

SENATE No. 440

THE INTENT AND OPERATION
OF THE TAX LAWS OF
MASSACHUSETTS.

MEMORANDA PREPARED BY THE TAX COMMISSIONER
FOR THE LEGISLATIVE COMMITTEE ON TAXATION.

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The Commonwealth of Massachusetts.

OFFICE OF THE
TAX COMMISSIONER, BOSTON, March 12, 1915.

HON. NATHAN A. TUFTS, *Chairman, Committee on Taxation.*

DEAR SIR:— I beg to hand you herewith memoranda relating to the operation of the tax laws of this Commonwealth. These memoranda are prepared for the committee on taxation as per your request of some weeks ago.

Respectfully yours,

WILLIAM D. T. TREFRY,
Tax Commissioner.

THE INTENT AND OPERATION OF THE TAX LAWS OF THE COMMONWEALTH.

MEMORANDA PREPARED BY THE TAX COMMISSIONER FOR THE LEGISLATIVE COMMITTEE ON TAXATION, FEBRUARY, 1915.

The Constitution contains the following clauses defining the powers of the Legislature in matters of taxation:—

. . . and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said Commonwealth; and also to impose and levy reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities whatsoever, brought into, produced, manufactured or being within the same.

Under the second or so-called "excise" clause of the Constitution the Legislature has established our system for the taxation of corporate and other privileges, and the laws thus enacted are administered chiefly by the Tax Commissioner. In discussions of recent years little criticism has been aimed at these "excise" or "franchise" tax laws or at their administration. Under the first or "proportional" clause of the Constitution the Legislature has provided for the taxation of property. The taxation of property is municipal; that is, assessors are elected by and paid by the municipalities, and the assessors thus elected value all property taxed and levy the taxes. All tax laws are made by the Legislature, however, and no municipality can modify any tax laws in any respect. Assessors are not responsible to any municipal officials or to municipal by-laws or ordinances which conflict with tax statutes. The whole conduct of assessors is regulated by statute for the enforcement of which they take

oath. Thus, assessors are public officials rather than municipal officials.

“Proportional” taxation has been defined by the Supreme Judicial Court in various decisions. Roughly speaking, we may say that under the rule of proportionality it has been deemed necessary that every kind of property here taxed must be taxed at the same rate as every other kind of property which is taxed, or that all taxable property must be subject to the same rate of taxation. Each municipality is a taxing district, and it follows that there are as many tax rates as there are municipalities, since in every case the rate is merely a *quotient*, *i.e.*, the total amount to be raised divided by the total valuation of the assessed property in the municipality. Thus, the property of Woburn, with a rate of \$26, is not taxed “proportionately” with the property of Orleans, where the rate is \$3; but all taxed property in Woburn is taxed at \$26, and all taxed property in Orleans is taxed at \$3, — and so on in every municipality. The Supreme Judicial Court has said that it is not possible for the Legislature to establish a uniform tax rate for any class of property everywhere in the Commonwealth, leaving other classes of property taxable at various municipal rates. This would not be “proportional.” The Legislature does have power, however, to exempt classes of property from taxation without violating the rule of proportionality. This the Legislature has done, so that exemptions aggregate very large amounts of property. The principal exemptions now in force are: —

1. Property of the United States.
2. Property of the Commonwealth, of counties and of municipalities.
3. The property of literary, benevolent, charitable and scientific institutions.
4. The property of incorporated agricultural and horticultural societies.
5. The property of Grand Army associations incorporated.
6. Houses of religious worship.
7. Cemeteries, tombs and rights of burial.
8. The property to the amount of \$500 of a widow, an unmarried

woman, a person above the age of seventy-five years, or a minor orphan, if the whole estate of such a person does not exceed the sum of \$1,000.

9. The property of such persons as assessors judge to be unable to contribute towards the public charges.

10. Wearing apparel and farming utensils of every person, household furniture not exceeding \$1,000 in value, tools of a mechanic not exceeding \$300 in value.

11. Mules, horses and neat cattle less than a year old, swine and sheep less than six months old, and domestic fowls not exceeding \$15 in value.

12. Certain parts of the property of soldiers and sailors and of their wives and widows.

13. Bonds or certificates of indebtedness issued by the Commonwealth or by any county fire district, water supply district, city or town, if the same have been issued after certain dates specified in this statute.

14. Ships and vessels engaged in the interstate or foreign carrying trade.

15. Bonds registered with the Tax Commissioner under the provisions of chapter 761 of Acts of 1914. (Only certain kinds of bonds may be registered and thus exempted.)

16. Stock of corporations whose corporate franchises are subject to excise taxes.

No accurate statement of the total valuation of exempted property can be made, but it amounts to some hundreds of millions of dollars. Property subject to taxation as defined by the statute is —

(a) Real estate which includes not only the land but also "all buildings and other things erected on or affixed to the same."

(b) Personal estate classified as follows: —

(1) Goods, chattels, money and effects.

(2) Money at interest and other debts due the person to be taxed more than he is indebted or pays interest for.

(3) Public stocks and securities, bonds of railroads and street railways, stocks in moneyed corporations within and without the Commonwealth. (Our excise tax laws have materially modified this by providing that the shares of stock of domestic corporations are taxed directly by the State and are thus tax-exempt in the hands of the holder.)

(4) Income from profession, trade or employment in excess of \$2,000 a year.

The law directs each board of assessors to assess (subject to exemptions) annually all the real estate in the municipality, all the tangible personal property in the municipality, and all the intangible personal property (money, credits, taxable securities, etc.) belonging to residents of the municipality wherever this latter class of property may be located. All taxable property is to be valued at its fair cash value.

In the department of the Tax Commissioner there are four men whose business it is to "supervise" municipal boards of assessors and municipal tax collectors. To one of these four has been assigned the "supervision" of the cities, and the towns are apportioned among the other three. It is to be said that, generally speaking, the work of assessment is better done in the cities than in the towns for various self-explanatory reasons, — assessors of the cities are better paid, give more time to the work, have some clerical and other assistance.

The Tax Commissioner is by law required to give to assessors all information coming to his knowledge which may be of assistance to them. We thus furnish them with information as to taxable property appearing in estates of deceased persons, copies of reports of corporations, and numerous other items which come into our office in regular course. With relation to the above it is to be noted that the powers of the Tax Commissioner are only supervisory or advisory. The Tax Commissioner cannot *order* anything. Assessors are at liberty at all times to disregard the Tax Commissioner and his advices. While in the last five years the general character of municipal assessment has been improved because of supervision by the Tax Commissioner, yet in numerous cases accurate information furnished by him has been entirely disregarded. It is to be noted, also, that the Tax Commissioner has neither the legal power nor the administrative equipment to undertake to make any comprehensive valuation or revaluation of the whole or any part of the property of any municipality, even though undervaluations or uneven valuations may be known to him.

The revenues of the 354 cities and towns are derived prin-

cipally from the taxation of property of the classes set forth herein. In 1914 the total amount of taxes laid upon property of all classes was \$85,252,402. Of this amount, \$20,461,019 was the tax laid upon personal property and \$64,791,383 upon real estate; that is, 23.44 per cent. was on personal property and 76.56 per cent. was on real estate. The highest rate, viz., \$26, was assessed in the city of Woburn, the town of Clinton, the town of Huntington, and the town of Savoy; the lowest rate, viz., \$3, was assessed in the town of Orleans. Rates from \$5.50 to \$9.80 prevailed in 10 towns, \$10 to \$14.90 in 57 towns, \$15 to \$19.90 in 13 cities and 144 towns, \$20 to \$26 in 20 cities and 108 towns.

Now let us see how the system works and where its weaknesses are: the assessors are by law required to assess annually as of the first day of April the following principal classes of property, — subject, of course, to statutory exemptions: —

1. Land and buildings.
2. Machinery and tools.
3. Livestock, household goods, stocks of manufactures including raw materials, goods in process, and finished produce in factories, stores, etc.
4. Money and credits and securities not exempt or otherwise taxed, and income from profession, trade or employment in excess of \$2,000.

So far as the first two items are concerned, substantially accurate assessment is accomplished in many municipalities, but great improvement is possible. The assessment of the third class enumerated above is more difficult and is less well done. Too often assessors are satisfied with an offhand guess of the owner, — frequently they do not get even that. The fourth class enumerated above is the point at which is located by far the largest part of the failure of assessors and of our tax system. The law requires citizens to make sworn returns to the assessors. The statute indicates the general form of these returns, blanks for which are prepared by the Tax Commissioner and are uniform for all municipalities, but the great majority of persons do not make the returns. For such as fail to make the sworn return the assessors are required to

estimate the value of his property. This is very difficult, since money, credits and securities and income are seldom seen, and ownership of them, while it may be suspected, is not definitely known. The result is that large amounts of "intangible personalty" are not assessed. Generally speaking, this kind of property is assessed if owned by a person so conscientious as to make the sworn return, or by an estate (or beneficiary thereof) which has lately passed through probate, but not always by any means are these estates taxed. It is true, beyond dispute, that many boards of assessors do some conscientious estimating or "dooming" in attempts to tax this kind of property, but the results do not indicate that assessors have come anywhere near finding it all. In a communication to the House of Representatives in April, 1913, the Tax Commissioner estimated that not less than \$4,646,000,000 of taxable personal property escapes taxation. This is only an estimate. Nothing more than an estimate is possible. The total assessed value of real estate as reported by the municipalities as of April 1, 1913, is \$3,353,716,536, and of personal property, \$1,084,742,120. Estates of deceased persons coming under our scrutiny show three and one half times as much personal property as real estate. This is true of all the estates examined by us in a period of four years. Making what appears to be suitable allowances for exempted property, etc., the conclusion as above is reached.

A large part of this untaxed (but taxable) property is located in the more wealthy municipalities, some of which have been called "tax dodgers' retreats." One cannot escape the conclusion that in many cases this title is deserved, and the further conclusion that assessors of some municipalities make little genuine effort to tax intangible personal property according to law. There are some indications — and there is a somewhat widespread belief — that in some municipalities assessors have privately agreed with certain residents that their property will not be assessed. Thus certain towns have become the legal residences of men of wealth, to mutual advantage, — the men have been largely untaxed on their personal property and the towns have benefited because the bank

stocks and Massachusetts corporation stocks owned by these men have brought large amounts of taxes into the town treasuries via the State treasury. Thus it comes about that there is a great variation in tax rates (in 1914 the highest is \$26 and the lowest is \$3), and that very large amounts of wealth tend to settle in the towns having low rates. Taxation as between the municipalities is thus very uneven. It is not a satisfactory answer to say that each town's taxes are its own business. Let us see how the State and county taxes and metropolitan assessments bear on this question. In 1914 these three items aggregated 21 per cent of the total property taxes of the State. The State and county taxes are charged against the different municipalities according to a table made by the Tax Commissioner and enacted into law. Metropolitan assessments are charged against the municipalities in the several metropolitan districts according to standards established by statutes, but the aggregate of these assessments is levied on the property as assessed by each municipality. There are several factors considered by the Tax Commissioner (according to law) in making the table for the apportionment of State and county taxes. The principal factor is the assessed valuation of the municipality as reported by the assessors. Therefore there is a strong inducement for assessors to make low valuations, since thereby the town's portion of the State tax will be less. There are municipalities where this consideration has controlled assessors. The following is from the testimony of an assessor of Lenox given to the legislative committee on municipal finance in 1911:—

The CHAIRMAN. I will ask you the same as a I asked before,—if you had a house built this year, costing a thousand dollars, what would you tax it? I don't know as you have any as low as that in Lenox, do you?

Mr. ROOT. Well, we have a few of them, but not very many. Now I will tell you; we have been assessing up to this past year between 50 and 60 per cent. of what we consider the cash value.

The CHAIRMAN. Now what do you do?

Mr. ROOT. Then, on the new residences that have been put up, — on residences where we could find out what the cost has been, we have put it in at about 55 per cent.

Representative BLISS. Do you consider that a fair cash value?

Mr. ROOT. Why, I don't consider it a fair cash value, but — I'll tell you — I will admit that we have been instructed by the State for two or three years to increase our valuations. I wanted to keep the valuations down, with the idea that our State taxes would be less, but I find that I have been mistaken; I have had the wrong idea. So then this year we started in to increase our valuations, and we are going to, this fall, revalue the town.

Representative BLISS. You have not been carrying out the oath of office that you took.

Mr. ROOT. To my knowledge I have, sir. I think we had — I did not know that we were compelled to assess real estate to the full cash value.

Representative BLISS. Then you did not read the law.

Mr. ROOT. I have read it several times, and possibly misconstrued it; that is all. When you asked this question — that brought it back to my mind, now — I asked the State deputy, and he asked me several times — in fact, it is understood, and we have known that we only assess the houses at between 50 and 60 per cent. in the previous years; they have never told me anything different, so I thought that I was doing all right.

Representative BLISS. You say you have been taxing at about 50 per cent., and now you put it up to 75 per cent.?

Mr. ROOT. Between 50 and 60. In the last year, when we had new residences, we put it at 75 per cent.

Representative BLISS. Is that how you get your increase of three million, in 1911, over 1910?

Mr. ROOT. No, sir.

Representative BLISS. \$2,278,000? Where did that come from?

Mr. ROOT. It was added taxes.

Representative BLISS. That \$2,278,000?

Mr. ROOT. Yes, sir; I might mention that in the beginning of the year, when we started with our work, this person was deceased; I assessed her on \$600,000 personal property, and after the will was probated, we discovered that we had two million and some odd more coming to us, which we levied the tax on.

Representative BLISS. Don't you think if you did that with a lot of your residents down here that they would stand for it a great deal more, on their personal taxes?

Mr. ROOT. I have done it this year; and we are having all kinds of trouble.

Representative BLISS. Do they file statements?

Mr. ROOT. A great many of them do, and a good many of them do not. That is what I am trying to have them do.

Representative BLISS. Yes.

Mr. ROOT. That is what I am trying to do. I am trying to compel them to do it now, I won't make any reduction to any of them until they file the returns.

Representative HOLMES. How long was this two million and a quarter that you discovered, in the probate office, — how long had that been in your town of Lenox?

Mr. ROOT. If I am not mistaken, it was between five and six years, and this person had been paying on \$25,000 personalty.

Representative BLISS. Does your Board follow up the probate office every year?

Mr. ROOT. Yes, recently; I didn't do it the first two or three years, but I have been following it as well as I could for the last two or three years.

Representative HOLMES. This is the same deputy tax commissioner who they testified came to Lanesborough — that is the same one that comes to you? Does he have the whole western territory?

Mr. ROOT. I think so.

Representative HOLMES. As far east as Worcester?

Mr. ROOT. I think so; I think that is the western part of the State.

Representative BLISS. Do you do any dooming? Do you doom any of your taxpayers? Do you put the amount up, until they get about as high as they will stand?

Mr. ROOT. For the past two years I have been increasing all of them.

Representative BLISS. You say you have more or less trouble with them?

Mr. ROOT. I am having this year — more than ever.

Representative BLISS. Is it the parties who have not filed returns?

Mr. ROOT. Yes, we have had no trouble with the people who file their returns.

Representative BLISS. Can you tell the committee what this abatement of \$208,000 was in 1911?

Representative HOLMES. That is on the valuation?

Representative BLISS. Yes, on the valuation.

Mr. ROOT. In 1911?

Representative BLISS. Yes.

Mr. ROOT. It was abatement on personal property; it was reassessed afterwards to another party.

Senator HERSEY. You say that on some of these estates you have been accustomed to assess about 50 per cent. on what you consider the cost?

Mr. ROOT. Yes.

Senator HERSEY. How do you consider the cost in some of these large landed estates, where you have a large amount underground?

Mr. ROOT. I will tell you; I know in some instances, and in others I have simply had to guess at it; in a few instances, recently, within two or three years, I am in touch with the people who are building, as a rule.

Senator HERSEY. Who are what?

Mr. ROOT. I am in touch with the person who is building the property, and I have inquired as to what their contracts were; I have made it a point to see if I could find out in that way, and I know very nearly the cost; I think there are one or two persons who told me, around Lenox, what they paid in the first place; and they give me a list of that; that is only in one or two instances, however.

Senator HERSEY. Of course on such property as that, even if it were only 50 per cent., it would be very doubtful if, after the man had finished, it would be a very large sum —

Mr. ROOT. That is one difficulty with them; we have some very magnificent places.

Senator HERSEY. I am aware of that.

Mr. ROOT. And very expensive buildings, and those expensive buildings are more a hobby than anything else.

Senator HERSEY. Certainly.

Mr. ROOT. For that reason we have been rather lenient in putting our valuation on it, because I think if the property was on the market it would not bring any sum nearly as much as we have levied; it is rather a difficult matter, I find, to value some of these places.

Representative BLISS. What is your tax rate?

Mr. ROOT. Eleven dollars.

Representative BLISS. It was 16 — \$16.50 last year?

Mr. ROOT. Yes.

Representative BLISS. How do you account for the drop of \$5.50?

Mr. ROOT. In the first place, our budget was — I forget just exactly the amount — \$35,000 to \$38,000 less, and we have been able to assess quite an amount in personal property this year that we had not had in previous years.

Representative BLISS. If you assess all that it was worth, in personal property and real estate, you would reduce it much more than that?

Mr. ROOT. I would be very glad to see if we could do it; I would do so; then we would not have a tax rate of more than \$8 in the year.

Representative HOLMES. Mr. Assessor, when you say that you are beginning now to assess the new estates on a new basis, aren't you a little hard on the old estates, — still on the old basis.

Mr. ROOT. I will tell you why, sir, we have done it this year. We are going to revalue the whole town. For instance — I will tell you why I am going to do it. The State, as you no doubt know, has valued our town at \$18,000,000.

Representative HOLMES. When did you find that out?

Mr. ROOT. This spring — this summer.

Representative HOLMES. Who told you about that?

Mr. ROOT. The deputy tax commissioner.

Representative HOLMES. That is the first time you found out that you were not going to be allowed to dodge your State tax any more?

Mr. ROOT. It was not the idea of dodging it —

Representative HOLMES. No — perhaps I use the wrong word. I should say “reduce” the State tax.

Mr. ROOT. Yes. I understood the smaller the valuation, the smaller the tax rate would be, but I found that I was mistaken; I found it out through asking the deputy about it. He informed me that they were valuing our town at \$18,000,000. — (Pages 2118-2123 of hearings given by this committee, on file in State Library.)

But in other municipalities low valuations are impossible because the revenue requirements are large. Such places find it necessary to make full valuations in order to secure necessary revenue, and thereby they subject themselves to the payment of an undue proportion of the State tax. In this way the greatest inequality and disproportion as between municipalities exist. The apportionment of the several county taxes among the municipalities of the respective counties similarly to the State tax accomplishes similar inequalities for similar reasons. It is true that in making up the basis for the apportionment of the State tax the Tax Commissioner may add to the assessed valuations of any municipality such amount as he sees fit. In 1913 he added altogether some three hundred and fifty millions. With what result? The addition by the Tax Commissioner of an amount increases the amount of State tax to be paid by the municipality; but the municipality assesses this larger amount not on the property values found by the Tax Commissioner, but on the smaller amount the assessors have reported. Thus directly the taxed property pays a State tax with reference to itself and also with reference to some untaxed (but taxable) property. With State and county taxes aggregating some thirteen millions the inequality and injustice thus perpetrated is very great.

It is a fact, therefore, that every attempt made by the Tax

Commissioner to equalize and make proportional as between the municipal units the basis upon which State and county taxes and metropolitan assessments are required to be paid does increase the inequality and disproportion of taxation as it affects the property and persons of any and every municipality. For example, in making up the basis for the State and county taxes in 1912 the Tax Commissioner added to Brookline's assessed values some \$34,000,000. The presence of these additional values was not denied by Brookline. By the additions of the Tax Commissioner the State tax of Brookline was increased nearly \$37,000; but this amount was in no part assessed upon the \$34,000,000 of taxable values found by the commissioner; these values were entirely unassessed. This charge, like all others, was levied only on the property actually assessed.

Further, the Tax Commissioner was able to add only three hundred and fifty millions to municipal assessments, while he believes that there is ten to fifteen times as much property escaping taxation. This indicates how successfully concealment is accomplished.

This matter of the State and county taxes is set forth to show that the Commonwealth has a vital and large interest in taxation, and that there exists under our present tax system the greatest disproportion, both intermunicipal and with relation to persons and property in the same municipality.

Now let us see how the imposition of our taxes affects various classes of property. Take the typical case of an estate composed as follows:—

Real estate in Massachusetts assessed at	\$10,000
Mortgage on real estate in New York (5 per cent.),	10,000
Cash in bank (drawing interest at 2 per cent.),	10,000
Shares of Pennsylvania Railroad Company (bought on 5 per cent. basis),	10,000
Bonds of State of New York (3½ per cent.),	10,000
Bonds of a Maine corporation all of whose property is in Massachusetts (5 per cent.),	10,000

Suppose this estate is situated in a city of Massachusetts having a \$20 rate. The total estate is \$60,000; every item

is taxable; accordingly the tax will be \$1,200. With relation to the real estate no serious burden will be imposed because generally real estate is bought and sold and leased on the basis of passing the tax on to the tenant. Whatever the tax on it, it is true, in general, that the income *net* to the owner may be set down as 4 per cent. or 5 per cent. Thus in this case, after the tax has been paid, we assume that the owner has a 5 per cent. income.

The mortgage secured by real estate in New York is in essence nothing but an interest in real estate. Our own statutes thus recognize a mortgage secured by real estate in Massachusetts and do not undertake to tax both the real estate and the mortgage. But if the security for the mortgage (that is, the real estate) is situated outside of Massachusetts, then our statutes appear to proceed upon the assumption that there are two values, viz., the value of the real estate itself, which of course is taxable in New York, and the value of the mortgage itself, which in such a case our statutes make taxable here upon its full value. Thus an estate which owns this mortgage and receives (at 5 per cent.) an annual income of \$500 from it is called upon to pay \$200 in taxes. The net income is therefore \$300, or 3 per cent. And yet the mortgage generally has value only because of the value of the New York real estate, itself fully taxed. This is a clear case of double taxation.

The next item in our estate is cash on deposit, which may be receiving 2 per cent. interest, — certainly not more. It is not probable that an estate of this kind would have \$10,000 of cash on deposit the year round. If it did, however, the entire income from it would be only \$200, and the tax would take the whole of the income for the year.

The next item is the shares of the Pennsylvania Railroad. This is a foreign corporation and its shares of stock are taxable property according to our laws. A first-class stock like this is bought to yield as low as 4 per cent. In this case we assume a yield of 5 per cent. Now when our estate purchased this stock, it in effect removed \$10,000 of wealth or property entirely from Massachusetts, and caused it to be

located somewhere in the territory occupied by the railroad. It became a small piece of roadbed, or rails, or a freight car, or a part of a locomotive; at any rate it left Massachusetts. It became property subject to taxation where located, or perhaps part of a franchise exercised entirely outside of Massachusetts, not within our taxing power but subject to taxation where exercised. For sending its wealth beyond the borders of Massachusetts and turning it into a part of the property of the railroad our estate received an engraved piece of paper called a certificate of stock. This stock has value only because of the property and rights of the railroad, all of which are undeniably beyond the taxing power of Massachusetts. Yet our laws call this certificate of stock property in the same way that they call land in Massachusetts property. They tax the two alike. The income derived by our estate from this railroad stock is \$500, and of this amount \$200 goes for taxes. In this case also the net income is \$300, or 3 per cent. on the investment.

The next item is the bonds of the State of New York. They have been acquired at a price which yields $3\frac{1}{2}$ per cent., or \$350. Of this amount, \$200 is paid for taxes, and the net income is \$150, or $1\frac{1}{2}$ per cent. Such bonds are a very desirable investment. They are sound because of property and facts entirely outside of Massachusetts. Our estate has in effect turned over to New York State its property, which has become part of a public building or a canal or some other public work. The bond itself is an engraved paper, of no value except because of the promise of a sovereign State engraved thereon, signed and sealed. Yet our tax laws call this bond property just as they call land in Massachusetts property, and they tax the two alike.

The last item in our estate is bonds of a Maine corporation, all of the property and business of which is located in Massachusetts. Such bonds are usually issued by a mill corporation, and may be either debentures or bonds secured by a mortgage upon all the property of the corporation. In the case of such a corporation the real estate, machinery and the stock of raw material are all taxable to the corporation, upon

the full value thereof, at the rate prevailing in the municipality where they are located. The rate is likely to be as much as \$20. The bonds issued by such a corporation have value only because of the property and business of the corporation, all of which are situated in this State and all or most of which are taxable. And yet such bonds for purposes of taxation are considered the same as land or other actual property here and are taxed accordingly. In this case the property is taxed as such, and the bonds which derive their only or principal value from such property are also taxed. In our estate the income derived from the bonds is \$500, and the tax takes \$200, leaving a net income of \$300, or 3 per cent. Here we have double taxation in its worst form, because the property and the bonds are both in Massachusetts and are both taxed here as though there were two values, whereas in fact there is only one value. It is true that with reference to the two items of bonds in this estate there may be an offset in the amount of the debts of the estate, but it frequently happens that there is no indebtedness; in all such cases taxation falls exactly as here set forth.

The foregoing illustration of what an estate (whether of a deceased or a living person) may contain is not fanciful; it is real and true in all essential respects. It is frequently said or believed that estates containing such items of property belong only to the rich. This is contrary to the actual fact. In our administration of the inheritance tax law we find hundreds of estates small in total value but so composed that their taxation is similar to that of this example. The following summary of facts relating to the property of this estate and its taxation under our laws may be made:—

1. The total income of the estate is \$2,550; of this amount \$1,200 is required for taxes in Massachusetts, or over 47 per cent. of the whole income.

2. Thirty thousand dollars of the whole estate, or 50 per cent. (items 2, 4 and 5), represent property entirely outside of Massachusetts for which our estate holds only paper evidence of ownership.

3. Ten thousand dollars of our estate, or 16½ per cent. (item 6), is fully taxed in another form in Massachusetts.

4. Ten thousand dollars of our estate, or 16 $\frac{2}{3}$ per cent. (the cash), is uninvested capital which under such circumstances cannot be expected to produce much if any more than is necessary to pay the tax.

If we were to assume other items of property in our estate for further illustration, we should not thereby add any essential element to the situation. The facts as set forth show how uneven and unreasonable the actual operation of our tax laws may be, for we assume no argument is necessary to convince one that tax laws which absorb 47 per cent. of the income of a typical estate are unreasonable, or to show that our laws act unevenly if, as in this case, they tax at the same rate property which is itself in Massachusetts and property entirely outside of Massachusetts of which only the paper evidence is here.

It goes without saying that persons who own estates composed as is this one use every proper and some improper means of keeping it secret from assessors. The statutory requirement that every person shall annually file a sworn list of his property is observed by only a small proportion of the people. The records of the estates of deceased persons are public records, however, and assessors generally (though not always) use these records to assist in taxation by estimate or doomsage. During the last seven years the Tax Commissioner has given information to assessors in hundreds of cases; but the cases which he has thus called to the attention of assessors constitute but a small fraction of the total which must exist in the Commonwealth. Thus in actual operation our tax laws reach some cases and fail to reach a much larger number, and there results the greatest disproportion in taxation.

Another fact which argues inequality and disproportion is the great variation in municipal tax rates. In our example we assumed a \$20 rate, which absorbed in taxes 47 per cent. of the total income of the estate. Suppose we had assumed a \$26 rate, which was actual in 4 municipalities in 1914; then taxes would have absorbed over 61 per cent. We assume the lowest rate of 1914, viz., \$3; then taxes would have absorbed \$180, or only 7 per cent. of the income. Now, whatever is the reasonable ability of such an estate to pay

taxes it certainly is not 7 per cent. of its income in one municipality and 61 per cent. of its income in another municipality. It is undeniable that estates of this kind exist in many municipalities of varying rates. The estates are alike in all essential respects, and yet the extent of their taxation, if they are taxed strictly according to law, differs greatly and is extremely disproportionate. Under such circumstances we need only ask the question, "In what municipalities will such estates tend to locate?" No extended answer to this question needs to be given. It is well known that municipalities having low tax rates seek and secure the location therein of many persons owning considerable property; it is equally well known that persons owning small estates cannot generally leave the industrial cities and towns where tax rates are always high and secure domicile in the residential towns which have low rates. This whole situation of high and low rates shows exceedingly great unevenness and disproportion in taxation and the amount of tax burden to be borne by people residing in different parts of the Commonwealth.

The State tax each municipality is required to pay into the State treasury is raised (as a part of the municipal rate) by an assessment upon the property in the municipality. The following table is made up of figures for 1914:—

NAME.	Total Amount of State Tax.	Amount of State Tax per \$1,000 of Assessed Valuation.
Andover,	\$19,862	\$2 311
Belmont,	18,637	2 111
Boston,	2,878,750	1 867
Brookline,	257,250	2 116
Cohasset,	20,212	1 982
Dover,	12,075	1 440
Easton,	21,000	2 950
Fall River,	199,937	1 955
Falmouth,	29,575	1 786
Greenfield,	22,750	1 744

NAME.	Total Amount of State Tax.	Amount of State Tax per \$1,000 of Assessed Valuation.
Hamilton,	\$11,200	\$1 816
Lancaster,	28,437	4 112
Lawrence,	149,362	1 871
Lenox,	21,962	2 409
Malden,	84,437	1 991
Manchester,	43,400	2 585
Marion,	12,775	2 174
Methuen,	21,612	2 302
Milton,	60,462	1 913
Nahant,	24,762	2 850
Newton,	154,000	1 841
New Bedford,	212,100	1 963
North Adams,	32,025	1 936
Northbridge,	15,225	2 727
Orleans,	3,325	.866
Pittsfield,	71,837	1 783
Quincy,	68,250	1 666
Springfield,	279,912	2 125
Swampscott,	29,837	2 125
Williamstown,	10,675	2 086

The second column of figures shows that assessed property in various parts of the Commonwealth contributes varying amounts to the State tax. Thus in Lancaster each \$1,000 of assessed property actually paid in 1914 \$4.112 into the State treasury, while in Orleans each \$1,000 paid only \$0.866. Thus so far as the State tax is concerned there is no "proportional" contribution. To have had such contributions proportional each \$1,000 of assessed value in the Commonwealth should have paid \$1.90 into the State treasury.

That taxation in Massachusetts as it actually operates is not equal and proportional is not and cannot be denied by any one who is familiar with the facts. There are those, however, who vigorously claim that strict enforcement of our present tax laws will result in proportional taxation as con-

templated by the Constitution. "The general purpose of the constitutional provision above quoted is to put the burdens of government equally upon all the people in proportion to their ability to bear them." (195 Mass. 609.)

If the capital value of all kinds of property is a reasonably accurate standard by which to measure the ability of the individual to support government, then it may be granted that a strict and uniform enforcement would produce proportional contribution from all property owners *in the same municipality*; but, even so, there would follow greater disproportion than now exists between property owners *in different municipalities*. It is argued that if by enforcement of our present tax laws we were to increase greatly the amount of property which is assessed for purposes of taxation we should thereby materially reduce the tax rates. It is believed by many that tax rates would thus become perhaps half of what they now are. It is a fact which I have observed in many cases during the last five or ten years, and about which I have absolutely no doubt, that the tax rate in a given municipality becomes high only after there has been made more than an average attempt to assess all the property in the municipality; that is, boards of assessors and city or town officials try to control the tax rate, rather than primarily to find all the assessable property. It is generally believed that a high tax rate is a bad advertisement for a city, and that all possible efforts ought to be made to keep the tax rate low. Thus I risk little in saying that long before a tax rate has become \$20 there has been made strong effort to increase the assessment of taxable property. The effort thus made by assessors in cities and towns where the tax rate threatens to reach, or is in danger of approaching, let us say, \$20, is much greater than is a similar effort made in other cities and towns (especially in the residential towns) where the tax rate is, let us say, \$10 or \$12, and where such a rate produces enough revenue to afford to the citizens of the town the best of everything. Thus it is a fact that enforcement of the tax statute is more nearly approached in the places where the tax rate is high than it is in the places where the tax rate is

low. To illustrate: my observation leads me to the conclusion that if we were to assume that 50 per cent. of the taxable property is actually assessed in, let us say, Fall River or Lawrence or Haverhill, we should be entirely justified in assuming that in Lancaster and Manchester and Brookline (for example) not over 25 or 20 per cent., or even a smaller proportion of the total taxable property, is actually assessed. This situation, which I have observed for many years, the proof of which is difficult to set forth and yet nevertheless can be found, tends to demonstrate that if all the taxable property were suddenly assessed we should find that the tax rate would be cut in half in some municipalities, and we should as surely find that the tax rate would be reduced much more than 50 per cent. in many of our other cities and towns. And, in general, the cities and towns in which the reduction would be largest are those places where the tax rate at the present is the lowest. The result, therefore, of a sudden enforcement of the law by which all taxable property should be written upon the assessment books would be a greater diversity than now exists in municipal tax rates. I have no hesitation in saying that the disproportion in taxation borne by residents of the different cities and towns would be vastly greater under a rule of strict enforcement than it is under our present practice. I am bound to say that there is very little inducement for any board of assessors to enter upon a campaign of strict enforcement. The risk is too great. Assessors know of the experience of the city of Malden, and from it they get little to encourage them. Previous to the year 1909 the tax rate of the city of Malden had been high, — in 1907 it was \$18 and in 1908 it was \$19.20. The assessors for the year 1909 evidently had a regard for their oaths of office which is not always entertained by assessors, and they appear to have believed it to be their duty to see to it that all the property of which they could get track was actually assessed. Accordingly, the amount of property assessed in 1909 was increased to such an amount that the tax rate became \$15.70. This lower tax rate, however, did not continue. The facts as to the assessment in Malden for a series of years appear in the following table: —

YEAR.	Tax Rate.	Assessed Personalty.	Assessed Real Estate.
1908,	\$19 20	\$6,734,100	\$26,867,400
1909,	15 70	12,751,080	28,438,600
1910,	18 50	10,376,184	30,115,200
1911,	19 40	8,970,036	31,102,200
1912,	19 20	8,438,596	31,943,100

These figures tell the story of the experience of Malden perhaps as well as an extended explanation would tell it. In 1909 considerable dooming was used by the assessors, so that the amount of personal property actually assessed was very nearly twice as large as it had been in the previous year. The amount thus appearing as assessed in 1909 steadily decreased, and the reason for the decrease was primarily that residents moved away from Malden, carrying with them to another domicile large amounts of personal property. For one year, namely, 1909, Malden had a tax rate which was low as compared with its previous experience; but the whole experience of Malden offers little if any encouragement to the assessors of any city or town to undertake a campaign of dooming and enforcement. This example of the city of Malden is cited for the reason that it has been in general terms well known to the public. I might with equal propriety cite the experience of boards of assessors in other cities and towns with relation to one or more citizens, where it has developed that dooming by which a largely increased amount of personal property is actually assessed has caused citizens to remove from the municipality and take up residence in another city or town. It is true that in the place to which a taxpayer goes it is necessary for the assessors to assess him upon personal property at an amount not less than that on which he was last assessed in the town from which he had come. This always or nearly always takes place, since assessors of the town from which the resident removes are careful to inform the assessors of the town to which he goes. If, however, the person removes from a place of a high tax rate to a municipality

where the rate is lower, even though he is assessed upon the same amount of personal property, the amount he pays in taxes is greatly reduced. The difficulties attendant upon a change of domicile for a person of considerable property are not great. This fact for all practical purposes serves to establish a limit beyond which doomsage cannot be used. The result is that the property owner, even though he files no list, can in far too many cases determine the amount at which his personal property shall be assessed by a threat, actual or implied, that if his assessment is too much increased his domicile will be changed. This is a situation confronting all or nearly all boards of assessors to such an extent that not much doomsage is used against those owners of considerable amounts of property who can easily change domicile. It has been already stated and sufficiently shown that a complete enforcement of our tax laws in all municipalities throughout the State would not reduce the inequality of taxation as between the various municipalities but would tend rather to increase this inequality and disproportion. Thus the tendency of property owners to remove from places where the tax rate is high and to settle in other places where the tax rate is lower would be increased rather than decreased by an enforcement of the statute.

There also exists another factor which must not be lost sight of. This is the possibility of removal of residents of Massachusetts entirely from this State to another. This is much emphasized, and I am satisfied that within the last few months, comparatively speaking, it has been much resorted to, either by actual change of domicile or else by the creation of trusts under which property is held by trustees, either natural persons or corporations, located entirely outside of Massachusetts. It is entirely possible to create such trusts so as to avoid all taxation in this Commonwealth. I am satisfied that this practice has been resorted to in a number of large cases in the immediate past, and that it is likely to be resorted to much more in the future unless a material modification in our system of taxation is quickly adopted. It is to be observed that in Rhode Island and Connecticut securities,

credits and cash are fully taxed according to law if they pay a tax at the rate of \$4 on a thousand. In New York State the taxation is even less. New Hampshire, apparently, is about to pass a statute which provides for the exemption of property of these classes, and the taxation of its income only at the rate of taxation prevailing in the various cities and towns. If this act becomes a law in New Hampshire there will result a rate of taxation which will amount to substantially \$1 on the thousand of capital value, as compared with our rates of \$20 or even more. The State of Maine has already modified its Constitution and is apparently about to adopt a statute which allows for the taxation of credits and securities at rates other than those applying to the balance of the taxable property of the State. With Massachusetts surrounded by these conditions, and possibilities of legal domicile under other jurisdiction in accordance with which it will not be necessary to remove business or actual residence from Massachusetts to any great extent, it is scarcely to be conceived that persons of property will continue to reside here and pay \$16 or \$18 or \$20 per thousand upon their securities; rather will they go to Rhode Island or Connecticut and pay \$4, in New York even less, in New Hampshire perhaps \$1, or in Maine some small amount not yet actually determined by statute.

I have heretofore during the last few years conceived it to be my duty to emphasize to the Legislature the necessity of enforcing our present tax laws so long as they remain upon the books, and I have repeatedly requested legislation of my own conception and also in many cases legislation introduced on private petition, which I believed would result in securing a degree of enforcement of the tax statute which we have not heretofore had. My reasons for asking for additional laws which would secure the actual enforcement of our tax statutes are, it seems to me, compelling and perhaps need not be set forth here. I do not think, however, that enforcement will improve conditions with relation to the proportionality of taxes. I am rather convinced that proportionality will be less on the whole if we have vigorous enforce-

ment than it is at the present time. So long as our tax laws remain unchanged I expect that I shall conceive it to be my duty to continue to ask the Legislature to see to it that means are established for their enforcement. Nevertheless, it is undeniably true that stricter enforcement of tax statutes such as ours, while it may afford us much satisfaction in that we are attempting to live in accordance with our own laws, yet nevertheless will not put our tax laws in accord with the industrial and economic organizations of society in Massachusetts, or of society and industry in the whole country and in the world at large. I am abundantly satisfied that reasonable and proportional taxation in the sense in which these terms were originally used in our Constitution is impossible of accomplishment, whether under lax or strict enforcement of the laws we now have on our books. If it is necessary for us to adhere to the meaning of the word "proportional" as we have heretofore apprehended it, then it seems to me the word "proportional" in all or in part must be taken out of our Constitution. By this I mean that we must depart from the idea of proportional taxation as I understand it has been defined and limited, and which has resulted as a matter of practice in the most disproportionate and unreasonable taxation between residents of various towns, and also as between residents of the same town owning different classes of property, and which I am satisfied would cause equal or greater disproportion and unreasonableness under a more strict enforcement. This would be accomplished to a considerable extent by the amendment passed last year, which should be again passed this year, unless all that it proposes can be accomplished under the existing Constitution. Before we actually amend our Constitution it may be the part of wisdom to ascertain, so far as possible within reasonable limits of time, whether we have employed all the methods possible under the Constitution to secure taxation which is actually reasonable and genuinely proportional. I am informed that there is a strong opinion, held by many persons whose judgment ought not to be entirely disregarded, that certain forms of taxation, or rather certain methods of

exemption, are possible under our present Constitution which would serve to eliminate much of the difficulty of our present tax system because they would make possible, by means of exemption, a distinction between classes of property which in no sense ought to be compared for the purpose of determining ability to pay taxes. It ought to be possible for the Legislature, if it shall so desire, to ascertain by questions submitted to the Supreme Judicial Court whether such action as is hoped for may be accomplished under our present Constitution. It seems to me that Senate Bills No. 438 and No. 439 might well be made the subjects of certain questions propounded to the Supreme Judicial Court with the purpose of ascertaining whether such legislative action as is indicated by either or both of these bills is permitted by the present Constitution. If it is possible, and the court should so inform the Legislature, I think it ought to be possible for us to make such changes in one of these bills as may appear to be necessary, and to have it enacted into law this year, to the end that we may stop migrations of persons and property from Massachusetts, and to the much greater end that we may proceed without further delay to establish in this Commonwealth a system of taxation which will be more actually reasonable and more genuinely proportional than is the system which we have had in this Commonwealth for many years.