

nominally reserved to the states. Yet while authorities in state taxation complain bitterly about the large differences in tax structure and tax treatment of business income and commodities from state to state, these differences are very narrow compared with those between countries. Commodity taxation is predominantly at the retail level—the administratively simpler manufacturers' excise tax is virtually non-existent—and the rates are very close to one another, particularly between contiguous states. State taxation of corporate income also tends to be much the same from state to state, and differences in rates, coverage, and definition of taxable income have narrowed over time.³²

The reasons for increasing uniformity are obvious enough. The freedom of commodities, capital, and persons to move from state to state without legal impediment, and the ease with which they do so, reduces greatly the scope for wide differences in tax treatment since both purchasers and sellers will leave the high tax states. A striking example of the pressures toward uniformity is provided by North Carolina's adoption in 1957 of a new tax law which changed the basis for calculating state taxes on the net income of corporations engaged in interstate commerce. The new law had the effect of reducing the tax burden on out-of-state corporations making interstate sales from bases in North Carolina and, moreover, it relieved in-state corporations from paying North Carolina income taxes on income derived from out-of-state sales.³³ The tax change was frankly designed "to encourage more industry to locate and expand in the State."³⁴ Within three years South Carolina and Virginia had adopted essentially the same formula, as the governor of South Carolina explained, "to keep competitive."³⁵

Under this pressure of acute competition for industry, measures are taken which benefit industrial firms but which, since most states are following similar practices, may not much affect the actual location of industry. It is not surprising, therefore, that there are perennial cries for greater coordination of state taxation, and even for uniformity. In 1957 the National Conference of Commissioners on Uniform State Laws approved a model Uniform Division of Income for Tax Purposes Act which would eliminate the pointless competition among states in their tax laws. But to date only three states have adopted the approved act in its entirety, and even then not without modification;³⁶ no state acting alone has much incentive to adopt it. Hence, even state tax commissioners and others who might be supposed to be jealous of states' rights have called on the federal government to impose uniformity on state taxation of corporations engaged in interstate commerce (which means in effect virtually all direct taxes on business).³⁷

A noteworthy feature of this competition among the states is that much of it arises from the mobility of business. Taxation and regulatory activities are less effective if the range of feasible business locations exceeds the jurisdiction of the taxing or regulatory authorities. State regulatory laws began to lose effect around the turn of the century when American corporations increasingly became truly national in their operations.

To some extent, however, similar problems arise from mobility of persons, especially when a metropolitan area is made up of several governmental jurisdictions, persons working in the area can choose to live where taxes are lowest even while enjoying the public benefits of the central city.

³² See *Special Subcommittee on State Taxation of Interstate Commerce of the Committee on the Judiciary, State Taxation of Interstate Commerce*, H.R. Rep. No. 1480, 88th Cong., 2d Sess., 95-126 (1964). See also, J. MAXWELL, *THE FISCAL IMPACT OF FEDERALISM IN THE UNITED STATES* (1946) especially Ch. XIII.

³³ The first of these two features recalls some of the tax privileges of foreign corporations setting up sales offices in Switzerland. The second, amounting to a remission of direct taxes on export sales, would at the international level be a clear violation of GATT rules.

³⁴ Advertisement in N.Y. Times, Nov. 17, 1957.

³⁵ STATE TAXATION OF INTERSTATE COMMERCE, *supra* note 32, at 123-26.

³⁶ *Id.* at 133.

³⁷ The situation is actually somewhat more complicated than this implies. States, faced with rapidly increasing needs for revenue, widened their business taxes considerably during the fifties to include a number of taxes touching significantly on interstate commerce. In 1959 the Supreme Court in *Northwestern Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959), upheld the right of Minnesota to tax the net income of an out-of-state business arising from sales in the state. A series of decisions on related cases made clear the wide taxing powers of the states. The business community was alarmed, and in late 1959 Congress passed a law limiting the rights of states to tax interstate commerce. Many states resented the limitation of their taxing powers, but—caught between rising revenue needs and competition with other states—urged the Congress to legislate uniform standards for defining tax base, apportioning income, etc. See *Hearings on State Income Taxation of Mercantile and Manufacturing Corporations Before a Special Subcommittee of the House Committee on the Judiciary*, 87th Cong., 1st Sess. at 367 (1961).