bus operates within the limits of incorporated cities and towns or in suburban additions.

There have been some problems in distinguishing between these two types of busses. The Attorney General has on several occasions declared that a vehicle which carries passengers for hire between or through two incorporated places is a motor bus.[152] A court of civil appeals has declared that when a bus leaves the city limits and passes by farm lands along its route outside the city, it should be classified as a motor bus.[153]

The rate schedule applied to motor busses is as follows:

Gross Weight in Pounds	Fee per 100-Pounds or Fraction Thereof	
	Equipped With Pneumatic Tires	Equipped With Solid Tires
1-4,000	$ 1.25	$ 1.50
4,001-6,000	1.35	1.75
6,001-8,000	1.40	1.85
8,001-16,000	1.50	2.00
16,001-24,000	2.00	2.25
24,001-28,000	2.50	2.75
28,001-and up	4.00	6.00[154]

Determination of the gross weight of a bus follows a slightly different formula than that used in computing the weight of other vehicles while, as for commercial vehicles, the gross weight of a bus is the actual weight of the vehicle fully equipped plus its net carrying capacity. The net carrying capacity is figured by multiplying the seating capacity by 150. The seating capacity is that at which the bus is rated by the manufacturer, exclusive of the driver's seat. If there is no manufacturer's rating one passenger shall be allowed for each 16 inches of seat space on the vehicle, again exclusive of the driver's seat.[155]

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[152] Op. Tex. Atty. Gen. No. 0-1026 (July 7, 1939); Op. Tex. Atty. Gen. No. 0-3230 (March 14, 1941); Op. Tex. Atty. Gen. No. 0-6046 (September 8, 1944; Op. Tex. Atty. Gen. No. 0-6698 (July 24, 1945).

[153] Redditt v. Nueces Transport Co., 224 SW 2d 290 Tex. Civ. App. (1949). For some further distinguishing opinions, bu of lesser importance, see: Op. Tex. Atty. Gen. No. 0-1415 (September 18, 1939); Op. Tex. Atty Gen. No. 0-1969 (February 23, 1940); Op. Tex. Atty. Gen. No. 0-3230 (March 14, 1941).

[154] Tex. Civ. Stat. (Vernon, 1948) art. 6675a-8a.

[155] Ibid, art. 6675a-6.

Farm Commercial Vehicles

A farm commercial motor vehicle must be registered but it is assigned special license plates and taxed only one-half of the amount which would otherwise apply. For example, one model Dodge one and one-half ton truck weighs 4,075 pounds and has, therefore, a registration weight of approximately 7,075 pounds. The normal registration fee for that truck would be $31.95. For a farmer the charge would be only half of that amount, or $15.98.

The law defines a farm commercial motor vehicle as one used by the owner only

> .....in the transportation of his own poultry, dairy, livestock, livestock products, timber in its natural state, and farm products to market, or to other points for sale or processing, or the transportation by the owner thereof of laborers from their place of residence, and materials, tools, equipment and supplies, without charge, from the place of purchase or storage, to his own farm or ranch, exclusively for his own use, or use on such farm or ranch...[156]

The imposition of a penalty upon an owner who permits the vehicle to be used "for any other purpose than those provided" in the above quoted portion of this section of the law manifests the intent that vehicles may be registered for this reduced fee only if to be used solely for the designated purposes.

An important factor in deciding whether or not to issue farm license plates is the use to which the vehicle is put. The Attorney General has declared that farm license plates can be attached to a vehicle in which a farmer hauls produce to market only if the produce comes from his land. If it is used to haul products owned by others or purchased from others it should have regular commercial plates.[157] In another instance the Attorney General decided that a contractor who hauled garbage purchased from an army camp to be fed to hogs owned by others but mortgaged to the contractor would have to put regular commercial plates on his trucks.[158]

A lumber company hauling lumber it purchases or lumber cut from land which it does not own, but rather leases, must pay the full fee. If the

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[156] Tex. Civ. Stat. (Vernon, 1948) art. 6675a-6a.

[157] Op. Tex. Atty. Gen. No. 0-527 (April 17, 1939); Op. Tex. Atty. Gen. No. 0-3201 (March 19, 1941).

[158] Op. Tex. Atty. Gen. No. 0-5284 (May 15, 1942).

lumber comes from its own land farm rates may be paid.[159] The Attorney General has also ruled that a farm marketing co-operative cannot use farm licenses on its trucks because it does not own the products which it is transporting to market.[160]

The numbers and types of articles which may be hauled by trucks bearing farm license plates have been expanded with each revision of the law. However, there are still some objects which may not be carried even though they come from the farm. An example is stone. One farmer wanted to haul stone quarried from his farm to a point of sale in farm-registered trucks. It was ruled that he could not do so.[161]

Diesel Propelled Vehicles

A diesel-powered vehicle, of whatever type, has to pay the regular tax plus an amount equal to ten per cent of that tax.[162] The same section of the law further provides that the tax collector, in issuing receipts, should indicate whether the vehicle was powered by diesel fuel, butane gas, or any distillate other than gasoline. Probably as a result of this provision, the question arose whether vehicles powered by motors using butane or other distillates besides gasoline were subject to the additional ten per cent. It was decided that they were not.[163]

Proration

The schedules given are for the entire registration year. However, Texas like many other states prorates the charges so that a person registering during the year does not have to pay the full amount. Texas divides the registration year into 12 monthly periods and for each month passed prior to registration one-twelfth of the fee is subtracted.[164]

Additional Weight Registrations

If an owner desires to register a vehicle already registered for a load greater than the weight originally established, he is entitled to do so. In that case the amount to be charged will be computed in the following manner: The prorated fee for the remaining portion of the year at the new registration rate will be computed. The fee for the remaining portion of the year if the vehicle were registered at this time at the original weight would also be determined. By subtracting the second item from the first, the remainder obtained would be the amount due.[165]

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159 Op. Tex. Atty. Gen. No. 0-3317 (April 30, 1941); Op. Tex. Atty. Gen. No. 0-3780 (July 25, 1941); Op. Tex. Atty. Gen. No. 0-5218 (May 5, 1943); Op. Tex. Atty. Gen. No. 0-6113 (July 20, 1944).

160 Op. Tex. Atty. Gen. No. 0-1417 (September 15, 1939).

161 Op. Tex. Atty. Gen. No. 0-5321 (November 26, 1943).

162 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-8c.

163 Op. Tex. Atty. Gen. No. V-731 (December 10, 1948)

164 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-4.

165 Motor Vehicle Division of Texas Highway Department, Motor Vehicle Registration Manual, pp. 23-24.

While additional fees are due if the vehicle is to be operated with a gross weight over that for which it was originally registered, there is no provision for refunds. If a vehicle is correctly registered there can be no reduction in the carrying capacity for which it is registered during the registration year.[166]

Transfers

Transfer of a registered vehicle involves a small fee of one dollar regardless of the nature of the vehicle transferred. Any person, other than a dealer, selling a registered vehicle must endorse on his certificate of registration a written transfer of the vehicle. The purchaser, including a dealer if he is the purchaser, must pay the county tax collector the one dollar fee.[167] This transfer fee is not required if the vehicle is sold for junk and is not to be driven over the roads.[168]

Dealer's Licenses

The motor vehicle registration acts make special providion for vehicles passing through the hands of dealers. A manufacturer or dealer, instead of registering each vehicle he wishes to demonstrate on the highways, may get a single general registration number which can be attached to any vehicle he sends on the road. The annual charge is $15 plus $5 for every additional set of plates bearing his number which the dealer wants. When a dealer's license plate becomes lost, mutilated, or stolen, it may be replaced by obtaining an additional plate for $5. Duplicate plates cannot be issued as replacements.[169] A dealer is defined as a

> ...person, firm or corporation engaged in the business of selling automobiles who runs them upon the public highways or streets for demonstration for the purpose of sale....[170]

The dealer must pay the full annual fee whenever he obtains a dealer's license plate or an additional dealer's license plate. The fee is not to be

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166 Ibid., p. 16.

167 Tex. Civ. Stat. (Vernon, 1948) art. 6685; Tex. Pen. Code (Vernon, 1948) arts. 1434, 1435. The Certificate of Title Act requires certain further processes in transferring a motor vehicle.

168 Op. Tex. Atty. Gen. No. 0-2435 (June 12, 1940). For further Attorney General's opinions relating to second-hand vehicles, most of which are concerned with dealers handling such vehicles, see: Ops. Tex. Atty. Gen. No. 2083 (June 6, 1919), No. 2108 (June 26, 1919), No. 2803 (March 18, 1930), No. 0-2065-A (February 3, 1941), No. 0-4547 (May 27, 1942), No. V-1073 (June 23, 1950). See also Harris Co. Tax-Assessor-Collector v. Reed, 225 SW 2d 586 (Tex. Civ. App. 1949).

169 Op. Tex. Atty. Gen. (March 1, 1933) cited in Motor Vehicle Division of Texas Highway Department, Motor Vehicle Registration Manual, p. 22.

170 Tex. Civ. Stat. (Vernon, 1948) art. 6686.

prorated by months as are most registration fees.[171] The uses for dealer's plates, or cardboard plates which dealers may issue bearing their designated number, are legally limited. They may be used on cars being shown or demonstrated on the roads. They may be used in conveying a vehicle from the dealer's place of business in one part of the state to his place of business in another part of the state. They may be used in moving the vehicle from the place of its unloading to the dealer's place of business or from the state line to the dealer's place of business. In addition, when a vehicle is sold by a dealer, the purchaser may use the cardboard tags issued by the dealer for a reasonable period not to exceed ten days.[172] Dealers do not have to notify the Highway Department of the vehicles to which their tags are currently attached.

Transit Licenses

Those engaged in the business of transporting vehicles over Texas highways also are charged an annual fee. The law provides that

> Any person, firm or corporation engaged in this state in the business of transporting and delivering by means of the full mount method, the saddle mount method, the tow bar method, or any other combination thereof, and under their own power, new vehicles from the manufacturer or any other point of origin to any point of destination within the State of Texas, shall make application to the State Highway Commission for a drive-away-in-transit license.[173]

The annual registration fee for a transit license under this portion of the law is $50. Additional licenses may be issued for three dollars a set.[174]

If a vehicle is picked up in another state or country and is being driven to the owner's place of residence in Texas for registration, or if it has been picked up in Texas and is being driven out of the state, or if it is driven through Texas for sale elsewhere, it must be registered at a cost of three dollars.[175] This registration for a Texan picking up a vehicle outside of the state is good for 30 days, but may not be renewed.

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171 Motor Vehicle Division of the Texas Highway Department, Motor Vehicle Registration Manual, p. 21.

172 Tex. Civ. Stat. (Vernon, 1948) art. 6686. Op. Tex. Atty. Gen. No. 2948 (March 29, 1934).

173 Tex. Civ. Stat. (Vernon, 1948) art. 6686.

174 Ibid.

175 Tex. Civ. Stat. (Vernon, 1948) art. 6686; Tex. Pen. Code (Vernon, 1948) art. 827b, sec. 3; Op. Tex. Atty. Gen. No. 0-2757 (December 13, 1940).

Coverage

There are certain specific exemptions allowed under the registration acts. These are of two types -- total exemption from registration, and exemption from payment of a registration tax even though registration is required. In addition to these specific exemptions the question of coverage has arisen in interpretation of several other portions of the motor vehicle registration laws.

The motor vehicle registration law provides that vehicles "used or to be used upon the public highways of this State" shall be registered. However, where a public highway separates lands under the control of one owner, crossing the highway from one piece of land to another does not constitute use upon a public highway.[176] The term "public highway"

> ...shall include any road, street, way, thoroughfare or bridge in this State not privately owned or controlled for the use of vehicles over which the State has legislative jurisdiction under its police power.[177]

It remains a public highway even if part of the road is closed for repairs. Vehicles used on the section being repaired must be registered.[178] However, a new road which has never been opened for traffic is not included.[179] The general tendency has been to interpret the provision on use of the state highways in a strict sense and to make any vehicle, not otherwise exempted, pay the fee even though it very seldom uses these highways.[180]

Government Vehicles Exempt

Vehicles which are the property of and are used exclusively in the service of the United States, the State of Texas, or a county, city, or school district of the State of Texas must be registered, but no tax need be paid. In order to register a vehicle as a government vehicle some person with proper authority must swear that the vehicle is owned by a unit of government

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[176] Tex. Civ. Stat. (Vernon, 1948) art. 6675a-2.

[177] Tex. Civ. Stat. (Vernon, 1948) art. 6675a-1(m).

[178] Op. Tex. Atty. Gen. No. 2802 (March 14, 1930). See also, Op. Tex. Atty Gen. No. 0-6925 (November 10, 1945).

[179] Op. Tex. Atty. Gen. No. 0-168-A (July 3, 1941).

[180] Ops. Tex. Atty. Gen. No. 0-607 (April 19, 1939), No. 0-652 (May 1, 1939), No. 0-891 (August 18, 1939), No. V-979 (December 22, 1949). This last opinion, concerned with the registration of highway building or maintenance equipment, has been questioned in the courts. State Auditor, Audit Report, Motor Vehicle Division, August 31, 1950.

and operated solely in its service. If it appears to the State Highway Department, which must review all applications for government-exempt plates, that the vehicle was transferred to the unit of government for the purpose of avoiding registration taxes, exempt plates are not issued. If the government vehicle, after registration as such, is transferred to a non-government owner the plates shall be revoked. Government-exempt plates are not issued annually, as in the normal procedure but for an indefinite period.[181]

The means by which the United States distributes its mails has presented a problem to those concerned with motor vehicle registrationlaws. There has never been any question about federally-owned vehicles used in transporting the mails, but the federal government also has its mails carried by privately-owned vehicles operating under contract. In 1925 the Attorney General ruled that private vehicles, even though they were used solely for carrying mail, were liable for the registration fee. He argued that the federal government was subject to reasonable regulations imposed by the state for the use of the roads and that the registration charge was not a tax on the United States or on the occupation of carrying the mails, even though it might incidentally affect the cost to the United States of supplying mail service.[182] In 1929 a Texas court in Lowein v. Moody decided the same question differently. A registration tax on a contractor whose vehicles were used exclusively in handling U. S. mail was declared to be outside the intent of the registration laws even though they did not specifically so state. It was implied that, even if required by the Texas registration acts, the tax could not be collected without constituting an interference with a valid function of the federal executive.[183] However, in two subsequent opinions the Attorney General has declared that vehicles contracted to carry the U. S. mails are required to pay. In the latter of these decisions theAttorney General noted that the trend of opinions on intergovernmental taxation has changed since Lowein v. Moody, which decision should not be regarded as presently applicable.[184] Accordingly, the present practice is to require payment of the tax on private vehicles used in the transportation of U.S. mails, and it may be assumed that the same rule would apply to private vehicles contracted to the federal government for the transportation of any other federal property.

A vehicle, to qualify for a government exemption, must be used in governmental activity. For example, the Attorney General has declared that motor vehicles owned by the Defense Plant Corporation which were being used by a lessee or a sub-contractor in the erection of structures having an ordinary business function had to bear license plates evidencing the payment of the appropriate tax.[185]

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[181] Tex. Civ. Stat. (Vernon, 1948) arts. 6675a-3, 6675a-3aa. Op. Tex. Atty. Gen. No. 2823 (January 26, 1931).

[182] Op. Tex. Atty. Gen. No. 2598 (April 15, 1925).

[183] Lowein v. Moody, 12 SW 2d 989 Comm. of App. (1929).

[184] Op. Tex. Atty. Gen. No. O-242 (February 6, 1939); Op. Tex . Atty. Gen. No. O-242a (March 25, 1941).

[185] Op. Tex. Atty. Gen. No. O-5381 (July 7, 1943). See also Op. Tex. Atty. Gen. (September 17, 1938) cited in Motor Vehicle Division of the Texas Highway Department, Motor Vehicle Registration Manual, p. 41

The law sets no specific policy on exemptions for representatives of foreign countries resident in the United States. However, a ruling by the Attorney General has established the principle that these persons, such as consuls, but not including subordinate employees, provided they are not citizens of the United States, are entitled to tax-exempt license plates.[186] The exemption applies whether the vehicle is owned by the official or his government.

Farm Vehicles Exempt

Exemptions are provided by the motor vehicle registration laws for "farm tractors, farm trailers, farm semi-trailers, and implements of husbandry, operated or moved temporarily upon the highways." This is not only an exemption from payment of a fee but also from registration of the vehicle at all.[187] section does not exempt farm trailers or semi-trailers with a gross weight of more than 4,000 pounds or any farm trailer or semi-trailer when it is used for hire.[188]

Non-residents Exempt

The registration provisions applicable to non-residents may vary. The reason for this is that the law permits exemption from registration, under certain conditions, for out-of-state visitors, provided Texans visiting this state from which the non-resident come are entitled to like treatment. It also makes

186 Op. Tex. Atty. Gen. (February 6, 1937) cited in Motor Vehicle Division of the Texas Highway Department; Motor Vehicle Registration Manual, p. 40. Op. Tex. Atty. Gen. No. 03290 (March 27, 1941); Op. Tex. Atty Gen. No. 0-5942 (March 29, 1944). Other Attorney General's opinions relating to government vehicle exemptions are as follows: Op. Tex. Atty. Gen. No. 2631 (December 30, 1925)--soldiers residing on a U.S. military reservation must pay the registration tax; Op. Tex. Atty. Gen. No. 0-2609 (August 14, 1940)--a water improvement district is liable for the licensing tax; Op. Tex. Atty. Gen. No. 9-1746-A (December 4, 1940)--municipally owned city busses are exempt from registration taxes; Op. Tex. Atty. Gen. No. 0-3014 (January 21, 1941)--the sheriff and his deputies are not entitled to exempt license plates on their private cars; Op. Tex. Atty. Gen. No. 0-6339 (January 25, 1945) --motor vehicles operated by the Housing Authorities of various Texas cities are not eligible for exempt license plates; Op. Tex. Atty. Gen. No. 0-6393 (February 8, 1945)--a truck owned and operated by the Texas State Guard does not have to pay a registration tax.

187 It will be recalled that farm commercial vehicles, although they must be registered to operate on the roads, only pay one-helf of the regular rate.

188 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-2. See also Op. Tex. Atty. Gen. No. 0-4115 (October 22, 1941); Op. Tex. Atty. Gen. No. 0-6202 (October 13, 1944); Op. Tex. Atty. Gen. No. C-48 (January 27, 1947); Allred v. J. C. Engelman, Inc., 54 SW 2d 352, Tex. Civ. App. (1932), 2d 75 Tex. Supreme Ct. (1932); Bean v. Reeves, 77 SW 2d 737 Tex. Civ. App. (1934).

provision for the State Highway Department to enter into reciprocal agreements with other states regarding exemption from registration fees. To the extent that such an agreement applies to a case it governs.[189] Reciprocal agreements have been entered into with the other 47 states and the District of Columbia.[190]

In the absense of a reciprocal agreement the following set of rules would be adhered to: A vehicle duly registered for the present year in the state or county of which its owner is a resident may be used for the transportation of persons or property for hire in the State of Texas without being registered, provided that it does not make more than two trips during a calendar month and does not stay in the state on any one trip over four days. For other vehicles the exemption is more general. A non-resident owner of a vehicle may operate it in Texas at will for marketing farm products which he has raised without having to register. So may the owner of a vehicle from an adjoining state or country who uses it to go to and from his place of work or to points in Texas for purchasing goods, wares and merchandise. An occasional visitor one making during the calendar month not more than five trips none of which exceeds five days, is exempt and, moreover, a foreign registered vehicle may be operated in Texas during the valid period of its license plates provided the owner is a visitor and does not engage in a gainful occupation in the state.[191]

The State Highway Department, acting through the State Highway Engineer, may enter into agreements with the proper officials of other states whereby residents of those states will be exempted from payment of registration fees for the use of the highways of Texas for such periods of time as may be mutually agreed upon. Under the agreement residents of Texas using the highways of the state with which the agreement is made must receive like consideration.[192]

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189 Op. Tex. Atty. Gen. 0-1415 (September 18, 1939).

190 Motor Verhicle Division, Summery of Reciprocity Extended Residents of Other States, 1950.

191 Tex. Pen. Code (Vernon, 1948) art. 827b, sec. 2. This article was greatly changed in 1947 prior to which time it provided for a system of temporary registration. Legal opinions on the law were all made in connection with the previous provisions and many of them do not apply to the law as it now stands. These legal rulings may be found as Op. Tex. Atty. Gen. No. 0-754 (May 24, 1939); Op. Tex. Atty. Gen. No. 0-1023 (July 10, 1939) Op. Tex. Atty. Gen. No. 0-1893 (Fegruary 27, 1940); Op. Tex. Atty. Gen. No. 0-2065 (April 1, 1940); Op. Tex. Atty Gen. No. 0-2154 (April 11, 1940); Op. Tex. Atty. Gen. No. 0-3901 (September 19, 1941); Op. Tex. Atty. Gen. No. 0-3442 (June 6, 1941); Op. Tex. Atty. Gen. No. 0-5601 (November 13, 1943); Op. Tex. Atty. Gen. No. 0-6885 (November 7, 1945); Miller v. Foard County, 59 SW 2d 277 Tex. Civ. App. (1933); New Way Lumber Co. v. Smith, 96 SW 2d 282 Tex. Supreme Court (1936).

192 Tex. Civ. Stat. (Vernon, 1948) art. 6675;-16.

Refunds

Refunds on registration fees may be made only in the event of an error in computing the tax. Refunds have to be approved by the Motor Vehicle Division before the tax collector is allowed to return any money. Also a refund must be made within the registration year. They are not allowed during one year to cover errors made during previous years.[193]

[193] Motor Vehicle Division, Motor Vehicle Registration Manual, p. 34.

SECTION 4--COLLECTION AND ENFORCEMENT

The motor vehicle registration tax, even though it applies to such a large number of persons, is often reputed to be simple to collect and enforce, because evident of its payment is so clear. The taxpayer attaches his vehicle license plates showing payment. This condition does facilitate the enforcement of the motor vehicle registration laws, but it does not follow that administration of these laws is simply a matter of depending solely upon the taxpayer to meet this obligation. There are problems in the operation of motor vehicle registration laws.

The Process of Registration

Registration is handled by the county assessor-collectors of taxes and by the Motor Vehicle Division of the Texas Highway Department. The distribution of functions varies according to the type of license being issued but by far the greater number of public contacts are made by the county collectors.

Normally the county assessor-collector handles the actual registration of vehicles. He is entitled to take the money and issue a proper receipt and license plates. Payment may be in money only.[194]

If the tax collector receives, in supposed payment of a registration fee, a check or draft which turns out to be bad he is to notify the sheriff, a constable or highway patrolman. The officer is then responsible for finding the person and for demanding payment. If payment is not made the license plates must be removed from the registered vehicle at the earliest opportunity.[195]

Applications for fee exempt registrations are made with the county but have to be forwarded to the Highway Department for approval. This is also the case for motor busses. Plates for fee exempt vehicles are issued by the Highway Department directly and those for motor busses are forwarded to the county assessor-collector for issuance.[196]

In transit drive-a-way permits are handled directly by the Highway Department, it receives the application and issues the proper permit.

The Motor Vehicle Division furnishes the county tax collector with practically all the supplies he needs to execute his function as an agent of the

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194 Op. Tex. Atty. Gen. No. 0-2050 (March 18, 1940).

195 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-15.

196 When the Highway Department decides that motor bus plates for a particular company are to be issued in a particular county it may refuse to send plates for this company's busses to any other county. Op. Tex. Atty. Gen. No. 0-2101 (March 22, 1941).

Highway Department for motor vehicle registrations. The county collector is sent a manual of instructions, a booklet summarizing reciprocity agreements which Texas has entered into with other states, various tables of rates for different weights and types of vehicles, application, receipt and report forms, license plates and such other instructions and materials as the Division feels will assist him in his duties. Representatives of the Division also hold meetings at various times and places throughout the state to instruct tax collectors on their registration duties and to discuss with them problems which are of mutual concern.

The local collector of taxes is required to make proper disposition of the registration fees which come into his possession and to make several reports to the Motor Vehicle Division. On Monday of each week he must deposit to the county's road and bridge fund the moneys which go to the county. He must also make two reports to the Highway Department and forward the portion of net fees which go to the state. These weekly reports are (1) a detailed report of all licenses issued normally accompanied by two copies of the receipts therfor; and (2) a recapitulation of the week's transactions.

When these reports are received by the Motor Vehicle Division they are checked for accuracy and discrepancies are called to the attention of the tax collector. While it is not feasible to check every receipt an effort is made to check those for commercial vehicles. The money records are carefully reviewed to insure that the state has received everything which is due it and nothing more. A record of over and under remittances is also kept in the Accounting Division, with the figures coming from corrected recapitualtion reports of the Motor Vehicle Division. The copies of receipts sent in by the tax collectors are filed by type, with different colors used to facilitate identification, in two files. One is set up according to license number and the other according to motor number. These separate files are necessary in their use for law enforcement purposes. If someone spots the number on a hit-and-run driver's care, the miscreant can be quickly identified through the license number file. Should a stolen car, the license plates of which have been changed, be recovered, its proper owner can be located through use of the motor number file. These examples indicate the uses for the two filing systems maintained by the Motor Vehicle Division. The main difficulty arises from the fact that many illegible receipts are received.

If in surveying the reports which the county collector sends in, the Motor Vehicle Division notes anything which might be indicative of unlawful practices, it can send one of its field men to make an on-the-spot investigation. However, the problem of violations of the motor vehicle registration laws by county officials and others will be discussed at some length later.

The Division maintains an inventory of all license plates issued to county collectors and checks these off as they appear on the weekly detailed reports. At the end of the registration year an accountant from one of the district offices of the Highway Department checks the unused plates at the tax collectors office and his report is carefully cross-checked with the

Division's records. At the same time a check is made of unissued receipts, voided receipts, and so on, in order that all the records may be reviewed before the tax collector is checked out at the close of the registration year. The activities of the Motor Vehicle Division are continually reviewed by the Accounting Division of the Highway Department and by the State Auditor. For a number of years the Auditor even issued a separate report on the activities of the Motor Vehicle Division which not only accounted for the moneys handled but also pointed out some of the difficulties connected with the administration of the motor vehicle registration laws, such as common violations of these laws, and made certain recommendations for legislative action.

Ownership and the Place of Registration

A Motor vehicle is supposed to be regististered in the county of residence of its owner.[197] This regulation applies not only to the original registration but to the payment of fees for additional weight.[198] Although a seemingly simple rule, this requirement has given rise to frequent interpretations, interpretations directed toward establishing guides by which administrators of the motor vehicle registration acts could decide, first, who was the owner for purposes of determining the proper county of registration and, second, what was the residence of the owner of a particular vehicle.

For purposes of determining the place of registration the owner of a vehicle is defined in the law as follows:

> "Owner" means any person who holds the legal title of a vehicle or who has the legal right of possession thereof, or the legal right of control of said vehicle.[199]

It should be emphasized that this definition of ownership only applies when a question of the county of registration of the vehicle is involved. It is not concerned with the name under which the vehicle should be registered.[200] In other words a vehicle might beregistered in the name of a Mr. A, who is the legal owner and a resident of county X, but still be registered in county Y because it is in the legal control of Mr. B., a resident of county Y.

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197 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-2; Miller v. Foard County, 59 SW 2d 277, Tex. Civ. App., (1933); Opp. v. State, 94 SW 2d 180 Tex. Crim. App. (1936); Op. Tex. Atty. Gen. No. 0-1950 (February 14, 1940).

198 Op. Tex. Atty. Gen. No. 0-3645 (June 14, 1941); Op. Tex. Atty. Gen. No. V-234 (June 5, 1947).

199 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-1 (1).

200 Op. Tex. Atty. Gen. No. 0-2050 (March 18, 1940).

The terms "legal right of possession" and "legal right of control" contained in the definition quoted above bean possession or control with a degree of permanency throughout the registration year. Excluded are those having only physical possession or physical control. Included are those who have all rights in the motor vehicle as to its control and operation, use and management, but who do not have legal title.[201]

It is a basic rule of vehicle licensing that the owner, in the sense that "owner" has in the registration law for this limited purpose, must register the vehicle in "the county in which he resides". For an individual this means his domicile.[202] For a foreign or domestic corporation, the administrative rule has been that it must register its vehicles in the county which is the site of its principal office in the state.[203] It has been understood that the law would permit the corporation no choice as only one county could be the correct one. However, a recent Civil Appeals case has called this rule into question. In Texas Highway Department v. Kimble County [204] it was declared that a corporation could have residence in more than one county and that it could register its vehicles in any county in which it had residence. It was decided that, even though its major place of business or head office was in another county, the corporation could register its vehicles in the county named by its charter as the place where its principal office is to be located. The county of registration for a partnership is that of the residence of the partners because in Texas law a partnership is not a legal entity but a contractual relationship. If the partners live in different counties the vehicle may be registered in either although careful attention must be given to the consideration of which partner, if either, is the "owner" under the law.[205] A partnership, for purposes of the registration acts, is to be considered domestic, and may register its vehicles in Texas, if one partner lives in the state.[206]

The Time of Registration

Registrations are normally made for a period of one year commencing April 1st and ending March 31st. This is known as the registration year. Applications for renewal of registration must be made by the date of commencement of the registration year.[207]

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201 Op. Tex. Atty. Gen. No. 0-2150 (March 22, 1940).
202 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-2; Op. Tex. Atty. Gen. No. 0-2050 (March 18, 1940).
203 Op. Tex. Atty. Gen. No. 0-370 (February 21, 1939); Op. Tex. Atty. Gen. No. 0-2050 (March 18, 1940); Op. Tex. Atty. Gen. No. 0-5866 (March 6, 1944); Op. Tex. Atty. Gen. No. 0-5895 (March 14, 1944).
204 239 SW 2d 831 (Tex. Civ. App. 1951).
205 Op. Tex. Atty. Gen. No. 0-2050 (March 18, 1940).
206 Op. Tex. Atty. Gen. No. 0-2535 (July 29, 1940).
207 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-3.

If an application for license is filed during April it must be accompanied by payment of the full fee. However,, as has been noted, if a vehicle is registered during any subsequent month the fee is prorated so as to be a payment for the remaining months of the year including that of registration, provided that the owner swears that the vehicle has not been illegally operated on the roads during any portion of the registration year.[208]

Under the motor vehicle registration laws the tax becomes deliquent if the vehicle is used upon the public highways without the fee being paid in accordance with the provisions of the act. If the tax becomes delinquent an additional charge of 20 per cent is added to the amount of fee due.[209]

License Plates

When an individual pays his registration fee he normally receives as evidence of that payment a license and receipt. The forms of these licenses and receipts, as well as the application forms for registration, are determined by the Highway Department.

It is provided that the State Highway Department shall prepare designs and specifications for license plates, or for whatever insignia are to be used as the legal registration insignia, and that requisition and purchase of these shall be submitted to the Board of Control for approval.[210] At one time the law required the Board of Control to order the license plates from the State Penitentiary but this provision was dropped in 1943. However, the prisoners still make the license plates.

As the law now stands, and as has been the practice, it is up to the Highway Department what insignia are to be used to indicate registration. It may issue "plates or a single plate of metal or other materials, symbols, tabs, or other devices." It also has the authority to decide where on the vehicle this insigne shall be displayed, provided that it must be clearly visible.[211] However, a separate provision of the law makes it a misdemeanor to operate a passenger or commercial vehicle on the highways without a front and a rear plate or to operate a road-tracter, motorcycle, trailer or semi-trailer without a rear plate.[212]

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208 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-4.
209 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-3a.
210 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-13 1/2.
211 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 6675a-13.
212 Tex. Pen. Cost (Vernon, 1948) art. 807v, secs. 5-6.

In the event an owner of a registered vehicle loses his license plates, or if they are in any way damaged, mutilated, or stolen, he may receive another set. Should any plates be left in his possession he must return them when he gets the new ones. A fee of one dollar is collected for each set of replacement plates issued.[213] As has been indicated this provision does not apply to dealers' plates.

Under certain conditions temporary license plates may be issued. These are made of cardboard. A familiar example is that of the dealer-issued cardboard plate which may be used upon a vehicle up to ten days after its purchase from the dealer. Temporary plates may likewise be issued when a person takes deliver of a car in another state or county. Under such conditions he is supposed to obtain a temporary plate good for not over 30 days, which costs him three dollars.[214]

License Receipts

The State Highway Department is required to issue or cause to be issued to the owner of every registered vehicle a license receipt that tells the date of issuance, the number of the license plates provided, the name and address of the owner, the registered weight and such other information as the Department feels is necessary.[215]

A copy of the receipt issued for any commercial motor vehicle, truck-tractor, triler or semi-trailer must be carried in the vehicle at all times when it is on the public highways.[216]

If the owner of a vehicle loses his receipt or if it is destroyed he is entitled to obtain a duplicate. To do this he may file with the State Highway Department or with the collector of the county in which the vehicle was originally registered, an affidavit that the receipt has been lost or destroyed. For the issuance of a duplicate receipt a charge of twenty-five cents is made.[217]

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213 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-13a.

214 Tex. Civ. Stat. (Vernon, 1948) art. 6686.

215 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-12, Tex. Ten. Code (Vernon, 1948) art. 827a, sec. 5a. The constitutionality of the Department's authority to prescribe forms for receipts, applications, etc, was tested and upheld in Robbins v. Limestone County, 268 SW 915 Tex. Supreme Court (1925).

216 Tex. Pen. Code (Vernon, 1948) art. 827a, sec. 5a.

217 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-a-12a.

Registration As a Means of Facilitating the Enforcement of Other Laws

The registration requirement can be and is used as a method for simplifying enforcement of other laws relating to vehicles. The process is simple--vehicles not meeting certain requirements may not be registered and may not, therefore, legally operate on Texas roads. This device is used in connection with overly wide and overly heavy vehicles, safely, certificates of title and motor vehicle sales taxes.

No vehicle exceeding 96 inches in width, excepting certain agricultural and highway construction machinery, may be registered.[218] No vehicle may be registered at a single axle weight of over 18,000 pounds and overweight vehicles also are required to obtain special permits from the Highway Department to use Texas roads.[219]

And unsafe vehicle may be refused a license. The determination of when a vehicle is unsafe falls on the Highway Department. Not only may a new license be refused but one already issued may be revoked.[220] There are several more specific provisions relating to the safety of vehicles on the roads. For example, the compulsory inspection law makes passing an inspection a requisite for registration of a vehicle.[221] Then there is the requirement that new cars may not be registered unless they equipped with safety glass.[222] In addition the registration of a vehicle may, under certain conditions, be suspended in accordance with the provisions of the new motor vehicle safety responsibility act.[223]

The certificate of title act, requiring a vehicle owner to have a prescribed document as evidence of his ownership, also made use of the motor vehicle registration provisions for purposes of enforcement. No person may now register a vehicle unless he can bring forth a certificate of title for it or prove that one exists.[224] There is an exception to this rule for owners of automobiles purchased new prior to January 1, 1936.[225] In like manner no vehicle subject to the motor vehicle retail sales and use tax can be registered unless that tax has been paid.[226]

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218 Tex. Civ. Stat. (Vernon, Supp. 1950) art. 6675a-8b).
219 Motor Vehicle Division, Motor Vehicle Registration Manual, p. 15
220 Tex. Civ. Stat. (Vernon, 1948) art. 6696.
221 Tex. Civ. Stat. (Vernon Supp. 1952) art. 6701d.
222 Ibid.
223 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 6701h, Law Service (Vernon, 1951) p. 210.
224 For a discussion of some of the legal aspects of the Texas Certificate of Title Act see Woodward, The Constitutional Lien on Chattels in Texas, 28 Tex. L. Rev. 305 331 (1950); 29 Tex. L. Rev. 672 (1951)
225 Tex. Pen. Code (Vernon, 1948) art. 1436-1x, sec. 63 (b); Op. Tex. Atty. Gen. No. 0-3174 (March 7, 1941).
226 Tex. Civ. Stat. (Vernon, 1948) art. 7047k, sec. 5.

Apparently the state was also interested in finding out the source of parts for rebuilt vehicles and used the registration system to do so. An applicant for registration of a rebuilt vehicle must file an affidavit giving the names of the persons or firms from whom the parts used in assembling the vehicle were obtained.[227]

Disposition of Revenues

A 1946 amendment to the Constitution provides as follows with reference to motor vehicle registration fees:

> Subject to legislative appropriation, allocation and direction, all net revenues remaining after payment of all refunds allowed by law and expenses of collection derived from motor vehicle registration fees. . . shall be used for the sole purpose of acquiring rights-of-way, constructing, maintaining and policing such public roadways, and for the administration of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads; and to the supervision of traffic and safety on such roads; and for the payment of bonds or warrants voted or issued prior to January 2, 1939, and declared eligible prior to January 2, 1945, for payment out of the County and Road District Highway Fund under existing law. . . provided, however, that the net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each county under the laws in effect on January 1, 1945.[228]

The overall effect of this constitutional provision is to require the allocation of moneys received from motor vehicle registration fees to road and highway purposes and to set a minimum allocation of money for the counties. This amendment seems to say that no formula could be adopted which would allow any county less than it is allowed under the present formula, this being the formula which was in effect when the amendment was passed. The amendment does not, however, freeze the formula itself.

The general rule applicable to the disposition of registration fees is that they shall be divided between the state and the counties. Each county is entitled to 100 per cent of net collections until the amount obtained during the calendar year has reached $50,000. After that, and until the county's share has reached $175,000, the county gets 50 per cent of the registration collections. After the county has received $175,000 it gets nothing more and registration collections go entirely to the State Highway Department.[229] To insure that state revenues are

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227 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-12b.

228 Constitution of the State of Texas, art. VII, Sec. 7a. Actually the road bond assumption program is financed out of motor vehicle fuel fax revenues.

229 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-10.

received by the state with reasonable promptness it is further provided that any funds which should be remitted to the State Highway Department and which have not been so remitted within 60 days after collection, shall bear interest to the benefit of the State Highway Fund in an amount of ten per cent per annum. The Highway Department is charged with determining the exact amount of such interest due and this interest constitutes a valid claim against the county collector and his official bondsman.[230] While the law specifies the calendar year as the basis for allocating registration revenues the actual practice is to make the disposition by registration year which runs from April 1 to March 31. It would make the records more difficult to handle otherwise. The refernce to calendar year in the distribution formula is in the older law enacted when the registration year was the calendar year.

The law provided that if the distribution of funds between state and counties provided by law should be declared invalid, such funds would be distributed 60 per cent to the counties making the collections and 40 per cent to the state.[231] However, the constitutionality of the method of distribution previously described has been tested and upheld.[232]

There are a few minor changes which are not distributed according to the above formula. For example, payments for dealers licenses go entirely to the state.[233] The special charges for unregistered vehicles temporarily travelling on state highways, called a road tax, go entirely to the state. The section of the law making provision for these fees does not specifically allocate them but a court decision has settled the matter.[234] However, the amounts received from sources such as those just mentioned are minor in comparison with the amounts received from those which are to be distributed between the counties and the state.

The general rule on moneys which go to the state from registration fees is that they shall be placed in the State Highway Fund. From this fund they are to be expended in accordance with the law for highway purposes.[235] One exception to the rule exists for fees received in payment for dealers' licenses. These go into the General Revenue Fund subject to appropriation by the legislature.[236]

The general rule for moneys which go to the county from registration fees is that they shall be placed in the county Road and Bridge Fund. Expenditures

230 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-10a.
231 Tex. Civ. Stat (Vernon, 1948) art. 6675a-14.
232 Harris County v. Hall, 56 SW 2d 943 Tex. Civ. App. (1932).
233 Tex. Civ. Stat. (Vernon, 1948) art. 6686.
234 Tex. Pen. Code. (Vernon, 1948) art. 827b; Bowie County v. Mc Duffie, 103 SW 2d 1062 (1937)
235 Tex. Civ. Stat. (Vernon, 1948) art. 6694.
236 Tex. Civ. Stat. (Vernon, 1948) art. 6686.

from this fund are to be made solely for the construction and maintenance of lateral roads in the county. However, it is further provided that such funds may be used for the payment of obligations, if any, issued for the construction of roads, including state highways of the county or districts therein or for the improvement of roads comprising the county road system.[237] Apparently the requirement that registration fees go entirely into the county road and bridge fund was, for some counties, building that fund too high at the same time that other activities were running short of money. Accordingly, in 1945 the Legislature decided that under certain conditions counties could apply registration fees to any purpose the County Commissioners Court saw fit; that is, they could transfer registration fees from the road and bridge fund to any other county fund.[238] Whether the provision conflicts with the previously noted constitutional requirement that registration charges be used solely for the roads is not clear.

The registration laws provide a series of fines for their violation. The law allocates these fines to the municipality or county in which they are assessed and to which they are payable. They are then to be applied to the construction and maintenance of roads, bridges and culverts and for the enforcement of traffic laws.[239]

Tax Collectors' Fees

As compensation for the services which he renders in the administration of the motor vehicle registration system, local tax collectors are entitled to certain fees. The schedule is as follows:

Annual Number of Receipts Issued	Fee for Each Receipt
1- 5,000	$ .60
5,001-15,000	.50
15,001-25,000	.40
25,001-and up	.30

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237 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-10. See also: Op. Tex. Atty. Gen. No. 1782 (July 19, 1917); 0-1451 (September 23, 1939); Op. Tex. Atty. Gen. No. 0-1091 (July 31, 1939); Op. Tex. Atty. Gen. No. 0-2942 (December 11, 1940); Op. Tex. Atty. Gen. No. 0-2085 (March 26, 1940); Op. Tex. Atty. Gen. No. 0-3358 (April 8, 1941); Op. Tex. Atty. Gen. No. 0-3171 (March 28, 1941); Op. Tex. Atty. Gen. No. 0-3606 (June 6, 1941); Op. Tex. Atty. Gen. No. 0-5338 (July 19, 1943); Op. Tex. Atty. Gen No. 0-6464 (March 15, 1945); Op. Tex. Atty. Gen. No. V-566 (May 11, 1948).

238 Tex. Civ. Stat. (Vernon, 1948) art. 6675a-17.

239 Tex. Civ. Stat. (Vernon, 1948) art. 6700.

In other words a collector who issued 20,000 receipts in a year would receive 60 cents each for the first 5,000 ($3,000), 50 cents each for the next 10,000 ($5,000), and 40 cents each for the next 5,000 ($2,000) for a total of $10,000. Out of the fees received the county collector is to pay all his costs resulting from the registration of motor vehicles.[240] Supplementary to these fees is the 25 cent fee for issuance of duplicate license receipts. Duplicate receipts may be issued either by the State Highway Department or the county tax collector who issued the original recipt. The fee goes to the agency issuing the duplicate.[241]

Violations of the Motor Vehicle Registration Laws

A number of possible infractions, some of which have come to be significant problems, confront the administrators of motor vehicle registration laws. Among these are improper registration of vehicles by the county tax collectors. Non-resident owners are often permitted to purchase license plates. Trucks, which are registered by weight, may be issued license plates for weights lower than those under which they will actually operate. Certain special plates bearing a lower registration fee may be issued for purposes not comtemplated in the law.

Irregularities by County Officials

Every year irregularities in enforcement of motor vehicle registration laws are disclosed in some Texas counties. Vehicles may be registered for owners who are not actually residents of the county. In some cases, or course, the tax collector does not know that the individual purchasing the plates is a non-resident, and the taxpayer may be paying his registration fees out of his home county merely to avoid the inconvenience of queues of taxpayers at the window of the big city assessor-collector. Also the taxpayer may not know it is a violation of the statutes to purchase his license plates away from his home county. On the other hand, the taxpayer may be making the illegal purchase in order to keep his automobile from being listed as personal property in his home county and thereby subject to the personal property tax of certain local units of government. Of course, the county collector also has incentives for permitting payment of license fees by out-of-county citizens.

Under the present system of allocation of registration fees, the county is permitted to keep the first $50,000 and half of any receipts thereafter until a sum of $175,000 has been credited to the county. Thus until the county's

240 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 6675a-11.
241 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 6675a-12a.

share of $175,000 has been reached, the more vehicles registered in a county the greater the county benefits. Conversely the State's share of the fees is reduced.

This has apparently resulted in some of the smaller populated counties in a great tolerance for proof of residence, and in following other practices not strictly in accor dance with the letter of the law. Discounts have been given in some instances on license plates. This has been done in several ways. The assessor-collector might let it be known that in his county license plates are available at reduced rates. This would be particularly attractive to a concern needing to license a large number of vehicles--a bus company or a trucking. The small county would realize that much more toward the $175,000 maximum, which it could not hope to attain through sale of in-county license fees, and the state would be the loser.

Also, some counties have been known to issue script and to sell it to out-of-county residents at a discount. Then the county collector would accept it at face value in payment for license plates. In some counties a barter-system for sale of license plates has been discovered. For example, a contractor might trade cedar posts worth $5,000 at retail, which did not of course cost him that much, to a county other than the one in which he should register his vehicles. In return, the county would sell him license plates actually worth %5,000. The same procedure might be used with concrete culverts being the medium of exchange. Here again, the county would profit by the procedure and the state would lose.

An indication of the number of counties involved in infractions of the registration laws during the post-war years in shown in the following table:

Registration Years	No. of Counties
1946	15
1947	15
1948	14
1949	23
1950	6

SOURCE: State Auditor, Audit Report of the Motor Vehicle Division, August 31, 1950.

Of course, it is possible that the number of counties listed does not include all violations inasmuch as others may have gone undiscovered.

It is difficult to estimate the loss of revenue as a result of such irregular registrations. When these irregularities occur, the state loses in several ways. First there is the loss as a result of the sale of license plates at less then the established fee. Neither the state nor the county will actually collect

the total amount due according to law. Second, the state loses when a small county registers out-of-county vehicles. When a county with a small population, and no possiblity of attaining its $175,000 maximum share set by the statute, permits the registration of a vehicle from a more populous county, the state loses its proper share of the tax. Registration as required by law in the taxpayer's home-county would cause the entire fee to revert to the state if the county's $175,000 maximum had been reached. On the local level, certain units of government will not be able to collect vehicle property taxes to which they are legally entitled. As vehicle registration fees as assessed upon an annual basis, undetected irregularities can result in the loss of income to the state for the entire year.

In 1937 the first substantial efforts were made to put an end to irregular registrations. Between 1937 and 1941 the Highway Department discovered between $118,000 and $553,000 in illegal registrations each year, for a total of more than $1,400,000.[242] Efforts on the part of the Motor Vehicle Division to curtail this practice have resuled in a reduction of these infractions. Nevertheless, in the 1950 registration year over $40,000 in illegal registrations was discovered.

Over Registered Weight Violations

Another major problem in the enforcement of the motor vehicle registration laws is that of trucks operating on the highways with loads over that for which they are registered. Mr. E. H. Thornton, Jr. Chairman of the Texas Highway Commission, has recently estimated that this practice loses the state around $7,000,000 a year. The job of catching vehicles travelling with more than the weight for which they were registered falls primarily on the License and Weight Division of the Department of Public Savety. These officials have portable scales to weigh the vehicles and can determine the weight for which they are registered from the registration receipts which must, by law, be kept with the vehicle. The following table represents the total number over registered weight violations discovered by this division during the fiscal years from 1946 to 1950.

Year	Violations
1946	3032
1947	3652
1948	4045
1949	2913
1950	3801

SOURCE: Records od the License and Weight Division.

242 State Auditor, Special Examination, Motor Vehicle Division, August 31, 1946, p. 17.

In view of the small number of license and weight inspectors, slightly over 30 today and fewer in previous years, the size of this state and the number of trucks and trailers passing over its highways, it may reasonably be expected that the number of violations discovered is only a portion of the total number of violations which occur.

There is some feeling that the difficulty is not only the possibility of avoiding detection but also the size of the fines. When convicted, most range from $5 to $40. It is believed by some that some truckers and trucking companies may consider it economical to send trucks on the roads with more than their registered weights even if they are occasionally approached. It is also of importance that while a vehicle which carries an over registered-weight load is supposed to register for the additional weight, the present law does not facilitate getting violators registered up to the weight they are carrying at the time they are apprehended. To register for additional weight they have to return to the county of original registration; this does not permit an easy administrative follow up where the violation is discovered some distance from the place for registration. The Motor Vehicle Division, from the material contained in the reports of the License and Weight Division, sends out letters to known violators but the response is not heavy.

Misuse of License Plates

Under the registration laws certain types of licenses cost less than the regular license fees. These reduced rate licenses are, however, legally limited in use. It will be recalled that farm vehicles can be registered at one-half of the regular fee and that dealers' plates can be obtained at $15 with additional plates at $5 each. Vehicles bearing these reduced cost license plates are widely used for other than the purposes indicated in the law. Some dealers use cars bearing the dealer license for private purposes and even buy additional plates for their salesmen. It is also widely believed that farm plates appear on vehicles which are not used solely for farm purposes.

Penalties

The registration acts provide a long series of penalties for those who violate its provisions. They are largely designed to punish persons attempting to operate or in any way use or dispose of a licensable vehicle without registering it and to punish persons who falsify registration insignia.

For those who fail to register or who in some manner fail to comply with the requirements on registration or on the display of license plates the penalty is ordinarily light. Usually the fine does not exceed $200 although the act is sometimes declared a misdemeanor.[243]

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[243] Tex. Civ. Stat. (Vernon, 1948) arts. 6675a-16, 6686x, 6695; Tex. Pen. Code (Vernon, 1948) arts. 804-806, 807b, 811, 812.

For those engaged in irregular traffic in license insignia the fine is to be not less than $25. This applies to anyone obtaining a seal from any unauthorized sorce as well as to anyone selling an imitation seal.[244]

Among other wrongs for which penalties are provided are making a false statement on the weight of a vehicle to be registered, operating illegally a vehicle from which the engine number has been removed, and transferring improperly a second-hand vehicle.[245] In addition there is a general catchall provision which declares that any violation of the registration laws for which no specific punishment is provided will be punishable by a fine not to exceed $200.[246]

As has been noted one of the serious violations of the registration laws is illegal registration of motor vehicles by small counties in order to increase county income from this source. There is, however, no penalty applying to the county, as such, for engaging in these practices but only penalties applying to the individuals involved.

Police Enforcement

The motor vehicle registration laws are enforceable just as are the traffic laws, by state and local police officials. As more vehicles have appeared on the roads enforcement of registration and traffic laws have become more difficult and local and state police forces have increased in size and become more costly. The legislature has, on several occasions, had to make special provision for increasing police forces especially concerned with controlling the use of the state roads.[247] However, the increase of vehicles also brings an increase in revenues which can be applied to enforcement functions as well as to bettering the highway and road systems of the state. One of the advantages of a use tax, such as the registration fee system, is that it tends to increase revenue as costs increase although, of course, not necessarily in a direct proportion.

Local Registration Prohibited

The registration laws not only provide for registration by the state, but prohibit local units of government from registering vehicles. However, this provision is not to be interpreted as interfering with the usual authority of an incorporated place to grant franchises or to license and regulate the use of motor vehicles for hire in such corporation.[248]

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[244]Tex. Pen. Code (Vernon, 1948) arts. 808-809.

[245]Tex. Pen. Code (Vernon, Supp. 1950) arts. 427a, sec. 5a, 1433-1435.

[246]Tex. Pen. Code (Vernon, 1948) art. 807a.

[247]Tex. Civ. Stat. (Vernon, 1948) 6699.

[248]Tex. Civ. Stat. (Vernon, 1948) art. 6698.

SECTION 5 -- RESULTS OF OPERATION

In viewing the results of operation of the motor vehicle registration system in Texas it must be kept in mind that the money involved is not the only important consideration. Some might argue that it is not even the most important one -- that the regulatory aspects of motor vehicle registration would justify the system even if it produced no revenue. However, since this chapter is a portion of a general tax study, its primary concern is with the revenue aspect of the law.

Registrations and Revenues

Table MV-1 shows the number of registrations, gross collections before deducting collectors fees and county shares, and the average per vehicle registration charge during the years 1929 to 1951.

TABLE MV-1

VEHICLE REGISTRATIONS, REGISTRATION COLLECTIONS AND AVERAGE CHARGES 1929-1951
(BY REGISTRATION YEARS,)
(figures to nearest thousand)

Year	Registration	Collections	Average Charge
1929	1,376,000	$20,457,000	$ 14.86
1930	1,402,000	13,972,000	9.96
1931	1,345,000	14,046,000	10.44
1932	1,238,000	13,199,000	10.66
1933	1,242,000	12,749,000	10.26
1934	1,359,000	15,003,000	11.03
1935	1,427,000	15,839,000	11.09
1936	1,538,000	17,589,000	11.43
1937	1,613,000	19,290,000	11.95
1938	1,630,000	19,748,000	12.11
1939	1,703,000	20,707,000	12.15
1940	1,802,000	21,672,000	12.02
1941	1,831,000	24,291,000	13.26
1942	1,704,000	22,788,000	13.37
1943	1,625,000	22,335,000	13.74
1944	1,625,000	22,854,000	14.06
1945	1,713,000	24,228,000	14.17
1946	1,944,000	28,654,000	14.73
1947	2,193,000	33,919,000	15.46
1948	2,441,000	39,128,000	16.02
1949	2,785,000	43,557,000	15.63
1950	3,133,000	47,842,000	15.27
1951	3,360,000	53,283,000	15.85

Source: Records of the Motor Vehicle Division of the Texas Highway Department.

Between 1929 and 1930 a severe drop in collections will be noted, while the number of vehicles registered increased. This was the result of the reduction in rates contained in the 1929 revision of the law. However, this reduction did not constitute a net gain to the motor vehicle using taxpayer because the legislature, in the same enactment, increased motor fuel tax rates sufficiently to more than offset the reduction in revenue from registrations.

The sluggishness resulting from the depression and, later, the war period can be seen from the figures in Table MV-1. The total number of registrations and the revenues from registrations tended to move slowly during these times. An upward trend can be noted starting in 1937 as the worst part of the depression was passing but, after a rise running through 1941, war-time limitations show their effects.

The post-World War II period has been the high era in the history of the motor vehicle, and this fact is shown in the figures for motor vehicle registrations and revenues in Texas. Between 1946 and 1951 the annual number of registrations increased by over 70 per cent and the annual revenue increased by over 90 per cent.

Variations in the "average charge" column represent primarily changes in rates and changes in the composition of highway motor traffic. However, the rates in effect today are essentially those adopted in 1941. Therefore, variations since that time have to be explained largely in terms of factors other than rate changes. The most important reason for the general rise in average charges is the increasing weight of modern motor vehicles and the fact that more heavy vehicles, such as trucks, are on the roads. Year to year variations can be brought about by a number of factors which are not vital to the general trend. For example, a large number of new car sales during a year will lower the average charge because most of those new vehicles will be registered for only a part of the year. Also the number of fee-exempt registrations and farm registrations will change. Despite the year to year variations the general picture is clear. Average annual motor vehicle registration charges are increasing because they are based primarily on weight and the average weight of the vehicles travelling the roads and highways of Texas is increasing.

Within the over-all patern there are substantial differences among the receipts obtained from the several classifications of vehicles registered under the motor vehicle registration laws. The biggest revenue raiser is the passenger motor vehicle. In 1951 almost 29 million of the over 53 million gross intake came from passenger cars. Next in line came commercial motor vehicles with over 15 million, trailers with over 4.5 million, and truck-tractors with over 3 million. All other types contributed slightly over one million. Accordingly passenger cars account for over one-half the money coming in from motor vehicle registration. In terms of the number of vehicles registered passenger cars account for an even high portion, over 70 per cent.

In addition to these regular registration fees there are the receipts from such things as dealers' licenses, the issuance of duplicate receipts, road tax charges and transfers. During the 1951 fiscal year these grossed over one million dollars. Transfers accounted for most of that amount.

Texas Receipts Compared to Those of Other States

Texas stands, relative to other states, in a reasonably good position to obtain income from motor vehicle registrations. There are approximately 2.5 persons per vehicle registered in Texas which is better than the national average and the figures for many other states. There is no exact relationship which can be established between vehicles per person and various social and economic factors. However, the wealth of an area and the concentration of population seem to be the major factors influencing the ratio between vehicles and population. More money in an area results in more automobiles, while heavy concentration of population seem to lower the proportionate number of automobile purchasers.

In absolute figures Texas stands high in the number of motor vehicles registered compared to the bordering states. Oklahoma, the next highest of this group, which also includes Arkansas, Louisiana, and New Mexico, had slightly over 750,000 registrations in 1949 compared to Texas' over 2,750,000.[249] However, Texas and Oklahoma are approximately on a par with reference to per capita registrations. The other states mentioned have a greater number of persons per vehicle than do Texas and Oklahoma. New Mexico follows Texas and Oklahoma in having the fewest people per vehicle. Next comes Arkansas and then Louisiana, although these two states are almost equal on this count.

A fairly substantial variation among state registration revenues in the southwest in 1949 can be seen if they are computed in terms of the average receipts from this source for each individual. New Mexico stood high with an average per person of $7.30 and Louisiana low at $2.52. In Texas the average cost for license payments going to the state was $3.11. On the national scene the figures range from a high of $10.51 in Vermont to a low of $1.15 in Idaho.[250]

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249 It should be noted that statistics on motor vehicle registration and registration receipts by states obtained from different sources vary somewhat. Nonetheless, the variations are not sufficient to seriously influence the comparisons made herein.

250 Edward W. Reed, The Arkansas Tax System (Fayetteville: University of Arkansas, 1950)p. 94. In this and some of the following comparisons it must be kept in mind that only state and not local receipts are being considered.

What is the story in comparing the state incomes from motor vehicle registrations? Income from registration fees for Texas and its bordering states during 1950 ran as follows:

Texas	$25,047,000
Arkansas	7,264,000
Louisiana	6,327,000
New Mexico	4,808,000
Oklahoma	19,378,000*[251]

Of course, the reason this group of figures bears no comparative relationship to the number of vehicles registered or the vehicles per capita is that the rates vary substantially among the states listed, as does the portion of the total revenue going to local units of government. A comparative review of rates will follow shortly.

If Texas and its surrounding states are compared according to the relationship of state registration income to per capita income they rank in the following order:

State	Rank Among the 48 States According to Percentage Registration Tax Is of per Capita Income
New Mexico	4
Oklahoma	7
Arkansas	14
Texas	39
Louisiana	41*[252]

In a complete table of all the states showing the percentage the registration tax is of per capita income, the percentage variation is very small. In Vermont, which ranks first, it is .98 and in Idaho, ranking forty-eigth, it is .09. Nonetheless, it should be recognized that small percentage figures, when items are computed in terms of a proportion of per capita income, can mean a substantial amount of money.

Allocation of Receipts

Table MV-2 presents the amounts and percentages of motor vehicle registration revenues which went to the counties as compared with those that went to the state for the fiscal years 1929 to 1951.

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251 Bureau of the Census, State Tax Collections in 1950, August, 1950, p. 7.

252 Edward W. Reed, The Arkansas Tax System (Fayetteville: University of Arkansas, 1950) p. 94.

TABLE MV-2

DISTRIBUTION OF NET RECEIPTS FROM MOTOR VEHICLE LICENSE FEES

1929-50*

Year	Total Net Receipts	Net to Counties	Per Cent	Net to State	Per Cent
1929	20,198,320	8,351,681	41.35	11,846,639	58.65
1930	14,186,216	9,560,699	67.39	4,625,517	32.61
1931	13,294,487	8,853,502	66.60	4,440,985	33.40
1932	12,614,032	8,407,825	66.65	4,206,207	33.35
1933	12,018,359	8,159,651	67.89	3,858,708	32.11
1934	13,800,522	9,178,020	66.50	4,622,502	33.50
1935	14,862,666	9,741,817	65.55	5,120,849	34.45
1936	16,699,756	10,871,024	65.10	5,828,732	34.90
1937	18,371,210	11,635,509	63.34	6,735,701	36.66
1938	19,057,794	11,904,371	62.46	7,153,423	37.54
1939	19,810,918	11,918,945	60.16	7,891,973	39.84
1940	20,593,446	12,101,133	58.76	8,492,313	41.24
1941	23,279,620	13,148,785	56.48	10,130,835	43.52
1942	22,589,183	12,641,362	55.96	9,947,821	44.04
1943	21,785,016	12,199,980	56.00	9,585,036	44.00
1944	22,183,554	12,380,377	55.81	9,803,177	44.19
1945	23,218,450	12,904,895	55.58	10,313,555	44.42
1946	27,204,988	14,274,365	52.47	12,930,623	47.53
1947	32,514,004	15,965,466	49.10	16,548,538	50.90
1948	38,029,438	17,271,855	45.42	20,757,583	54.58
1949	41,588,251	18,212,204	43.79	23,376,027	56.21
1950	47,791,972	19,578,729	40.97	28,213,243	59.03
1951	53,225,831	20,664,074	38,83	32,561,756	61.17

SOURCE: Biennial Reports of the State Highway Department of Texas and State Auditor's Reports on the State Highway Department and its Motor Vehicle Division.

*NOTE: Net receipts are gross receipts less fees to counties. Years ending August 31.

From this table it can be seen that registration receipts received by the counties ranged from a little under 40 to a little under 70 per cent of the total. Obviously with the present system for distribution of receipts it is to the benefit of the state to have high collections and to have them concentrated to the greatest extent possible. The current increase in population and in the urbanization of population can be seen in the fact that the state's portion of registration returns has been going up.

It will be recalled that the distribution of the registration receipts is not based on a percentage figure but allows a county to keep 100 per cent of the first

$50,000 net receipts and 50 per cent of the net receipts thereafter until the county share reaches $175,000. During the 1951 fiscal year the counties received income as follows:

71 counties received $50,000 or less.
160 counties received between $50,000 and $175,000.
23 counties received the maximum of $175,000.[253]

The variations in collections by counties were tremendous, with one county netting in net revenue a little over two thousand dollars and another receiving close to six million in 1951. This disproportion between registration receipts among the counties means that a few more populous counties provide the greatest segment of state income from registrations. For example, in the 1951 fiscal year four counties -- Bexar, Dallas, Harris, and Tarrant - accounted for almost one-half of the total registration fees that went to the state. In the same year the 23 counties which received the maximum allowed to the county, that is $175,000, paid into the state about 26 million of the over 32.5 million which constituted the state's share. In other words, the great bulk of the state's income from motor vehicle registration comes from 26 of the state's 254 counties.

Rates

In view of the fact that Texas compares well with other states on receipts it might be expected that it would also compare well on rates. This is indeed the case. Texas is in step in basing its rate schedules on weight. It also runs a bit higher than the median in the size of the fees which it collects.

While weight, although not always computed in the same manner, is the most popular base for figuring passenger car fees, such measures as horsepower, age, value and also flat rates are used. Among those states using weight as a measure a comparative picture is further complicated by the fact that the graduations of the fees are different. However, it would probably be fair to say that Texas falls among the upper middle group of these states. The same estimate holds true even if all states are included regardless of their method of computing the fee.[254]

In figuring the charge on trucks every state uses one form or another of a weight measure. However, within this broad similarity there is a great deal of variation in the methods used for determining the weight on which the fee is computed. In truck fees Texas falls in the upper middle group for the lighter, but rises toward the top for the heavier vehicles. Approximately half the states are like Texas in that they allow a reduced fee for farm vehicles, but less than ten of the states increase the fees for diesel-powered vehicles.[255]

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253 Annual Report, Accounting Division, Texas State Highway Department, fiscal year 1951, p. 10.

254 Report of the Senate Interim Committee on State and Local Taxation of the California Legislature, Part III, 1951, pp. 415-417.

255 Ibid, pp. 416-424.

For trailers, as for trucks, the general criterion is weight determined in one manner or another. In this grouping Texas again falls in the upper middle group on the basis of charges made.[256]

All in all it may be said that Texas, in terms of the rates charges for registration of vehicles, falls into the upper middle group as compared with other states. Of course, due to the different bases used and the different graduations of rate that relationship will not hold throughout. Taking a particular vehicle in Texas it might be found that it falls well outside of the upper middle group when the charges which would be made on it by all the states are calculated. For example, instead of the Texas rate being about fifteenth from the top it might be fourth from the top. However, disregarding particular cases the generalization holds that Texas rates put it in the upper middle group of the states for vehicle registration taxes. It is also correct to say that Texas rates are so graduated that, as the vehicle becomes heavier, the Texas fee becomes relatively higher when compared with those which would be levied on the same vehicle in other states.

Costs

The costs of the motor vehicle registration system are borne in part by the State Highway Department and in part by the offices of the county tax assessor-collectors. The last mentioned officials are paid on a fee basis and, while it is impossible to discover their actual costs incurred from registration activities, the amounts which they receive for those activities are known.

Table MV-3 demonstrates the amount of commission paid to county tax assessor-collectors for the period from 1945 to 1949 inclusive, and the average commission paid per receipt issued. It also shows the difference between these factors for 1940 and 1949.

TABLE MV-3

TOTAL COMMISSIONS PAID COUNTY TAX ASSESSOR-COLLECTORS FOR ISSUING MOTOR VEHICLE LICENSES: Registration Years 1940 & 1945-49*

Year	Total Registration	Commission Paid	Average Commission per Receipt
1945	1,693,580	$ 597,001.33	35.2¢
1946	1,920,818	667,758.29	34.7
1947	2,165,667	741,081.26	34.2
1948	2,463,347	812,335.05	32.9
1949	2,783,866	908,115.32	32.6
Total	11,027,257	$3,726,291.25	33.7¢
1940	1,781,780	$ 628,693.83	35.2¢
1949	2,783,866	908,115.32	32.6
	1,002,086	$ 279,421.49	2.6¢ decrease

SOURCE: Motor Vehicle Division of the Texas Highway Department.

Examination of the table will disclose that the average commission paid decreases as the number of receipts increases, although not in exact proportion. The reason for this, it will be recalled, is that the fees for collection paid to a tax collector decrease, accoring to a schedule set out in the law, as the total number of registration receipts he issues increases. Increased registration results also in a percentage decrease in the tax collectors' portion of total registration. For example, in 1940 the fees paid to tax collectors amounted to almost three per cent of total revenue but by 1949 the figure was approximately 2 per cent. However, due to the action at the Fifty-Second Legislature in revising upward the collectors' fee schedule, these commissions are due for an upturn in the immediate future.

Other direct costs for the administration of the motor vehicle registration system fall on the Motor Vehicle Division of the Highway Department and involve expenditures for supplies, such as license plates and the numerous forms furnished the county tax collectors, and the costs of record-keeping and general administrative activities.

One big item of cost in a registration system is that of supplying license plates to be attached to registered vehicles. Actually the cost of individual plates is not much but the over-all cost is substantial. For example, in 1949 the total cost to the Highway Department for license plates, which includes the cost of manufactury, delivery, inspecting and testing was over $258,000. In 1951, it was $360,000. However, the cost for each set of plates in 1949 was only about nine cents. Naturally as cost in general rise the cost of manufacturing license plates will also rise, and a slight increase can be seen between 1948 and 1949 in cost per pair of license plates. It can also be seen, by comparing the 1945 and 1946 costs when only one plate was issued for each vehicle with those of later years when two were issued, that there is some decrease in cost per unit with an increase in the number of plates produced. Accordingly, the use of only one plate does not cut license plate costs by half.

In comparison with other states Texas manufactures its license plates quite cheaply. This holds true even when Texas costs are compared with those of other states using prisoners to make the tags. For several years the State Auditor, in his annual report on the Motor Vehicle Division, has been running compasisons between the Texas per plate cost and that of other states from which figures could be obtained.[257] In every instance Texas came out with the smallest figure.

During the 1951 fiscal year the total office expenses of running the registration activities of the Motor Vehicle Division amounted to about $364,000. As would be expected the greatest single item was salaries, registration and office supplies and then travelling expenses following.

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[257] State Auditor, Audit Report - Motor Vehicle Division, State Highway Department, August 31, 1950, pp. 15, 16.

On the basis of these figures it is possible to reach an estimate of the cost of administering the vehicle registration laws as compared with the amount of revenue they yield. It would be a fair estimate that during the 1951 fiscal year the total cost of administration was around $1,800,000, the largest portion of which went in fees to county tax collectors.[258] In the same fiscal year gross receipts came to $54,740,000. Accordingly administrative expenses amounted to approximately 3.2 per cent of gross receipts.

SECTION 6 -- SUMMARY AND PROBLEM AREAS

The foregoing discussion indicated that the motor vehicle registration system in Texas has given rise to several problems. It is the purpose of this section to summarize the problem areas which may be of sufficient significance to deserve legislative attention. Some of the considerations and some of the possible courses of action that should probably be taken into account in an examination of these matters are also indicated. As is true of this entire study, the mention of problem areas and possible approaches is not intended to indicate that some change is necessary.

Problem areas in motor vehicle registration include the following:

(1) Violations of registration laws by county tax collectors.

(2) The loading of trucks to more than their registered weights.

(3) Misuse of dealers' and farmers' license plates.

(4) The legal residence of a corporation for registration purposes.

(5) The illegality of some receipts on file at the Motor Vehicle Division.

(6) The apparent duplication of certain records maintained by the Motor Vehicle Division and the Accounting Division of the Texas Highway Department.

In addition, because it seems to be a recurring issue, some mention will be made of the arguments on the proper organizational location of the motor vehicle registration function.

Violations of Registration Laws by Tax Collectors

As has been noted, tax collectors in some counties deviate from the strict requirements of the registration laws. The State Auditor's reports indicate that frequently this has for its purpose the obtaining for their counties of greater registration revenue than those counties would otherwise receive. The current method of distributing net registration receipts between the state and the counties in which these receipts are collected is such that some of the smaller counties may be tempted to increase their revenues by increasing their sales of license plates through offers of discounts to non-residents of those counties. These non-residents may come from larger counties, in which case this practice involves a loss of registration income to the state.

Several possible approaches to this problem have been mentioned. One would be to set up a registration system administered by field officers of the Motor Vehicle Division rather than by county assessor-collectors of taxes. Another would be to devise some more extensive method for checking county finances, such as an annual audit of all county funds by an outside authority. A third possible avenue of approach would be to modify the present state-county distribution formula which may be viewed as inducing these infractions of the registration laws.

An argument for the possibility that representatives of the Motor Vehicle Division take over field administration of the registration tax is that they would not have an interest in any particular county and would not, therefore, be inclined to engage in illegal registration practices to increase any county's revenue. As there would be little incentive to do otherwise, the field tax administrators might be expected to register the vehicle only in the right county and to receive full payment in cash for the registration. However, it should be noted that even the best administration of the law would probably not prevent all out-of-county registrations; for example, persons desiring to avoid city or county ad valorem taxes on motor vehicles collected at their place of residence might still try to register in another county. Nevertheless, this possibility might be viewed as a means to eliminate a bulk of the cases, such as where truck or bus companies register out of county in order to reduce their costs of registration. Of course, it could be argued that this possibility means giving up the advantages of employing existing administrative facilities.

Another possible line of approach would be to provide for a more complete audit of county accounts, including in that audit some checks on at least the major registrations such as those of truck and bus companies. This audit would be made, of course, by someone outside of the county, possibly by a representative of the state government. A full audit would make it difficult for counties to accept without detection other than money for registrations and could serve to uncover additional illegal registrations and to prevent many future illegal registrations. On the other hand, it could be argued that this approach is not consistent with Texas policy as to state-local relations.

The present method for distributing net registration receipts between the counties and the state is viewed by some as inducing registration irregularities. Accordingly, an apparent possibility is to seek some alternative method of allocation which would not be so designed as to encourage illegal registrations. However, any examination along this line needs to take into account the specific requirements and policy of the Constitution allocating a portion of these revenues to the county. The constitutional declaration that the share of net receipts to be retained by any county shall never be less

than the maximum amounts it could retain under the laws in effect on January 1, 1945, must be kept in mind.[259] This requirement presents limits on any revision of the formula.

Loading Trucks to More Than Their Registered Weights

Another big problem in motor vehicle registration is that many trucks and truck-trailer combinations are loaded to more than the weight for which they are registered. When a truck is not registered to the full amount of its weight plus the weight of the load it will carry on the roads of the state or the counties, both are losing tax money to which they are entitled under the law.

This problem may not lend itself to easy and complete solution. An apparent approach would be better enforcement and more realistic penalties. It is instructive that the increases which have been made in the personnel of the License and Weight Division of the Department of Public Safety in recent years have resulted in substantial increases in the number of cases filed and fines collected. Where the point of diminishing returns would be reached is not known, but it would probably be determined by careful analysis of all the factors involved and by experimentation. It should be noted in this connection that the number of violations discovered is not the only criterion of efficient enforcement because efficient enforcement should lead to fewer attempts at sending trucks on the roads carrying more than the weight for which they are registered.

As noted in Section4, there is the additional problem of the penalties collected being so small that some truckers may feel it is a profitable operation to overload the trucks and pay such fines as they may have to pay. Also, as noted in Section 4, there is not presently an easy method for getting a truck apprehended with greater than its registered weight to register up to the weight carried at the time it was apprehended. One approach to both of these matters could be to make appropriate penalties mandatory and to provide the means which would insure registering trucks detected traveling with over their registered weights up to the full amount of their weights when caught.

Misuse of Dealers' and Farmers' Licenses

Dealers' and farmers' licenses are issued to be placed on vehicles used under certain restricted conditions. They are less expensive than regular registrations and so when vehicles with dealers' or farmers' tags are

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[259] Tex. Const., Art. VIII, sec. 7a.

used under other than the restrictions laid down by law, the state or counties are not receiving the full registration tax to which they are entitled. Possibly better enforcement by police officials and more stringent penalties for violations are methods of approach to these problems. Insofar as dealers' licenses are concerned, a possible enforcement device might be to watch the number of additional plates issued to each dealer, this being a clue to, although not proof of, misuse.

Setting the Legal Residence of a Corporation

The long-established administrative rule that the residence of a corporation for registration purposes is the county in which it has its principal place of business has been upset by a recent civil appeals case which held in effect that a corporation could register its vehicles in the county where its principal place of business is located in fact or as stated to be its location in its charter. The situation whereby a corporation may be chartered in a county in which it has practically no facilities opens the way for truck and bus companies to get charters in counties in which they believe they may be able to get discounted license plates. On the other hand, this consideration may not be important enough to a corporation to influence the placing of its charter location; so the practice might never materialize. However, the possibility might merit some attention.

Illegality of Receipts

The receipts on file at the Motor Vehicle Division are vital in law enforcement activities of the state. It is, therefore, important that they be readable. However, some of the receipts cannot be read with facility. The Motor Vehicle Division has been attempting to persuade tax collectors to type receipts, but it has not been wholly successful in this endeavor. It might be desirable, for that reason, to provide for the typing of registration receipts.

Duplication of Records

It would appear that some duplication of accounts exists between the Motor Vehicle and the Accounting Divisions of the Highway Department. Apparently both divisions keep records of registration revenues and of overages and shortages in the reports from the various counties. There may be some cause for this practice, either as a double check or because it has proved to be the best way for the Accounting Division to keep track of revenues. The Accounting Division is the accounting center of the Highway Department and must keep adequate records of all moneys. However, it might be possible to eliminate this duplication and adopt other procedures which would be more efficient and still be capable of accomplishing the desired purpose.

The Organization of Registration

This study has not been concerned with the broad problem of the proper location in the Texas state governmental organization of the registration function. However, this matter has come up on several occasions and a brief note on the various proposals might be properly included.

The first question is whether the Motor Vehicle Division, or at least that part of it dealing with registration, is properly located. The Report of the Texas Joint Legislative Committee on Organization and Economy, which was published in 1933, suggested that the registration function be transferred to an agency charged with the collection of taxes. It was argued that the function performed was basically tax collecting and that the primary relationships were with local tax-collecting officials, while the Highway Department was concerned with the building and maintenance of roads. There was no particular reason, it was stated, why the fact that the receipts from a certain tax were allocated to a particular department should require collection by that department.[260]

On the other hand, it has been suggested that vehicle registration be placed in the Department of Public Safety. This suggestion is based on the assumption that the activity is closely connected with law enforcement and that registration of vehicles is somewhat analogous to registration of drivers.

There have also been suggestions that the License and Weight Division of the Department of Public Safety be transferred to the Highway Department. It is argued that the functions of this division are, even though they partake of law enforcement, most closely connected with those of the Motor Vehicle Division.

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260 The Government of the State of Texas (Report of the Joint Legislative Committee on Organization and Economy) Pt. VI (January 10, 1933), p. 18.

CHAPTER IV

GAS GATHERING TAX

SECTION I - HISTORICAL AND LEGAL DEVELOPMENT

The natural gas industry is a newcomer to the field of major Texas industries. It has developed primarily over the last three decades with the most significant gains coming during the last ten years. The history of the development of this industry is discussed in connection with the natural gas production tax in an earlier volume of this study;[1] it need not be repeated here. Since the gathering tax is itself very recent, having become effective September 1, 1951, it is helpful to set out additional facts showing the major trends in the industry at the time the tax was enacted and at present.

The National Picture

Natural gas has become a significant part of the national source of energy. A report of the President's Materials Policy Commission states that:

> . . . . More than five times as much (gas) was marketed in 1950 as in 1925, and the increase in consumption in 1951 was the largest in history. Natural gas now supplies more than 18 per cent of the energy used in the United States as compared with 4 per cent of a much smaller total in 1920.[2]

More detailed figures from other sources support these general statements.[3] The average annual increase of marketed production of natural gas from 1940 to 1950 was eight per cent.[4] The increase in marketed production for 1950 over the 1949 total was 16 per cent, and for the following year, 1951, about 18 per cent over that of 1950. Totals of estimated marketed production for the United States and Texas for the last five years were:

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1 Texas Legislative Council, Staff Research Report, No. 51-8, A Survey of Taxation in Texas, Part II, Analysis of Industrial Taxes (Austin, March 1951), pp. 178-188.

2. Resources for Freedom, Vol. III, The Outlook for Energy Sources, prepared by the President's Materials Policy Commission, 1952, p. 15.

3 The figures and estimates following, except as noted, are from "Bureau of Mines Releases Details of Natural Gas in 1950," Gas Age, Vol. 109 (May 8, 1952), pp. 181, 182, which digests material from a forthcoming Bureau of Mines Mineral Yearbook.

4 The figures given here for "marketed production", although cited from a variety of publications are all based on estimates made by the Bureau of Mines. Marketed production comprises gas either sold or consumed by producers, including losses in transmission, amounts added to storage, and increases in gas in pipelines. These figures are not useful for estimating taxable gas, but should be reliable for the purpose of determing trends as they are here used.

Year	In millions of Cubic Feet	
	United States	Texas
1947	4,582,173	1,992,704
1948	5,148,020	2,289,923
1949	5,419,736	2,588,921
1950	6,282,060	3,126,402
1951 (preliminary)	7,415,600	3,802,400[5]

During this five year period, the expenditures for new facilities and plant expansion of the natural gas industry have been estimated to total $4,560,000,000, a total which included $511,000,000 for production; $2,939,000,000 for transmission; $958,000,000 for distribution; and $152,000,000 for general expenditures.[6] Another estimate places at $954,000,000 the sum spent in 1950 on the construction of natural gas transmission and distribution lines. During the same year the Federal Power Commission approved construction of 5,750 miles of natural gas transmission lines which, when completed, will raise to total mileage of the natural gas transmission system to 265,000 miles.

Texas' Stake in Gas

Texas' stake in this expanding industry is sizable. The national increase of the 1951 total over 1947 was a substantial 61.8 per cent. The Texas increase for the same period, however, was 90.8 per cent.[7] Furthermore, as the table shows, Texas produced slightly more than one-half of the gas marketed in 1951. Texas also had proved reserves at the end of 1951 of 105,653,229 millions of cubic feet, or 54.513 per cent of the United States total of 193,811,500 million cubic feet.[8]

This, then, is the business environment in which the gas gathering tax was imposed and now operates.

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5 "Gas Sales Nearly Double in Six Years," Oil and Gas Journal, Vol. 51, No. 1 (May 12, 1952), pp. 154, 155.

6 "Gas Industry Will Spend $5.6 Billion in Expansion Next Five Years," Gas Age, Vol. 110, No. 3 (July 31, 1952), p. 30. These figures are based on estimates made by the American Gas Association.

7 "Gas-Sales Nearly Double in Six Years," Oil & Gas Journal, Vol. 51, No. 1 (May 12, 1952), p. 155.

8 "Proved Reserves of Crude Oil, Natural Gas Liquids and Natural Gas," American Gas Association, Vol. 6, p. 18 (December 31, 1951), published by the American Petroleum Institute.

The Statute

The Texas gas gathering tax law has had a short and well publicized history. In view of similarities of language, its source appears to have been the gas gathering tax levied by the State of Louisiana in 1940 for a two year period and continued from session to session until incorporated into the permanent tax laws of that state in 1948.[9]

Louisiana Gas Gathering Tax

A summary of the background of the Louisiana tax may be instructive as it may possibly throw some light on the Texas tax. Apparently, a belief arose in that state that the market price for gas at wells of three or four cents per 1,000 cubic feet did not represent the intrinsic worth of the gas in terms of heat production when compared with oil or coal.[10] A severance tax, therefore, based on that value both unduly burdened royalty owners and returned proportionately less revenue than did a tax on oil. The Louisiana tax was designed to increase the tax on gas without burdening the royalty owner by placing the incidence on the operators of transmission lines at rates not directly variable with value.[11]

The constitutionality of the Louisiana tax has not been attacked in the courts. Doubts regarding its validity have been raised, however, and there is reason to believe that informal agreements between elements of the gas industry and the Louisiana government have deterred a test. The Louisiana Revenue Code Commission put it this way:

> Pretermitting all side agreements, legislatively unrecorded understandings and such, it is asserted by the gas industry that there do exist very serious legal complications concerning this tax. Prior to 1940, there was no gas gathering tax. It was first effected by negotiations with the affected industry and enacted by Act 153 of 1940 for a two year period.[12]

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[9] Louisiana Revenue Code Commission, Preliminary Report, 1946, p. 129; Louisiana Acts 1948, No. 11, secs. 1-11; Louisiana Revised Statutes of of 1950, Title 47, arts. 671-677.

[10] This was apparently felt by some to be a problem in Texas as it received some attention in the 52nd Texas Legislature, the same legislature which enacted the Texas gas gathering tax. House Bill No. 638 provided for granting authority to the Railroad Commission to fix minimum field prices to prevent waste resulting from early abandonment and bad drilling practices as low prices offer insufficient incentive. The Bill passed the House and was favorably reported by the Senate Committee, but was not enacted into law. House Journal, Vol. 2., pp. 2197-2199; Senate Journal, p. 1115.

[11] Louisiana Revenue Code Commission, Preliminary Report, 1946, pp. 128, 129.

[12] Ibid., p. 129.

The assertions were that the tax is an unconstitutional burden on interstate commerce and that it also violates a Louisiana constitutional provision limiting taxation of oil and gas lease rights to severance taxes. The report continues:

> It is not the function of this Commission to . . . . indulge in any guessing as to whether or not material tampering with this tax would provoke any of those issues or precipitate any of those agreements . . . . [13]

Similarity of Louisiana and Texas Tax

The Texas tax, the constitutional validity of which is now under attack in the courts, follows the Louisiana tax closely in language, rate, coverage and exemption provisions. The close similarity of language is illustrated by the following quotation from the definition sections of both laws, underlining the Texas additions and placing in parenthesis the deletions from the Louisiana law.[14] These sections are quoted in full for the further reason that they are the provisions traising constitutional questions.

> (a) "Gas" means natural and casing-head gas or other gas taken from the earth or waters, regardless of whether produced from a gas well or from a well also productive of oil, distillate, condensate or other product.
>
> (b) "Casing-head gas" means any gas or vapor indigenous to an oil stratum and produced from such statum with oil.
>
> (c) "Gathering gas" means the first taking or the first retaining of possession of gas produced in Texas (Louisiana) for transmission whether through a pipeline, either common carrier or private, or otherwise after severance of such gas, and after the passage of such gas through any separator, drip trap, meter or other method designed to separate the oil therefrom. (that may be located at or near the well) In the case of gas containing

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13 Ibid., pp. 129-130

14 Defendents' Reply Brief, Appendix A. This and other references to briefs are to the trail briefs filed in three cases filed in the 126th District Court, Travis County, Texas, styled Panhandle Eastern Pipe Line Company v. Calvert, et al; Michigan-Wisconsin Pipe Line Company v. Calvert, et al; and Amarillo Oil Company v. Calvert, et al, bearing respectively docket Numbers 91332, 91338 and 91508.

gasoline or liquid hydrocarbons that are removed or extracted (in commercial quantities) at a plant within the State by scrubbing, absorption, compression or any other (similar) process, the term "gathering gas" means the first taking or the first retaining of possession of such gas for other processing or (for) transmission whether through a pipeline, either common carrier or private after such gas has passed through the outlet of such plant. (Provided that the license or tax hereby levied is not levied against or charged to any royalty interest of any lessor or vendee or assignee of such royalty interest).

Both the Texas and Louisiana statutes provide for a flat rate per 1,000 cubic feet of gas; one cent for Louisiana and 9/20th of one cent for Texas. Both assert that the tax is laid on the privilege of engaging in the business or occupation of gas gathering as defined in subsection (3) quoted above. Both contain express provisions designed to prevent the taxpayer from passing the tax back to an earlier possessor or owner of the gas. Finally, both exempt gas injected into the earth, flared or vented gas and gas used on a lease or in the manufacture of carbon black.[15]

Litigation to Test Constitutional Validity

The Texas act became effective on September 1, 1951. The first payments became due on October 25, 1951, for the preceding month. About one half of the first tax payments were paid under protest pursuant to the pertinent statute.[16] Proceedings were soon instituted by several of the protesting companies for recovery of the taxes paid. Three of these were consolidated into one action and tried together for the purpose of testing the validity of the statute. The cases appear to have been chosen for the variety of fact situations involved. The following descriptions taken from the State's trial brief appear not to have been questioned by the other parties to the proceedings:

> Panhandle Eastern Pipe Line Company produces gas in Texas and purchases gas that is produced in Texas. It transports by pipeline such gas in both interstate and intrastate commerce. It takes the gas so purchased at the outlet of the processing plants within the meaning of the taxing act in question for transmission in pipelines. The gas so produced is retained at the outlet of processing plants within the meaning of the taxing act in question for transmission in pipelines.

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[15] Tex. Civ. Stat. (Vernon Supp. 1952) art. 7057f; Louisiana Revised Statutes of 1950, Title 47, arts. 671-677.

[16] Tex. Civ. Stat. (Vernon, 1948) art. 7057b.

Michigan Wisconsin Pipe Line Company produces no gas. It purchases gas that is produced in Texas and transmits such gas by pipeline into interstate commerce. The gas so purchased by Michigan-Wisconsin is taken at the outlet of processing plants within the meaning of the taxing act in question for transmission by pipelines.

Amarillo Oil Company produces no gas. It purchases gas that is produced in Texas and transmits such gas by pipeline into intrastate commerce. The gas so purchased by Amarillo Oil Company is taken at the outlet of processing plants within the meaning of the taxing act in question for transmission by pipelines.[16a] (emphasis added)

A provision of the act makes the tax invalid as to gas transmitted in intrastate commerce if held invalid as to that transmitted interstate.[17] The briefs of the parties indicate that because of this provision, the constitutionality of the act as applied to the Michigan-Wisconsin Company, which transmits out of state all gas purchased, is the focal point of the suit. The question may be stated as whether a tax laid on the "taking" of gas from a processing plant for transmission only to out of state customers violates the commerce clause of the Federal Constitution which reads:

> The Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.[18]

The position of the State as reflected in the trial brief is that the taking of the gas by Michigan-Wisconsin is a taxable activity. This is based on the premises that: (1) the activity is either a local activity in interstate commerce affecting commerce; (2) as such, the state may tax the activity if it extends benefits; and (3) the tax is not discriminatory nor does it present a possibility of multiple tax burdening by several states. The brief asserts:

> Some of the following cases would seem to require that this activity be held a part of intrastate commerce; some would require that it be held a local activity in interstate commerce, and others make no attempt to place the taxed activity in either classification. However, the point of all the case is that the activity in question is properly

17 Tex. Civ. Stat. (Vernon, supp. 1952) art. 7057f, sec. 11.

18 Constitution of the United States, Article 1, section 8, subdivision 3.

16a Defendent's Trial Brief, p. 2.

taxable by the State if the State gives benefits, protection and opportunities to the activity to be taxed.[19]

Extensive testimony was adduced on trial to show that the tremendous capital outlay necessary for pipeline development would not have been feasible without the assurance of continued gas reserves made possible by conservation regulation by the state.[20]

Further contention is made that the tax is non-discriminatory since the incidence and amount of the tax are not governed by whether the gas is transmitted intra- or inter-state, but fall alike on both. Multiple taxation is said not to be possible since the "first taking" of the gas for transmission after production can occur and be taxed only one time.[21]

The position taken by the taxpayers is summarized by the following excerpts from a reply brief:

> . . . The attack by plaintiff is on the ground that plaintiff's activities are solely a part of commerce itself, and therefore are not subject to taxation by the State . . . .[22]

And further:

> . . . The State is wholly without power to levy any tax on the "taking" of "retaining" of gas by plaintiff if such gas is in interstate commerce at the time of taking or if such taking is an activity in and a part of commerce itself; and this is true irrespective of any protection, opportunity or benefit that may be realized by plaintiff by virtue of the conservation laws and the regulations of the Railroad Commission of Texas thereunder, or by virtue of any other law of the State. If the tax is placed upon an activity which is a part of interstate commerce, upon interstate commerce itself, or upon the business of engaging in interstate commerce, the tax is invalid whether or not it discriminates against interstate commerce, whether or not it is or could impose any multiple burden upon interstate commerce, whether or not any opportunities and benefits are afforded by the State of Texas to the taxpayer, whether or not the tax is fairly apportioned to business within the state.[23]

The trial court rendered judgment for plaintiff taxpayers without opinion. The suit has been appealed to the Texas Court of Civil Appeals.

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19 Defendants' Trial Brief, p. 28.
20 Defendants' Trial Brief, pp. 5-19.
21 Ibid., pp. 54-55.
22 Plaintiffs' Reply to Defendants' Brief, p. 9.
23 Ibid., pp. 9-10.

SECTION 2 - ORGANIZATIONAL FORM

Primary responsibility for the administration of the tax is placed on the Comptroller of Public Accounts. Collection and enforcement powers, with the exception of the prosecution of suits, are vested only in the Comptroller. The Comptroller is authorized to prescribe the content of the forms on which taxpayers are required to report and to make rules for administering the tax, He is empowered to hire "auditors and technical assistants " to make investigations regarding payment of the tax.[24] An unusual feature of the tax law is that there is no express provision designating the officer or agency to whom the tax shall be paid. No doubt the requirement is implicit that payment be made to the Comptroller. In any case, it appears probable that the rule-making power is sufficiently broad to permit the Comptroller to require that the tax be paid to him.

The attack on the tax in the courts has delayed development of any but a skeleton administrative organization. The tax has been assigned to the Gross Receipts Division of the Comptroller's office. Three members of that division participate in administering the tax, and these on a part-time basis only. They are the head of the Division, an auditor who checks the arithmetic calculations on each return and insures that correct disposition is made of payments under protest and a bookkeeper who makes ledger entries from the tax returns of all reported taxable gas.

The Attorney General is authorized to enjoin from pursuing the occupation of gathering gas any gatherer who fails to file reports or who is delinquent in tax payments.[25] He is also directed to file suits for penalties and delinquent taxes for the enforcement of liens.[26]

SECTION 3 - ASSESSMENT

The tax is self assessing. The taxpayer is directed to pay the tax on the 25th day of the month following that month for which payment is made.[27] Taxpayers are also required to keep records and make reports as prescribed by the Comptroller.[28] The statute does not prescribe a time for the filing of reports, but it would appear that the Comptroller has power to do so under the rule-making power granted him.[29] While no formal rule has been adopted,

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24 Tex. Civ. Stat. (Vernon, supp. -1952) art/ 7057f, secs. 5, 6.

25 Ibid., art 7057f, sec. 7.

26 Ibid., sec. 8.

27 Ibid., art. 7057f, sec. 3. The statute provides for "payment for gas gathered during the next preceding thirty (30) days." Without formal rule, this provision is construed by the Comptroller's office to mean for the preceding calendar month.

28 Ibid., sec. 5.

29 Ibid., sec. 5.

the form prescribed for the reports directs that they be filed at the time payment is required, on the 25th day of the month succeeding that for which payment is made. Simultaneous reports and payments are in the pattern of other Texas tax laws and facilitate administration.

It should be noted that this tax statute, like many others in Texas, does not provide any method for refunding to the taxpayer erroneous payments or over payments or for permitting credit to be given toward future payments.

Method of Assessment

The Gross Receipts Division is taking steps to facilitate reporting and payment by taxpayers. When the tax became effective, the forms for reports were mailed to all companies reporting production and purchase of oil and gas. Since that time the forms have been mailed only on request but the Division contemplates preparing addressograph plates of taxpayers and regular mailing of forms in the near future.

The Division attempts to answer questions of coverage and administration which arise, but so qualified as to make it clear that administrative rule or precedent which might affect the pending litigation is not intended.

Rate

The rate of the tax is 9/20ths of one cent for each 1000 cubic feet of gas gathered.[30] Since gas volume is variable with temperature and pressure, a standard definition of "cubic foot of gas" is incorporated by reference from the natural gas tax.[31]

Statutory Classifications

Gas Gatherer

The tax is levied on every person engaged in gathering gas produced in Texas. That portion of the statute defining "gathering gas" is quoted in Section 1 of this chapter. Apparently the purpose is to tax the "taking" of gas from three sources: (1) gas produced with oil and separated from oil when produced, (2) gas produced from a gas well and placed in a pipe line for transmission without processing in a "plant", and (3) gas from a gas well which undergoes processing in a "plant" to remove liquid hydrocarbons before transmission to a consumer.

30 Ibid., sec. 2.

31 Tex. Civ. Stat. (Vernon, 1948) art. 7047b, sec. 2(12).

Several difficulties in applying the definition to the industry have been brought to the attention of the Comptroller. Production and marketing structure and practices in the industry are not simple and uniform. Situations range from that of a producer selling the gas within yards of the well to vertically integrated organizations which produce, process, transmit by pipeline and sell natural gas to consumers. Hypothetical situations illustrate the the of problems resulting: (1) A producer operating several wells from which he collects gas through a system of pipelines sells the gas to a transmission company at a central point; and (2) a processing plant pipes processed gas 25 miles to connect with a transmission line operated by another company which purchases the gas. In these instances the producer and processor literally retain possession of the gas for transmission some distance by pipe-line. Are they "gathering gas" within the meaning of the act? Or is the concern which buys the gas from the producer or processor the "gatherer?"

There is also a wide variety of devices for the extraction of liquid hydrocarbons from natural gas, from simple traps to complex establishments. The statute provides that:

> In the case of gas containing gasoline or liquid hydrocarbons that are removed or extracted at a plant within the State by scrubbing, absorption, compression or any other process, the term "gathering gas" means the first taking or the first retaining possession of such gas . . . for other processing or transmission . . . after such gas has passed through the outlet of such plant. [32] (emphasis added)

The term "plant" is not further defined. There is some uncertainty whether the more simple extraction devices in use constitute a "plant" and whether concerns receiving gas after passage through them are "gatherers."

Exemptions

Gas used for certain purposes is expressly excluded from computation of the tax. These exemptions are:

(a) gas produced and then lawfully injected into the earth of this State;
(b) gas used for fuel in connection with lease or field operations;
(c) gas lawfully vented or flared; and
(d) gas used in the manufacture of carbon black.[33]

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32 Tex. Civ. Stat. (Vernon Supp., 1952) art. 7057f, sec. 1 (c).
33 Ibid., sec. 2.

The Comptroller has encountered minor construction problems in three of these exemption provisions. Lift gas is sometimes injected into a well for the purpose of aiding in bringing oil to the surface, but without the gas being injected into the earth as in repressuring operations. It is not clear whether this use of gas is expressly excluded from computation of the tax. No tax is currently being collected on gas used for this purpose.

Subsection (b) does not indicate whether the gas excluded under it must be used for fuel in the field in which it is produced or by the producer. The Comptroller is accepting reports excluding gas used for fuel in lease or field operations anywhere in the state. Other uses than for field operations are not so treated. At present the Comptroller views, for example, use in transmission line pumps as non-exempt.

The question has been raised whether the language, "used in the manufacture of carbon black," exempts not only gas from which carbon black is made but also the gas used for fuel in operating the equipment in a carbon black plant. Gas used for both purposes is currently excluded.

SECTION 4 - COLLECTION AND ENFORCEMENT

The statutory powers for the enforcement of the tax are extensive. The Comptroller is authorized to procure a staff for examination and investigation of reports and records of taxpayers. For this purpose, the investigators are authorized to enter the taxpayers' premises. The Comptroller is authorized to promulgate and enforce rules "pertinent to the enforcement of this Act, which shall have the full force and effect of law." [34]

If a taxpayer is delinquent and the Comptroller employs auditors to determine the correct amount of tax due, a reasonable audit fee may be charged against the taxpayer as a penalty.[35] The fund collected is to form a revolving fund for expenditures of this kind. The remaining penalties and enforcement measures are, first, a possible subjection to injunction from gathering gas for delinquency in filing a report or paying the tax; second, ten per cent of the tax and six per cent annual interest for late payment; third, a $25 penalty for each day of violation of any provision of the statute; and, finally a prior lien in the state on all property used in the business for delinquent taxes, penalties and interest.

Special provisions to aid enforcement are included which make the records and certified copies of records of the Comptroller and audits made

[34] Ibid., art. 7057f, sec. 6.
[35] Ibid., sec. 8.

by the Comptroller's office, admissible in evidence and prima facie proof of the matters covered in them. They also require that reports be made when contracts for gathering gas change hands.[36]

None of the sanctions available are now being exercised. The policy the Comptroller has adopted is one of minimum administrative and enforcement activity. Instances of failure of taxpayers to report or to pay the tax and other violations, when they appear, are called to the attention of the taxpayer by letter and flagged in the files. If no response is received from the taxpayer, a field auditor of the Gross Receipts Division may be directed to call on the taxpayer for an investigation of the facts. No audits are made and no other steps toward enforcement are taken. This policy was adopted because the attack on the constitutionality of the tax was felt to make inappropriate the bringing of further proceedings for the enforcement of the tax. Suits could not fairly be brought to a conclusion until the constitutional questions are settled. While active investigations, through field audits and other means, could be carried on to develop information regarding violations, the Comptroller's office feels that tax collections personnel may be used to better advantage on other taxes. Furthermore, funds provided are considered insufficient to set up an enforcement organization. A collection fund of one-fifth of one per cent was appropriated as an enforcement fund. Through June, this fund, consisting of one-fifth of one per cent of only the amount not held in suspense, amounts to little more than $8,000. None of this amount has been spent, however.

Allocation of the Revenue

After deduction of the one-fifth of one per cent allocated to enforcement, the balance is districuted one-fourth to the Available Free School Fund as is required by the Texas Constitution for occupation taxes, and three fourths to the General Revenue Fund. Only funds not held in suspense are allocated.

SECTION 5 - ANALYSIS OF OPERATION

The last available records of payment of the tax are of those made in July, 1952, for the gas gathered in the month of June. These show that the taxes paid to the Comptroller total $10,798,933.02. Of this amount $6,614,067.44 was paid under protest and is held in suspense.[37] These totals indicate that

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36 Ibid., sec. 9 (a) and (c)

37 The Comptroller's Office, based on past experience, estimates that about $18,000 of this total was paid under protest by taxpayers who will not file suit for its recovery. Hence, this amount will be released from suspense 90 days after payment.

that about 40 per cent of th total payments have not been protested. The July payment, however, made after the decision of the district court, shows a different pattern. Of $967,944.76 paid in, $869,546.41 was protested, leaving only $98,398.35, or a little more than ten per cent of the total payment not protested. The July payments were made by 185 taxpayers with 107 protesting and 78 not protesting. A single company out of those not protesting paid about $83,000.

In view of the passive enforcement policy of the Comptroller, the newness of the tax, and the inadequacy of information based on experience, no useful estimate may be made of the amount of taxes, if any, which are owed but not being paid. Accurate estimate of administrative costs is not feasible since the three persons in the Gross Receipts Division of the Comptroller's office who are concerned with the tax contribute only a fraction of their time. Exclusive of the litigation, costs are apparently quite low.

SECTION 6 - SUMMARY AND PROBLEM AREAS

In terms of receipts, the gas gathering tax is a major Texas tax. Assuming its valid continuation, the indications are that the revenues may be expected to increase as the natural gas industry continues to expand.

It is apparent that the significant problem of the tax is constitutional validity. Until this issue is finally determined, the remaining problems arising out of the law are overshadowed.

During the brief period of the administration of the tax, only problems of interpretation have come to light. Vigorous enforcement, if the validity of the tax is upheld, might raise others not yet evident. Those problems already encountered may be briefly recapitulated.

The statutory definition of "gathering gas" is not easily applied to some of the wide variety of production and marketing practices in the natural gas industry; it is often difficult to determine which of several concerns dealing with specific gas is a "gatherer" and liable for the tax.

The exemption provisions, excluding gas injected into the earth and gas used in lease and field operation and in producing carbon black, are not sufficiently detailed to indicate whether certain related uses are or are not exempt.

This tax, like many others, fails to provide any method whereby erroneous payment or overpayment of taxes may be refunded or credited against future taxes.

CHAPTER V

CORPORATION TAXES

SECTION 1 - HISTORICAL AND LEGAL DEVELOPMENT

The Origin and Background of Corporate Enterprise

The corporate form of business organization was known to both the Roman Empire and the medieval church, and some basic principles of corporate organization are drawn from the ideas of those times.[1] Among them is the theory that a corporation has "personality," that it is a legal entity separate from its members. The English relied on this and other early concepts in producing their great body of corporation law.

The pressing monetary difficulties in which so many British monarchs have have found themselves, coupled with the royal desire to be independent of financial control by the Parliament, lent impetus to corporate development in England. Their majesties made grants of monopoly privilege in return for loans or gifts. The first case was the chartering of the Muscovy Company by Queen Mary in 1554. Her successor, Queen Elizabeth, was especially active in the creation of "joint stock companies." The practice of royal incorporation continued until the revolution of 1688, after which William and Mary were placed on the throne and Parliament assumed the right to issue franchises. The Parliament, as had the monarchs, used joint stock trading companies as sources of revenue. The East India Company, which was established in 1600, repeatedly helped the kings and then the Parliament to fill a depleted treasury. The Bank of England in 1694 and the South Sea Company in 1711 were both chartered by acts of Parliament for the same reasons that had prompted grants of franchises by English monarchs--the need for revenue or for credit at low interest rates. Obviously the early development of corporations in England was closely connected with the government's perennial need for money.

The Growth of Corporate Enterprise in the United States

Corporations have figured prominently in the development of the United States. Early settlements were made in New England under the auspices of such corporations as the Massachusetts Bay Company, the Plymouth Company, and the New Sweden Company. These companies operated chiefly under monoply grants or franchises from the English crown. They hesitated, however, to share their rights through secondary franchises. Accordingly, only two American corporations are recorded in the colonial period.

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[1] The material on the early historical development of the corporation is drawn largely from Richard W. Lindholm, The Corporate Franchise as a Basis of Taxation (Austin: University of Texas Press, 1944), pp. 23-52.

After the Revolution, the power to grant franchises was assumed by the individual states. Due to the great need for industrialization of the fledgling republics, corporate development was sometimes aided by special tax exemptions or through part ownership by the governments. This practice continued into the nineteenth century, although it was then largely limited to railroads.

The corporate form of organization was slow to establish itself in the field of general business enterprise. By 1800 there had been some 335 corporate charters issued in the United States. Of this total, 219 were for highway companies, 36 for local public service companies, 67 for banking and insurance companies, and only 13 were classified as companies engaged in "business proper."[2] During 1830, railroad corporations began to appear, and by 1860 they occupied first place in the total number of corporations. Banking, insurance, navigation, and water supply corporations were also common during the period prior to 1850.[3] Technological advances of the post-Civil War period helped make industrial corporations common by the end of the 1870's.

Between the Civil War and the early years of the 20th century a booming American market and accelerated industrialization produced a rapid increase in grants of corporation charters. During the 1880's incorporation was prominent in the manufacture of heating appliances and in the electric light and power industry. Railway incorporations continued to be of importance, reaching their peak in 1881. However, by 1907 they had become insignificant. Street railway incorporations rose to a peak in 1901 but new incorporations were negligible after 1912. The regulation of capital issues during the first World War produced a sharp curtailment in incorporations, but there was a steep upturn immediately afterward.[4]

By 1920 corporate enterprises had become common in the manufacture of drugs, dairy products, automobiles, non-alcoholic beverages, metalwork, industrial machinery, and numerous other areas of economic endeavor. Automobile, radio, aircraft, and transportation incorporations dominated the 1920's. From 1929 to 1943 incorporations generally declined with the great depression probably the main reason.

Manufacturing concerns have received a large percentage of all corporation charters granted since 1875. In 1904 only 24 per cent of the manufacturing establishments were incorporated. However, they produced 74 per cent by value of national manufactures. Less than ten years later these figures had increased to 48 and 92 per cent respectively.[5]

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[2] Big Business, Its Growth and Place (New York: 20th Century Fund, 1937), p. 11.

[3] State and Local Taxation of Business Corporations (New York: National Industrial Conference Board, Inc., 1931), p. 11.

[4] George H. Evans, Jr., Business Incorporations in the United States, 1800-1943, Publication No. 49 (Baltimore: National Bureau of Economic Research, 1948), p. 69.

[5] Big Business, Its Growth and Place, op. cit., pp. 13-16.

Up to the Civil War incorporation was effected largely by special laws. As early as 1811 New York permitted incorporation under a general statute, but this practice did not come into wide use until after the Civil War.[6] Constitutional provisions requiring incorporation under general laws became so numerous after 1875 that the issuance of special charters practically disappeared from most fields of enterprise. The first such provision in Texas was included in the Constitution of 1876 which provided, "No private corporation shall be created except by general laws," and "General laws shall be enacted for the creation of private corporations...."[7] The effect of this change in Texas law is indicated by the fact that in 1872 approximately 50 corporations with an authorized capital of nearly $20 million were chartered, while four years later, when the 1876 Constitution became effective some 140 corporations with an authorized capital of about $23 million dollars were chartered.[8]

The Development of Corporation Taxation in the United States

Since the corporate form of organization was not widely used prior to 1850, the states with few exceptions taxed corporations operating in their territories in the same manner they taxed unincorporated businesses -- by the general property tax. Legislatures later sought special ways to tax corporate business, and these special taxes fell into three broad categories:

(1) Charges on domestic corporations at the time of their organization and on foreign corporations at the time of their entrance into into the taxing State.
(2) Annual taxes on domestic and foreign corporations either in the form of fixed charges or measured by some aspect of capitalization; and
(3) Annual corporation income taxes.[9]

Early taxes on corporations appear to have been designed chiefly to overcome the inability of the general property tax to reach the intangible worth of a corporation. Several states instituted special methods for taxing incorporated business in the late 18th and early 19th centuries. These taxes gradually evolved into annual "franchise" taxes.

Organization and Entrance Charges

Before annual corporation taxes were established there were organization and entrance charges. The term "organization charge" applies to those amounts

6 State and Local Taxation of Business Corporations, op. cit., p. 11.

7 Art. XII, secs. 1 and 2.

8 Evans, op. cit., pp. 144, 147.

9 State and Local Taxation of Business Corporations, op. cit., p. 16.

paid by domestic corporations at the time of their incorporations -- a charter or incorporation fee. Entrance charges, which had a later development, are those amounts paid by foreign corporations when they apply to do business in states other than those granting their charters. These charges, sometimes referred to as permit fees, are paid only once during the life of the permit. They were first employed to defray the administrative costs of incorporation or entry and were, therefore, small fixed charges in the nature of fees. Eventually the concept of taxation crept in. The change from fees to taxes was sometimes prompted and often accelerated by the need for additional revenues. The fees were gradually increased until they produced more revenue than was necessary to pay the relatively low administrative costs. In time almost all of the states replaced their fixed organization fees with organization taxes graduated according to the authorized capital stock of the organizing corporation. Pennsylvania, in 1847, led in the adoption of general organization charges. By the turn of the century more than three-fourths of the states and, by 1929, all but one state exacted charges for the creation of corporations within their jurisdictions.[10]

Entrance charges for foreign corporations developed into taxes much later than did organization charges. This was doubtless due to the small size of early manufacturing and mercantile corporations with the result that their business was largely confined to the state of incorporation, and thus the matter did not come up as early. Not until the last decade of the 19th century were foreign corporations required to pay taxes upon their entrance into states other than their home state. Ohio levied an entrance tax in 1894 at a rate of one-tenth of one per cent of the capital stock employed in that state. New York followed a year later with a rate of one-eighth of one per cent. By 1929 all but two states had adopted this charge.[11]

Annual Privilege Taxes--Domestic and Foreign Corporations

Annual corporation taxes are based on the concept of taxing a privilege granted by the state to the corporation. The franchise tax is levied on domestic corporations for the privilege of doing business in corporate form and is collected by the state granting the franchise. The foreign corporation privilege tax is levied on foreign corporations for the privilege of doing business in corporate form in the state and may be collected by any state in which the foreign corporation operates. The privilege of doing business in corporate form is substantial. Its most important facet is limited liability.

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10 Ibid., pp. 16, 17.

11 Ibid., p. 18.

Massachusetts, Pennsylvania, and New York have been the leaders in developing taxes on corporations and the principles of corporation taxation. Massachusetts in 1792 was the first to direct attention to corporation stock as a regularly taxable item, but this was done in connection with assessment of the property tax.[12] During the 19th Century, a number of innovations were made in Massachusetts in relation to taxing corporations, but these were generally tied to the concept of property taxation.

Pennsylvania, in 1840, passed the first general corporation tax act taxing capital stock. Delaware levied such a tax in 1869 and New York in 1880. By 1929, 34 states levied capital stock franchise taxes, although some of them only used the franchise tax as a means for setting a floor on revenue from corporation income taxes.[13]

Annual privilege taxes on foreign corporations were not adopted simultaneously with annual taxes on domestic corporations. In 1865, a quarter of a century after it adopted an annual franchise tax for domestic corporations, Pennsylvania levied the first annual tax on foreign corporations doing business in that state. Delaware followed in 1869, and New York in 1885. New York based the tax on capital stock employed by the foreign corporation in that state. Thus New York provided the first apportionment formula for the taxation of corporations doing both interstate and intrastate business.[14]

No Par Value Stock - A Special Problem

The first statute governing the use of stock having no par or face value was enacted in New York in 1912,[15] but the use of such stock had been under consideration by the New York Bar Association since 1892.[16] No par value stock had been used prior to this time, however. Early New England turnpike charters are credited with having no stated par value stocks and, in fact, no statement of total capital stock.[17]

The introduction of no par value stock presented a problem in the collection of both annual taxes and organization or entrance fees from corporations where the basis was total authorized capital stock. Besides New York, Delaware early permitted the organization of corporations with no par value stock. The entrance

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[12] Lindholm, op. cit., pp. 53-54.

[13] Ibid., p. 61; State and Local Taxation of Business Corporations, op. cit., p. 20.

[14] State and Local Taxation of Business Corporations, op. cit., p. 20.

[15] Morawetz, "Shares Without Nomination Par Value," 26 Harv. L. Rev. 729 (1913), p. 730.

[16] American Refining Co. v. Staples, 260 SW 614 (Tex. Civ. App., 1924).

[17] Cook, "Watered Stock"--Commissions--"Blue Sky Laws"--Stock Without Par Value, 19 Mich. L. Rev. 583, 595 (1921), citing Middlesex Turnpike Co. v. Swan, 10 Mass. 384 (1813) and Charter of Worcester Turnpike Corp., Laws of Mass., 1806, ch. 67, p. 15.

of these corporations into states having no provision authorizing the issuance of no par stock and having no provision for determining the tax base of this stock for franchise tax purposes presented a special problem. Recognizing the administrator's difficulty in computing the franchise tax, the Supreme Court of Kansas, in 1919, nevertheless, directed that Kansas grant a permit to a Delaware corporation having no par stock.[18] Similarly, the Supreme Court of Missouri ruled that a corporation chartered under the laws of Delaware with no par value stock could obtain a permit to do business in Missouri even though domestic corporations were not authorized to issue this stock.[19] In both instances, the courts determined that the tax could be ascertained by applying the rate to the total capital employed in the state. A year later, a Michigan court upheld the collection of a tax from a Delaware corporatinn upon the basis of a value of $100 per share, the value fixed by Delaware for each share of no par value stock for taxation purposes.[20]

A New York statute enacted in 1920 fixing the value of no par value shares at $100 was declared unconstitutional as discriminatory and arbitrary by a state court in 1922.[21] Massachusetts in 1921 defined the value of all stock for tax purposes as the "fair cash value," thus obviating any necessity for a distinction between par value and no par value stock.[22] The measures which states have taken to deal with no par value stock have varied substantially.[23]

Corporatinn Income Taxes

The last step in the progression of taxation on corporations has been the corporation income tax. The corporation income tax has not done away with the capital stock tax, but it has grown into a position of greater prominence as a revenue raiser for the states. Texas is among the approximately one-fourth of the states that have not turned to the taxation of corporation income.

Although there had been some short-lived earlier attempts, the first serious corporation income tax was Wisconsin's, which followed shortly after the Federal Corporation Excise of 1909. The revenue received encouraged the spread of this form of corporation tax.[24]

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[18] North American Petroleum Co. v. State Charter Board, 105 Kan. 161, 221 Pac. 625 (1919).

[19] State ex rel Standard Tank Car Co. v. Sullivan, 282 Mo. 261, 221 SW 728 (1920).

[20] Detroit Mortgage Corp. v. Vaughn, 211 Mich. 320, 178 NW 697 (1920), aff'd on rehearing 182 NW 526 (1921).

[21] People ex rel Terminal etc. Corp. v. Walsh, 195 NY Supp. 184 (App. Div., 1922).

[22] Wickersham, The Progress of the Law of No Par Value Stock, 37 Harv. L. Rev. 464, 473 (1924), citing 1921 Mass. Gen. Laws, ch. 63, pars. 32 and 39.

[23] State and Local Taxation of Business Corporations, op. cit., p. 42.

[24] Ibid., p. 21.

The Development of Corporation Privilege Taxes in Texas

The pattern of development found in the several states was one of organization and entrance fees and taxes, followed by annual taxes on corporations in the form of franchise and privilege taxes. A more recent trend has been toward annual corporation income taxes. Texas has not followed this later trend.

Early Organization and Entrance Charges

In 1879 Texas passed an act charging $100 for charters and amendments for certain types of corporations and $25 for others. Only the specified types of corporations were included.[25] In 1883, because the Secretary of State was collecting less than his costs of administration on incorporations, the fee was raised.[26] Also all corporations created for profit and benefit were made to pay an incorporation fee.

By an act of 1887, Texas required foreign corporations to file their charters with the Secretary of State and to obtain a permit to do business in the state.[27] However, it was two years later before a fee was attached to this requirement.[28] The fee was graduated, which was unusual at that time, and the permit was limited to ten years.

The Initial Texas Franchise Tax

The initial Texas franchise tax law was enacted in 1893.[29] The tax, which was levied at a flat rate of $10 annually on both foreign and domestic corporations, was collected by the Secretary of State. Texas started off applying the term "franchise tax" to annual taxes on both domestic and foreign corporations, although the tax on foreign corporations is not technically a franchise tax but a tax on the privilege of doing business within the state as a corporation. Therefore, when reference is made to franchise taxes in Texas, it should be understood that foreign corporation privilege taxes are also included. Four separate taxes were bundled together in the single statute, and the franchise tax appeared to be the least significant of the four. While the first three were designated specifically

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[25] Acts 16th Leg., R. S. 1879, ch. 15, p. 12.

[26] Acts 18th Leg., R. S. 1883, ch. 73, p. 72.

[27] Acts 20th Leg., R. S. 1887, ch. 128, p. 116.

[28] Acts 21st Leg., R. S. 1889, ch. 78, p. 87.

[29] Acts 23d Leg., R. S. 1893, ch. 102, p. 156.

as taxes on insurance, telephone, and car companies, the franchise tax appeared as an annual levy of ten dollars on "other corporations." Failure to pay meant loss of the right to do business. From this origin, the franchise tax grew. However, the car company tax tied in with the history of franchise taxation in Texas because it was based on capital stock. Sleeping and dining car companies and corporations renting or leasing rolling stock to any railway company were required to apy a tax of 25 cents on each $100 of capital stock employed in the state and an allocation formula was provided for determining the portion of authorized capital stock employed in the state. The authorized capital stock basis of this tax, which was already recognized as a basis for organization and entrance fees, subsequently came to be the basis of the franchise tax on all corporations.

While Texas followed the national pattern, in that its annual corporation privilege tax developed after its organization and entrance fees, it varied from the pattern by placing the annual tax on both domestic and foreign corporations at the same time. However, Texas enacted its first annual tax considerably later than some other states and at a lower rate.

Two amendments to the franchise tax were passed in 1897. The first of these made capital stock the basis for a new annual graduated franchise tax on domestic corporations and authorized capital stock as the basis for a new annual graduated tax on foreign corporations.[30] Capital stock was already used as the basis for organization and entrance fees and the car company tax. Transportation companies paying annual gross receipts taxes were exempted.

The second 1897 act differentiated between domestic and foreign corporations for tax purposes. Both were taxed according to a graduated scale but foreign corporations had to pay a higher tax.[31]

In 1905 the amendment was passed which exempted from the franchise tax all insurance, surety, guaranty, and fidelity companies and sleeping, palace, and dining car companies paying an annual tax on gross receipts.[32] The specific exemption for sleeping, palace, and dining car companies paying gross receipts taxes clarified the earlier provision exempting transporation companies paying gross receipts taxes. At the same time a new and higher rate was provided and the basis of the tax was broadened to include the total amount of capital stock issued and outstanding, plus the surplus and undivided profits of the corporation, whenever this total amount was greater than the authorized capital stock.

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[30] Acts 35th Leg., R. S. 1897, ch. 104, p. 140.

[31] Acts 35th Leg., R. S. 1897, ch. 120, p. 168.

[32] Acts 29th Leg., R. S. 1905, ch. 19, p. 22.

In 1907, the inadequacies of the corporation franchise tax law of 1893, as amended, were recognized by the Legislature. Existing provisions were repealed and a new act was passed.[33]

The Secretary of State, with the Attorney General, was given authority to collect and enforce the tax. The Legislature made more specific provision for the administration of the tax--requiring reports, penalties, clarifying forfeitures of rights to do business and charters, and providing for the voluntary surrender of permits held by foreign corporations who were ceasing their activities in the state. No new exemptions were provided, but all previous exemptions were continued.

The tax basis act and the rates of the 1905 act were changed, but the distinction between domestic and foreign corporations was continued. Domestic corporations were taxes at 50 cents on each $1,000 of authorized capital stock, whether or not the issued and outstanding capital stock plus surplus and undivided profits exceeded the authorized capital stock. The minimum tax on domestic corporations was ten dollars.

The minimum tax on foreign corporations was $25, and the rate was graduated as follows: $1 on each $1,000 of authorized capital stock up to and including $100,000; $2 on each $5,000 thereafter up to and including one million dollars; $2 on each $20,000 thereafter up to and including ten million; and $2 on each $50,000 in excess of ten million. If, however, total issued capital stock plus surplus and undivided profits exceeded authorized capital stock, the rate for each $1,000 up to and including $100,000 was doubled, with the rates in the other scales remaining the same. The constitutionality of this provision establishing graduated rates on the total authorized capital stock of foreign corporations was challenged in 1917, and this provided a significant turning point in the history of Texas franchise taxes.

Looney v. Crane Co.

Early United States Supreme Court decisions exhibited some confusion over the application of annual capital stock privilege taxes to foreign corporations. A New York privilege tax came before the court in 1892 in the first Supreme Court case dealing with the problem. The court held that the principle of the tax, it being a tax on the privilege of doing business within the state as a corporation, was proper. Following the general theory that a state might grant, or withhold, or attach conditions to the privilege, the court said that entrance conditioned upon a tax payment was permissible and further inquiry was unnecessary.[34]

[33]Acts 30th Leg., 1st C. S. 1907, ch. 23, p. 503.

[34]Horn Silver Mining Co. v. New York, 143 U. S. 305 (1892).

This decision and one other in that period[35] seemed to accept the taxing power of the states over foreign corporations as plenary. The court had earlier ruled that their taxing power over domestic corporations was plenary.

In 1910, however, the question again came before the court in three cases concerned with entrance taxes based upon the total authorized capital stock of foreign corporations.[36] All three taxes were held invalid as burdens on interstate commerce. Thus the court displayed a more critical attitude toward state taxation of foreign corporations. A rush of attacks upon the constitutionality of annual privilege taxes followed.[37] A new guiding principle was needed.

Among the cases arising in that period was a Texas case attacking the validity of the 1907 entrance and annual privilege taxes on foreign corporations. This case, which is chiefly of historical interest now, was Looney v. Crane Co.[38] The entrance and foreign corporation annual privilege taxes were held invalid when applied to foreign corporations. The court declared that they imposed a burden upon interstate commerce because they failed to provide for apportionment of stock between that employed in and that employed out of the state. The court recognized the right of Texas to impose a tax on entrance into the state and on the conduct of intrastate business within its boundaries, but stated that the state could not, when granting these privileges, "tax the property of the corporation and its activities outside of and beyond the jurisdiction of the state." Such taxes violated the due process and commerce clauses of the federal Constitution. Thus this decision condemned unapportioned authorized capital stock as a basis for entrance and annual tax on foreign corporations.

First Apportionment Formula

On March 17, 1917, while Looney v. Crane Co. was still pending in the United States Supreme Court, the Legislature passed two acts dealing with the foreign corporation franchise tax and the foreign corporation "permit" or entrance tax.[39] The first of these 1917 acts amended the annual corporation franchise tax so that the levy was collected on "that proportion of the entire authorized capital stock as the gross receipts from the Texas business of such corporation done within the State of Texas bears to total gross receipts of such corporation from its entire business. . ." After this apportionment,

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[35] Ashley v. Ryan, 153 U. S. 305 (1892).

[36] Western Union Telegraph Co. v. Kansas, 216 U. S. 1; Pullman Co. v. Kansas, 216 U. S. 56; Ludwig v. Western Union Telegraph Co., 216 U. S. 146 (1910).

[37] State and Local Taxation of Business Corporations, op. cit., p. 62.

[38] 245 U. S. 178 (1917).

[39] Acts 35th Leg., R. S. 1917, ch. 84, p. 168.

the rate payable by foreign corporations was fixed as follows:

$1 on each $	1,000 up to $100,000,
$2 on each	5,000 up to $1 million,
$2 on each	20,000 up to $10 million, and
$2 on each	50,000 in excess of $10 million.

The foreign corporation permit or entrance tax was also amended so as to base the tax on capital invested in Texas.[40] Thus the Legislature met the objections to the Texas franchise tax raised by the U. S. Supreme Court in Looney v. Crane Co. before the opinion was given.

The Legislature, in 1917, again amended the franchise tax on foreign corporations so as to revise the rate upward.[41] In the same act, the basis for entrance fees on foreign corporations was changed from authorized capital stock to stock actually subscribed, even though this was not done for the franchise tax. "Authorized" stock includes all capital stock which the charter provides shall be the capital stock of the corporation whether or not the entire amount has been sold to stockholders. "Outstanding" stock has not been judicially defined, but apparently includes only that part of the authorized stock which has been sold or contracted to be sold to stockholders. This alteration was adopted in conformity with one of the supposed principles announced in Looney v. Crane Co. Graduated entrance fees were provided with a maximum of $2,500. The apportionment formula enacted two years earlier for entrance fees was omitted from the statute, apparently because the Legislature considered this tax ceiling and the new base adequate to meet constitutional requirements.[42] In 1919, the apportionment formula was extended to domestic corporations.[43] Also, the base on which the tax was to be computed for domestic corporations with foreign business was changed by the inclusion of a provision that the tax was to be paid on total amount of capital stock actually paid in plus surplus and undivided profits when the total of these exceeded authorized capital stock. Provisions relating to domestic corporations doing business only in Texas were not altered.

No Par Value Stock

Texas had made no provision for no par value stock when a case on that subject rached a court of civil appeals in 1923.[44] A Delaware corporation having 750,000 shares of no par value stock employed $9,387,064 worth of

[40] Ibid., ch. 85, p. 169.

[41] Acts 36th Leg., R. S. 1919, ch. 42, p. 75.

[42] The formula provided for annual foreign corporation taxes and necessitated changes in reporting procedure which wer made in 1921. Acts 37th Leg., R. S. 1921, ch. 90, p. 173.

[43] Ibid., ch. 60, p. 100.

equipment and property in Texas.[45] The Secretary of State contended that franchise taxes were due on a valuation of $75 million, accepting the valuation of $100 per share assigned by Delaware, while the corporation argued that its tax base should be only $9,387,064. The court held that taxes were due only on the capital employed in the state, or the valuation submitted by the corporation.

A second case involving the same question was decided by the same court a year later. Noting that the Texas statute "was designed to apply to par value stock and is not readily adjustable to no par value stock corporations," the court gave a comprehensive definition of authorized capital stock for such cases as this, declaring it:

> . . .is the amount of money or value of property, services, or labor which the corporation receives or agrees to receive for so much of its capital stock as has been issued, subscribed, or offered for sale, to which should be added in case of authorized stock not issued, subscribed, or offered for sale, the amount necessary to be added to the corporate capital in order to make such authorized capital stock equal in share value to the share value of the capital stock which has been issued, subscribed, or offered for sale.[46]

That same year, 1924, a case involving no par value stock was decided by the U. S. Supreme Court. The valuation adopted by the court was essentially the same as that used in the Texas case.[47]

The Texas Legislature in 1925 enacted this system of valuing no par value stock into law, prescribing its value as the amount actually received at the date of issue.[48] Any of the authorized stock not issued was, for taxation purposes, valued at the same rate as issued stock. Thus the franchise tax was due on total authorized no par value stock.

Transportation Corporations

Concern for the poor financial condition of various transportation corporations, allegedly due to the competition resulting from increased use of the automobile, produced an extension of the franchise tax in 1927.[49] In a

[45] The case as reported employs the figure 75,000 shares but reports the value as $75 million. The original records, filed with the court of civil appeals, reveal that 750,000 was the number of shares, instead of 75,000.

[46] American Refining Co. v. Staples, 260 SW 614 (Tex. Civ. App., 1924).

[47] Airway Electric Appliance Corp. v. Day, 266 U. S. 71 (1924).

[48] Acts 39th Leg., R. S. 1925, ch. 77, p. 236.

[49] Dallas Morning News, March 4, 1927.

single act, the gross receipts tax levied on interurban, trolley, traction, and electric street railways was repealed,and these corporatinns were made subject to the franchise tax.[50] In the same year, banks in the process of liquidation were added to the list of exemptions.[51]

Court Decision Produces Changes

From 1905 to 1930, annual franchise taxes on foreign corporations doing business in Texas were based upon authorized capital stock, regardless of whether or not it was actually issued or subscribed. The basis for entrance fees, on the other hand, was changed in 1919 from authorized to subscribed capital stock. Also, in the same case which dealt with no par value stock, the U. S. Supreme Court indicated that a capital stock annual privilege (or franchise) tax levied on corporations doing both interstate and intrastate business would be invalid if based on authorized capital stock.[52]

In 1930 the Legislature undertook substantial revision of the franchise tax and enumerated its reasons for doing so in the emergency clause of the new statute:

> The fact that the present franchise tax law results in discrimination against corporations having par value stock on the one hand, and those having no-par stock on the other, and because a tax on capital stock fails to reach all of the capital on which a corporation does business and therefore fails to distribute the burden of taxation, as where one has a small capital stock with a large capital provided from bonds, while another has a capital stock fairly representing its actual capital, and for a further reason that an attack is now being made on the validity of the franchise tax on foreign corporations, create an emergency. . .[53]

The most important changes in this revision were (1) the substitution of an outstanding stock base for the authorized stock base, (2) a combination of the statutes levying franchise taxes on both domestic and foreign corporations coupled with an equalization of the separate rates, and (3) a new provision for computing the value of no par value stock. These changes constitute the first major overhaul of the tax statute and remain substantially in effect at present.

[50] Acts 40th Leg., R. S. 1927, ch. 286, p. 431.

[51] Ibid., ch. 208, p. 294.

[52] Airway Electric Appliance Corp. v. Day, 266 U. S. 71 (1924).

[53] Acts 41st Leg., 5th C. S. 1930, ch. 68, p. 220.

In combining the annual domestic and foreign franchise taxes, the Legislature provided that the tax be "based upon that proportinn of the outstanding capital stock, surplus and undivided profits, plus the amount of outstanding bonds, notes and debentures, other than those maturing in less than a year from the date of issue, as the gross receipts from its business done in Texas, bears to the total gross receipts of its entire business." A general expansion of the tax base was thus accomplished and its development completed.

All corporations were required to pay a minimum annual tax of $10, and the rates were established at 60 cents on each $1,000 up to one million dollars and 30 cents for each $1,000 in excess of that amount.

Street, railway, and interurban corporations which had been made subject to the franchise tax in 1927 were combined with those corporations paying an annual tax on intangible assets and required to pay franchise taxes at a rate of only one-fifth that imposed on other corporations. In addition, corporations engaged solely in public utility business were taxed at still another slightly higher rate but upon a base which excluded long-term indebtedness. Terminal companies not organized for profit were added to the list of exemptions.

Because the franchise tax payable by corporations issuing no par value stock was also based on the total such stock authorized, the method of valuatinn was also changed. Instead of establishing a value for the stock not issued, all no par stock was to be valued at the "value actually received at the time of issuance. . ." Here, too, subscribed rather than authorized capital stock was made the tax base and the long-term indebtedness was included as for other corporations. In addition to these major changes, the reporting requirements were changed so as to obtain the information needed under the new provisions. Other administrative and enforcement procedures also received attention.

Completeness of Classification

In 1931 the Legislature completed development of the present classification with the enactment of an assessment formula for corporations engaged in both public utility and non-public utility business.[54] At the same time, taxes payable by multiple purpose corporations were reduced, levying the full tax for one purpose, and one-fourth of such amount for each additional purpose. In explanation of this enactment, the Legislature said, "The present law requires corporations jointly engaged in the ice, water, light, and power

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54 Acts 42d Leg., R. S. 1931, ch. 256, p. 441.

business to pay a franchise tax of three or more times the amount paid by corporations engaged solely in the light and power business."

Attacks on the Franchise Tax During the 1930's

Following the substantial revision of 1930, there were several attacks on the franchise tax law. Questioned were the inclusion of long-term indebtedness in the tax base, the special treatment accorded public utilities and proration of corporate value for tax purposes by the share of a corporation's gross receipts received from business done in Texas. The constitutionality of the law was upheld over all of these objections.[55] During this decade, however, a court of civil appeals ruled, in a case involving a Maine corporation, that interstate business could not be included with intrastate business in the term "business done in Texas" without violating the commerce clause of the federal Constitution and that the Legislature intended to use the term in conformance with the Constitution.[56]

Agitation for Revision

There was considerable agitation for revision of the franchise tax in 1937, with some discussion of changing to a corporation income tax.

> Challenging corporations he believes have received preferential treatment in the franchise tax, Governor James V. Allred said, "It looks as though the pipelines and public utilities think they are bigger than the government. I am going to find out." As a means of levying taxes upon such corporations to make them pay an equitable share, Governor Allred listed a substantial increase in the franchise tax and possibly, an income tax.[57]

A bill was proposed at that time, retaining the tax base, but increasing the rate to one dollar per $1,000 capitalization. Pipelines and railroads would have been placed on the same basis as other corporations by removing the four-fifths exemption granted them by virtue of their payment of an intangibles tax. Utilities would have been required to pay as other corporatinns by removal of the provision eliminating long-term indebtedness as a factor in determining their taxable capitalization. This basis was said to be "about half as broad, because long-term indebtedness of utilities is a major factor in their capitalization."[58]

[55] Southern Realty Co. v. McCallum, 65 Fed. 2d 934 (1932); Gulf States Utilities Corp. v. State, 46 SW 2d 1018 (Tex. Civ. App., 1932); Ford Motor Co. v. Beauchamp, 308 U. S. 331 (1939).

[56] Clark v. Atlantic Pipe Line Co., 134 SW 2d 322 (Tex. Civ. App., 1939, err. ref'd).

[57] Dallas Morning News, September 10, 1937.

[58] Ibid.

However, the bill failed to pass.

Omnibus Tax Law of 1941 and After

The acts of 1930 and 1931, unaltered except for two 1939 amendments[59] relating to consolidation of corporations with payment of a supplemental franchise tax in that event, and to suits for recovery franchise taxes paid under protest, was mended once more in the Omnibus Tax Law of 1941.[60]

A flat rate, one dollar for $1,000, was substituted for the previous graduated rates and a minimum tax of $20 was established. In addition, an alternative minimum tax base was provided equal to the value of a corporation's property located in Texas as assessed for ad valorem taxes. The tax base and the apportionment formula were not changed, but the definition of long-term indebtedness was modified.[61]

The rate for solely public utility corporatons was changed to equal the new rate imposed on general business corporations, but long-term indebtedness was still excluded from their tax base. It will be remembered that this group were taxed at a higher rate than that levied upon other corporations under the 1930 statute.

Another significant provision was added to the tax statute at this time. Prior to 1941, the franchise tax was imposed upon "every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas." Under the 1941 amendment the tax was to be collected from corporations "chartered or authorized to do business in Texas, or doing business in Texas." Thus tax liability no longer was conditioned upon the holding of a charter or a permit to do business but was incurred by the mere act of conducting business within the state.

Outside of a 1943 amendment[62] dealing with the state's lien for unpaid taxes, the Legislature did not again alter the franchise tax law until 1949. In that year, three mendments were added. The first of these related to forfeiture procedures on the charters of corporations whose right to do business had been forfeited prior to July 2, 1948.[63] Prior to this act, forfeiture of corporation charters was possible only after a court judgment. This method entailed considerable expense to the state. The Legislature made provision for forfeiture without judicial action and explained that "thousands of corporations with charters still in existence

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59 46th Leg. R. S. 1939, pp. 129 and 643.
60 47th Leg. R. S. 1941, ch. 183, p. 269.
61 Houston Oil Co. v. Lawson, 175 SW 2d 716 (Tex. Civ. App. 1943, err. ref'd).
62 Acts 48th Leg., R. S. 1943, ch. 318, p. 476.
63 Acts 51st Leg., R. S. 1949, ch. 501, p. 926.

had their right to do business forfeited prior to July 2, 1948." It mentioned further that there was a "need for forfeiture of such charters after due notice without the cost of litigation. . ."

The second, and perhaps the most important of the 1949 amendments, was one which elaborated and modernized administrative procedures.[64] The legislature noted that procedures adopted in 1907 were still in effect and that they contributed to administrative inefficiency and lost the state thousands of dollars in revenue. Accordingly, a change was needed.

The third amendment of the session exempted state-chartered building and loan associations.[65]

An additional tax of 10 per cent on all franchise taxes due from May 1, 1950 to April 30, 1951, and of one-third of ten per cent on taxes due from May 1, 1951 to August 31, 1951 was levied in 1950 by the 51st Legislature.[66] The revenue from this increase was allocated to the State Hospital Fund created by the same Act.

Audits of Corporate Records by the State Auditor

An important development in the administration of the franchise tax has been the entry of the State Auditor into tax enforcement through field audits. A regular audit by the State Auditor of the office of the Secretary of State revealed that no field audits were being made and that "a number of corporations had not been correctly reporting for franchise tax purposes."[67] The Legislature, in 1947, and for subsequent years, has appropriated funds to the State Auditor for the purpose of instituting a program of field audits. No general law provision was made in 1947 empowering the making of audits, but the franchise tax law was amended in 1949 to authorize audits by both the Secretary of State and the State Auditor not only in Texas but anywhere in the United States.[68]

The last changes in the franchise tax law were made by the 52nd Legislature in 1951. Primarily there was a change in rates, the charge

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64 Ibid., ch. 536, p. 975.
65 Ibid., ch. 609, p. 1200.
66 Acts 51st Leg., 1st C. S. 1950, ch. 2, p. 10.
67 Office of the State Auditor, Audit Report on the Secretary of State, August 31, 1950, p. 33.
68 Acts 51st Leg., R. S. 1949 ch. 536, p. 975; Tex. Civ. Stat. (Vernon, Supp., 1950) art. 7089.

being increased from $1 to $1.25 on each $1,000 and the minimum tax being increased from $20 to $25.[69] In addition mutual investment companies were added to the exemption list.[70]

Summary

The franchise tax has come a long way from its origin in 1893 as a minor tax added to a statute providing for more important levies. The major developments in the history of the tax have been changes in rates, in the types of assets going into the base against which the rates applied, and in the allocation of assets between those used in the state and those used outside. Rates have increased irregularly from the early days of the tax to the present $1.25 per $1,000. Also, variations between the rates applicable to foreign and domestic corporatons have been removed. The base of the tax, which in the early days was authorized capital stock, has had added to it surplus and undivided profits and long term indebtedness. However, outstanding capital stock has been substituted for authorized capital stock. The allocation of corporation assets between those used in the state and those used outside was required of the state by the Federal Constitution as interpreted in the courts. It might also be mentioned in speaking of changes in franchise tax laws, that there has been a constant addition of administrative regulations to the laws until today many administrative details are to be found in the statutes.

SECTION 2--ORGANIZATIONAL FORM

The original corporation franchise tax law of 1893 contained few rules on the administrative organization to be used for collection and enforcement. The 1907 revision amplified these meager provisions, as did the 1930 revision, each act adding some details. In 1949 franchise tax administration received a long-needed modernization and the provisions enacted at that time are substantially the law on administration of the tax today.

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69 Acts, 52nd Leg., R. S. 1951, ch. 402, p. 695.

70 Ibid., ch. 143, p. 245. The franchise tax law as it presently stands may be found in Tex. Civ. Stat. (Vernon, Supp. 1950) arts. 7085-7093, 7095, 7097; Tex. Civ. Stat. (Vernon, Supp. 1952) arts. 7084, 7094, 7096.

Secretary of State Primarily Responsible for Administration

As with other Texas taxes, several people have duties connected with the adminisltration of the franchise tax but one administrator is primarily responsible. The primary administrator is the Secretary of State.

The Secretery of State is collector for the franchise tax and, to carry out this duty, he is vested with powers of investigation and enforcement. He furnishes report forms which are supposed to be completed by all corporations liable for the tax and receives both the executed reports and the tax apyments. He must satisfy himself that the proper tax is being paid and, in connection therewith, he may require corporations to maintain such records as he feels are necessary and may examine these records when a tax payment or report appears to be inadequate or incorrect. If franchise taxes and penalties are not paid, the Secretary of State may revoke a corporation's right to do business and, under certain conditions, may request that the Attorney General file suit for revocation of the corporation's charter.[71] The duties vested in the Secretary of State are actually carried out by the Franchise Tax Division in the State Department. Also a major portion, probably about 75 per cent, of the work of the IBM or Tabulation Section in the State Department is taken up with franchise tax work.

Normally the Franchise Tax Division consists of the Division head, three auditors and three other employees. During peak months the Division will hire two to five more auditors depending on appropriations available. The IBM Section normally has four employees.

While the Franchise Tax Division collects the franchise tax, it is not responsible for organization and entrace charges. The Charter Division in the State Department handles these.

Others Connected with Administration

The Attorney General, as the state's legal officer, is responsible for bringing suits for the collection of back franchise taxes and penalities. Also, when a corporation's right to do business has been revoked by the Secretary of State and has not been revived in a specified period the Attorney General must insituted procedings for the revocation of its charter.

The State Auditor is responsible for making a check of the report forms submitted by corporations to the Secretary of State. In addition he makes field

[71] The distinction between revoking a corporation's right to do business and its charter will be discussed later in this study.

audits of corporation records to insure that these reports accurately represents the financial conditions on the basis of which the tax is determined. There is no field force in the Franchise Tax Division.

Besides the major administration activities mentioned above, certain purely ministerial duties are prescribed for court clerks and county clerks. When a court renders a decision involving the forfeiture of a corporation charter its clerk must give notice of those decisions to the Secretary of State, who enters them on appropriate records. Upon notice from the Secretary of State the County Clerks of counties in which corporations with either their principal place of business or any property in the county whose right to do business has been forfeited shall record the amount of taxes due the state by these corporations. The state has a prior lien on all corporate property for franchise taxes and penalties and the record maintained by the County Clerk is intended to serve as notice of this lien to all interested parties.

Section 3 -- ASSESSMENT

As was noted in Section 1 there are two sets of levies collected on corporations as such -- (1) organization and entrance charges, and (2) annual franchise and foreign corporation privilege taxes. Texas collects both and, while this study is primarily concerned with the annual tax, some attention is given to organization and entrance charges to show the whole picture.

Organization and Entrance Charges

In Texas there is no single, integrated scheme of organization and entrance charges. There are instead, a number of statutory provisions levying fees and taxes on various types of corporations, some of which seem tied to industry regulation. These charges are for the filing and extension of charters for corporations organized under Texas laws, the issuance and renewal of permits to do business for corporations organized outside Texas, and the filing of charter amendments and certified copies of charter amendments reflecting changes in name, place of business and capital stock. The charge originated as a means of defraying administrative expenses incidental to regulation and, in general, retain the form of filing fees. However, certain corporations are now required to pay graduated charges which yield revenues substantially above administrative costs. To this extent the charges have not become taxes.

Organization and entrance charges may, for convenience in discussion, be divided into three major groups: (1) fees which must be paid by domestic and foreign corporations including certain domestic non-business corporations, insurance companies, and certain co-operatives and other corporations for which specific statutory provision is made; (2) taxes which must be paid by domestic corporations including state banks, channel and dock, railroad, telegraph, street railway and express companies, and ordinary business corporations; and (3) taxes which must be paid by foreign business corporations.

Fees Paid by Domestic and Foreign Corporations

Several types of corporations are charged only small fixed fees. These present little difficulty beyond identification of the corporations included and a statement of the amount of the tax.

Certain domestic non-business corporations. A charter fee of ten dollars and ten dollars for each charter amendment is paid to the Secretary of State by corporations organized in Texas

> for the support of public worship, any benevolent, charitable, educational, missionary, literary or scientific undertaking, the maintenance of a library, the promotion of a public cemetery not for profit and the encouragement of agriculture and horticulture, to aid its members in producing and marketing agricultural products, or for acquiring, raising, breeding, fattening or marketing livestock. . . .[72]

Insurance companies. Both domestic and foreign insurance companies are regulated by the Board of Insurance Commissioners and pay to the Board a fee of $25 for filing a charter or certified copy of a charter. Additional fees are provided for other ragulatory activities of the Board.[73]

Cooperatives and other corporations for which specific provision is made. Specific statutes have been enacted from time to time providing for the creation of corporations not otherwise authorized and authorizing the collection of fees as follows.

Corporation	Fees
Domestic warehouse and marketing[74]	Annual charter fee graduated on capital stock but not more than $25.
Domestic building and loan[75]	Charter fee of $25 and amendments $5.
Domestic rural credit unions[76]	Charter fee of $10.
Domestic non-profit co-operative credit associations[77]	Charter fee of $10.
Domestic non-profit farmers co-operatives[78]	Charter fee of $10 and amendments $10.
Domestic electric co-operatives for rural electrification[79]	Charter fee of $10 and amendments $2.50.
Domestic non-profit telephone co-operatives[80]	Charter fee of $10 and amendments $2.50.

72 Tex. Civ. Stat. (Vernon, 1948) art. 3914.
73 Tex. Civ. Stat. (Vernon, Supp. 1952) Ins. Code, Art. 4.07.
74 Tex. Civ. Stat. (Vernon, 1948) art. 5581.
75 Ibid., art. 881a-5.
76 Ibid., art. 2463.
77 Ibid., art. 2512.
78 Ibid., art. 2518.
79 Ibid., art. 1528b, sec. 29.
80 Tex. Civ. Stat. (Vernon Supp, 1950) art. 1528c, sec. 28.

Foreign building and loan[81]	Permit fee and annual renewal of $500 or $20 for each $1 million.
Domestic and foreign co-operatives marketing agricultural products[82]	Charter fee of $10 and amendments $2.50.

Tax Paid by Domestic Corporations

The taxes on state banks, channel and dock, railway and telegraph corporations, and ordinary business corporations have certain common features. The tax is assessed on three contacts which each corporation may have with the Secretary of State or, in the case of banks, with the Banking Commissioner. There are (1) the filing of a charter at the time the corporation is created (The charter contains, along with other information, the number of shares into which the capital stock is divided and a length of time not exceeding 50 years for which the corporation is to exist.), (2) the filing of amendments to the charter changing its name, place of business or the amount of its capital stock, and (3) the filing of applications for extending the charter beyond the time fixed in the initial charter. A literal reading of the statutes imposing the taxes might seem to require that a graduated tax based on the total capital stock authorized by the charter be charged on each of these contacts. For example, the pertinent provision taxing state banks provides:

> For each charter, amendment or supplement thereto, of a bank or bank and trust company, a fee of fifty dollars shall be paid when said charter is filed, and if the authorized stock of such corporations exceeds ten thousand dollars of it authorized capital stock or fractional part thereof after the first . . . .[83]

Similar provisions, except as to rate, are made for the other two groups.[84] These provisions have been construed, however, to require the tax to be computed on the full amount of the authorized stock only upon the initial filing of the charter and upon extensions of the charter. Amendments which increase capital stock are taxed at a graduated rate, but only on the increase. Other amendments, which change name or place of business or which decrease capital stock are taxed at the minimum rate.[85]

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81 Ibid., art. 881a-61. Apparently supersedes art. 3915 and requires payment to the Banking Commissioner.

82 Tex. Civ. Stat. (Vernon, 1948) arts. 5763-5764.

83 Tex. Civ. Stat. (Vernon, 1948) art. 3921.

84 Tex. Civ. Stat. (Vervon, 1948) art. 3914.

85 Op. Tex. Atty. Gen. No. 0-1938 (May 1, 1940); Flowers v. Pecos River R. Co., 138 Tex. 18, 156 SW 2d 260 (1941) St. Louis Southwestern R. Co. v. Tod, 94 Tex. 632, 64 SW 778 (1910).

Two other general provisions affect corporations paying a graduated tax. First the amount of the tax is limited to $2,500 during the life of the corporation's charter, i.e. once the corporation has paid fees totaling $2,500, no further tax may be assessed until an extension of the charter is sought.[86] Second, a special arrangement is made for corporations not having capital stock and which are not taxed on a fixed fee basis. These compute the tax on net assets.

State banks. State banks are taxed on the filing and renewal of charters at the rate of $50 for the first $10,000.[87] The fee for amendments other than those increasing capital stock is a minimum of $50.[88] The stock is valued for tax purposes at the par or face value authorized in the charter. State banks are not authorized to issue stock not having par value, and the problem of valuing this class of stock does not, therefore, arise.[89]

Channel and dock, railroad, telegraph, street railway and express companies. These corporations are taxed at different rates depending on whether they are authorized by charter to issue par value stock or no par stock. Some corporations issue both par and no par value stock in which event each type is taxed at the rate established therefor. The statutory rate, if par value shares are authorized, is $200 for the first $100,000 and 50 cents for each additional $1,000 or part of $1,000.[90] In no par shares, i.e. shares without any stated value, but sold from time to time at prices fixed by appropriate action of directors or stockholders, are authorized, the rate is $50 for the first $10,000 of authorized no par shares and $10 for each additional $10,000 or part thereof. Par value shares are valued at par as in the case of banks, and no par shares are valued at the average value actually received for those sold multiplied by the total number of shares authorized.[91] If both types of shares are authorized, the tax must be computed separately on each.

Ordinary business corporations. All corporations organized under Texas laws for which specific provisions are not made, as discussed above, are taxes as one group.[92] This group consists primarily of what may be termed ordinary business or trading corporations. The tax rate for both par and no par shares is $50 for the first $10,000 or part thereof. The stock is valued in the same manner as for the group just discussed.

86 Tex. Civ. Stat. (Vernon, 1948) arts. 3914, 3921; General Motors Acceptance Corp. v. McCallum, 10 SW 2d 687 (Tex. Civ. App., 1928).
87 Tex. Civ. Stat. (Vernon, 1948) art. 3921.
88 Ibid.
89 Ibid., art. 1538a.
90 Ibid., art. 3914.
91 Ibid., arts. 1538f, 1538g.
92 Ibid., art. 3914.

Tax Paid by Foreign Corporations

The entrance tax assessed on foreign corporations is in some respects similar to that on organization of domestic corporations. Foreign corporations which desire to do intrastate Texas business are, in general, required to file a copy of their charters with the Secretary of State and to secure a permit. They must also file copies of charter amendments and renew their permits every ten years. For the permit and renewal they are required to pay a tax of $50 for the first $10,000 of taxable capital stock and $10 for each additional $10,000 or part or $10,000. For filing amendments increasing capital stock, they are required to pay a tax on the increase at the same rates. Other amendments are taxed at the $50 minimum. The maximum rate which may be assessed on any corporation is $2,500 during the ten-year life of its permit.[93] There are, however, several significant differences in the tax on foreign and domestic corporations. These relate to the corporations taxed, the basis on which the tax is computed, and determination of the tax on stock increases. In addition, there are provisions applicable to foreign corporations entering Texas for the first time.

Corporations subject to the tax. In general, all foreign corporations "organized for pecuniary profit" and desiring "to transact or solicit business in Texas, or to establish a general or special office in this State" are required to secure permits, file charter amendment and pay the tax.[94] Foreign state banks and corporations organized for the purpose of "constructing, building, operating or maintaining any railway" are not permitted to do business in Texas. Special statutory provisions, as has been indicated, impose an entrance tax on foreign insurance companies, building and loan associations and certain co-operatives marketing agricultural products.[95] There appear to be no express provisions permitting foreign non profit corporations generally to enter Texas and requiring them to pay a tax. The Attorney General has ruled that foreign non profit corporations are not required to secure permits in order to do business in Texas.[96] However, a foreign electric co-operative has been granted a permit to do business in Texas on payment of the minimum fee of $50 required of foreign profit corporations.[97]

93 Chicago Corp. v. Shepperd, 248 SW 2d 261 (Tex. Civ. App. err. ref'd. 1952).
94 Tex. Civ. Stat. (Vernon, 1948) arts. 1529 et. sez., 3914.
95 Tex. Civ. Stat. (Vernon Supp. 1952) Ins. Code art. 4.07; (Vernon Supp. 1950) art. 881a-61; (Vernon, 1948) arts. 5763, 5764.
96 Op. Tex. Atty. Gen. No. 0-5998 (May 5, 1944).
97 Op. Tex. Atty. Gen. No. 0-660 (May 4, 1939).

Foreign corporations which are engaged solely in interstate commerce are not required to secure a permit or pay the tax.[98]

Basis on which the tax is computed. As has been indicated, domestic corporations pay a tax on the total amount of the capital stock authorized by their charters. Foreign corporations are taxed only on stock which has been issued and only on that portion of issued stock which is allocated to the business being done in Texas. So much of the total issued stock is allocated to Texas business as the Texas assets plus gross receipts from Texas business bears to total assets plus total gross receipts of the corporation. If the Texas assets are used in doing interstate business this amount is further reduced by including, in making the computation, only that portion of the Texas assets as the gross receipts from the assets used in intrastate business bears to total gross receipts from those assets.[99] This elaborate formula was apparently devised as a method of complying with prohibiting taxes constituting a burden on interstate commerce.[100]

As is the case with domestic corporations, par value stock is valued at par and no par stock at the price actually received. Foreign corporations not issuing capital stock are permitted to compute the tax on net assets.

Computation of the tax on increases in capital stock. The statute requires foreign corporations whose charters have been amended so as to increase their authorized capital stock to file, within 90 days of the close of the permit year, an affidavit showing the stock issued under the amendment. A tax is paid on the increase. As in the case of the initial permit charge, the tax is on only a proportionate part of the total determined by the proportion of Texas assets and gross receipts to the corporations total assets and gross receipts.[101] There appears to be no provision for the assessment of a tax on increases resulting from the sale of stock already authorized, when the corporation enters Texas, but which had not been issued, or for stock issued more than one year after an authorizing amendment. Unlike domestic corporations, therefore, it appears that foreign corporations may, under certain circumstances, increase their capital stock without incurring a tax. Since there is not now any method whereby capital

98 Crane Co. v. Looney, 218 Fed. 260, affirmed 245 U.S. 178.
99 Tex. Civ. Stat. (Vernon, 1948) art. 3914, unnumbered par. 5.
100 Western Union Tel. Co. v. Kansas, 216 U.S. 1. (1909).
101 Tex. Civ. Stat. (Vernon, 1948) art. 3914.

stock increases of foreign corporations may be investigated unless reported, this question has not been raised in administering the tax.

Beginner corporations. Corporations having no previous business experience in Texas from which the tax could be computed are permitted to pay the minimum $50 fee at the time the permit to do business is issued and to compute the balance of the tax at the close of the first permit year.[102]

Franchise Tax

The Texas franchise tax is an annual tax levied upon corporations for the privilege of doing business in Texas in corporate form.[103] It is graduated according to the risk capital employed which can be assigned to the Texas operations of the business. Out of a history of changes in rates, basis and coverage designed to increase revenue, to meet changes in corporate financial structure, and to avoid attacks on constitutional validity has come a complex tax structure in which there are substantial difficulties both of statutory construction and of administration.

Actual assessments of the franchise tax are made by the corporations paying the tax. They are required to calculate annually the amoung of tax due and to report this amount and information relating to the basis on which it was calculated to the Secretary of State on a form prescribed by him.

Corporations Subject to the Tax

"Every domestic and foreign corporation . . . chartered or authorized to do business in Texas, or doing business in Texas," except those specifically exempt, is required to pay the tax.[104] This provision creates three situations in which the tax may be collected. It may be collected on (1) domestic corporations--those chartered in Texas, whether or not they are doing business in Texas; (2) foreign corporations which have obtained a permit to do business in Texas whether or not they are doing business in Texas, (3) foreign corporations conducting business in Texas which are not required to obtain a permit or, being required to do so, have failed to obtain a permit.[105] Of course, domestic or foreign corporations which are subject to the

102 Ibid.

103 The term "risk capital" is used to encompass capital stock, surplus and long tern indebtedness, all of which from the base on which the franchise tax is computed.

104 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7084.

105 In at least one case prior to the addition of the clause on "doing business in Texas" a court held that a foreign corporation which had no permit was not liable for the franchise tax. Jordan v. Grandfield Bridge Co., 290 SW 866 (Tex. Civ. App., 1926).

tax but which are not doing business in Texas only have to pay the minimum tax.[106] In determining the taxability of corporations without a charter or a permit, "doing business" has been construed to apply only to those transactions which are begun and completed in Texas.[107]

Corporations exempt. The franchise tax statute exempts two principal groups of corporations and two named businesses.[108] Other portions of the statutes make special provision for certain other corporations. These include state chartered building and loan associations though they are required to pay a franchise tax under another provision.[109] Mutual investment companies registered under the federal Mutual Investment Company Act of 1940.[110]

With regard to the first exempt group, corporations paying a gross receipts tax, the statute provides that the tax does not apply to

> any insurance company, surety, guaranty or fidelity company, or any transportation company; or to any corporation organized as a terminal company not organized for profit and having no income from business done by it, or to any sleeping, palace car and dining car company not required to pay an annual tax measured by their gross receipts . . . (emphasis added)[111]

The underlined words were added to this section and deleted from another portion of the law in 1951 in an attempt to collect the exemptions in a single section. While the change raises several interpretative problems, the Secretary of State is of the opinion that no change in effect was intended. Under long standing administrative interpretation, therefore, insurance, surety, guaranty or fidelity companies, and sleeping, palace and dining car companies are required to pay a tax measured by gross receipts and are exempt from the franchise tax. Non-profit terminal companies are exempt without relation to whether they pay a gross receipts tax.[112]

The interpretative problems raised by the statute as it now stands may be sufficiently serious to warrant legislative consideration to correction. These are

106 Op. Tex. Atty. Gen. No. 0-1775 (January 6, 1940).
107 Clark v. Atlantic Pipe Line Co., 134 SW 2d 332, (Tex. Civ. App. 1939, err. ref'd); Flowers v. Pan American Refining Corp., 154 SW 2d 982 (Tex. Civ. App., 1941, err. ref'd).
108 The two exempt groups are (1) certain corporations paying a tax measured by gross receipts and (2) certain non-business corporations.
109 Tex. Civ. Stat. (Vernon Supp. 1950) art. 881a-6.
110 Tex. Civ. Stat. (Vernon Supp. 1952) art. 7094.
111 Ibid.
112 This provision had been so construed prior to the change. Houston Belt and Terminal Ry. Co. v. Clark, 143 SW 2d 373(Tex. Com. App. 1940).

as follows:

1. Does the phrase "not required to pay an annual tax measured by their gross receipts" apply to each of the corporations listed above it or only those immediately preceding it, i.e. "sleeping, palace car and dining car" companies?

2. Does the insertion of the phrase "or to any corporation organized as a terminal company not organized for profit and having no income from business done by it," in this context now require that these corporations pay a gross receipts tax to be within the exemption?

3. The term, "transportation company" is not defined in the statute. The term was used in the statute when it was first enacted in 1907.[113] Prior thereto, during the same session, the Legislature enacted an occupation tax measured by gross receipts.[114] Several occupations were included which would seem to come within the definition of "transportation company" including express companies, various railroad car companies, and pipe line companies. Later, in 1941, a similar tax was levied on certain motor carriers.[115] Does the transportation company exemption apply to a portion or to all of these corporations?

4. Pipe line companies and certain motor carriers are now subject to a tax on intangible assets, payment of which apparently relieves them of liability for the gross receipts tax.[116] Assuming these corporations are transportation companies and exempt if "required to pay an annual tax measured by their gross receipts," do they lose their franchise tax exemption by becoming liable for the tax on intangible assets and thus being relieved of the gross receipts tax?

The second group of exempt corporations, certain non-business corporations, presents less difficulty but has been subject to some litigation and a number of rulings by the Attorney General. The statute makes the tax inapplicable

> to corporations having no capital stock and organized for the exclusive purpose of promoting the public interest of any city or town, or to corporations organized for the purpose of religious worship or for providing places of burial not for private profit, or to corporations organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits, or for strictly educational purposes, or for purely public charity . . .[117]

These exemption provisions are strictly construed. A corporation claiming exemption must come clearly within the statute.[118]

113 Acts 1907, 30th Leg., 1st C.S. Ch. 23, p. 502, sec. 13.
114 Ibid. Ch. 18, p. 479.
115 Acts 1941, 47th Leg. Ch. 184, p. 269.
116 Tex. Civ. Stat. (Vernon, 1948) arts. 7105, 7116.
117 Tex. Civ. Stat. (Vernon, Supp. 1951) art. 7094. The Secretary of State contrues "and encouraging agricultural pursuits," to apply only to agricultural fairs, and not as an independent exemption.
118 McCallum v. Associated Retail Credit Merchants, 41 SW 2d 45 (Tex. Civ. App. 1931).

Thus, county chambers of commerce are not exempt since the statute lists only corporations promoting the public interest in any city or town.[119] Educational corporations are exempt even though organized for profit.[120] Although afforded special treatment under the organization tax, corporations organized for support of literary or scientific undertaking are not exempt.[121] Nor are foreign farm marketing associations.[122]

A number of specific types of corporations are given special statutory treatment either exempting them from all franchise taxes or providing a different tax than that provided under the general franchise tax laws. These are:

Corporations	Charge
Co-operatives marketing agricultural products[123]	$10
Domestic Building and loan[124]	$10
Foreign building and loan[125]	$250
Domestic rural credit unions[126]	exempt
Domestic farmer's co-operatives[127]	exempt
Domestic co-operatives for rural electrification[128]	$10
Domestic telephone co-operatives[129]	exempt

119 Op. Tex. Atty. Gen. No. 0-7240 (May 31, 1946).
120 Op. Tex. Atty. Gen. No. 0-4442 (March 4, 1942).
121 Op. Tex. Atty. Gen. No. 0-4137 (October 27, 1941).
122 Op. Tex. Atty. Gen. No. 0-6045 (October 4, 1944).
123 Tex. Civ. Stat. (Vernon, 1948) arts. 5737 et seq.
124 Ibid., art. 881a-6.
125 Tex. Civ. Stat. (Vernon, Supp. 1950) art. 881a-61.
126 Tex. Civ. Stat. (Vernon, 1948) art. 2484.
127 Ibid., arts. 2512, 2518.
128 Ibid., art. 1528b, sec. 29.
129 Tex. Civ. Stat. (Vernon Supp. 1950) art. 1528c, sec. 28.

Basis on Which the Tax is Computed

Except for cer: tain public utility corporations the tax is based on that portion of the outstanding capital stock, surplus and undivided profits and certain other evidences of long term indebtedness as the corporation's gross receipts from Texas business bears to its total groass receipts from all business.[130] For example, a corporation for which all the items mentioned totaled $100,000 and which was doing 50 per cent of its business in Texas would base the tax on $50,000. However, this amount may not be less than the value for county ad valorem tax purposes of the corporation's property situated in Texas. Thus, if the corporation in the above example had a plant in Texas valued for ad valorem purposes at $60,000, the tax would be computed on this amount. Certain public utilities are permitted to exclude long term indebedness for the computation. Since this exclusion results in a tax reduction, these corporations may be more conveniently discussed along with corporations whose tax is reduced through special rate classifications.

By breaking down the formula for establishing the figure against which the tax rate is to be applied, it can be seen that four important determinations have to be made before the amount of the tax can be settled. It is necessary to decide on (1) the value of taxable capital stock, (2) the amount of surplus and undivided profits, (3) the amount of long term indebtedness, (4) what portion of the total gross receipts of the corporation come from business done in Texas.

Valuation of capital stock. Two classes of stock must be considered, par value and no par value stock. Par value stock has an official value fixed by the corporation charter and printed on the face of the stock certificates. This stated or par value often has no direct relationship to market value. No par value stock has no stated or official value but only a market value.

Par value stock is taxed at its fixed or face value, that is, its par value.[131] No par value stock has "the value actually received at the time of the issuance thereof".[132] The statute further provides that only "outstanding" capital stock is taxed.[133] No definition of this term is pro vided. The Secretary of State apparently construes the term to mean all of both par and no par stock which has been subscribed, i.e. contracted to be sold by the corporation, without regard to whether the full purchase price has actually been paid to the corporation.[134]

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130 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7084.

131 American Refining Co. v. Staples, 260 SW 614, 616 (Tex. Civ. App., 1924, aff'd 269 SW 420, Comm. App., 1925, opinion by the Supreme Court.)

132 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7084 (3).

133 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7084 (1).

134 Forms of Secretary of State reporduced in CCH Texas Tax Reporter, par. 6-402, 6-403, 6-404.

The statute further provides that "Capital stock as applied to corporations without capital stock shall mean the net assets."[135] The phrasing of this provision suggests that these corporations would simply substitute net worth for capital stock in making the computation and would also include the other two items, surplus and indebtedness. However, no indication is given as to how surplus would be computed; it must be remembered that net worth will ordinarily include surplus. The problem is apparently of little moment since most non-stock corporations are either exempt or required to pay a minimum tax only.

Surplus. Determination of surplus and undivided profits subject to the tax has presented a number of more or less technical accounting problems and has, therefore, required frequent interpretation. The statute provides, without further elaboration, that "surplus and undivided profits" shall be included in the tax basis. A court of civil appeals defined this to include: (a) assets of a corporation after deduction of liabilities, including capital stock; (b) surplus relaized from issue of stock above par; (c) undistributed profits; and (d) increase in the valuation of property or fixed assets.[136] This ruling had reference to a corporation having only par value stock, but with slight adjustment would be applied to those with no par value stock.

This case has apparently been the primary guide to the Secretary of State in administering the tax. Howver, several rulings of the Attorney General are significant. A difficult problem has been the proper treatment of accounts receivable from installment sales which may be payable over a number of years. A corporation seeling real estate, for example, might have substantial funds tied up in such a manner, the value of which is difficult to determine since not all may be collected. However, the Attorney General in 1949, reversing a prior ruling, ruled that unrealized profits from installment sales do not constitute either surplus or undivided profits for the corporate franchise tax.[137] Another problem has involved the treatment of intangible costs, e. g. wages, fuel, etc. incidental to drilling oil wells. Federal income tax laws apparently allow these costs to be capitalized or charged off as expenses at the option of the taxpayer. The Attorney General ruled that these costs are not contemplated by the term "surplus" as used in the franchise tax, but that a corporation which elects to treat them as a capital item on its books is bound thereby.[138]

In another ruling, the Attorney General excluded from computation of surplus reserves for bad debts.[139]

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135 Tex. Civ. Stat. (Vernon Supp. 1953) art. 7084 (1).
136 United North & South Development Co. v. Heath, 78 SW 650 (Tex. Civ. App., 1934).
137 Op. Tex. Atty. Gen. No. V-774 (February 15, 1949)
138 Op. Tex. Atty. Gen. No. R-3711 (November 16, 1951) clarifying Op. No. V-1037 (April 7, 1950).
139 Op. Tex. Atty. Gen. No. R-1280 (June 22, 1948).

Long term indebtedness. Long term indebtedness included in the tax base consists of notes, bonds and debentures either having a maturity date of a year or more from the date of inception or representing an indebtedness which has been outstanding for one year or more. This provision was apparently intended to insure that the tax be measured by all the risk capital used by the corporation in Texas business without regard to source.

Business done in Texas. Only that part of the gross assets of the assets of the corporation is taxed as the gross receipts from "business done in Texas" bears to the total gross receipts of the corporation. The statute was framed in this manner to tax only intrastate commerce and to meet the objections raised in the case of Looney v. Crane Co.[140] The Court of Civil Appeals therefore held that, although the underlined phrase was susceptible of a construction including both interstate and intrastate business done in Texas, it should be construed in such manner that it would be constitutional. This case involved the receipts of a corporation from shipments of oil by pipeline from points in Texas to the Gulf Coast. At the coast the oil was immediately transferred to ships which took it to other states or other countries. The court also recognized as controllina a long-standing administrative construction that the tax included only transactions which were begun and completed in Texas. The ground for this determination was that the Legislature must be aware of and satisfied with the rule. If the Legislature was not satisfied it would have changed the interpretation.[141] A subsequent case involved receipts of a corporation from the sale to purchasers outside of Texas of crude oil products refined in Texas. The court in this case did not decide the question of whether using gross receipts from this business in determining the share of the corporation assets against which the franchise tax could be collected would violate the commerce clause of the federal constitution. All the court decided was that such action did not accord with long standing administrative practice and that, therefore, the tax could not be calculated in that way.[142] The question of whether receipts from out of state sales of goods which one manufactured or processed entirely in Texas can be included under "business done in Texas" for purposes of the franchise tax has apparently never been settled. The present ruling is that the law is not to be interpreted as including such manufacturing or processing because up to 1939 the standing administrative practice was not to do so and it must be assumed that the legislature is aware of this practice and, not having changed it, is satisfied with it.

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140 245 U.S. 178 (1917).

141 Clark v. Atlantic Pipe Line Co., 134 SW ed 322 (Tex Civ. App., 1939, err ref'd.).

142 Flowers v. Pan American Refining Corp., SW 2d 982 (Tex. Civ. App., 1941, err. ref'd.).

Rate of the Tax

The rate at which corporations generally compute the franchise tax is $1.25 for each $1,000 or part of $1,000 of taxable assets. This rate is apparently applicable to most ordinary business or trading corporations. However, special provisions reducing the amountof the tax apply to certain corporations.

Corporations paying one fifth of the basic rate. Some corporations are permitted to pay only one fifth of the rate paid by corporations generally, or 25 cents per $1,000 of taxable assets. These are:

> Corporations, other than those enjoying the use of public highways by virtue of a certificate of public convenience and necessity granted by the Railroad Commission of Texas, which are required by law to pay annually a tax upon intangible assets, and corporations owning or operating street railways or passenger bus systems in any city or town and suburbs thereof, and corporations organized to and maintaining or owning or operating electric interurban railways,. . .[143]

It has been held that those corporations which are subject to intangible assets tax are entitled to the reduced franchise tax rate whether or not the intangible assets tax is actually assessed or paid.[144] Concerns entitled to a reduced rate under this provision are railroad, ferry, bridge, turnpike, toll, and oil pipe line corporations.[145] "Motor bus companies" and "common carrier motor carriers" are subject to the intangible assets tax but since they use the public highways and are required to secure certificates of convenience from the Railroad Commission, they are not entitled to the reduced rate.[146]

Public utilities. Certain public utilities are granted a tax advantage throuch exclusion of long term indebtedness from the base on which the tax is computed. The corporations covered, therefore, compute the tax only on outstanding capital stpcl amd surplus.[147] Since long term indebtedness in the form of bonds and debentures frequently forms a major part of the financial structure of utility corporations, this exclusion amounts to a substandial tax reduction. Except for those public utility corporations entitled to the one-fifth rate, all corporations "engaged solely in the business of a public utility as defined by the laws of Texas whose rates or services are regulated, or subject to a regulation in whole or in part, by law" are entitled to exclude long term indebtedness in computing the tax. This provision has been construed to

143 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7084 (2).
144 Flowers v. Texas-Mexican Railway, 174 SW 2d 70 (Tex. Civ. App., 1943).
145 Tex. Civ. Stat. (Vernon, 1948) art. 7105.
146 Tex. Civ. Stat. (Vernon, 1948) art. 911a.
147 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7084 (3).

limit public utilities to those corporations "declared to be such 'by law', which means, as applied here, by a legislative enactment."[148] Regulated corporations, such as inter-city bus lines and motor freight carriers, which are excluded from the rate reduction, may still come within this provision.[149] Among those not paying the tax on long term debt are gas pipe line companies, telegraph, telephone, gas and light, and sewerage corporations.[150]

Multi-purpose corporations. Corporations generally are permitted to secure charters or permits to do business for only a single purpose set out in an article or subdivision of the statutes authorizing the creation of corporations.[151] Most corporations, therefore, are required to pay only one franchise tax computed on their total gross assets. However, under three statutory provisions, corporations may be chartered or granted permits to do business in more than one distinct type of activ ty. Two of these were on the books prior to 1930.[152] One contains five distinct purposes: (1) land companies, (2) merchandise and manufactures, (3) power plants, (4) railway and all other kinds of transportation and communication, and (5) the improvement of harbors and rivers. Another also contains five: (1) water supply, (2) ice, (3) gas and electric power, (4) carbonated water, and (5) cottonseed oil mills and cotton compresses. Some of these are public utilities; others are not. Each corporation chartered for two or more purposes was required to pay a franchise tax based on total risk capital on each purpose.

In two decisions, one by the Texas Commission of Appeals and one by the Court of Civil Appeals, these provisions were construed, together with the franchise tax provisions as they existed prior to 1931.[153] The decisions established the following rules: (1) The provision requiring a tax on each purpose applied to foreign corporations as well as to domestic corporations. (2) A public utility business is a business regulated by statute. (3) A corporation engaged in a nonpublic utility business and a public utility business not engaged "solely" in public utility business could not, therefore, omit long term indebtedness in computing the tax. (4) Since no provision was made for allocating gross assets among the purposes in which the corporations were engaged, the tax must be computed for each purpose on their gross assets employed in all activities. This meant that they paid three times the regular tax if they served three purposes.

In response to the Commission of Appeals decision, the Legislature added two provisions to the franchise tax in 1931[154] One of these permitted corporations engaged in both public utility and non-public utility business to allocate its risk capital between them according to the gross receipts received from each. The other provided:

148 Gulf States Utilities Co. v. State, 46 SW 2d 1018 (Tex. Civ. App. 1932, err ref'd.).
149 Op. Tex. Atty. Gen. No. 0-1331 (Nov. 1, 1939).
150 Op. Tex. Atty. Gen. No. 0-686 (May 8, 1939) Tex. Civ. Stat. (Vernon, 1948 Title 32, Ch. 10.
151 Ramsey v. Tod, 95 Tex. 614, 69 SW 133 (1902); Johnston v. Townsend, 103 Tex. 122, 124 SW 417 (1910).
152 Tex. Civ. Stat. (Vernon, 1948) art. 1302, Subdivision 80 and 88.
153 Western Public Service Co. v. Meharg, 288 SW 141 (Tex. Com. App., 1926, opinion adopted by Sup. Ct.) Gulf States Utilities Co. v. State, 46 SW 2d 1018 (Tex. Civ. App. 1932, err. ref'd).
154 Acts 1931, 42nd Leg., ch. 265, p. 441.

> Corporations which are now required to pay a separate franchise tax for each purpose or business authorized by their charters, shall herafter pay only the tax provided hereunder for one purpose, and one-fourth (1/4) of such amount for each additional purpose named in their charters.[155]

Neither of these provisions has been judicially construed, but it appears that they have the following results:

(1) Corporations doing both public utility and nonpublic utility business will compute two taxes, one based on that part of the total risk capital of the corporation allocated to public utility business, and the other based on that part of the risk capital allocated to the non-public utility business. For example, a corporation engaged in supplying ice, water and electric power, three of the purposes permitted under one of the multi-purpose provisions, would allocate its risk capital between its ice business, which is non-public utility, and its water and electric businesses, which are public utilities. The allocation would be in proportion to the gross receipts from each type of activity. It would then pay two taxes--one computed on the risk capital allocated to the ice business, and one based on the risk capital allocated to the other two activities. The risk capital allocated to public utility businesses would not include long term indebtedness. The over-all tax, therefore, would be no more than that for a single purpose corporation taxed under the general provisions.

(2) Corporations engaged in more than one purpose, all of which are either public utility or non-public utility businesses, will pay a tax based on the total risk capital of the corporation and one-fourth of that amount for each purpose in addition to the first. If, for example, the corporation discussed above were engaged only in the two public utility activities--water and electric power--it would be required to pay a tax based on the total risk capital for both activities and an additional tax of one-fourth that amount. A corporation engaged in three purposes, all either public utility or non-public utility, would be required to pay a total of one and one-half times as much tax as a single purpose corporation with the same risk capital.

The third statute under which multi-purpose corporations are authorized was enacted in 1945.[156] It authorized two purposes--purchase, processing and sale of agricultural products, and purchase, manufacture and sale of feeds, fertilizers and insecticides and fungicides. The statute also provided that the

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155 This is now found in Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7084 (5).
156 Acts 1945, 49th Leg., Ch. 252, p. 390.

full tax should be paid on each. The Attorney General ruled that since the franchise tax amendment of 1931 provided a reduced rate only for those multi-purpose corporations "now" (1931) required to pay a separate franchise tax, the 1945 act created an exception and a corporation engaging in both purposes should pay the full tax on each purpose. [157] Since the franchise tax was amended in 1951, but repeated the language contained in the 1931 amendment, the status of these corporations is not clear. The question is, does "now" refer to 1931 or to 1951?

Beginner Corporations

The franchise tax is payable in advance for the year from May 1st through the following April 30th, based upon the business experience of the preceding year. [158] Beginning corporations without previous business experience in Texas are necessarily given special treatment. This treatment differs for domestic and foreign corporations. Domestic corporations compute the tax, for the fraction of the year from the date of their charters to the following May 1st, on the total assets of the corporation without allocation for business expected to be done outside the state. [159] Foreign corporations, on the other hand, are permitted to postpone computation of the tax until the close of the first year of business. They then compute and pay the tax at the appropriate rate and basis on the first year's business, and the fraction of the year remaining until May 1st. If the permit year ends after January 1st, they also compute and pay the tax for the year beginning on the following May 1st. They are also required to deposit with the Secretary of State either $500 or a bond in that amount from which delinquent fees and taxes may be collected in the event of forfeiture of charter or withdrawal from the state. [160]

Dissolution, Withdrawal and Insolvency

Domestic corporations which have entered into a good faith plan of dissolution are taxed only on the difference between the amount of outstanding capital stock and the amount of the liquidating dividends paid on the stock. [161] When liquidating dividends equal the amount of the outstanding stock, only the minimum tax is assessed, although the corporation may continue in existence having undistributed assets during the remaining life of its charter. [162]

Foreign corporations are permitted simply to withdraw from the State after having paid all fees and taxes. [163]

157 Op. Tex. Atty. Gen. No. V-466 (December 30, 1947).
158 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7084.
159 Tex. Civ. Stat. (Vernon, Supp. 1950) art. 7086.
160 Ibid.
161 Ibid., art. 7097.
162 Op. Tex. Atty. Gen. No. 0-1545 (December 19, 1939).
163 Tex. Civ. Stat. (Vernon, Supp. 1950) art. 7093.

No provision is made for reduction of the tax on a foreign corporation in the process of dissolution in the state where it is chartered. Presumably, such a corporation continues to be liable for the franchise tax so long as it holds assets in Texas.

Insolvency of a corporation may be made the basis of forfeiture of its charter or permit, but neither insolvency, adjudication in bankruptcy, nor assignment for the benefit of creditors relieves a corporation from liability for the franchise tax.[164] State banks which have closed their doors and gone into the hands of the Banking Commissioner for liquidation are relieved of further tax payment, except that, if after liquidation there are funds which would go to stockholders, the franchise tax and penalties must be paid first.[165]

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[164] State v. Dyer, 16 Tex. 209 (1847); Op. Tex. Atty. Gen. No. 0-1327, (December 19, 1939).

[165] Tex. Civ. Stat. (Vernon, Supp. 1950) art. 7085.

SECTION 4 - COLLECTION AND ENFORCEMENT

Collection and enforcement of organization and entrance taxes and franchise taxes is the primary responsibility of the Secretary of State. The Charter and Franchise Tax Divisions of the office of the Secretary of State have segregated functions with respect to the collection of these taxes, but they work closely together. The Attorney General has duties of enforcing both types of taxes and the State Auditor has regular duties concerning enforcement of the annual franchise tax.

Organization and Entrance Charges

Charter Division -- Initial and Renewal Taxes

The Charter Division performs its collection function as a part of the process of corporate regulation through the issuance and renewal of charters and permits and the filing of charter amendments. It collects, from beginning domestic corporations, before the charter is approved, both the initial charter fee and the franchise tax for the balance of the year between the date of filing and May 1st. It collects from foreigh corporations securing a permit for the first time, only the minimum $50 charge, the balance of the tax being postponed until the end of the corporation's first year of Texas business. The balance is then collected by the Franchise Tax Division. The Charter Division also collects the minimum fee of $50 for filing charter amendments and certified copies of charter amendments. The tax on amendments increasing capital stock is handled by both the Charter and Franchise Tax divisions with the latter making the computation of the amount for foreign corporations and maintaining necessary reference files. Renewals of both charters and permits are also handled by both divisions in a similar manner.

The methods of the Charter Division may be simply described. Charters, applications for permits and charter amendments are received by the Division and checked for conformity to general corporate law. Payment of the tax, as computed by the taxpayer, often accompanies the documents offered for filing. If payment is made, the Division checks the taxpayer's computation. If the computation is incorrect or if payment is not offered, the Division computes the tax correctly and informs the taxpayer of the amount due. The document is not filed until the correct tax is paid.

The often cifficult problems of determining the classification of corporations as to exemptions and purpose are dealt with by this Division. Three persons in the Division take part in this process. One person checks documents filed by foreign corporations; another those filed by domestic corporations. The Division head reviews both.

Franchise Tax Division

The Franchise Tax Division aids the Charter Division in the collection of permit charges on foreign corporations and the charges on amendments increasing capital stock, and on the renewal of charters and permits. These are briefly discussed. The principal activity of this division is the collection of the annual tax on corporations.

Foreign permit charges. When a foreign corporation first secures a permit it is required to pay the $50 minimum tax. The balance of the tax is postponed until the end of the first year of business in order that the capital stock may be apportioned between intra- and inter-state business.[166] The Franchise Tax Division maintains a file on corporations subject to the additional tax and mails out appropriate forms and instructions. It checks the returned forms and payments for error.

Increases in capital stock. Domestic corporations must pay a tax on amendments increasing capital stock at the time the amendment is filed. The tax is not apportioned between stock allocated to intra- and inter-state business.[167] Hence this tax is collected by the Charter Division. Foreign corporations, however, pay only the minimum $50 tax at the time a copy of an amendment increasing stock is filed, and must report within 90 days of the close of the permit year the amount of stock issued.[168] The Franchise Tax Division maintains a file on corporations in this status and mails the necessary report forms to them when the additional tax is due.

Renewals. The tax on renewals of domestic charters and foreign permits is collected at the time these are approved by the Charter Division. The Franchise Tax Division participates in checking the computations of the amount due.

Apparently no express statutory sanctions are provided for enforcement of these taxes. Amounts due at the time a document is filed may be collected by refusing to file the document unless accompanied by correct payment, however, and the delayed taxes on foreign corporations may be insisted upon when the corporation seeks a renewal of its permit, since copies of all charter amendments must be filed with a certificate that they are complete from the issuing state. No regular review of renewal applications for this purpose is now made, but some tax delinquencies are uncovered in this manner.

Annual Franchise Tax

Collection of the annual franchise tax is the principal function and responsibility of the Franchise Tax Division, although the State Auditor and the

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166 Tex. Civ. Stat. (Vernon, 1948) art. 3914.

167 Ibid.

168 Ibid.

Attorney General play a part. Following is a discussion of the usual collection process, the handling of delinquencies, and the activities of the State Auditor and the Attorney General.

Usual Collection Process

Once each year the Franchise Tax Division mails out to foreign and domestic corporations a form on which to report their franchise taxes. This form is accompanied by general instructions on completing the form and by a remittance slip. The form and the remittance slip, as well as the records of the Division relating to any corporation, bear a number which has been assigned to the addressee corporation. The number is used for purposes of identification and to simplify filing, record-keeping and correlating the various reports and records on corporations which are found in different places in the Division.

Under the law corporations are required to submit their franchise tax reports, sworn to by an officer of the corporation, to the Secretary of State between January 1 and March 15, unless an extension is granted to May 1.[169] The tax must be paid by May 1.[170] The returns are checked both by Division personnel and by the State Auditor's office. They are compared with the tax payment actually received. Payments are promptly deposited in the State Treasury.

A special file is kept of beginning foreign corporations which are permitted to pay their first year taxes at the close of the first year of business. Appropriate forms and instructions are mailed out to them, some being mailed each month, as their business year ends.

Several difficult problems arise in this phase of the Division's activity. A major difficulty is the peak load of reports and payments that occurs during four months of the year from January 1 through May 1. There are between 25 and 30 thousand corporations operating in Texas which are subject to the franchise tax, and the job of auditing their reports, handling the payments and mailing out delinquent notices is jammed into a few months of the year. In 1951, the Division was able to hire five part-time auditors to assist in checking reports, but it still got behind the schedule prescribed by law.

Other problems are the extension of reporting time and the separation of reports from payments. Reports are required to be filed with the Secretary of State between January 1 and March 15, unless the Secretary of State extends the time to May 1.[171] The tax is not required to be paid until May 1.[172] About 5,000 corporations a year get extensions for varying lengths of time. Some

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169 Tex. Civ. Stat. (Vernon Supp., 1950), art 7089.

170 Tex. Civ. Stat. (Vernon Supp., 1952), art. 7084.

171 Tex. Civ. Stat. (Vernon Supp., 1950), art. 7089.

172 Tex. Civ. Stat. (Vernon Supp., 1952), art. 7084.

corporations submit payments with their report; others send them separately. The result is the complication of the processing of reports and payments during the Division's peak load period.

There is also a problem of adequacy of reporting. The law requires that the report be submitted in duplicate and contain designated information to permit the Secretary of State to check the accuracy of the amount of tax as reported.[173] Further information may be required by the Secretary.[174] Some difficulty has been encountered both in getting duplicate reports and in getting reports completely filled out. Aggressive action by the Charter Division has reduced the problem to some extent. The Division at one time adopted the practice of not accepting incomplete reports from corporations on the ground that they lacked sufficient information for proper classification. This policy has been discontinued.

Another difficult problem is that of insuring that all corporations subject to the tax report and pay the tax. For domestic corporations, this is a matter of establishing systems whereby the voluminous files of charters and amendments may be kept current and accessible. Domestic corporations must have charters on file with the Secretary of State in order to exist. An unknown number of foreign corporations, however, operate within the state without either securing a permit or paying the franchise tax. Probably the larger of these corporations are now being picked up and required to comply with the law through the co-operation of the Texas Employment Commission. The Employment Commission issues about every three months a list of businesses paying employment taxes in Texas. The offices of the State Auditor and the Secretary of State check the list for foreign corporations not haveing permits. A form questionnaire is then directed to corporations apparently violating the law. The returned questionnaire is turned over to the Attorney General for further investigation and action. Some delinquent corporations are also uncovered by inquiries from lawyers and people generally as to the corporate status of concerns with which they are in litigation or have business dealings. These are also referred to the Attorney General.

Delinquencies and Penalties

A number of sanctions are provided by the franchise tax law for the enforcement of this tax. They include penalties for failure to report and failure to pay the tax, and certain additional powers granted to the Secretary of State.

Monetary penalties. Failure or refusal of a corporation to make a report when due subjects it to a penalty of ten per cent of the amount of the tax due.[175] On failure to pay the tax when due the corporation must pay an additional 25 per cent of the tax as a penalty.[176] These penalties are mandatory

[173] Tex. Civ. Stat. (Vernon Supp., 1950), art. 7089.

[174] Ibid.

[175] Ibid.

[176] Ibid., art. 7091.

and may not be waived, reduced or compromised by the Secretary of State.[177] The state has a prior lien for all taxes and penalties on all of the corporation's property which may be protected by the Secretary of State's filing proper notice in the county of the corporation's principal place of business and by bringing suit within two years after forfeiture of the right to do business.[178] Additional protection is gained in the case of foreign corporations by the requirement that beginning foreign corporations either deposit $500 with the Secretary of State or file an equivalent bond which may be reached in the event of delinquency on corporate fees and taxes.[179]

Administrative forfeiture of the right to do business. When a corporation fails either to make a timely report or to pay the tax when due, the Secretary of State may forfeit its right to do business without any judicial proceeding.[180] The Secretary of State mails notice to delinquent corporations in May. If a corporation fails to correct the delinquency by July 1st, the right to do business is forfeited by appropriate entry on the corporate records. The consequences of the forfeiture are serious, since the corporation may not then sue or defend suits and directors and officers may be held personally liable for debts incurred with their knowledge and consent. The right to do business may be revived, however, by payment of all taxes and penalties and an additional five per cent for each month of delinquency. During 1951, about 4,000 corporations were delinquent and about 2,000 had their rights to do business forfeited. Approximately 75 per cent of these revived their right to do business. Some corporations lose and then revive their right to do business year after year. Apparently they send in their report and later forget to mail the tax payment.

Administrative forfeiture of charters. Two provisions have been made for the forfeiture of the charters of domestic corporations without judicial proceedings. In 1949, the Legislature authorized the Secretary of State to forfeit the charters of those corporations whose right to do business had been forfeited prior to July 2, 1948.[181] The Secretary of State was required to give corporations notice, mailed to the address given in the charter, within 90 days after the act became effective. If the corporation failed to revive its right to do business within six months of the date of notice, the Secretary was to forfeit the charter by entry on the corporate records. The purpose of this provision was to permit the Secretary of State, without the expense of judicial proceedings, to clear out of the records a large number of defunct corporations. Some forfeitures were consummated, but the job was not completed under this provision. Lack of personnel prevented sending out the required notices within the 90-day period prescribed.

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177 Op. Tex. Atty. Gen. No. V-1239 (August 16, 1951).

178 Tex. Civ. Stat. (Vernon, Supp., 1950), art. 7090.

179 Ibid., art. 7086.

180 This power and the procedures for accomplishing forfeiture are detailed in Tex. Civ. Stat. (Vernon Supp., 1950), arts. 7091, 7092.

181 Tex. Civ. Stat. (Vernon Supp., 1950), art. 7092a.

In 1951 a more general provision was enacted.[182] Under it the Secretary of State is authorized to forfeit charters of domestic corporations which he determines, with the approval of the Attorney General, have no assets from which taxes and penalties may be collected and which fail to revive their right to do business by the January following forfeiture.

Acting under this provision, the Secretary of State forfeited chargers of several corporations in 1951. After a corporation's right to do business had been forfeited, a letter was directed to the clerk of the county of its principal place of business inquiring whether the corporation had any property. A list of those for which a negative reply was received was submitted to, and approved by the Attorney General. An entry of forfeiture was then made on the corporate records after January 1. Difficulties arose, however. Charters were forfeited of corporations which had property unknown to the county clerk and which were active. Litigation was avoided by permitting these corporations to revive their right to do business and by entering on the corporate records that the charter was forfeited through error.

To avoid a repetition of this difficulty, the following procedure is proposed to be followed in the future: The Secretary of State will certify to the Attorney General after July 1st a list of corporations whose right to do business has been forfeited. The Attorney General will send out a demand letter for taxes and penalties,notifying the corporations of possible forfeiture of domestic charters. After about 60 days, if there is no response from the corporation, inquiries as to assets will be directed to county clerks. Notice of impending forfeiture will be sent by the Secretary of State to corporations appearing to have no assets, and a list submitted to the Attorney General for approval. After January 1st, entry will be made of forfeiture on the corporate records.

Judicial forfeiture of charters and permits. Both domestic and foreign corporations which have their right to do business forfeited and fail to revive it by the following January 1st may have their charters and permits forfeited by judicial proceedings.[183] Corporations in this category, other than domestic corporations whose charters are administratively forfeited, are certified to the Attorney General in January, and suit is brought for forfeiture and the collection of taxes and penalties.

Additional enforcement powers. The Secretary of State is given authority to require, in addition to the report, an affidavit of the officers of a corporation setting out the financial status, surplus and indebtedness of the corporation.[184] If not given, the Secretary of State may refuse to issue the charter or permit under consideration, or to accept the franchise tax payment. This authority is apparently infrequently exercised.

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182 Tex. Civ. Stat. (Vernon Supp. 1952), art. 7096.

183 Tex. Civ. Stat. (Vernon Supp., 1950), arts. 7092, 7095.

184 Ibid., art. 7087.

The Secretary of State and the State Auditor are given the power to audit the books and records of corporations.[185] The Secretary of State does not exercise this power; the State Auditor does.

Rule-making power is also given the Secretary of State,[186] but not exercised through issuance of any formal rules. Instructions printed on or accompanying various forms prescribed by the Secretary of State partially perform this function.

State Auditor - Field Audits

The Franchise Tax Division has no field force. Field audits of corporations to check the accuracy of reports are made by the State Auditor's Office. The Auditor's Office has about five men stationed in various large cities in the state and usually one who audits corporations in areas which are remote from the regular field offices.

The franchise tax law provides that representatives of the Secretary of State or of the Auditor may audit the books of corporations in the event that requests for additional information are incompletely answered, or if there is reason to believe that information supplied by the corporation is incorrect.[187] Nevertheless, audits are also conducted on a routine basis.

When franchise tax reports come into the Auditor's Office they are sent out to the appropriate field offices. Reports of corporations not located in a field office area are checked in Austin and may later be forwarded for more detailed investigation by a roving field man. No attempt is made by the Austin office to supervise in detail the order in which field men conduct their audits. Practice varies in each of the branch offices. One follows an alphabetical order; another audits large corporations first; and another, with two field men, divides the area into downtown and suburban districts, one handled by each. An attempt is made to reach all corporations located within the field office areas, where most corporations are located, every two or three years. An attempt is made to reach all large corporations not in field office areas by the roving field man. The corporation books are audited each time back to the last audit. Two groups of corporations are not now audited. These are small corporations outside the areas of established field offices, and foreign corporations not maintaining books in Texas.

When a field auditor discovers what he believes to be a discrepancy he reports it to the Auditor's Austin office. The report is turned over to the State Department, which sends it to the corporation involved. If the corporation

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185 Ibid., art. 7089.

186 Ibid.

187 Ibid.

pays the additional tax it is credited therewith and the matter ends. If the corporation protests, the letter of protest is forwarded through channels to the field man who gets in touch with the corporation and reviews the problem. The field auditor and the taxpayer are often able to reach agreement on proper disposition of the disputed item. If agreement is not reached, the corporation may either pay the tax under protest and sue for its recovery, or risk forfeiture of its charter. The Auditor's staff investigates and recommends; therefore the ultimate power of decision in the event of dispute lies with the Secretary of State.

Thus the task of the Auditor's office is the comparison of reports with the books of the corporation to insure that the reports and the tax paid are correct. This involves a multitude of minor problems of correct accounting practices. Some of these are recounted in Section 3 of this chapter. The major current problems are the auditing of corporations which keep no books in Texas, and searching out attempted tax evasion through inaccurate reporting of long-term indebtedness.

The franchise tax law authorizes forfeiture of permit or charter if any corporation refuses to permit auditing of its books anywhere in the United States,[188] but the Auditor has considered it impractical to send men out of state to audit books. No other means has been devised for checking the accuracy of the reports of corporations not maintaining books in Texas.

The problem of corporations failing to report all indebtedness outstanding more than a year is a continuing one. A few taxpayers devise complex schemes for concealing the fact that indebtedness is long rather than short-term. This item is therefore regularly checked both on the desk audit of the report in Austin and in the field.

The field men perform an additional service. During the first three months of the year they make fewer audits and spend more time in their offices. There they are available to answer questions from taxpayers. This practice has two motivations, the first being that the information service is productive of better returns, and the second being that during this time of year many corporations are heavily occupied with preparing federal and state returns, and audits would be inconvenient for them. During this period the field men may also be called upon to participate in performing other duties given the State Auditor by law.

Attorney General

An Assistant Attorney General devotes his full time to the collection and enforcement duties given to the Attorney General. He engages in three

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188 Ibid.

major activities. He prosecutes judicial proceedings for delinquent taxes and penalties and to forfeit charters of corporations which have become delinquent after July, 1948, and which have assets from which the taxes and penalties may be collected.[189] He approves the determination of the Secretary of State that particular corporations do not have sufficient assets from which taxes may be collected in order that the Secretary of State may administratively forfeit the charters of these corporations.[190] Finally, he investigates and prosecutes for the appropriate taxes and penalties those foreign corporations doing Texas business without a permit which are brought to his attention by the State Auditor or the Secretary of State.

These activities are carried on with close co-operation of the offices of the Secretary of State and the State Auditor. Shortly after the July deadline for the filing of franchise tax reports and the payment of the tax, the Secretary of State certifies to the Attorney General a list of all delinquent corporations. The Attorney General sends a demand letter to the corporation. The corporation is given about 60 days in which to clear up the delinquency through filing a report or paying the tax with penalties, or both. The Secretary of State then investigates those corporations still delinquent to determine whether they have property from which taxes may be collected by suit. The list of those not having property is submitted to the Attorney General for approval of administrative forfeiture. Suit is instituted against those having property.

Foreign corporations illegally doing business without permits are brought to the attention of the Attorney General in two ways. Inquiries directed to the Secretary of State by lawyers or citizens generally regarding the corporate status of a business sometimes reveal out-of-state corporations doing business without a permit. The State Auditor's franchise tax unit now regularly checks against an index of foreign corporations having permits, corporations paying employment taxes through lists provided by the Texas Employment Commission. Corporations which apparently should, but do not, have permits are investigated by the Attorney General and appropriate action taken.

Allocation of Revenues

Revenues from the franchise tax and from organization and entrance charges collected by the Secretary of State are deposited to the General Revenue Fund. The additional franchise tax of ten per cent which was passed in 1950 for the support of state hospitals and special schools was deposited to the State Hospital Fund.[191] While this special tax has expired, occasional delinquent payments containing it still come in.

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189 Ibid., art. 7095.

190 Tex. Civ. Stat. (Vernon Supp., 1952), art. 7096.

191 Tex. Civ. Stat. (Vernon Supp., 1950), art. 7084 1/2.

SECTION 5 -- RESULTS OF OPERATION

Costs of Operation

The costs of collecting and enforcing the franchise tax and organization and entrance charges are divided among the Franchise Tax Division, the Charter Division, and the IBM Section in the State Department, the State Auditor, and the Attorney General. While not all items of cost can be determined with complete accuracy, it would appear that during the 1951 fiscal year the cost of collecting these taxes was about $100,000. Approximately one-half of this amount was spent by the Auditor's Office in handling office and field audits of franchise tax returns. Most of the remainder was, of course, the cost of the Franchise Tax Division.

On the basis of 1951 costs and 1951 collections it would appear that the cost of collecting the taxes is about one per cent of the amount of revenue it yields. While the figure for one year cannot be taken as representative of every year, it is not likely that the variation will be great from year to year during the last several years. Assuming that the total number of corporations involved is between 25,000 and 30,000, the per corporation cost is between $3.30 and $4.00.

Tax Receipts

Organization and entrance charges substantially exceed the costs of collection. While the amounts involved are not negligible, they are small in comparison with the collections of the franchise tax. Since this study is primarily concerned with the franchise tax, only the organization and entrance charge receipts for the fiscal year 1950 -1951 are given here.[192]

Source	Amount
(Collected by Secretary of State)	
Domestic Corporations	$ 298,464.59
Foreign Corporations	134,521.42
(Collected by Other Agencies)	
Additional collections by the Board of Insurance Commissioners, the Departments of Banking and Agriculture	15,730.00
TOTAL	$ 448,716.01 [192]

[192] Annual Report, Comptroller of Public Accounts, Part I, (1951), pp. 13, 39, and 45.

Table Franchise I shows receipts from the franchise tax during the past 20 years, the percentage those receipts were of total state revenue, and the share domestic and foreign corporations paid of the total franchise tax. These figures represent the franchise tax collected by the State Department and do not include entrance or organization charges, or charges made by the Banking Commission or other state agencies.

This table shows several general trends. There has been an over-all tendency for franchise tax revenue to increase during the period shown. Franchise tax revenue has been prone to rise to a level and stay there for a while and then to rise to another level and stay there for a time. In possibly a year or so, assuming this pattern continues, it will have reached another plateau. There was, of course, a decline during the depression. During the years 1928 and 1929, the last years before the depression, franchise tax receipts were slightly over two million dollars a year. During the depression they tended to stay around one and one-half million a year, a drop of approximately one-fourth. At the beginning of World War II, franchise tax revenue rose sharply but it leveled off for most of the war period. Since the war franchise tax receipts have risen steadily. It should be kept in mind that there have been several changes in the law during the era beginning immediately before the depression to the present. Bases, rates, exemptions, and so on have undergone change.

The franchise tax has never accounted for a large per cent of state revenue income, but it has supplied about the same portion from year to year. While it has fluctuated from a top of two per cent to a bottom of nine-tenths per cent during the past 20 years, about one and one-half per cent seems to be the point toward which it tends.

Another point of interest is the relationship between receipts from domestic and those from foreign corporations. The foreign franchise tax supplied 22 per cent of total receipts in 1932, and 51 per cent in 1951. The domestic franchise tax supplied 75 per cent of total receipts in 1932 and 47 per cent in 1951. These figures represent more than mere differences between the two years, the shift plainly taking place continuously over the 20-year period. This should not, of course, be interpreted simply in terms of our getting more money out of foreign corporations as a result of a growing importance of the foreign corporation in the Texas economy. What Texas taxes is the part of each of those foreign corporations that has been put into Texas. The revenue importance of franchise taxes paid by foreign corporations serves also to emphasize the significance of the comparative weakness in administration of the tax on foreign corporations which were noted in the previous section.

Among the factors which influence revenue from the franchise tax are the bases of the tax, the rate and the method of administration. As previously noted there has been an important change in franchise tax administration during recent years -- the addition of office and field audits by the State

Auditor's Office. The addition of field audits in particular would logically be expected to influence revenue in two ways -- by catching underpayments and overpayments, and by inducing corporations to report accurately since they may be eventually checked. In the fiscal years 1948 through 1950 the Auditor's Office has certified approximately $531,000 in additional taxes and penalty to the Secretary of State.[193] Part of this may, however, represent discrepancies also picked up by the Franchise Tax Division. That Division states that sometimes the same items are picked up by the Franchise Tax Division and the State Auditor's Office in the dual office audits which are made. During this period the amounts certified to the Secretary of State have decreased each year although total receipts have been rising each year. This would indicate that the additional office and field audits are resulting in more accurate reporting by the taxpayers.

Looking at franchise taxes, including organization, qualification, corporation license and other such fees, Texas is high in terms of the dollars and cents amounts collected. Of 47 states collecting charges of the kind mentioned above, Texas was sixth in 1951.[194] At the top was Pennsylvania with over $57 million. Pennsylvania was followed by New York with over $43 million. However many states tax corporations primarily through an income tax rather than through a gross assets tax such as that used in Texas. About 35 states have a corporation income tax -- usually a joint personal and corporation income tax. About 15 of the 35 receive more from their corporation income taxes than Texas receives from its franchise tax.[195] Looking at the combined 1951 income from corporation income taxes, franchise taxes, and similar charges for each state, Texas is slightly above the middle state in terms of total receipts.

Analysis of Rates

As is evident from the discussion above, many states do not depend primarily on franchise taxation as a method for taxing corporations, but instead on the corporation income tax. Of course, almost all states make some charges against corporations, but they are often fees or nominal charges.

About 32 states collect franchise taxes similar in nature to that collected in Texas.[196] However, while the general nature of these taxes is similar, the rates and the bases against which they are assessed vary widely.

In Texas the rate is expressed as $1.25 tax on each $1,000 of taxable base. A number of other states express their rates in the same manner, the

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193 State Auditor, Audit Report, Secretary of State, (February 1, 1947 through August 31, 1950).

194 CCH, Tax Systems (13th ed. 1952), p. 351.

195 U.S. Bureau of the Census, Summary of State Government Finances in 1951 (Washington, D.C.: Government Printing Office, 1952), p. 9.

196 CCH, Tax Systems (13th ed., 1952), pp. 168-172; CCH, State Tax Guide, All States (2nd ed., 1952), pp. 801-861.

Table Franchise - 1

Franchise Tax Receipts, 1932-1951
(Figures Rounded to Nearest Thousand)

Fiscal Year	Domestic	% of Total	Foreign	% of Total	Penalties	Total	% of State Revenue Receipts
1932	$ 1,116,800	75	$ 332,900	22	$ 35,900	$ 1,485,600	1.5
1933	963,100	74	312,400	24	30,000	1,305,500	1.5
1934	1,351,300	61	823,800	37	53,400	2,228,400	2.0
1935	998,100	66	474,500	32	28,700	1,501,300	1.3
1936	1,072,000	68	472,300	30	40,700	1,584,958	1.3
1937	896,200	61	529,200	36	49,700	1,475,100	1.0
1938	923,500	61	561,000	37	35,100	1,519,600	.9
1939	938,000	58	672,300	41	25,200	1,635,500	.9
1940	1,009,600	59	684,300	40	26,000	1,719,900	.9
1941	1,443,100	57	1,023,600	41	46,400	2,513,100	1.3
1942	2,172,800	50	2,074,100	48	98,600	4,345,500	1.9
1943	1,794,300	53	1,553,800	46	57,200	3,405,300	1.4
1944	2,737,400	55	2,180,900	44	41,800	4,960,100	2.0
1945	2,095,000	50	2,049,100	49	37,800	4,181,900	1.7
1946	2,323,900	52	2,076,700	47	38,200	4,438,800	1.5
1947	2,640,700	50	2,597,500	49	51,500	5,289,700	1.4
1948	3,085,200	50	2,987,400	49	60,400	6,133,000	1.2
1949	3,578,100	48	3,806,100	51	70,100	7,454,300	1.4
1950	4,230,100	49	4,308,800	50	91,200	8,630,100	1.5
1951	4,671,400	47	5,032,400	51	134,400	9,838,200	1.6

SOURCE: Annual Reports of the Comptroller of Public Accounts, 1932-1951.

rates usually ranging between $1.00 and $2.00 per $1,000. Several other states express their rates in terms of per cent, or in terms of so many mills or so many cents against a specified amount. Generally rates expressed in this manner also work out to something between $1.00 and $2.00 on the $1,000. In addition, there are a sizable number of states that apply graduated rates. These are normally graduated according to a bracket schedule; that is, the tax may be $20 on $5,000 or less, $30 on $5,001 to $10,000, and so on.

With this amount of variation it is difficult to determine how Texas rates compare to those of other states. Among the states that express their rates in such manner that they can be compared, Texas falls about in the middle. There is actually no such predominence of any one rate that it could be called the usual rate.

Texas has a broader tax base for its franchise tax than do most states. In about 15 states the franchise tax is collected against the value of capital stock. Some arrangement is made for no par value stock, it frequently being given a fixed value. About seven of the states collecting franchise taxes use the value of the stock plus surplus as the base. Two states outside of Texas use stock value, surplus and long-term indebtedness. Also, many states like Texas only tax that portion of the value employed in the state for domestic as well as foreign corporations.

SECTION 6 - SUMMARY AND PROBLEM AREAS

The preceding discussion illustrates that neither the statues nor the administration of the organization and entrance charges of the franchise tax are simple. A number of problems are raised with respect to these taxes. The purpose of this section is to summarize briefly the more important of the problems and to discuss possible solutions which have been advanced by persons working with the tax, or which have been otherwise discovered during the course of this study.

Organization and Entrance Charges

There appear to be two major problems growing out of the organization and entrance charges -- (1) the complexity of the applicable statutes, and (2) the several differences in the tax levied on domestic and foreign corporations. The question has also been raised as to whether these charges are an appropriate means of raising revenue or whether they should be limited to fees adequate to cover the costs of the office of the Secretary of State in handling corporate charters and permits.

The complexity of the statutes appears to stem from three sources -- (1) the necessity of tying the charges to an already complex body of general corporation law, (2) the accumulation over the years of special fee provisions

for particular types of non-business corporations, and (3) the necessity of adjusting the tax base only to the Texas business of foreign corporations to avoid constitutional invalidity. The complexity increases the administrative difficulty of collecting the tax by raising difficult classification and exemption questions.

There are a number of differences in application of the charges to domestic and foreign corporations which appear to result in heavier taxation of domestic corporations. Some of these may be briefly listed. Foreign non-profit corporations apparently may operate in Texas without a permit; some domestic non-profit corporations are exempt, but many are taxed. Foreign business corporations are taxed on only that portion of capital stock actually issued which may be allocated to Texas business; Domestic corporations pay on total authorized stock without allocation. The inequity arising from these provisions, however, may be counter-balanced by the frequency with which renewal charges are due. Domestic corporations may be chartered for fifty-year periods, while foreign corporations must renew their permits every ten years. For both, the maximum charge during the period is $2,500.

The suggestion has been made that the graduated tax on the filing of charters and amendments and the issuance of permits be discontinued in favor of a fixed charge applicable to all corporations based solely on the Secretary of State's costs of handling. Such a plan would have the advantage of greatly simplifying the administration of the tax. Some revenue would be lost, but the argument is made that this amount could more appropriately be raised through adjustment of the franchise tax rate. Those charges collected by other agencies than the Secretary of State are now, with one exception,[197] small fixed charges. They are, moreover, connected with general regulation of specific businesses. They are not included in this suggestion.

Franchise Tax

The major problems arising out of the franchise tax appear to be the following:

A. Problems of Administrative Organization and Procedure
   1. Extreme variations in work-load with the peak appearing in about four months of the year.
   2. Regular participation of the State Auditor in enforcement of the tax although primary responsibility rests with the Secretary of State.
   3. Submission of payments separately from reports.

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[197] Tex. Civ. Stat. (Vernon Supp., 1950), art. 881-61.

B. Problems of Enforcement

1. Insuring that all corporations subject to the tax report and pay it.
2. Lack of field audits of books of some foreign corporations.
3. Schemes to evade or avoid part of the franchise tax by concealing long term indebtedness or refunding it in a manner not subject to tax.
4. Possibility of foreign corporations failing to report and pay a tax on increases in capital stock.

C. Problems of Statutory Basis

1. Problems of rate, basis and exemption provisions.
2. Double taxation of some multi-purpose corporations.

D. The Proposed Corporation Code and the Franchise Tax.

Problems of Administrative Organization and Procedure

The administration of the franchise tax presents several problems of organization and procedure. These problems are all susceptible to legislative treatment, although some can be dealt with by administrative action.

Work Load Variations

Under present law the great bulk of the work which must be done in administering the franchise tax falls in one period of about four months. Reports and payments have to be audited and processed and delinquency notices mailed out within a fairly short time. At this period the Franchise Tax Division gets far behind in its work. Obviously it is not feasible to keep on the payroll during the slack months the number of persons needed to meet the peak load. The approach so far has been to hire some temporary employees during the rush season, but even with them the work has lagged.

At least two possible solutions have been suggested. One is to make the reporting date for each corporation fall shortly after the end of the corporation's fiscal year. This is now done for the federal income tax. Another is to shift field men into office audits during peak months, allowing them to make field audits during the rest of the year. This last possibility gives rise to additional considerations which will be discussed subsequently.

At present all corporations file reports and pay the franchise tax in the same part of the year. However, these reports cover the fiscal year of each corporation, not a fiscal year established by the state. It is also on the basis of corporation fiscal years that corporate income taxes are computed for federal tax purposes. It appears that corporations figure their federal income, taxes, and in so doing collect the information necessary to calculate the state franchise tax. Many corporations whose fiscal years end shortly before the date for filing the franchise tax return find it very difficult to get that return in to the state. Some, to meet the requirements of the law, file temporary returns

and correct them later. This is true even though time extensions are granted for filing. Accordingly, the current regulation on filing returns and paying the franchise tax not only creates a difficult administrative problem for the state but for many corporations as well. In view of these facts it has been suggested that corporations be required to file their franchise tax returns at the same time or shortly after they file their federal income tax returns. This would take the pressure off a number of corporations, would fit in with the present corporation practices in calculating the franchise tax, and would tend to even the work load of the Franchise Tax Division. It is not to be supposed that this would do away completely with peak periods and slow periods because most corporations have fiscal years ending around June or December. It would lessen the size of the peak load. To get an accurate idea of what should be expected, it would be necessary to tabulate the dates on which corporation fiscal years end, finding how many end in each month. This has not yet been done. Before any action is taken, some additional investigation should be made of other administrative changes which would be necessary and of difficulties to which the change might give rise for taxpaying corporations.

A second possibility is to leave the law as it is and have the field men make office audits during the peak period, leaving their field audits for the other portion of the year. However, a personnel problem might arise if it were necessary to call the field men into Austin from their homes for four months a year. This would also interfere with a present program which uses field men during the reporting period to advise taxpayers on computing the tax. The State Auditor occasionally details men to help the Franchise Tax Division when it gets behind, but there seems to be no regular program for alleviating the problem of the peak work load along these lines.

Participation of the State Auditor in Enforcement

Two agencies, the Franchise Tax Division in the State Department and the State Auditor's Office, share the task of enforcing the tax. The Auditor's Office supplies the field force and to some extent duplicates the office audits made by the Franchise Tax Division. This situation places on the State Auditor's Office a duty which is not in line with its other duties as a legislative service agency -- seemingly placing executive responsibilities upon a legislative agency -- and eventually places that office in the position of reviewing as an audit office what it does as a tax administration agency. When the legislature authorized the Auditor to perform field audits of corporations, no audits were being made nor were they then expressly authorized. The legislature may have adopted the view that the Auditor's Office was a qualified agency, outside the regular enforcement machinery, which was appropriate to improve the tax administration. Since then there have been some changes in the enforcement powers granted to the Secretary of State. He

now has authority to conduct field audits; improved devices whereby he may clear the files of defunct corporations and thereby improve their usefulness have been enacted. Other improvements in tax administration have occurred. Re-examination of the Auditor's participation may therefore be desirable.[198]

Payments Submitted Separate from Reports

Under present statutes corporations may file franchise tax returns at one time and make payments at another. This creates the administrative difficulty of getting regurns and payments together to check them against each other. There also seems to be a problem of corporations filing reports and then forgetting about the payments. When they do this they become delinquent on the tax and have to pay a penalty. No advantage seems to accrue from the present method which would have to be surrendered by requiring returns and payments together. On the other hand, there are distinct advantages in having returns and payments arrive in the same envelope. This has been suggested several times by others.

Problems of Enforcement

While the franchise tax law contains several sanctions to insure proper reporting and tax payments there is still a substantial problem of delinquency. This appears to arise in part because of the large number and varying size of the corporations subject to the tax. Many corporations, small ones in particular, may have inadequate legal and accounting advice about the franchise tax. Disagreements about the amount of tax seem certain to arise in view of varied accounting and business practices. Delinquency may also result in part from failure to utilize fully the sanctions provided.

Securing Reports and Tax Payments

Substantial gains have already been made in insuring that all corporations which are subject to the tax file timely reports and pay the proper tax. The large number of inactive or defunct domestic corporations that made difficult the routine checking of tax reports and payments are now being cleared out of the files by administrative forfeiture of charters. Forfeiture of the right to do business and then of charters and permits of newly delinquent corporations, and probably most of the larger ones, which attempt to do business in Texas without securing a permit and paying the franchise tax are being picked up by the State Auditor's Office through checks of the corporations paying Texas employment taxes. There are, nevertheless, problems remaining in this area. There continue to be some corporations which do not

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198 It is not possible to separate this single matter from the whole problem of the organization of tax administration in Texas. This will be the subject of a forthcoming report of the staff of the Legislative Council.

submit complete reports and some which fail to submit the reports in duplicate. More aggressive administrative use of penalty provisions may be a partial answer to this problem. There also remains an unknown number of foreign corporations which have not secured a permit, and are therefore unknown to the Secretary of State, although they do Texas business. Further use of available business directories and form questionnaires may be helpful toward finding these corporations. Co-ordination with other tax collecting units of the state might also prove helpful.

Audits of Corporate Records Outside the State

A number of foreign corporations (One estimate places the number at about one-third of those operating in the state.), do not maintain books in the state. It is not the practice to send men outside of Texas to audit corporation books although there can be no question of the right of the Auditor or Secretary of State, under the current law, to audit books of foreign corporations which are located in other states. The law provides that any corporation refusing such an audit shall lose its Texas right to do business and its permit.[199]

There are at least three methods of approach to this problem. The most apparent one, of course, is to send franchise tax auditors outside the state to the place where the books are located. An alternative to sending a man outside the state is to require foreign corporations operating in Texas to maintain books in the state which are sufficiently complete to provide a satisfactory audit for franchise tax purposes. There is the third possibility of working out a co-operative arrangement with other states, many of which must have a similar problem, for auditing corporation books for tax purposes. Such a co-operative arrangement could probably be worked out between the other states, virtually all of which tax corporations, and the federal government, which is also interested in corporation books. Working out the details of this plan would require some detailed investigation, but there seems to be no reason why Texas could not take the initiative in establishing such an arrangement. It might be pointed out that Texas participates in such a device in enforcing the gross premiums tax on insurance under a co-operative plan worked out by the National Association of Insurance Commissioners.[200] Each of these possibilities involves additional effort to the tax administrator or corporation or both, which may need to be weighed against the possible revenue advantages.

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199 Tex. Civ. Stat. (Vernon Supp. 1950), art. 7089.

200 A Survey of Taxation in Texas, Part IIA - Analysis of Individual Taxes Continued, Staff Research Report to the Texas Legislative Council, No. 5 2-1, p. 83.

Schemes to Avoid Tax on Long-term Debt

From time to time corporations are found which try to avoid part of the tax through schemes for breaking the continuity of long-term debt to give it the appearance of short-term debt. It has been suggested that a different measure of debt, the average debt of the corporation throughout the year in the form of bonds, notes, and debentures might be considered to determine whether it is a better measure. This would mean that the daily or monthly average rather than the amount of debt on a particular day the year, i. e., the last day of the corporation's fiscal year, would be the base. This might be more consistent with the theory of taxing the capital used in the business and would prevent any advantage accruing from breaking the continuity of long-term indebtedness. Of course, if all debt were included in computations under this approach, there would be an expansion of the present concept of "risk capital" for purposes of the tax base.

Failure of Foreign Corporations to Report Stock Increases

The law presently requires foreign corporations to report increases in capital stock outstanding. Since a part of the basis of the franchise tax is capital stock, allocated between Texas and non-Texas business, failure of the corporation to report increases decreases the tax apparently due. Some corporations, intentionally or through inadvertance, fail to make the required report. There is at hand a means of curtailing this. When a foreign corporation applies for a renewal of its permit, the Charter Division requires it to file copies of all documents filed in the chartering state with a certificate from that state that the record is complete. A careful review of the documents at this time would reveal franchise tax delinquencies arising out of failure to report stock increases. The renewal could be withheld until payment is made. Some delinquencies are now uncovered by this method, but no routine check is made. The head of the Franchise Tax Division feels, however, that most of the delinquencies from this source result from inadvertance and that the revenues from it would be insufficient to warrant routine investigations.

Problems of Statutory Basis

Problems of Rate, Basis, and Exemption Provisions

Several problems arise out of the complex provisions of the tax rate and base and of the exemptions. They may deserve legislative review to determine whether legislative clarification is desirable.

Doing business in Texas. Only those foreign corporations "doing business in Texas" are required to pay the tax. It is now settled, apparently, that

"doing business" includes only transactions both begun and completed in Texas, the basis of the ruling being long continued administrative practice acquiesced in by the Legislature.[201] It is not clear, however, whether this includes all intrastate business which is subject to taxation by Texas under the franchise tax. It may be that some business which is constitutionally taxable is excluded by this ruling.[202] This concept also affects computation of the tax of corporations paying it, both foreign and domestic, since taxable capital is allocated between Texas and non-Texas business.

Exemptions. An attempt by the Legislature in 1951 to collect all the exemptions provisions into one section may have raised some serious interpretative problems. Into a provision exempting

> . . . any insurance company, surety, guaranty or fidelity company, or any transportation company, or any sleeping, palace or dining car company which is now required to pay an annual tax measured by their gross receipts. . . .

the amendment inserted after "transportation company" the words

> . . . or to any corporation organized as a terminal company not organized for profit and having no income from business done by it. . .[203]

The added words were drawn from another exemption provision. The Secretary of State continues to construe the statute as it was construed before the amendment. It is possible that the amendment could be construed as intending a change in meaning and that several questions of interpretation may now be raised. Are all of the named corporations, including non-profit terminal companies, exempt if they are required to pay a gross receipts tax? Or does the phrase relating to gross receipts taxes apply only to sleeping, palace and dining car companies? The words "transportation company" have been construed in the past by the Secretary of State to be limited to the listed sleeping, palace and dining car companies. Do they now include express companies and motor carriers and others which might come within the definition of "transportation company"?

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201 Clark v. Atlantic Pipe Line Co., 134 SW 2d 322 (Tex. Civ. App., 1939, err. ref'd).

202 Flowers v. Pan American Refining Corp., 154 SW 2d 982 (Tex. Civ. App., 1941, err. ref'd).

203 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7094. The original section may be found in the 1948 edition of Vernon's Texas Statutes.

Complexity of the Rate, Basis, and Exemption Provisions. The sheer complexity of the rate, basis, and exemption provisions makes for difficulty in classifying corporations and computing the tax. Some corporations are exempt by the franchise tax statute itself. Others are exempt or a special low tax provided in special statutory provisions dispersed through the general corporation law. Even for some of those corporations exempt by the franchise law, resort must be had to other tax statutes, the gross receipts tax provisions, for example, to spell out the exemption. Complex rate and basis groups are provided for corporations paying intangible assets taxes, public utility corporations and others. As in the case of exemptions, resort must frequently be had to other statutes to determine the group within which a particular corporation falls. Spelling out these provisions should make both the taxpayer's and the administrator's jobs of reporting, paying, and collecting the tax easier.

Double Taxation of Some Multi-purpose Corporations

Under present corporation law most corporations are permitted to organize for a single purpose only. Foreign corporations are issued permits for a single purpose. In certain instances, however, corporations are permitted to organize for two or more named purposes and foreign corporations may be issued permits for these purposes. The authorizing statutes, however, require that an additional tax be paid for each purpose based on the full risk capital for all purposes. The franchise tax law alleviated this situation somewhat by reducing to one-fourth the additional tax for some corporations and by permitting others to split risk capital between public utility and other purposes and pay a tax for each based only on the capital allocated to it. One multi-purpose provision, however, was enacted after the franchise tax statute was amended and has been ruled by the Attorney General to require payment of the full tax on each purpose.

The theory of these additional taxes is obscure. It may be that the purpose of the Legislature in requiring a tax for each purpose was to prevent multi-purpose corporations from avoiding the tax on part of their business. As construed in the courts, however, these corporations were required to pay the full tax on total business from all purposes and an additional tax for each purpose more than one. As they presently stand, the statutes do not tax even the multi-purpose corporations alike. Legislative review of this situations may, therefore, be desirable.

The Proposed Corporation Code and the Franchise Tax

Committees of the State Bar have been working for several years on a revision of the business corporation laws of Texas and have produced a code which it recommends to be enacted.[204] Also, an interim committee of the Legislature has been studying the matter. It is, therefore, possible that a

[204] 14 Tex. B. J. 345 (1951); 15 Tex. B. J. 280 and 288 (1952).

new corporation code may be enacted in the next several years. Although it cannot be now known what the contents of the code which might be adopted may be, a cursory examination of present drafts indicate that there might be some substantial changes made in present law. An examination of present drafts of the proposed corporations code indicates that very difficult problems would arise in the administration of the franchise tax unless the tax law were also amended so as to co-ordinate it with the corporation code or the latter adjusted to the former. For example, there seems to be strong interest in removing the long clas sification of single purposes for which a corporation may be organized in Texas; if this were done, it would remove the bases upon which the franchise tax law taxes multiple purpose corporations. The franchise tax operates in the environment of corporate business practices and of business corporation law. To operate smoothly, it must be in tune with the environment. Therefore, if confusion is to be avoided, when and if the business corporation law is revised, consideration of adjusting the franchise tax law may be necessary.

Chapter VI

MISCELLANEOUS TAXES AND FEES

In the previous chapters of this volume and in the two preceding volumes of this tax survey, a detailed examination has been made of the major revenue producing taxes of Texas. There remain a large number of taxes and fees which have not been discussed. Although no one of the remaining taxes and fees supplies much income to the state, their combined annual revenue runs into millions of dollars and they directly touch a large number of people. They should not, therefore, be overlooked. This chapter will summarize the provisions of these taxes and fees.

A detailed discussion of each of these taxes and fees does not seem feasible or necessary for present purposes. Their multitude and relative insignificance in terms of revenue make a complete enumeration and discussion impractical. Therefore, this discussion is limited to summarizing the provisions and operation of most of these miscellaneous sources of revenue. Unemployment compensation and retirement contributions are excluded from this survey even though they are large items; they bear a close relationship to insurance payments and so are unlike the taxes and fees covered in this survey. Although an effort has been made to report on all of the taxes and fees of any significance, some may not have been found.

For convenience, the taxes and fees have been grouped according to type and, where feasible, subdivided by general categories of subjects taxed. The first major group is entitled "Fees" and the second "Occupation Taxes." One other tax, that on oleomargarine, will be discussed briefly in the last section; it is expressly labelled an excise tax and does not fit the other two categories and so is treated separately. The classification used here was adopted primarily to permit an orderly form of presentation; it does not consistently follow that employed by either the courts or by the comptroller.

A fee, as that term is used in this chapter, is fundamentally a charge imposed in connection with some governmental regulatory, protective, or service activity and designed to cover, at least in part, the costs involved. In other words, it is a method of exacting payment for regulation, or protection, or some direct government service. Fees occasionally bring in more revenue than is required to finance the activity they are levied to support. Matching income exactly with expenditures is not an easy task, and divergencies between the two sometimes become sizable.

An occupation tax is a charge for the privilege of engaging in business. Normally, its purpose is to raise revenue in amounts substantially above the costs of administering any governmental regulatory, protective, or service activity which might be connected with the charge. However, an occupation tax may, like many taxes, have some regulatory purpose without destroying its essential nature. While the idea behind the occupation tax concept is fairly clear, the application of the term

to any particular levy is not a simple matter. In Texas, several court decisions and Attorney General's opinions have been rendered on the subject. Other states attempting to separate occupation taxes from other types have been faced with similar problems of classification and the rulings vary from one state to another. No authoritative formula which will readily permit unequivocal classification appears to have been developed. However, a scientific classification seems unnecessary for present purposes. The occupation taxes to be taken up in this section have almost all been designated as such by law, and many of them, having been in operation for a long time, at least have custom on the side of this designation.

Since this discussion is an attempt to cover a broad assortment of taxes and fees, the treatment which can be given to each is definitely limited. For that reason, the discussion will indicate only the general purpose of the fee or the subject of the tax, the agency in charge of collection, rates, disposition of revenues, and annual receipts for the last few years. No effort has been made to decide whether any of these taxes or fees have been repealed by implication by subsequently enacted law covering the same area.

SECTION 1 -- FEES

Fees may be collected in a variety of ways. The most common way is to require their payment in connection with licenses, permits, or registrations. However, they also take such forms as direct payments for services rendered by an official, much in the manner of payments for any services, or charges on sales or processing. Presumably, fees are collected to defray administrative costs, but, as has been noted, some fees are high enough to more than cover these costs.

Before discussing particular fees, a few remarks should be made on the fees generally and the manner of their treatment here. One of the major points which deserves attention is the manner of disposing of receipts from fees.

In a substantial number of cases, fees received from a particular activity are earmarked for use of the agency which collects them. This process has the advantage of relating the moneys available to the amount of work to be done. However, it also presents certain disadvantages. In the first place, there is legislative difficulty in setting fees in a general law at a level that, over the years, will supply just the amount of revenue needed to carry out the purposes of the act adequately and efficiently. Failure to set rates at satisfactory levels results in some agencies' having an excess of funds and others a shortage. When an agency gets too much money, there may be some temptation to be wasteful; when it gets too little, it is unable to fulfill properly the purpose for which it was established. Several methods have been devised for dealing with this problem. They appear irregularly among the various statutes providing for fees. One is to make a legislative judgment as to what operating balance, if any, is needed, and then to allocate, annually or biennially, excess receipts from fees to the General

Revenue Fund. This prevents accumulation of idle moneys but may still be an inadequate check to prevent wasteful habits in an agency which can always count on getting more than it needs. The problem of inadequate executive or legislative supervision of expenditures may be significant only as to those agencies whose revenue is not deposited in the State Treasury. As moneys may be expended out of the Treasury only in pursuance to biennial appropriation, boards whose funds are deposited in the Treasury are subjected to legislative scrutiny in the process of obtaining biennial appropriations. [1] The other side of the coin is that some licensing boards often do not have enough to meet the expenditures they have budgeted by appropriation act or otherwise. Another device, used frequently in activities administered by the Commissioner of Agriculture, is to allow the administrator to vary the fee, within limits, to make revenues match costs. This is a way of delegating part of the fee-making power on to the administrator.

In dealing with earmarking and funding of fees, it should be noted that there is no central point at which information on total over-all financial activities of all state agencies can be obtained. The law requires that some fee collections be funded with the Treasurer, and information on these is included in the annual reports of the Comptroller. Nevertheless, numerous accounts are held locally and not reported by the Comptroller; information on these is not readily available.

To keep discussions of particular fees as short as possible, it has been necessary to simplify the treatment. No notice is accorded to some of the variations which appear in the laws themselves. For example, while several of the examining boards are entitled to give a second examination within a specified time at no fee or at a reduced fee, no account is taken of this feature. In like manner, increases in license fees as penalties for late payment are not recorded. Statements on the disposition of receipts take into account only the general intent of the basic law, and no details are given. These simplifications have been accepted to keep this study at a reasonable length.

Agriculture and Agricultural Commodities

Among state activities for which fees are charged are those relating to agriculture and agricultural commodities. These activities generally fall into three classes. The first is the inspection or grading of farm products which will eventually be consumed as food. The second is the regulation of the products used by farmers, such as seeds and fertilizers. The third is the authorization and control of certain business activities directly related to agriculture, such as marketing associations.

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[1] Texas Const., Art. VIII, sec. 6.

Commodities from the Farm

Many farm commodities are subject to inspection and certification by the state at various points after they have been grown and harvested or while they are being grown. This protects the consumer, but it may also protect the farmer from damage to his interests.

Citrus Fruits. Like all fruit-growing states, Texas is interested in safeguarding orchards and their products, particularly citrus fruits. Several laws are concerned with regulation of citrus fruits, providing fees to cover costs. They deal with inspection and classification, grading, coloring, vendors and shippers, and dealers. All except the citrus fruit grading act are administered by the Commissioner of Agriculture. The grading act has been under the jurisdiction of the Texas Citrus Commission, which has operated in conjunction with the Commissioner of Agriculture.

Under the inspection and classification act, the Commissioner of Agriculture, in agreement with officials of the U. S. Department of Agriculture, is entitled to set rates for inspecting and classifying. However, rates may not exceed one-half cent for each container of one-half bushel and one cent for each container of more than one-half bushel at regular inspection points. Inspection elsewhere is to be done at cost. The disposition of these fees is to be decided by the state-federal agreement. At one time, when this law was solely state-administered, the Commissioner of Agriculture was charged with setting fees which approximately covered costs.[2] In recent years, receipts from these fees have averaged about $145,000 a year.[3]

The citrus fruit grading act has been administered by the Texas Citrus Commission. Originally enacted in 1949, it was the most recent of the citrus fruit laws. The statute allowed a charge not to exceed three cents per standard packing box or bag of one and three-fifths bushels on fruit grown in Texas and packed or processed here. Variations in the tax had to receive approval of the Commissioner of Agriculture. Receipts were allocated as follows: three-fourths to the Texas Citrus Commission Fund for use in defraying the costs of administration; one-eighth to the Agricultural and Mechanical College of Texas -- Weslaco Experiment Station No. 15 Citrus Fund; and one-eighth to the Texas College of Arts and Industries Citrus Fund.[4] In 1950, the first year of collection, income was $152,600 and expenditures were $29,500.[5]

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2 Tex. Civ. Stat. (Vernon, 1948) art. 118a.

3 Audit Report, State Department of Agriculture, February 28, 1949.

4 Tex. Rev. Civ. Stat. Ann. (Vernon, 1952) art. 118d.

5 All figures on receipts and expenditures, unless otherwise indicated, are obtained from Annual Reports of the Comptroller and are rounded to the nearest hundred.

In 1952, the levy provided in the Citrus Commission Act was declared unconstitutional by the Texas Supreme Court.[6] The court decided that the charge was designed to raise revenue rather than to facilitate regulation and was, therefore, a tax. It then determined that this tax violated the equal and uniform rule because it applied to firms, associations and corporations, but not to natural persons.

Regulation of artificial coloring of citrus fruit is the duty of the Commissioner of Agriculture. He has authority, within limits, to vary the fees collected pursuant to the mandate of the grading act. These are levied on dyed citrus fruits but may not exceed one-half cent for each container of one-half bushel or less or one cent for each container of more than one-half bushel. If the fruit is in bulk, the maximum rate is one cent per 80 pounds. Fees are to be applied to administration of the act and should be no higher than needed to cover administrative costs.[7]

The Commissioner of Agriculture is also charged with regulation of fruit vendors and shippers. To provide for the costs of this activity, he is entitled to make a charge not greater than 2.5 cents for each regular-size box of citrus fruits handled or 1.5 cents for each box of one-half or less regular size. Charge for bulk fruit is to be not more than 2.5 cents for 80 pounds. The receipts are, along with colored citrus fruit fees, to be placed in a Citrus Fruit Inspecting Fund.[8] From 1946 through 1950, fund receipts and expenditures have been as follows:

Year	Receipts	Expenditures
1946	$ 115,600	$115,300
1947	120,800	143,800
1948	104,400	138,400
1949	104,200	113,800
1950	75,800	67,900

Citrus fruit dealers, under the Agricultural Protective Act, are required to register with the Commissioner of Agriculture. For a "dealer," "handler," "commission merchant," "contract dealer," or "minimum cash dealer," there is an annual fee of $25. For a "buying agent" or "transporting agent," there is an annual fee of one dollar. These registration charges, allocated by law to cover the costs of administering the act,[9] earn the state about $25,000 a year.

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6 H. Rouw Co. v. Texas Citrus Commission, 21 Tex. S. Ct. Rep. 179 (1952).

7 Tex. Pen. Code (Vernon, 1948) art. 719c-1.

8 Ibid., art. 719a.

9 Tex. Civ. Stat. (Vernon, 1948) art. 118b.

Cotton Classers. In Texas, cotton classers have to obtain annual licenses at five dollars each from the Commissioner of Agriculture. Revenues are allotted to the General Revenue Fund, this being one of several fees designated as general revenue. [10]

Nursery Stock. Like many other agricultural products, nursery stock is subject to inspection by the state through the instrumentality of the Commissioner of Agriculture. A rate of from $2.50 to $15 is set by law for each inspection, the determination being made by the commissioner. He may also charge not more than five dollars for inspection of imported nursery stock. This money goes into the General Revenue fund. [11] This service brought in $14,900 in 1946 and $24,500 in 1947. From 1948 through 1950, receipts were above $40,000 annually, reaching $44,100 in 1950.

Fruits other than Citrus, Vegetables, and Vegetable Plants. Texas has general provisions concerning inspection and certification of fruits other than citrus and vegetables and vegetable plants in addition to particular acts applicable to designated vegetables. The Commissioner of Agriculture is charged with administration of them all, usually in co-operation with the United States Department of Agriculture.

Under the inspection laws for fruits, other than citrus, and vegetables, other than potatoes, the Commissioner of Agriculture may charge a fee sufficient to pay for the inspection. Such an inspection, which is to grade the fruits or vegetables, will be made at the place of shipping or loading if requested by a financially interested party. [12]

Special provisions for inspections to establish grades, classifications, quality, and condition apply to cabbage, potatoes, and tomatoes. Cabbage and tomato inspections are conducted in co-ordination with the United States Department of Agriculture, fees being set by the commissioner after consultation with the proper federal officials. Fees for inspections of cabbage may not exceed five dollars a carlot at regular inspection stations or the cost of inspection at any other point. Fees for inspection of tomatoes may not be more than $6 a carlot at regular stations or more than cost elsewhere. Receipts are allocated in accordance with state-federal agreement. [13] The potato inspection law affords a variation on the general theme. The Commissioner of Agriculture is generally in charge of the function, but rates are set by appropriate county commissioners' courts at an amount not to exceed three dollars a carlot. The county receives these fees but has to pay the inspectors. [14]

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[10] Ibid., art. 5679a.

[11] Ibid., arts. 119-135.

[12] Ibid., art. 117.

[13] Ibid., arts. 118c-1, 118c-2.

[14] Ibid., art. 117a.

The vegetable plant certification law, designed to insure that certain products leaving the farm are free of diseases or insects, provides for a levy of $5 for each inspection and from 25 cents to $1 additional for each acre which must be inspected over five. These fees are credited to the Texas Vegetable Certification Fund to be used in enforcing the law.[15] During 1950, the first year of collections, receipts were $10,000 and expenditures were $8,600.

Commodities for the Farm

Commercial Fertilizers. To protect the farmer, a variety of commodities which he uses are checked by the state. Among these are commercial fertilizers. Although nominally duties of the Commissioner of Agriculture, actual inspection and registration of commercial fertilizers are handled by the State Chemist at A. & M. He receives a 25 cents a ton fee which under supervision of the Board of Directors of A. & M. College, is spent to carry out provisions of the act.[16]

Feeding Stuffs for Livestock and Livestock Remedies. To protect one of the state's major industries, feeding stuffs for livestock and livestock remedies are inspected. The feeding stuffs law is administered by the Texas Agricultural Experiment Station, which finances the work from the ten cents a ton fee provided.[17] In the period from 1946 through 1950, receipts ranged around $320,000 annually, generally approximating expenditures.

The State Health Officer carries out provisions of the law on registration of livestock remedies, and certificates of registration are issued annually to persons producing or handling such remedies.[18] For each remedy registered, there is an annual charge of $10. Persons registering more than ten livestock remedies are charged only $100. However, these fees may be reduced by the State Health Officer if they bring in more than is needed to administer the registration act. The annual income has been more than $8,000. Until August 31, 1947, fees went to the State Health Officer for enforcement purposes; since then they have gone into the General Revenue Fund.

In 1949, the Legislature passed an act regulating hormone type herbicides. Provision was made for the Commissioner of Agriculture to license persons selling or using such herbicides. A charge of $25 made for each person and each piece of equipment covered was placed in the 2,4-D License Fund and used in administering the act. In 1950, the first year of collections, receipts were $7,000 and expenditures $1,900. However, in 1951 the law was changed to require an annual license fee of $150, except for sellers of herbicides in small packages, for whom the fee is $5. An annual inspection fee of $10 was authorized for machinery. The fund name was changed to the Herbicide Fund.[19]

15 Tex. Civ. Stat. (Vernon, Supp. 1950) art. 118e.
16 Ibid., art. 97.
17 Tex. Civ. Stat. (Vernon, 1948) arts. 3872-3881.
18 Ibid., art. 192--1
19 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 135b-3.

Insecticides and Fungicides. Sale of insecticides and fungicides is also subject to state supervision. The Commissioner of Agriculture is charged with effectuation of this act, and registration charges are set at $25 for each manufacturer or seller for each insecticide or fungicide, not to exceed $100 a firm. The revenue received goes into the General Revenue Fund.[20] Annual revenue from these fees usually approximates $10,000.

Seed Breeders, Growers, and Sellers. Activities of seed breeders, growers, and sellers -- with special attention to pure-bred cottonseed breeders and growers -- are subject to state inspection. Seed growers in general and cottonseed breeders and growers in particular are required to register annually with the State Seed and Plant Board, at the same time paying a fee of $10. In addition, the board may levy a charge of not more than 25 cents per acre on cotton or one per cent of the average retail value on any other seed subject to the law. In connection with the regulation of cottonseed breeders and growers, a Special Pure Bred Cottonseed Inspection Fund has been set up to be used in enforcing the law.[21] Receipts and expenditures shown on the record of this fund for 1946 through 1950 are as follows:

Year	Receipts	Expenditures
1946	$16,300	$13,400
1947	19,200	13,600
1948	20,800	14,100
1949	20,900	18,700
1950	21,400	17,600

Seed sellers, on the other hand, are directly subject to the jurisdiction of the Commissioner of Agriculture. He may set a fee, not to exceed one cent per 100 pounds or fraction thereof on sales. The money obtained from these fees, about $30,000 annually, is used to defray the cost of administering the law.[22]

Commercial Activities Connected with Agriculture

Citrus Marketing Agreements. A ten-dollar fee is charged for filing an application for a citrus marketing agreement with the Commissioner of Agriculture. In addition, the law provides for an initial charge and a monthly levy to be determined by the Commissioner as sufficient to cover the costs incurred by the Department of Agriculture in relation to execution and administration of the marketing agreement. Revenues received under these provisions are used by the Commissioner to carry out the Texas Citrus Marketing Act of 1937.[23]

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20 Tex. Civ. Stat. (Vernon, 1948) art. 135b-1, sec. 10.

21 Ibid., arts. 56-67a.

22 Ibid., art. 93b.

23 Ibid., art. 5764a.

Agricultural Marketing Associations. Similarly, agricultural marketing associations are required to register with the Commissioner of Agriculture. They are liable for an annual fee of $10, a $10 fee for filing original articles of incorporation, and a $2.50 levy for filing an amendment.[24] During the last five years, revenues from these fees have ranged from $4,100 to $7,800 annually.

Agricultural Commission Merchants, Dealers, Brokers, and Agents. Annual rates for licenses issued by the Commissioner of Agriculture are $25 for each commission merchant, dealer, or broker, and $1 for each agent. The license permits the licensee to handle in the designated capacity certain berries and vegetables in the Texas Citrus Fruit Zone. Fees are now deposited in the Citrus Fruit Inspection Fund. Until a 1949 revision of the law, however, they went into the Agricultural Protective Act Fund. In any event, they are applied to defraying expenses incurred in carrying out the law.[25] From 1946 through 1949, the Agricultural Protective Act Fund showed an annual income from these license fees averaging about $23,000 and expenditures which averaged about $14,000, although the figure was more than $45,000 one year.

Financial and General Businesses

While several levies on associations have already been considered in other chapters, some have not yet been discussed. These include certain fees charged banks, building and loan associations, insurance companies, and gas pipeline companies.

Banks

State Bank Charters. The Commissioner of Banking is charged with a multitude of regulatory and inspection functions, some of which have fees connected with them. One such fee is collected for granting state bank charters and recording amendments. The charge for investigation of charter application may not exceed $50. The charter fee itself is $50, plus an additional $10 for each $10,000 of authorized capital stock, or fraction thereof, above $10,000. However, the total may not exceed $2,500.[26] These moneys are designated for use of the Banking Department.[27]

Inspection of Banks. The Commissioner of Banking is also charged with the duty of inspecting banks. He may collect a fee sufficient to cover the cost of the examination, but it may not be more than $50. These fees also accrue to the Banking Department.[28] During recent years, the income of the Banking

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24 Ibid., arts. 5737-5764.

25 Tex. Civ. Stat. (Vernon, Supp. 1950) arts. 1287-1, 1287-2.

26 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 3921.

27 Tex. Civ. Stat. (Vernon, 1948) arts. 342--301-313; Tex. Civ. Stat. (Vernon, Supp. 1952) art. 342--112-112A and 3921a.

28 Ibid., art. 342--201-211; Tex. Civ. Stat. (Vernon, Supp. 1952) art. 342--201-208A.

Department in the form of fees collected from banks has fluctuated considerably. From 1948 to 1950, receipts averaged approximately $185,000 a year. [29]

Building and Loan Associations

Application for Charter. Building and loan associations are subject to a variety of fees, some of which vary in accordance with whether they are domestic or foreign. The charge for filing an application for charter is $25 for a domestic concern. For a foreign concern, the fee is computed by multiplying $20 times the number of millions of dollars, or fractions thereof, in its assets, provided that the total fee may not exceed $500.

Franchise Tax. An annual franchise tax is also levied at the rate of $10 for a domestic association and $250 for a foreign one.

Annual Statement: Each building and loan association is further required to file an annual statement of its financial condition, accompanied by fees calculated from the following schedule:

Assets	Fee	
Less than $250,000	$100	
250,001 - 500,000	150	
500,001 - 750,000	200	
750,001 - 1,000,000	250	
1,000,001 - 1,250,000	300	
1,250,001 - 1,500,000	350	
1,500,001 - 1,750,000	375	
1,750,001 - 2,000,000	425	
2,000,001 - 2,500,000	550	
2,500,001 - 3,000,000	650	
3,000,001 - 6,000,000	plus 100	for each million or fraction thereof over three.
6,000,001 - and up	plus 50	for each million or fraction thereof over six.

These, although not quite all of the fees charged building and loan associations, are the more important ones. Income from these fees, about $34,400 in 1950, is allocated to the Banking Department for its use. [30]

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29 Audit Report, State Department of Banking, September 1, 1944, to August 31, 1948, and August 31, 1950.

30 Tex. Civ. Stat. (Vernon, 1948) arts. 881a -- 1, - 881a -- 7, 881a -- 10a, 881a--11, 881a--13 - 881a--23, 881a--26 - 881a--36, 881a--37a - 881a - 43, 881a--45 - 881a--56, 881a--57a - 881a--60, 881a--62, 881a--64 - 881a--69; Tex. Civ. Stat. (Vernon, Supp. 1950) arts. 881a--10, 881a--24, 881a--25, 881a--37, 881a--44, 881a--57, 881a--61, 881a--63; Tex. Civ. Stat. (Vernon, Supp. 1952) arts. 881a--8, 881a--9, 881a--12.

Gas Utility Tax

Several gross receipts taxes are levied to raise revenue for state regulation of a particular business. Notable among these are the insurance maintenance taxes, the oil and gas regulation tax, the boxing and wrestling gross admissions tax, and the gas utility tax. [31]

The gas utility tax is levied at the rate of one-fourth of one per cent of gross income received from gas pipelines.[32] Receipts from the tax are deposited in the Gas Utilities Fund, from which the Railroad Commission draws to pay its expenses in regulating the production, transportation, and distribution of natural and liquefied gas; the statute limits expenditures per calendar year to $70,000. [33]

From 1946 to 1950, receipts from the tax varied between $149,400 and $269,600. Expenditures during that time never exceeded $80,800 a fiscal year. Surpluses are transferred to the General Revenue Fund.

Insurance

Insurance companies pay a variety of fees, the income from which is generally applied to the support of the Board of Insurance Commissioners. These fees are paid in connection with filing charters and annual statements and the valuation and registration of life insurance policies.[34]

During the 1950 fiscal year, all the fees mentioned above brought in $97,000. The small part these play in financing the operations of the Board of Insurance Commissioners is illustrated by the fact that insurance maintenance and examination fees accounted for almost a million dollars in the same period. Expenses of the board exceeded one million dollars for that fiscal year.

Health, Sanitation, and Safety

The state regulates a large number of activities importantly affecting the health and personal safety of its citizens, particularly the qualifications of persons who render personal services, such as doctors.[35] To make the regulatory bodies self-supporting, the Legislature has usually provided that fees be paid by those who are regulated.

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31 The oil and gas maintenance tax is discussed in Chapter VII of Part II of A Survey of Taxation in Texas and the insurance maintenance taxes in Chapter II of Part IIA. The boxing and wrestling gross admissions tax is discussed elsewhere in this chapter.

32 Tex. Civ. Stat. (Vernon, 1948) art. 6060.

33 Ibid., art. 6066.

34 Tex. Civ. Stat. (Vernon, Supp. 1952) Insurance Code art. 4.07. There are also the maintenance taxes and examination fees paid by insurance companies to the Board of Insurance Commissioners. These have already been referred to in Chapter II of Part IIA of the Texas Legislative Council's A Survey of Taxation in Texas.

35 Fees charged in connection with safety on the highways will be discussed later.

Barbers, Hairdressers, and Cosmetologists

The regulation of barbering is entrusted to the State Board of Barber Examiners, while regulation of hairdressing and cosmetology is the function of the State Board of Hairdressers and Cosmetologists. Both boards receive examination and license fees for their support. However, ten per cent of the income of the State Board of Hairdressers and Cosmetologists is allocated to the General Revenue Fund.

Barber fees consist of a $10 examination fee, a $10 original license fee, and a $5 annual renewal of license fee.[36] A wider variety of charges is made for hairdressers and cosmetologists. The original application and license fee to conduct a beauty parlor is $10 and an annual fee of $5 is charged thereafter. Annual fee to conduct a beauty school is $100. Examinations cost $10. A teacher must pay $10 each year, an operator $3, and a manicurist $2.50, except that the original license fee is sometimes higher.[37]

In 1946, fees brought about $77,900 into the State Board of Barber Examiners Fund. Receipts rose constantly until in 1950 the figure reached $98,000. Expenditures during this period increased from $51,700 in 1946 to $92,000 in 1950. Hairdresser's' and cosmetologists' fees totaled $201,900 in 1946 but subsequently declined, following an irregular pattern, until in 1950 the amount was $166,800. However, the board spent $96,000 annually at the beginning of the period and $168,000 at its end.

Basic Sciences

In 1949 the Legislature passed the controversial basic sciences act which requires certain persons practicing healing arts to qualify in basic science subjects -- namely anatomy, physiology, chemistry, bacteriology, pathology, hygiene, and public health. To administer the act, the Legislature created the State Board of Examiners in the Basic Sciences and provided fees which were to be funded for the use of the board.

The act established a $15 examination fee. However, persons who come to Texas from other states and who are covered by the reciprocity provisions of the law must pay $25 to cover costs of checking their qualifications.[38]

In 1950, the first year of the board's operation, these fees brought in $16,100. The board issued warrants for $12,900.

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36 Tex. Pen. Code (Vernon, 1948) art. 734a, sec. 23; Tex. Penal Code (Vernon, Supp. 1952) art. 734a, sec. 20.

37 Tex. Pen. Code (Vernon, 1948) art. 734b.

38 Tex. Civ. Stat. (Vernon, Supp. 1950) art. 4590c.

Bedding

Persons engaged in the occupations of manufacturing, repairing, and renovating bedding must obtain permits from the State Department of Public Health. An additional permit is required of those who would give germicidal treatments to bedding and materials.

The initial permit fee for bedding manufacturers, repairers, and renovators is $5, and the annual renewal fee is $2.50. Persons giving germicidal treatments must pay an initial fee of $25 and an annual renewal charge of $1. In addition to permits, the State Department of Public Health sells stamps to be attached to bedding at $5 for 500. Receipts from bedding permits and stamp sales go into the General Revenue Fund. However, the law provides that costs of administering the act shall not exceed the moneys taken in as a result of its operation. [39]

In the post-war period, receipts from permits have been from $4,000 to $5,000 annually. Stamp sales brought in $31,200 in 1950, as compared to $24,800 in 1946.

Chiropodists

Chiropodists, persons treating ailments of the feet, must be approved by the State Board of Chiropody Examiners if they wish to practice in Texas. This board, to cover costs of its activities, is entitled to levy a $40 examination fee and a $20 annual license fee. [40] Annual income of the State Board of Chiropody Examiners is about $2,500.

Chiropractors

The State Board of Chiropractic Examiners is responsible for administering the laws on examinations and annual registrations for chiropractors. The current board operates under authority of a law passed in 1949, a previous law regulating chiropractors having been declared unconstitutional. [41]

The applicant for chiropractic examination must pay a fee of $25. A practicing chiropractor is liable for an annual registration fee of $15. Any qualified person wishing to enter Texas to practice is charged $50. These fees are allocated to the board for its use; however, all moneys in excess of $20,000 in the Chiropractic Examiners Fund at the end of a fiscal year are to be transferred to the General Revenue Fund. [42]

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39 Tex. Civ. Stat. (Vernon, 1948) and Tex. Civ. Stat. (Vernon, Supp. 1950) art. 4476a.

40 Tex. Civ. Stat. (Vernon, 1948) art. 4568 and Tex. Civ. Stat. (Vernon, Supp. 1952) arts. 4567, 4569 - 4571.

41 Ex Parte Halsted, 182 S.W. 2d 479 (Tex. Crim. App., 1944).

42 Tex. Civ. Stat. (Vernon, Supp. 1950) art. 4512b.

During the 1950 fiscal year, income from examination and license fees paid by chiropractors was $43,400. The board issued warrants for $35,400 against the Chiropractic Examiners Fund.

Convalescent Homes

Several kinds of establishments offering care and custody of the young and aged are required to be licensed by the State Department of Public Health. Maternity homes and lying-in hospitals and day nurseries and child-placing agencies are licensed without charge.[43] Convalescent homes caring for pension and old age assistance recipients must pay a license fee of one dollar; income goes into the General Revenue Fund.[44]

Dentists and Dental Hygienists

The State Board of Dental Examiners is responsible for policing the dental profession and for examining and annual registration of dentists and dental hygienists. For dentists, the examination fee is $25; and the annual registration fee may vary from $2 to $12 in accordance with the board's judgment as to the amount necessary to cover its expenses. Fees are deposited in a Dental Registration Fund to be used for expenses of the board as provided by Legislative appropriation. All moneys in the fund in excess of $30,000 at the end of the fiscal year are transferred to the General Revenue Fund.[45]

Income from dental registration fees has varied. It was $16,200 in 1946 and $18,400 in 1950. However, the 1950 figure was a drop from the previous year, when income had been $24,000. Expenses of the board have risen steadily from $13,200 in 1946 to $21,000 in 1950.

The 52d Legislature decided that dental hygienists should also be licensed and gave administration of the licensing act to the State Board of Dental Examiners. The board may charge a $25 examination fee and an annual registration fee of from $2 to $12. Allocation of revenue is the same as that for license fees paid by dentists.[46]

Embalmers and Funeral Directors

Laws applicable to embalmers and funeral directors are administered by the State Board of Embalming. Connected with the actions of this board is the collection of examination and license fees to be levied against embalmers and funeral directors. These fees are ten dollars for examinations and five dollars for annual registrations of embalmers. Five dollars is the cost of examination and the annual license fee for funeral directors. Fees are retained by the board for its use.[47]

43 Tex. Civ. Stat. (Vernon, 1948) arts. 4442 and 4442a.

44 Ibid., art. 4442b.

45 Tex. Civ. Stat. (Vernon, 1948) arts. 4543-4551c; Tex. Civ. Stat. (Vernon, 1952) arts. 4549, 4551a, 4551b, and 4551d.

46 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 4551e.

47 Tex. Civ. Stat. (Vernon, 1948) arts. 4576a-4582a.

Food and Drug Manufacturers and Importers

The State of Texas demands that certain manufacturers and processors adhere to rules enacted for protection of the consumer. Laws regulate the manufacturer of foods and drugs in general and special provisions relate to flour and bread, oleomargarine, meat, and milk. Primarily to obtain a record of those concerned, manufacturers of foods and drugs are required to register annually with the State Health Officer. The fee accompanying this registration is nominal -- one dollar -- but it has brought in as much as $5,000 in a year. [48]

Naturopathists

Persons wishing to practice naturopathy, a system for treating disease through physical culture to stimulate natural processes, must meet certain qualifications and must re-register annually. The agency with which they deal is the State Board of Naturopathy Examiners.

The examination fee charged by the State Board of Naturopathy Examiners is $25; applicants who practiced in another state or who are graduates of a reputable naturopathic college may be licensed upon payment of a $50 fee. Annual re-registration fees are from $5 to $25, the board having authority to vary the amount according to its needs. Income from annual registrations is placed in the Naturopathic Re-registration Fund for use of the Board; it is not clear whether income from other fees is also placed in this fund. At the end of the fiscal year any amount in the Fund in excess of $10,000 is to be withdrawn and deposited in the General Revenue Fund. [49]

Nurses

There are three separate examining boards for nurses -- the State Board of Nurse Examiners, the State Board of Tuberculosis Nurse Examiners, and the State Board of Vocational Nurse Examiners. Each board is charged with giving examinations in its appropriate area and all except the Tuberculosis Nurse Examiners administer an annual registration system.

Fees charged by these boards are as follows: The examination fee for nurses is $15 and the annual renewal fee is $1. For tuberculosis nurses, there is an examination fee of $10. Vocational nurses must pay $10 for examination and an annual license fee of $1. In addition, the Vocational Nurses Board levies a $10 reciprocity fee on vocational nurses allowed to enter the state for practice and a $25 fee for accrediting vocational nurses' training programs.

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48 Tex. Civ. Stat. (Vernon, 1948) arts. 4465a - 4476-3; Audit Report, State Department of Health, August 31, 1949.

49 Tex. Civ. Stat. (Vernon, Supp. 1950) art. 4590d; Tex. Civ. Stat. (Vernon Supp. 1952) art. 4590d, sec. 11.

Revenues received by the Board of Nurse Examiners are applied to the administrative costs. The tuberculosis nurses' examination fee is not allocated by the act. The various amounts paid by vocational nurses are used for expenses of the Vocational Nurse Board, but any unused portion in the fund at the end of the calendar year is to be paid into the General Revenue Fund.[50] During the 1950 fiscal year, the Board of Nurse Examiners received $41,400 in fees and spent $40,900.[51]

50 Tex. Civ. Stat. (Vernon, 1948) arts. 4513-4525, 4527-4528, Tex. Civ. Stat. (Vernon, Supp. 1950) art. 4526 (Registered Nurses); Tex. Civ. Stat. (Vernon, Supp. 1950) art. 4528b (Tuberculosis Nurses); Tex. Civ. Stat. (Vernon, Supp. 1952) art. 4528c (Vocational Nurses).

51 Audit Report, Board of Nurse Examiners, September 1, 1949, to August 31, 1950.

Optometrists

To practice optometry in Texas, it is necessary to qualify and register annually with the Board of Examiners in Optometry. Fees paid under the provisions of the law are retained by the board for its own use. However, funds in excess of $10,000 remaining at the end of the fiscal year must be transferred to the General Revenue Fund.

Major fees levied by the board are an examining fee, an original license fee, and an annual renewal fee. The first is $35, the send $25, and the third $20.[52]

These fees bring in from $9,000 to $10,000 a year. Income frequently falls short of costs.[53]

Pharmacists

Regulation of the standards of pharmacy is the function of the State Board of Pharmacy. To further this activity, the board has the power to examine prospective pharmacists and to review the qualifications of those coming into the state. It also administers a registration system for pharmacists and the licensing of pharmacies and drug manufacturers.

The pharmacy examination fee is $10 and the annual renewal fee $10. Initially, a person from out of state wishing to practice pharmacy in Texas must pay $25. Annual registration of a pharmacy or drug products factory costs $2. These fees are allocated to the board to provide for the expenses it incurs in administering the act.[54] Annual fee income and annual expenditures of the board during recent years average about $40,000.[55]

Physicians and Surgeons

The practice of medicine in Texas is supervised by the State Board of Medical Examiners. This agency is charged with examining and annually registering physicians and surgeons.

Examinations given under the authority of Board of Medical Examiners Act cost the applicant $25. A practicing physician or surgeon may renew his license for $2 annually. If an out-of-state physician or surgeon wishes to begin practice in Texas, the original fee is $50. Revenues are used for administration and enforcement of the law.[56]

Moneys deposited in the Medical Registration Fund between 1946 and 1950

52 Tex. Civ. Stat. (Vernon, 1948) arts. 4552-4560, 4563, 4564, 4565c-4566--1; Tex. Civ. Stat. (Vernon, Supp. 1952) arts. 4561, 4562, 4565, and 4565a.

53 Audit Repot, Texas State Board of Examiners in Optometry, August 4, 1950.

54 Tex. Civ. Stat. (Vernon, 1948) art. 4542a, secs. 1-3, 5-7, 10-13, 15, 16, 18, 20; Tex. Civ. Stat. (Vernon, Supp. 1952) art. 4542a, secs. 4, 8, 9, 14, 17 and 19.

55 Audit Report, Texas State Board of Pharmacy, April 1, 1948, to March 31, 1950.

56 Tex. Civ. Stat. (Vernon, 1948) arts. 4495-4500a, 4502, 4503, 4505, 4509, 4511 and 4512; Tex. Civ. Stat. (Vernon, Supp. 1950) art. 4504, 4510; Tex. Civ. Stat. (Vernon, Supp. 1952) art. 4501.

have varied from $16,200 to $18,400. Expenditures have increased from $13,200 to $21,000 from 1946 to 1950.

Steam Boiler Inspection

As a safety measure, a steam boiler may not be operated without having a Certificate of Operation issued for it by the Bureau of Labor Statistics. Also, stationary steam boilers are required to be inspected yearly; portable boilers are required to be inspected yearly and whenever moved to a new location. Fees vary according to a scale based on diameter of the boiler. For boilers more than 30 inches in diameter, the charge is $3.25 for each external inspection and not more than $9.35 for each internal inspection. Complete inspection of a boiler of from 24 to 30 inches in diameter costs $6.25. If the boiler is less than 24 inches, the cost is $3.25. Fees are deposited in the State Boiler Inspection Fund and are used in paying costs of administration. [57]

During the post-war era, receipts from steam boiler inspection fees have risen from $31,700 to $42,700 annually. At the same time, expenditures for administration of the act have increased from $29,300 to $49,600. These revenue figures are based on the scale of charges in effect before 1951; however, a recent increase should result in greater income.

Veterinarians

Veterinarians are licensed by the State Board of Veterinary Medical Examiners. This board charges $15 for examinations and $1 for annual renewal. The reciprocal license fee is $20. Income from these sources is allocated to financing the board. [58] Annual fee income seldom exceeds $2,000, but it covers the board's expenditures. [59]

Highways and Motor Vehicles

On the state level, a number of taxes and fees are related to highways and motor vehicles. Several of the more important of these have been discussed in detail in earlier chapters. Most of the remaining licenses and permits for which recipients must pay will be briefly outlined here.

Antifreeze Sales Agencies

Regulation of the sale of antifreeze is a function of the Commissioner of Agriculture. As a control measure, it is required that every manufacturer or distributor register with the Commissioner and, at the time of registration, pay a $20 fee for each brand of antifreeze sold. Although the act does not state how the

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57 Tex. Civ. Stat. (Vernon, 1948) art. 5221c, sec. 1-4, 6-11, 13-19
Tex. Civ. Stat. (Vernon, Supp. 1952) art. 5221c, sec. 5 and 12.

58 Tex. Civ. Stat. (Vernon, 1948) arts. 7448-7465.

59 Audit Report, State Board of Veterinary Medical Examiners, September 20, 1943, to August 31, 1950.

revenue is to be funded, it directs that these fees be used to defray costs of administering the antifreeze act. [60]

Certificates of Title

The Certificate of Title Act provided for a legal document manifesting the ownership of a motor vehicle. Administration of the act is generally under the Highway Department, but county tax assessor-collectors act as agents of the department in its execution. For issuance of a certificate of title, there is a charge of 50 cents, half of which goes to the county assessor-collector as a fee and the other half to the Highway Department for deposit in the State Highway Fund. Fees accruing to the state under the Certificate of Title Act are to be expended to administer the act. [61]

The state's receipts from charges for certificates of title have approximately doubled from 1946 to 1950, increasing from $229,200 to $457,500. For the last four years, however, the Certificate of Title Section, the operating agency performing the Highway Department's functions under the act, has operated at a deficit varying from $3,700 to $59,000. In the 1950 fiscal year expenses were $27,200 more than receipts. [62]

Chauffeurs and Operators

Testing drivers and issuing them licenses is one of the duties of the Department of Public Safety. Charges are $1 for an ordinary driver, $2 for a commercial operator, and $3 for a chauffeur. These fees are deposited in the Operator's and Chauffeur's License Fund, from which they are disbursed on vouchers drawn by the chairman of the Public Safety Commission and signed by another member of Commission or the director of the Department of Public Safety. [63] This fee revenue alone supports the conduct of the Main Division and Driver's License Division of the Department.

The following table shows receipts of the Operators'and Chauffeurs' License Fund from license fees for the fiscal years 1946 to 1950, inclusive, and the warrants drawn on that fund during the same period:

Year	Receipts	Expenditures
1946	$ 858,600	$ 510,000
1947	948,900	562,000
1948	1,148,900	808,800
1949	1,158,400	808,500
1950	1,338,500	973,800

A recent increase in the fees charged for operators' commercial operators' licenses should increase income from this source.

60 Tex. Civ. Stat. (Vernon, Supp. 1950) art. 165-b.
61 Tex. Pen. Code (Vernon, 1948) art. 1436--1, sec. 1-6, 10-56, 58-64; Tex. Pen. Code (Vernon, Supp. 1952) art. 1436--1, sec. 7-9, 57.
62 State Auditor, Audit Report on the Motor Vehicle Division, August 31, 1950, p.10.
63 Tex. Civ. Stat. (Vernon, 1948) art. 6687b, sec. 1-14, 16-8, 20-46, Tex Civ. Stat. (Vernon, Supp. 1952) art. 6687b, sec. 3, 15 and 19.

Motor Bus Permits

The Railroad Commission collects several fees to support its administration of laws regulating the operation of common carrier motor buses in the state. Anyone desiring to operate a motor bus on the highways must obtain a certificate of convenience and necessity from the Commission which certificate is, with the permission of the Commission, transferable. Each application for an original certificate or a transfer must be accompanied by a $25 filing fee. Persons operating buses must pay $1 annually for an identification plate for each bus. They must also pay $10 for each bus plus $1 for every passenger capable of being carried in the bus as stated in the rated carrying capacity.[64]

During 1950 the bus and seating fees, plate fees and application and transfer fees brought in over $86,000 which is about on par with collections for the several years preceding. According to the motor bus law the identification plate fees and the bus and seating fees are to be deposited in a "Motor Transportation Fund" in the Treasury. For reasons which have not been uncovered, this fund apparently was never created. Receipts have been deposited in the General Revenue Fund.

Motor Carrier Permits

The Railroad Commission is charged with effectuating the policies in the motor carrier law. This law provides for the regulation of common carriers, specialized carriers and contract carriers and requires that these carriers must not be run on the highways of the state unless certificates of convenience and necessity have been obtained from the Railroad Commission. Applications for certificates must be accompanied by $25 filing fees. The certificates may be transferred with the consent of the Commission but transfer involves payment to the state of a $25 filing fee and an amount equal to 10 per cent of the consideration given for the transfer. Persons operating motor carriers must also pay a $1 annual identification plate fee and $10 annual truck fee for each vehicle.[65]

In 1950 filing, transfer, plate and truck fees earned the state about $194,000, this being slightly higher than the yield for the several previous years. According to the motor carrier law, transfer fees are to be deposited in the Highway Fund and all others, except the application fees for transfer of common carrier certificates, are to be deposited in a special "Motor Carrier Fund." This fund has never been established; receipts have been deposited in the General Revenue Fund.

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64 Tex. Civ. Stat. (Vernon, 1948) art. 911a.

65 Tex. Civ. Stat. (Vernon, 1948) art. 911b.

Motor Bus Ticket

The law requiring licensing of motor bus ticket brokers gives duties of administration to the Railroad Commission. Rates are $25 to cover the original hearing and license, with $25 to cover the original hearing and license, with $25 as an annual renewal fee. The hearing fee is credited to the Motor Transportation Fund to be used in the administration of the act. Renewal fees are to be deposited in the General Revenue Fund.[66] Although the motor bus ticket broker licensing act is still on the books, it is reported by Commerce Clearing House as inoperative.[67]

Super-heavy and Over-sized Vehicle Permits

Vehicles in excess of legal weights or sizes allowed by law may, for limited periods, obtain permits to travel the highways from the State Highway Department. Among requirements imposed on those desiring to exercise this privilege is payment of a fee graduated in accordance with the length of time the permit is to be in force. For a period not exceeding 30 days, the cost is $10. Beyond that and up to 60 days, the charge is $15. Up to the maximum allowable of 90 days, the charge is $20. Single trip permits cost $5 each. Receipts are deposited to the credit of the State Highway Fund.[68]

Income from this source, which has been increasing rapidly in recent years, was more than $439,000 in 1950.[69]

Game and Fish

A plethora of acts controls activities of hunters and fishermen in Texas and attempts in general to create favorable conditions for the conservation of game and fish.

Administration of these laws is the duty of the Game and Fish Commission, which until 1951, was titled the Game, Fish, and Oyster Commission.[70] The Game and Fish Commission is entitled to make certain charges, usually in the form of license fees. Except for issuing fees which are retained by persons selling licenses, the moneys received from these levies are used by the Commission in executing its duties.

Game

Hunting Licenses. The game regulations which are of direct concern to the majority of Texans are those on hunting seasons, hunting licenses, and game which

66 Tex. Civ. Stat. (Vernon, 1948) art. 911d.

67 Commerce Clearing House, "Texas Tax Reporter," par. 30-500.

68 Tex. Civ. Stat. (Vernon 1948) art. 6701a, sec. 1-2, 4, Tex. Civ. Stat. (Vernon, Supp. 1950) art. 6701a, sec. 3.

69 State Highway Department of Texas, Seventeenth Biennial Report, September 1, 1948, to August 31, 1950.

70 Tex. Pen. Code (Vernon, Supp. 1952) arts. 978f--3.

may be taken. The regular hunting license, which covers practically all birds and animals in season, costs a resident $2.15 and a non-resident $25. The issuing fee which comes out of these charges is 15 cents for a resident license and $3 for a non-resident license.[71]

Antelope and Wild Elk Licenses. While a regular hunting license authorizes the possessor to hunt practically all birds and animals in season, antelope and wild elk require a special license. The rate on an antelope and wild elk license is five dollars.[72]

Renting Boats to Hunters. A boat owner who hires out his boat for hunting is liable for the payment of an annual fee. This fee is two dollars.[73]

A series of licenses is connected with the commercial pursuit of fur-bearing animals. Annual charges are as follows:

Resident trapper	$ 1.00	
Non-resident trapper	200.00	
Beaver-Otter trapper	50.00	
Wholesale fur buyer	25.00	each place of business
Retail fur buyer	5.00	" " " "
Resident dealer	5.50	
Non-resident dealer	50.00	
Propagation permit	5.00	
Game breeder	2.00	

In addition, there is a levy of 1 cent on each pelt except raccoon and mink pelts, on which the levy is 5 cents. A 20-cent fee is usually paid to the person issuing one of these licenses. However, the beaver-otter trapper's license issuance fee is 50 cents.[74]

Sportsman's Fishing License. Like those on game, regulations and licenses for fish differentiate between persons fishing for sport and those fishing for profit. The license to fish in fresh waters for sportsmen costs $1.65 for residents. Non-residents may buy a $1.65 license valid for five days or a $5.25 license effective for the year. The issuing fee is 15 cents on $1.65 licenses and 25 cents on $5.25 licenses.[75]

Commercial Fishing Fees and Licenses. To pay for the variety of regulations applicable to commercial fishing and in order to foster scientific and informational activities on sea food, the Game and Fish Commission collects several fees from commercial fishermen and fish dealers. The schedule provided by law is as follows:

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71 Tex. Pen. Code (Vernon, Supp. 1952) art. 895b, secs. 1 and 2.
72 Tex. Civ. Stat. (Vernon, 1948) art. 9781-2.
73 Tex. Pen. Code (Vernon, 1948) art. 903.
74 Ibid., arts. 923q, 923qa, 923qa-7, and 978k.
75 Tex. Civ. Stat. (Vernon, Supp. 1950) art. 4032b.

Commercial fisherman	$3.00	
Wholesale fish dealer	200.00	each place of business
Wholesale truck fish dealer	100.00	each truck
Retail fish dealer (municipality of less than 7,500 population)	3.00	each place of business
Retail fish dealer (municipality of between 7,500 and 40,000 population)	10.00	each place of business
Retail fish dealer (municipality of over 40,000 population)	15.00	each place of business
Retail oyster dealer (municipality of more than 7,500 population)	5.00	each place of business
Retail truck fish dealer	25.00	each truck
Bait dealer	2.00	each place of business
Shrimp trawlers	2.00 to 15.00	depending on size of trawl
Seine or net	1.00	each 100 feet
Fishing boat	6.00	
Fish skiff	1.00	
Oyster dredge	15.00	
Fish guide	2.00	[76]
Commercial Fishing Boat - Menhaden	100.00	per boat

Sale of Fish, Crabs, Shrimp, Oysters, and Turtles. In addition, there is a charge on the sale of fish, crabs, shrimp, oysters, and turtles. On fish, crabs, and shrimp, the levy is "not less than one-fifth of one per cent per pound." Oysters are taxed at not less than 2 cents a barrel and turtles at not less than half a cent a pound. Terrapins are taxed at 25 cents each.[77]

The Game and Fish Commission in 1946 received about $740,000 from commercial and non-commercial fish and game licenses, including those connected with the special administrations of Lake Medina and Lake Worth. In 1950, total license fees collected were $1,386,000. This agency also has much higher returns from fines than most others.

Miscellaneous Professions and Occupations

A variety of professions and occupations, or devices used in these professions and occupations, are registered or licensed by the state. Many of these have already been treated under the foregoing subject headings. However, a number of them do not lend themselves to inclusion in broad classifications. For that reason, they are discussed under this "miscellaneous" category.

[76] Tex. Pen. Code. (Vernon, 1948) art. 934a; Tex. Pen. Code (Vernon, Supp. 1950) art. 934a--2; Tex. Pen. Code (Vernon, Supp. 1952) art. 934c (Menhaden).

[77] Tex. Pen. Code, (Vernon, 1948) art. 937a.

Accountants

Examining and licensing of accountants is conducted by the State Board of Public Accountancy. This agency collects from recipients of licenses an annual fee of $5. In addition, it collects a $25 examination fee. These fees, which account for from $42,000 to $51,000 a year, are allocated for support of the board and its activities. [78]

Architects

The examination and licensing law applicable to the practice of architecture is administered by the Board of Architectural Examiners. The act provides that charges be made for testing or licensing. The examination and original license fee for residents is $25, while the original registration fee for architects from other states is $30. Annual renewal can be obtained by a payment of $10. Receipts are deposited with State Treasury in Architects Registration Fund and are utilized to pay expenses of the board. However, at the times at which the law requires an audit of the accounts, any amount over $10,000 must be transferred to the General Revenue Fund. [79]

From 1946 to 1950, income from architects' examination and license fees has fluctuated between $10,400 and $13,000 a year. Expenditures increased from $4,400 in 1946 to $9,200 in 1950. This necessitated raising the ceiling on expenditures by the board, which, prior to 1950, was limited by law to $6,500.

Attorneys

Lawyers must take an examination to qualify to practice in the state and pay an annual license fee. Bar examinations are administered by the Board of Law Examiners. There is a $20 examination fee and an additional $1 fee for the certificate awarded to successful applicants. These moneys pay the expenses of the board. [80] Fee income of and disbursements by the Board of Law Examiners have been about equal for the last few years, averaging about $20,000. [81]

Texas has an integrated bar; that is, all active lawyers must be members of the bar association and the State Bar is an administrative agency in the judicial department. Annual licensing is accomplished through imposition of bar dues. The Texas Supreme Court is in general charge of this activity, which is handled for it through the general court's clerk. Officers elected by the bar conduct the affairs of the State Bar. The law provides that the annual charge shall be four dollars unless it is increased by election of the members of the State Bar; the current annual fee is $8. These fees pay the costs of administering the provisions of the State Bar Act. [82]

78 Tex. Civ. Stat. (Vernon, 1948) art. 41a, sec. 1-3, 6, 7, 9-14, 16-25; Tex. Civ. Stat. (Vernon, Supp. 1952) art. 41a, sec. 4, 5, 8, 15. Audit Report, Texas State Board of Public Accounting, May 21, 1945, to August 31, 1950.

79 Tex. Civ. Stat. (Vernon, 1948) art. 249a, sec. 1, 6, 11, 15 and 16; Tex. Civ. Stat. (Vernon, Supp. 1952) art. 249a, sec. 2-5, 7-10, 12 and 13.

80 Tex. Civ. Stat. (Vernon, 1948) arts. 304-318; Tex. Civ. Stat. (Vernon, Supp. 1952) art. 319.

81 Audit Report, Board of Law Examiners, August 31, 1950.

82 Tex. Civ. Stat. (Vernon, 1948) art. 320a--1, sec. 1-3, 5-7; Tex. Civ. Stat. (Vernon, Supp. 1950) art. 320a--1, sec. 4.

Boxing and Wrestling

Boxers, wrestlers, and certain other persons connected with the sports must pay annual fees to the Commissioner of Labor to offset costs of enforcing laws applicable to these activities. Promoters of boxing or wrestling matches must pay fees for each type of event they promote, graduated in accordance with the size of city in which they work. The scale is as follows:

Size of City	Fee
- 7,500	$10
7,501 - 17,500	20
17,501 - 25,000	30
25,001 - 75,000	100
75,001 - and up	200

A performer's fee is $5 for the year, but he may obtain a 30-day permit for $1. Managers and matchmakers pay $15 annually. Referees pay an annual fee of $10, or $1 for a single match. Seconds and timekeepers pay $2.50 annually. These fees are deposited in the Boxing and Wrestling Enforcement Fund. [83]

Boxing and wrestling license fees for the last five years have brought in not less than $8,900 nor more than $13,000 annually. The pattern of revenues has been irregular.

In addition to these license fees, a gross admissions tax levied on boxing and wrestling matches is also allocated to the Boxing and Wrestling Enforcement Fund. This three per cent tax must be paid within 48 hours after each contest. [84]

As might be expected, the gross admissions tax is a more lucrative source of income than license fees. It has brought in about $30,000 annually for the last five years. Any excess in the Boxing and Wrestling Fund is to be transferred each year to the General Revenue Fund.

Employment and Labor Agents

The licensing of labor and private employment agents is a function of the Commissioner of the Bureau of Labor Statistics. These agents are subject to an annual fee of $150 for each county in which they operate. Receipts from license fees, more than $38,000 in 1950, are used to pay expenses of administering the act. [85] This is probably slightly lower than the cost of administering the labor agency law. [86]

83 Tex. Pen. Code (Vernon, 1948) art. 614--1 - 614--17c.

84 Tex. Pen. Code (Vernon, 1948) art. 614-6.

85 Tex. Civ. Stat. (Vernon, Supp. 1950) arts. 5221a-5 (Labor Agency), 5221a-6 (Private Employment Agency).

86 Audit Report, Bureau of Labor Statistics, August 31, 1949.

Engineers

The Board of Registration for Professional Engineers is supported by registration and annual renewal fees paid by engineers. The registration fee is $25, and annual renewal costs $5. Revenues from this source have ranged from $40,800 to $46,600 in the 1946-1950 period. Annual expenditures of the board increased from $19,500 to $40,300 during that time.[87] Revenues are deposited with the State Treasurer in the Professional Engineers' Fund.

Insurance Agents

The Board of Insurance Commissioners and the Life Insurance Commissioner are responsible for licensing insurance agents. Qualifications and fees vary with the type of insurance handled and function performed. Life, health and accident insurance agents must pay an annual license fee of $2. Persons desiring to act as a local recording agent or solicitor for other than life, health and accident insurance are required to take an examination given by the Board and be licensed. Examination and original license fee is $10 if local recording agent operates in town of more than 5,000, and $5 if he operates in smaller town. It is $5 if solicitor works in town of more than 5,000, and $2.50 if he works in smaller town. The annual renewal fee is $1 for both local recording agents and solicitors. Agents representing fire, fire and marine, inland, casualty or surety insurance companies may be licensed to place lines of direct insurance with companies not licensed in Texas upon payment of annual fee of $25. Credit insurers are required to pay an annual fee of $300.[88] Insurance agents' license fees are used for enforcement of the acts levying them. Income was $71,000 for the 1950 fiscal year which, as a result of new legislation, was an increase of $34,000 over 1949. Expenditures from the Insurance Agents License Fund in 1950 were $52,000. Insurance Agents License Fund in 1950 were $52,000. Insurance recording agents' and solicitors' fees are used for administering the act as appropriated by the Legislature. They are funded in the Recording Agents' and Solicitors' License Fund, which receives from $17,200 to $20,200 annually, as evidenced by 1946 to 1950 figures. Warrants drawn on this fund have increased from $9,500 in 1946 to $22,000 in 1950.[89]

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87 Tex. Civ. Stat. (Vernon, 1948) art. 3271a.

88 Tex. Civ. Stat. (Vernon, Supp. 1952) Insurance Code, art. 21.07 (Life, health and accident agents), 21.14 (Local recording agent and solicitor), 21.38 (direct insurance agents), 3.53, sec. 2 (credit life, health or accident insurance). A discussion of insurance taxation generally and of the gross premiums tax may be found in A Survey of Taxation in Texas: Part IIA-Analysis of Individual Taxes Continued (Tex. Leg. Council, Staff Research Rep. 52-1), Chap. II.

89 Tex. Civ. Stat. (Vernon, 1948) and Tex. Rev. Civ. Stat. Ann. (Vernon, 1950) arts. 4764c, 5062b, 5068b, 5068e.

Liquefied Petroleum Gas Containers

Persons making or handling liquefied petroleum gas containers and repairing or connecting appliances using this gas must have licenses from the state. The Liquefied Petroleum Gas Division of the Railroad Commission is the administering agency. Rates are $5, $25, or $50, varying with specified conditions. Income goes to the Railroad Commission for use in administering the act.[90] Income from these fees has declined from $54,500 in 1947 to $38,411 in 1950, apparently as a result of the leveling off after the end of the war.[91]

Plumbers

Master plumbers, journeymen plumbers, and plumbing inspectors must be licensed by the Board of Plumbing Examiners. Maximum fees which the board may charge are $50 for master plumbers and $5 for all others; the maximum fee for examination, original registration, and renewal is the same. Revenue from these fees is allocated to the board to defray expenses of administering the act; the act states that no fee revenues shall be paid into the General Revenue Fund. If the fees should result in more revenue than is needed for this purpose, the board must reduce fees.[92] In 1949 these fees brought in almost $203,000. The board spent about $123,000.[93]

Real Estate Dealers and Salesmen

The licensing of real estate dealers was at one time a function of the Securities Division of the Secretary of State's office. However, a 1949 revision of the law created the Texas Real Estate Commission and transferred this function to it. The board is entitled to use the fees received but must, at the end of each calendar year, turn any surplus over to the General Revenue Fund. Charges are $10 for an original or renewal license for a real estate dealer and $5 for an original or renewal license for a real estate salesman.[94]

Fees from real estate dealers and salesmen accounted for from $68,200 to $79,400 annually from 1946 to 1949, but, after a 1949 increase in rates, the figure jumped to $209,100. From 1946 to 1949, expenditures increased from $18,500 to $26,000. However, in 1950, the first year of operation under the revised statute, they amounted to $90,000.

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90 Tex. Civ. Stat. (Vernon, 1948) and Tex. Rev. Civ. Stat. Ann. (Vernon, 1950 and 1952) art. 6053.

91 Audit Report, Railroad Commission of Texas, August 31, 1950.

92 Tex. Civ. Stat. (Vernon, 1948) art. 6243--101.

93 Audit Report, Texas State Board of Plumbing Examiners, September, 1947, to June 30, 1950.

94 Tex. Civ. Stat. (Vernon, 1948) 6573a, sec. 1-4 ; Tex. Civ. Stat. (Vernon, Supp. 1950) art. 6573a, sec. 5-22.

Securities Dealers, Salesmen, and Issuers

The Texas Securities Act requires securities dealers, salesmen, and issuers to register with the Secretary of State, who is charged with collecting the following fees: For filing an original or renewal application by a dealer, $25; for any application of a dealer in documents representing oil, gas, or mining interests, $12; for a registration certificate, whether original or renewal, issued to a dealer, $10; for the filing of an original or renewal application for a salesman, $10; for a registration certificate issued to a salesman, $5; for filing an original or renewal application by an issuer, $5; for a renewal permit to an issuer, $5; for every permit to an issuer, one-tenth of one per cent of the aggregate amount of securities described and proposed to be sold in the state. Revenues from these fees are applied to administering the act, with the proviso that the excess at the end of each year reverts to the General Revenue Fund.[95]

Receipts from fees collected under authority of the Securities Act have, during the last five years, increased irregularly from $80,100 to $136,900. Totals of warrants drawn for administration of the act have increased $25,900 to $45,400 in the same period.

Surveyors

Surveyors, after passing the appropriate examination, receive a permanent license. Examinations are held by the county superintendents of schools, who retain two dollars of the ten-dollar examination fee. Administration of the surveyors' examining program is, however, under supervision of the Board of Examiners of State Land Surveyors. The remaining eight dollars of the examination fee is sent to the board to be used in defraying its expenses, with any annual surplus going into the General Revenue Fund.[96]

Teachers

Teachers who must be examined to obtain certificates are examined by county boards of examiners, but the examining program is supervised by a State Board of Examiners. The four-dollar fee is divided equally between the county and the State Board of Examiners.[97] Income to the state from this source has been increasing steadily since the war, reaching $18,500 in 1950.[98]

Ticket Salesmen (Anti-Scalper Law)

Persons who sell tickets to sporting, entertainment, or amusements events at prices greater than those marked on the tickets are required to pay an

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95 Tex. Civ. Stat. (Vernon, 1948) art. 600a, sec. 1, 2, 4, 6-23, 25-38; Tex. Civ. Stat. (Vernon, Supp. 1952) art. 600a, sec. 3, 5, 24.

96 Tex. Civ. Stat. (Vernon, 1948) arts. 5268-5282.

97 Tex. Civ. Stat. (Vernon, 1948) and Tex. Rev. Civ. Stat. Ann. (Vernon, 1950) arts. 2877-2891a, 2654-5.

98 Audit Report, State Department of Education, August 31, 1949.

annual license fee of $250 to the Comptroller of Public Accounts. Receipts are deposited to the General Revenue Fund. [99]

The law makes it clear that this charge is not designed to raise revenue nor to finance a particular governmental activity but to prevent buying of tickets to such events for later sale at exhorbitant prices. Apparently, the license fee has been collected only on one or two occasions.

Weights and Measures

Weights and measures are in the sphere of activity of the Commissioner of Agriculture. Under the various laws on the subject, he is required to test weighing and measuring devices and to grant certificates of authority to public weighers. At the same time certificates of authority are given to public weighers, their scales must be tested. For testing measuring and weighing devices, the commissioner is entitled to set a reasonable fee graduated according to cost of the instrument tested. Public weighers must pay $5 annually for certificates of authority. Moneys received, about $4,000 a year, go into the State Treasury. [100]

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99 Tex. Pen. Code (Vernon, 1948) art. 1137k.

100 Tex. Civ. Stat. (Vernon, 1948) arts. 5680-5704-A (Public Weighers), 5705-5736f. (Weights and Measures).

SECTION 2 -- OCCUPATION TAXES

A number of Texas taxes are labeled "occupation taxes" in the statutes by which they are levied. A few have been treated as being within this classification by the courts. Others have been so deemed in rulings of the Attorney General. Still others have been accepted as occupation taxes by the collecting agencies. Some of the taxes within this classification have been discussed separately in this survey because they are large revenue sources -- for example, the taxes on natural gas and cement. An attempt has been made here to discuss the remaining taxes within this group.

Occupation taxes, as the name indicates, are intended as a tax on the privilege of doing business. The name, however, conveys little information regarding the nature of the tax. There appear to be few, if any, common or distinguishing characteristics. This is aptly illustrated by the following quotation:

> The outstanding characteristic of these occupation taxes is their arbitrariness. A few of them are based upon some rough measure of the volume of business, but most of them are based upon no reasonable principle whatever. One student lists no less than 13 important elements that are used either singly or in combination to form the base or measure for these taxes. [101]

Classification is important in Texas because of the constitutional requirement that one-fourth of the revenue received be allocated to the free public schools. [102] The taxes here grouped under the term "occupation tax" are those subject to allocation in this manner either by express direction in the statute or because they have been so classified as discussed above.

Administration of Occupation Taxes

The statutes contain certain general provisions relating to the administration, collection, and enforcement of the occupation taxes collected by the Comptroller. To facilitate his work, he is authorized to prescribe rules and regulations for collection and enforcement. These have the force of law in that a violator is subject to legal action and penalties, each separate day of violation being considered a separate offense.

Persons subject to an occupation tax must display or have in their immediate possession a "tax receipt or license." This requirement is evidently designed to assist tax collectors in determining that the tax has been paid. An

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101 Harold M. Groves, Financing Government (New York: Henry Holt and Company, rev. ed., 1945), p. 256.

102 Tex. Const., art. VII, sec. 3.

occupation tax license is transferable one time only.

In addition, the law provides that certified claims by the state are prima facie evidence in judicial proceedings and sets the venue of civil and criminal suits. Another rule generally applicable to occupation taxes is that they are collected in advance unless the law provides otherwise. [103]

The duty of actually collecting most of the occupation taxes discussed here is given to the Cigarette and Occupation Tax Division of the Comptroller's Office. The division field force is used to check on delinquent taxpayers. There are some exceptions, however; for example the tax paid by labor agents is collected by the Commissioner of Labor Statistics.

The Occupation Taxes

For convenience, occupation taxes are arranged alphabetically in this section. They are so varied that any attempt to classify them into groups is generally unsatisfactory. Receipts from each of the taxes are listed and tabulated at the end of this section.

Admissions

This tax is applicable to all places of amusement which charge for admission, except in the case of benefit performances. The tax is due quarterly and is levied at the rate of one cent for each ten cents or fractional part thereof if the admission price is above 51 cents. Passes are taxed at the rate for equivalent tickets and season tickets at ten per cent. [104]

Auctioneers

The annual ten-dollar tax on auctioneers applies regardless of the method by which the auctioneer is paid and even if he does not make auctioneering his only or principal business. [105]

Baseball Parks

The occupation tax on baseball parks is graduated according to the size of the city in which the park is located. Ball parks within five miles of any city are liable for the tax at the rate applicable to parks in the city. Baseball parks "owned or maintained in good faith" by educational institutions are exempt. Of course, the tax applies only to those baseball parks which charge for admission. The schedule of rates is as follows:

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103 Tex. Civ. Stat. (Vernon, 1948) arts. 7047, first unnumbered para., subdiv. 42, 43, and 44; 7047a-20; 7055; and 7056. In addition, see Ibid., arts 7050, 7051, 7052, and 7053, and Tex. Pen. Code (Vernon, 1948) arts. 119, 120, and 121. Because the acts passed over the years on the subject have not expressly repealed prior acts, it is uncertain which of these laws are current and which apply to all or any one of the occupation taxes discussed here.

104 Tex. Civ. Stat. (Vernon, 1948) art. 7047a-19. See preceding Section for information concerning boxing and wrestling gross admissions.

105 Ibid., art. 7047, subdiv. 6.

Size of City or Town	Annual Tax
Less than 10,000	$ 10
10,000 - 25,000	25
25,000 - 50,000	50
50,000 - and up	100 [106]

Brokers and Factors

Brokers and factors in general and loan brokers, pawn brokers and ship brokers in particular are liable for occupation taxes. A broker or factor is defined by the act as any person who:

> ...for another and for a fee, commission or other valuable consideration, rents, buys, sells, or transfers, for actual spot or future delivery, or negotiates purchases or sales or transfers of stocks, bonds, bills of exchange, negotiable paper, promissory notes, bank notes, exchange, bullion, coin, money, real estate, lumber, coal, cotton, grain, horses, cattle, hogs, sheep, produce, and merchandise of any kind; whether or not he receives and delivers possession thereof...

Excluded from this definition are salesmen working for only one employer, receivers, trustees in bankruptcy, or anyone who is acting under court order. Neither is the tax collected from any person otherwise subject to taxation under the occupation tax law, provided he is engaged in only one occupation. The annual tax on brokers and factors is ten dollars. [107]

The brokers' and factors' tax law is not, however, as broad in application as appears from a reading of the provisions. The caption of the act declared that it was not to be construed as "levying any tax on any new occupation or occupations." Accordingly, the Attorney General ruled that, even though real estate salesmen were specifically mentioned in the act, they were not in fact taxable under it. [108]

For loan brokers, the annual occupation tax is $150 for each place of business. Loan brokers are not defined in the occupation tax law, but notice is given that the term will be used as "defined by the laws of this State." [109] Elsewhere in the statutes, loan brokers are defined as persons, other than lending institutions subject to supervision or examination by the Banking Department, lending money with wages or household furnishings as security. [110]

106 Ibid., art. 7047, subdiv. 32.
107 Ibid., (Vernon, 1948) art. 7047, subdiv. 7.
108 Op. Tex. Atty. Gen. No. 0-5590 (September 21, 1943).
109 Tex. Civ. Stat. (Vernon, 1948) art. 7047, subdiv. 14.
110 Ibid., art. 6165a, sec. 2.

The annual tax on pawnbrokers is also $150.[111] Texas law defines pawnbrokers as those who lend money for interest, taking as surety a deposit of personal property.[112]

Ship brokers, persons engaged in the management of business matters between vessel owners and shippers, are subject to an occupation tax of $25 a year.[113]

Cannon Cracker Dealers

Sellers of large firecrackers, those longer than two inches and having a circumference greater than one inch, and the sellers of toy pistols which shoot exploding cartridges are taxed $500 annually for each place of business. The statute does not include sales of such things as cartridges or industrial or military explosives.[114]

Carnivals

The occupation tax on carnivals is collected quarterly at a rate of $50 a quarter. However, if the carnival operates in only one county, the maximum tax payment is $100 annually.[115] A carnival is described as a collection of shows, exhibitions, riding devices, and the like operated together under one management.

Circuses and Side Shows

The occupation tax on circuses and exhibitions applies to a variety of shows, such as wild west shows, dog shows, menageries, etc., for which admission is charged. Excepted are those operated for "charitable, benevolent, religious, or educational purposes."

The tax rates, which vary with the size of the shows, are collected for each day on which performances are given. Size of the show is determined by the number of vehicles or cars required to move it from place to place. When shows travel by railroad, the following schedule applies:

Number of Cars Required to Move Show	Daily Rate
Not more than 2	$ 25
3-5	40
6-10	55
11-20	75
21-30	100
31-and up	225

111 Ibid., art. 7047, subdiv. 13.
112 Ibid., art. 6146.
113 Ibid., art. 7047, subdiv. 9.
114 Ibid., art. 7047, subdiv. 38.
115 Ibid., subdiv. 25 (b).

When shows travel by automobile, truck, or other such conveyances, the rates are graduated according to the following scale:

Number of Loads	Daily Rate
Not over 2	$ 10
3-5	15
6-10	20
11-20	25
21-35	35
36-50	50
Over 50 - for each load in excess thereof	2 [116]

An additional tax is required for menageries, museums, and side shows operating in conjunction with a circus if a separate fee is charged for admission. This tax is $10 for every day on which admission fees are received. [117]

Coin-operated Machines

The tax on coin-operated machines has undergone several modifications since its original enactment. The current law on the subject was passed in 1951 as a revision of a 1936 statute.[118] However, these rather long and involved statutes were preceded by a simple occupation tax on coin-operated machines which began as a ten-dollar tax on panorama or view shows but grew to include a wide variety of machines in later years.[119]

For taxation purposes, coin-operated machines are divided into two categories -- music coin-operated machines and skill or pleasure coin-operated machines. On music coin-operated machines, the annual rate is five dollars for machines which take coins larger than nickels or their equivalent. Skill or pleasure coin-operated machines with a similar coin capacity are taxed at the rate of $60. However, should it cost more than one cent and less than five cents to operate the skill or pleasure machine, the annual charge is $30.

A recent opinion by the Attorney General has declared that coin-operated machines giving free games are illegal, a ruling which is expected to cut deeply into receipts from the coin-operated machine tax, at least for a time.[120]

While the rates of this tax have not been changed since 1936, exemptions have been extended. Originally, only service coin-operated machines and several types of machines subject to an occupation or gross receipts tax were excluded. In 1949, machines vending milk and ice cream but otherwise liable for the tax were given reduced rates. In 1951, all machines which vend merchandise only were excepted.

116 Tex. Civ. Stat. (Vernon, Supp. 1952) art. 7047, subdiv. 24.
117 Tex. Civ. Stat. (Vernon, 1948) art. 7047, subdiv. 25a.
118 Tex. Civ. Stat. (Vernon, Supp. 1952) arts. 7047a-2--7047a-16.
119 Tex. Civ. Stat. (Vernon, 1948) art. 7047, subdiv. 23.
120 Op. Tex. Atty. Gen. No. V-99 (January 27, 1950).

The statute contains detailed provisions for enforcement. Licenses which can be easily seen by the public and which are difficult to remove must be attached to taxable machines. Certain records on coin-operated machines must be maintained by the owner and by the Comptroller. In addition to penal provisions, including fines of from $5 to $500, the Comptroller is entitled to seal machines on which the tax has not been paid. A special fund is provided for collection and enforcement of the tax.

Concerts

Concerts for which admission fees are charged are subject to a state occupation tax of two dollars for each performance. The law provides, however, that:

> ...entertainments when given by the citizens for charitable purposes, or for the support or aid of literary or cemetery associations are exempt. [121]

A concert is described as a musical performance in which several voices or instruments participate.

Credit Appraisers

Credit appraisers are persons who report on the credit ratings of businesses. The tax is $300, and the law is so devised that no concern will be liable for it more than once each year, including in the concern's liability that of its employees. [122]

Employment and Labor Agents

The occupation tax on employment and labor agents is, along with the gross receipts tax on wrestling matches, collected by the Commissioner of Labor Statistics rather than by the Comptroller. It applies to labor agents hiring or soliciting common or agricultural workers for employment outside of the state. The tax is set at an annual rate of $600 plus charges graduated according to population of the county in which recruiting is done. The additional amount is $100 in counties under 100,000, $200 in counties from 100,000 to 200,000, and $300 in counties more than 200,000. [123]

Insurance Agents and Adjusters

The occupation tax on insurance agents applies to persons acting as general agents for insurance companies. The definition in the act is quite long and complicated, providing certain exceptions, but in broad terms a general

121 Tex. Civ. Stat. (Vernon, 1948) art. 7047, subdiv. 30 (Italics added).
122 Tex. Civ. Stat. (Vernon, 1948) art. 7047, subdiv. 16.
123 Tex. Civ. Stat. (Vernon, Supp. 1950) art. 5221a-5, sec. 4.

agent is the person generally controlling the business of one or more insurance companies in the state and in charge of the activities of the local and special agents of that company. The annual tax is $25. [124]

An insurance adjuster, according to the law, is a person charged with ascertaining the liability or amount of damages when a claim is made against an insurance company, regardless of whose employ he is in. The rate of this tax is $10. [125]

Itinerant Physicians

The itinerant physicians' tax applies to every medical man who travels from place to place in the practice of this profession. Essentially, it covers any physician who practices in an area where he does not maintain an office. The tax is $50. [126]

Itinerant Salesmen

The taxes on itinerant salesmen vary in accordance with the products being sold. The law sets up three groups of itinerant salesmen -- itinerant merchants, peddlers, and travelling vendors of patent medicines.

An itinerant merchant is described as one who sells bankrupt stocks or water - or fire-damaged stocks and who "may remove" these stocks "from place to place." The tax is $100 for each place of business for the first month or part of a month. If the merchant remains in one place for a time, the tax is reduced, being set at $20 a month up to six months and $10 a month thereafter. [127] This tax does not usually apply to the sale of such goods when they are sold in the town or city in which the bankruptcy or fire occurred.

The peddlers' tax covers travelling salesmen who make delivery at the time of sale of such items as clocks, agricultural implements, cook stoves, wagons and similar vehicles, washing machines, and churns. The annual tax of $200 must be paid in each county in which the salesman works except for his own place of business. [128]

A travelling vendor of patent medicines is described as one who sells these medicines on a retail basis, not including those who solicit or take orders for patent medicines from stores. The annual tax is $50. [129]

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124 Tex. Civ. Stat. (Vernon, 1948) art. 7047, subdiv. 10 (b).
125 Ibid., subdiv. 10 (a).
126 Ibid., subdiv. 3.
127 Ibid., subdiv. 1.
128 Ibid., subdiv. 5.
129 Ibid., subdiv. 2.

Mechanical Rides

This tax applies to all persons operating for profit hobby horses, flying jennies, ferris wheels, or any other device of that character whether or not it bears a name. The rate is $25 a year.[130] The tax is not collected for these devices when they are connected with a carnival. Carnivals, it will be recalled, are liable for a separate occupation tax.

Medicine Shows

The annual occupation tax of $50 on medicine shows is collected from every person who maintains an exhibition for profit through the sale of medicines or other articles of value, whether or not admission is charged. However, the tax does not apply if the show is operating on the grounds of a state or county fair while that fair is giving its annual exhibition.[131]

Menageries

Persons owning menageries, museums, and zoological exhibitions operated continuously in one city or town and for which admissions are charged must pay $50 a year.[132] As has already been indicated, similar shows, when connected with a circus, must pay a tax of $10 for each day on which admissions are charged.

Money Lenders

Agents who lend money for a concern are taxed at $150 a year for each county in which an office is maintained. The tax does not, however, apply to life insurance companies, banks or concerns lending money as incidental to real estate transactions.[133]

Nine and Ten Pin Alleys

This tax applies not only to what are usually called bowling alleys but to gaming devices using pegs, balls, rings, and other devices. The tax is $10 for each track or alley but may not exceed $100 in any one year.[134]

Pistol Dealers

The pistol dealers' tax covers all concerns or persons dealing with pistols for profit, whether transactions are wholesale, retail, cash, or barter. Excepted are persons or firms selling solely to the militia or the federal government. The annual tax is $10. It is evident that the law is intended primarily to

130 Ibid., subdiv. 37.

131 Ibid., subdiv. 29. This last provision is more important in connection with the tax which the county is allowed to collect and which is based on performances. The state tax is collected on an annual basis.

132 Ibid., subdiv. 25(a).

133 Ibid., subdiv. 15.

134 Ibid., subdiv. 36.

regulate and provide a record of transactions involving pistols.[135]

Prizes or Awards

The giving of prizes -- whether in money or goods, to one or more patrons of a theater, place of amusement, or business enterprise -- is covered by this tax. Set at 20 per cent of the value of prizes given, the tax must be paid monthly.[136] If the prize is in goods or services, the tax must be computed on the basis of what it would cost the recipient to obtain the equivalent goods or services if purchased on the open market.

Race Tracks

The tax on race tracks varies with the length of the track and applies only to race tracks used for profit. It does not apply to tracks used by individuals solely for training purposes nor to tracks operating in connection with agricultural fairs and expositions. If the track is as long as one mile, the annual levy is $100. If it is one-half mile or less, the tax is $50.[137] Evidently there is no tax on any track which is longer than a half mile and shorter than one mile.

Rodeos

Rodeos, taxed at ten dollars per day, are described as exhibitions in which bronco busting, rough riding, equestrian or acrobatic feats, and roping contests are performed. However, the tax applies only when the performers receive remuneration other than prizes given for winning contests.[138]

Shooting Galleries

Persons maintaining shooting galleries at which fees are paid must pay an annual tax of $15.[139]

Sleight of Hand Performances

Every performance of sleight of hand or legerdemain is taxed $25. This does not apply to performances connected with theaters or circuses.[140]

Skating Rinks

The annual tax on skating rinks of $25 is collected only if the rink is used for profit.[141]

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135 Ibid., art. 7047d.
136 Ibid., art. 7047f.
137 Ibid., art. 7047, subdiv. 33.
138 Ibid., subdiv. 31.
139 Ibid., subdiv. 35.
140 Ibid., subdiv. 28.
141 Ibid., subdiv. 34.

Stock Exchanges

The so-called stock exchange tax is levied on

> ...every person, firm, corporation, or association of persons owning, operating, managing, controlling, or pursuing the business or occupation of any cotton exchange quotation service in this State, or furnishing quotations on the stock market on grain, cotton, or other commodities, or stocks and bonds, and who maintain an office or place of business, or branch office, and have a bulletin board or other means of furnishing quotations on the stock market...[142]

The tax rate is $250 annually for every "separate establishment, office, branch office, or place of business," except that it is $100 for any member of only one commodity exchange. Not taxed are persons furnishing market quotations gratuitously without intent to solicit or accept orders for commodities, stocks, or bonds.

The provisions relating to the $100 rate for members of one exchange and exempting persons furnishing market quotations gratuitously have been interpreted by the Attorney General so that few persons engaged in the types of business taxed receive tax reductions or exemptions.[143]

In 1936, an Attorney General's opinion declared the tax invalid, and it has not been collected since.[144] However, a subsequent opinion seemed to assume that the article was still in effect.[145] The question of the tax's validity is again under consideration, and there are indications that it will be declared in force.

Street Car Companies

The occupation tax on street car companies is collected annually on the basis of miles of track, including sidings, owned by the company. The rate is two dollars a mile.[146]

Theaters

Theaters, for purposes of this law, include opera houses, theaters, tents, airdomes, or other structures in which entertainments or exhibitions are given for profit. Movies, plays, musical comedies, and similar entertainment are included. The annual tax is graduated according to population of the town or

142 Ibid., art. 7047a.
143 Op. Tex. Atty. Gen. (April 23, 1930); Op. Tex. Atty. Gen. (April 19, 1932).
144 Op. Tex. Atty. Gen. (April 3, 1936).
145 Op. Tex. Atty. Gen. No. 0-5483 (August 6, 1943).
146 Tex. Civ. Stat. (Vernon, 1948) art. 7047, subdiv. 21.

city in which the theater operates. Since the law prohibits collection of the tax more than once annually, a traveling theater must pay the rate for the largest city in which it proposes to operate. The rate scale is as follows:

Population of City or Town	Annual Tax
Under 1,000	$ 5.00
1,000 - 2,499	15.00
2,500 - 4,999	20.00
5,000 - 14,999	30.00
15,000 - 19,999	40.00
20,000 - 29,999	50.00
30,000 - 39,999	60.00
40,000 - and up	75.00 [147]

Waxworks

The tax on waxworks applies to menageries, waxworks, exhibitions, exhibits, or displays of any kind charging a fee for admission. To distinguish it from similar taxes, it has been interpreted to apply only when admission is for viewing inanimate objects or reproductions such as those of animals, birds, or human beings. The tax, collected only when such exhibits are not connected with a theater or circus, is two dollars a day. [148]

Wrestling Matches and Acrobatic Performances

The occupation tax on wrestling matches and acrobatic performances is ten dollars for every exhibition to which admission is charged except when the exhibition is connected with a circus or theater. [149] However, the tax appears to have been repealed, at least insofar as it relates to wrestling matches, by the following statement in the boxing and wrestling laws:

> No other fee or tax, either general or local, than as herein provided, shall be assessed against or levied upon any such match, contest or exhibition, contestant, or manager, or promoter thereof. [150]

This sentence, part of the article levying a three-per-cent gross admissions tax on boxing and wrestling matches, was passed three years after the occupation tax described above. The occupation tax on wrestling matches and acrobatic performances is not now being collected.

147 Ibid., subdiv. 22a.
148 Ibid., subdiv. 26.
149 Ibid., subdiv. 27.
150 Tex. Pen. Code (Vernon, 1948) art. 614-6.

Table Occ - 1

OCCUPATION TAX REVENUES, 1949-1951 *

TAX	FISCAL YEAR 1949	1950	1951
Admissions	$224,500	$201,400	$185,000
Auctioneers	1,500	1,400	1,700
Baseball Parks	1,300	1,700	1,700
Brokers			
Brokers and Factors	$2,900	$2,500	$3,100
Loan Brokers	9,500	9,900	11,100
Pawn Brokers	29,900	29,000	33,300
Ship Brokers	50	50	81
	42,400	41,400	47,600
Cannon Cracker Dealers	--	--	--
Carnivals	5,200	6,600	7,500
Circuses & Side Shows			
Circuses	11,000	9,500	9,000
Side Shows	2,100	1,800	2,500
	13,100	11,300	11,500
Coin Operated Machines	751,400	764,700	643,600
Concerts	36	--	4
Credit Appraisers	300	300	300
Employment & Labor Agents	4,800	4,800	5,400
Insurance Agents & Adjusters			
General Agents	400	400	400
Insurance Adjusters	3,000	2,700	3,100
	3,400	3,100	3,500
Itinerant Physicians	--	--	25
Itinerant Salesmen			
" Merchants	--	--	100
Peddlers	--	--	--
Traveling Vendors	500	500	200
	500	500	300
Mechanical Rides	2,600	2,700	2,400
Medicine Shows	200	200	100
Menageries	200	50	50
Money Lenders	1,000	1,500	1,100
Nine & Ten Pin Alleys	19,700	23,100	18,400
Pistol Dealers	6,800	6,300	7,600
Prizes & Awards	22,600	21,600	27,700
Race Tracks	1,400	1,800	1,400
Rodeos	1,100	700	600
Shooting Galleries	800	800	900
Sleight of Hand	--	--	--
Skating Rinks	3,400	3,200	3,000
Street Car Companies	100	100	100
Theaters	40,600	40,400	50,600
Waxworks	--	--	--
TOTALS	$1,149,200	$1,139,800	$1,022,000

* These figures are rounded to the nearest hundred if in excess of one hundred. Accordingly, they will not always add to the totals.

Occupation Tax Receipts

The Table Occ-1 indicates receipts from the occupation taxes discussed in this section for the fiscal years 1949 to 1951 inclusive.

It is clear from this table that many of the taxes have yielded little or no revenue. Admissions, coin-operated machines, and prizes and awards were the only taxes which produced amounts in six figures. Some five others yielded amounts in the five-figure bracket, the remaining taxes having each accounted for less than $10,000 annually. Several show receipts of less than $100. Some of these revenues, such as the 1951 amounts for credit appraisers and itinerant merchants, represent remittances by only one taxpayer.

Disposition of Occupation Tax Receipts

The constitution requires that one-fourth of all occupation tax revenue go to the Available School Fund; in accordance with statutory designation, long practice, or administrative interpretation the taxes included here are considered occupation taxes and subject to this allocation. The remaining three-fourths usually goes into the General Revenue Fund. Enforcement funds are provided for most of these taxes, the moneys for which are subtracted before other allocations are made. These taxes are cleared through the Tax Clearance Fund, established by the Comptroller to simplify the process of dividing a number of taxes among the various funds for which they are designated by law.

Several deviations from the usual pattern occur. There are no provisions for enforcement funds in the admissions and the prizes and awards tax laws. The Attorney General has, therefore, ruled that use of admission tax receipts for enforcement is illegal, even when so provided by the Legislature in an appropriation bill.[151] The admissions tax also differs from the other occupation levies in that three-fourths of its receipts go into the State Old Age Assistance Fund rather than the General Revenue Fund. This was also true of the coin-operated machine tax until the Legislature changed its allocation in 1951. Three-fourths of the receipts from that tax now go into the Omnibus Tax Clearance Fund.

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151 Op. Tex. Atty. Gen. No. V-378 (September 17, 1947).

SECTION 3 -- OLEOMARGARINE TAX

The oleomargarine tax is primarily interesting because, although nominally in effect since 1934, it has yielded the state only a few dollars, received during the first year of operation. The total revenue received from the tax to date is $7.50. It should perhaps be noted, too, that this tax is one of the few specifically labelled an "excise" tax in the statute. Although some other state taxes closely parallel excise taxes as levied in other states, they are generally designated by other names -- occupation, or gross receipts, for example.

The reason for this situation is apparent from a careful reading of the tax statute. [152] The definition section contains an all-inclusive statement of what the law means by oleomargarine. However, the portion of the act which actually levies the tax reads:

> ...every wholesaler...engaged...in the sale of oleomargarine as herein defined, containing any fat and/or oil ingredient other than oleo from cattle, oleo stock from cattle, oleo stearine from cattle, neutral lard from hogs, cottonseed oil, peanut oil, corn oil, soya bean oil and/or milk fat shall... pay an excise tax of ten (10) cents per pound on all such oleomargarine so sold... [153]

Essentially, this requires payment of the tax on oleomargarines made of fish oil or fat, coconut oil, palm oil, or vegetable oils other than cottonseed or soya bean, most of which substances are grown and processed outside the state. The purpose of the tax, then, appears to have been to discourage competition from oleomargarines made with foreign oils and fats.

Aside from the fact that it brings no income to the state, the oleomargarine tax represents a fairly complete tax statute. The levy is supposed to be collected from wholesalers, who are required by law to report monthly to the Comptroller the amount of taxable oleomargarine sold during the previous month and pay the tax of ten cents a pound thereon. The Comptroller is responsible for prescribing forms to be used and for supplying them to wholesalers. He also has authority to require wholesalers of taxable oleo to keep records available for inspection during all ordinary business hours. As a means of enforcement, all "containers, packages, or cases" of taxable oleomargarine are required to bear a sticker containing certain information prescribed by the statute.

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152 Tex. Civ. Stat. (Vernon, 1948) art. 7057c.

153 Ibid.

SECTION 4 - SUMMARY

The large number of taxes and fees included in this chapter and the summary treatment given them does not facilitate an examination, as was done in the previous chapters, of specific problem areas in this operation and administration. This summary account and a statement of the comparatively small revenue produced by such taxes and fees does indicate that the importance of certain taxes to the Texas tax structure might be questioned. Some of the taxes may be imposed on activities that are no longer significant in our economy--changed technology may have rendered them obsolete. The revenue produced from others may not be sufficient to justify the effort devoted in their collection. It is possible that some of these taxes are such that efforts to collect them constitute a harrassment of the taxpayer for relatively insignificant amounts. While this inventory is sufficient to raise these doubts, caution must be exercised in drawing conclusions from it. Convenience has dictated that each of the taxes be summarized very briefly; this means that the full environment in which they operate has not been given. Distortions as to their full significance may have occurred. Therefore, rather than attempt evaluation of problems for each tax, it may be well to set out some of the factors which should be considered to aid determination of whether further detailed consideration need be given these taxes, and if so, the direction which such consideration might take.

Perhaps it should be mentioned that while these taxes individually may produce relatively insignificant income to the state when compared with such taxes as the crude oil production and the motor vehicle fuel tax, they are important in the aggregate. The occupation taxes included in this chapter yielded slightly over one million dollars in the fiscal year 1950. Although this represents but a fraction of one per cent of total tax revenue during that year, in the absolute this is not an insignificant figure.

In some instances the significance of a tax may not be measured only in terms of the income it produces for the State. It is probable that some of the taxes included were not enacted solely to produce recenue but also to serve some regulatory purpose. The tax may have been enacted to severely limit, if not prevent, the activity which is taxed. For example, the so-called Anti-Scalper Law is expressly aimed at regulating the sale of tickets to sports and other amusement events in excess of established prices.[154] The purpose of a law, when fully enforced, directed toward elimination of the taxed activity is completely accomplished when the tax produces no revenue. A tax may

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154 Tex. Pen. Code (Vernon, 1948) art. 1137k. The emergency clause of this act expresses a regulatory purpose. Acts 47th Leg., R.S. 1941, chap. 307, sec. 6.

of course, have a regulatory purpose and yet not be designed to eliminate the taxed activity. In view of this tax law purpose, it would seem desirable to examine carefully the purpose and operation of a tax before making any decision that it should be repealed because it is not producing sufficient revenue.

Another factor that may deserve to be taken into account is the place tax laws play in business competition. Taxes upon business activity are generally considered costs of doing business and therefore may affect the price at which the businessman can sell his service or commodity. Competition may exist among the sellers of the same commodity or service and among sellers of different commodities or services which fulfill substantially the same purpose. This factor appears to be of importance to the oleomargerine tax discussed in this chapter and may be significant for others of the group. Thus, it would seem that any change in the state's tax laws should be undertaken with some awareness of its effect upon the different segments of the economy which will be affected.

A third consideration is that these taxes assure that a large number of taxpayers make direct payments of state taxes. A frequently stated desideratum of a state tax structure is that it be designed to provide for the direct payment of taxes to the state by as large a portion of the state's taxpayers as feasible. It is argued that this provides a broad tax base and thus tends to distribute more fairly the obligation of supporting state government. It is also argued that making direct rather than indirect tax payments strengthens democratic government by making the citizen more conscious of his state government and more interested in insuring that his taxes are spent wisely. Texas has few taxes which apply widely. The state has given up the ad valorem tax for general revenue purposes, although significant amounts are still being collected for special state purposes. The franchise tax is probably the tax most widely applicable to businesses; however, a substantial portion of the businesses in Texas are conducted in other than the corporate form and are not subject to this tax. One means of serving this objective, therefore, is through a larger number of taxes of narrower application to each of a wide variety of business activities. A number of the tax laws discussed in this chapter were enacted before the present major revenue taxes were passed, and it cannot be said that the legislative purpose when they were enacted was the widening of the tax base. However, a law may be assigned a purpose different from that originally intended through the legislature's decision to retain it.

Another factor that may deserve exploration when reviewing a low revenue yield tax is the administrative effort made in its enforcement. It is probably true that many of the occupation taxes included in this chapter do

not receive as energetic and aggressive an enforcement effort as do the state's major revenue producers. However, it is understandable and probably wise that the state's tax administrators focus their attention upon the major taxes. There is undoubtedly a point beyond which the expenditure of effort on some taxes is not sound in terms of the additional revenue that may be produced. These factors suggest that one line of inquiry could be taken to determine whether some of the taxes can and should be made individually significant revenue producers through aggressive enforcement. A by-product of incomplete tax enforcement is a form of tax discrimination. If an effort is not made to collect the tax from all who owe it, it is argued that there is discrimination against those who voluntarily come forward and make payments. Widespread disregard of a law is said to lead to ever-widening disrespect for it. To the extent that this analysis has validity, it suggests that these taxes might be re-examined to determine whether more administrative effort should be expended in their collection and what legislative action is required to permit such effort.

The factors mentioned with regard to the occupation taxes are applicable in differing degrees to fees. There are considerations pertaining only to fees which also deserve mention. As in the case of the occupation taxes, many of the fees are individually not important when compared with the major source of state revenue, but in the aggregate they are significant. Although information concerning some fees is not readily available, some 50 classes of fees tabulated yielded $6.5 million in the fiscal year 1950. The certificate of title and the game and fishing license fees accounted for more than $2.5 million of this total.

Fees are often imposed to finance the state's performance of some regulatory or service function. The desired extent or scope of the state activity defines the revenue which such fees need to produce. Thus, certain fees can be expected to yield comparatively small amounts of money because the function which they support does not require larger expenditures. There may be a point below which the expenditure requirements of a given function are so small that it may be considered undesirable to inconvenience the citizen and expend administrative effort in collection of a fee to support it. In such instances, the usual alternative for financing the state function would be to draw upon the General Revenue Fund.

There are some fees intended to be the exclusive support of an activity, which at times provide either substantially more or less income than appears to be needed for the function. This problem is met, in the case of several licensing boards, by giving the board the power to vary the amount of the fee within certain limits in accordance with their revenue needs. This

technique may deserve examination to determine whether it has worked well enough to merit extending its use. Another device available is the requirement that excess revenue be transferred to the General Revenue Fund at some certain date. This device provides little or no limitation on unwise expenditures and its application requires that careful attention be given to an agency's flow of fees and expenditures to prevent transfer of needed but unspent funds.

An incidental though not unimportant point is that information is not readily available on the total annual income of all fees but only on those which are funded in the State Treasury. Another question deserving attention is whether prompt annual reports on fees not funded in the Treasury should be made by the agency collecting the fee to some department such as the State Treasurer or Comptroller of Public Accounts, or whether all fees should be deposited in accounts in the State Treasury. Either of these alternatives would permit complete information to be made available regularly for legislators and interested citizens through the reports now made by these departments.

The factors outlined above appear to be some of those that may deserve consideration in any review of the occupation taxes and fees included in this chapter. Because of the necessarily brief treatment which has been afforded them, it seems particularly pertinent to recall here the limitation on all of the individual tax studies--primary attention has been devoted solely to the particular tax or group of taxes under discussion and to their administration. Before any tax is substantially revised it should also be viewed in the business or economic context in which it operates and in the context of related taxes.

Appendix A

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The volumes referred to are A Survey of Taxation in Texas, Parts II, IIA, and IIB - Analysis of Individual Taxes. Page references are to the page which begins the chapter in which the subject matter is discussed.