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BARCLAY 7-2051

Ans
Aug 11/40 January 30, 1940

Mr. Lawson Purdy,
640 West 158 Street,
New York City.

Dear Mr. Purdy:

Enclosed is a proposal for land valuation tax bill for New York State; also proposals for two amendments to the state constitution; also an explanation of the bills.

Copies of these papers have been sent to Harold S. Bутtenheim, Dick Eyre, Harry Maguire, Phil Cornick and a few others who are interested in the practical work of getting land value legislation before the people.

We are trying to put Henry George's philosophy in a concrete legislative proposal. It is not primarily a tax reform measure.

We would like to get your reaction to these proposals and any criticism or suggestion that may occur to you.

Yours truly,

Walter Fairchild

WF:HW

S T A T E O F N E W Y O R K

No. _____

Int. _____

IN SENATE

- - - -

Introduced by Mr.

A N A C T

To promote the general welfare, to eliminate business depressions and unemployment and to give all men equal rights to the use of the earth by taking the value of land in taxation and repealing taxes on labor products and industry.

STATE OF NEW YORK

No. _____

Int. _____

IN SENATE

Date _____

Introduced by Mr. _____

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

Proposing an amendment to section 10 of article I of the constitution, in relation to ownership of lands; allodial tenures; escheats.

Section 1. Resolved (if the Assembly concur), That section 10 of article I of the constitution be amended to read as follows:

§10. Ownership of lands; allodial tenures; escheats.

The people of the state, in their right of sovereignty, possess the original and ultimate property in and to all lands within the jurisdiction of the state. All lands shall forever remain allodial so that the entire and absolute property is vested in the owners, according to the nature of their respective estates. The value of land, however, being created by the presence and activities of all the people is declared to be the common asset of the people of the state and the legislature shall pass appropriate laws to recover the full annual value of all lands exclusive of improvements within the jurisdiction of the state for the use of the state and its subdivisions. All lands the title of which shall fail, from a defect of heirs, shall revert, or escheat to the people.

§2. Resolved (if the Assembly concur), That the foregoing amendment be submitted to the people for approval at the general election to be held in the year nineteen hundred and forty-one, in accordance with the provisions of the election law.

STATE OF NEW YORK

No. _____

Int. _____

IN SENATE

Date _____

Introduced by Mr.

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

Proposing the repeal of section 10 of article VIII of the constitution, in relation to limitations on amount to be raised by real estate taxes for local purposes; exceptions.

Section 1. Resolved (if the Assembly concur), That section 10 of article VIII of the constitution be repealed.

§2. Resolved (if the Assembly concur), That the foregoing amendment be submitted to the people for approval at the general election to be held in the year nineteen hundred and forty-one, in accordance with the provisions of the election law.

S T A T E O F N E W Y O R K

No. _____ Int. _____

IN SENATE

- - -

Introduced by Mr.

A N A C T

To promote the general welfare, to eliminate business depressions and unemployment and to give all men equal rights to the use of the earth by taking the value of land in taxation and repealing taxes on labor products and industry.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§1. Policy of state and purpose of chapter. It is hereby declared that a serious public condition exists in this state affecting and threatening the welfare, comfort, and safety of the people of the state, resulting in abnormal disruption in economic and industrial processes, and the curtailment of incomes by unemployment and business depression. To raise wages, increase the earnings of productive capital, abolish unemployment, and promote the free flow of capital goods requires a shifting of the entire burden of taxation from values created by the combination of labor and industry to the values created by the community. The abolition of all taxation save that upon the value of land will remove the burden upon production and industry, bear equally upon all men, and fall only upon those who receive from society a peculiar and valuable unearned

benefit, and upon them in proportion to the benefit they receive. The shift of the burden of taxation from production and exchange to the value or rent of land alone will eliminate land speculation and land monopolization. With natural opportunities thus free to labor, with capital and improvements exempt from tax, and productive industry released from restrictions, poverty will be abolished, unemployment eliminated, and wages of labor and the earnings of capital increased. Therefore, in the public interest, the necessity for legislative intervention by the enactment of the provisions hereinafter prescribed is hereby declared as a matter of legislative determination.

§2. Assessment of land. Beginning in the year next succeeding the passage of this act and thereafter land shall be assessed at its full value as though unimproved and free from tax, and the taxing authorities of counties, cities, towns, villages and school districts shall annually fix such tax rates on the assessed valuations of land as to cause, as nearly as possible, ninety-nine per centum of the annual value or rent of land to be taken by taxation.

§3. Assessment of improvements. Beginning in the year next succeeding the passage of this act and thereafter improvements on land shall be assessed at their full value and the taxing authorities of the state and its subdivisions shall annually levy a tax on one per centum of the value of improvements at the rate determined according to the preceding section.

§4. Assessment of intangible franchise rights.

Beginning in the year next succeeding the passage of this act the state tax commission shall annually fix and determine the full and actual value of the intangible franchise right of each special franchise under the jurisdiction of the public service commission and of the transit commission as though free from tax and exclusive of the value of tangible property included in such special franchises. The commission shall also fix and determine the full and actual annual value of the same and shall file a written statement of such full value and annual value with the clerk of the city, town, or village in which such special franchise is subject to assessment as set forth in section 45-c of article 2 of the tax law. The taxing authority of each taxing district shall annually fix such tax rates on such full value of the intangible franchise right as to cause as nearly as possible ninety-nine per centum of the annual value of such intangible franchise right to be taken by taxation.

§5. Equalization of assessment and apportionment of tax.

The state tax commission shall make such reasonable rules and regulations not inconsistent with law as may be necessary to require the local taxing authorities of the state to assess land at its full value as though unimproved and untaxed and to determine the annual value or rent thereof. The state tax commission shall ascertain the amount of the budget reasonably adopted by any county, city, town, village or school district

and in the case of any overlapping taxing districts it shall calculate the ratio of the amount of such budgets with respect to the land values within such taxing districts. The state tax commission shall also ascertain the amount of the total assessment for land and improvements in any tax district and the total amount to be raised by taxation and shall apportion this amount in accordance with the respective local budgets. Any excess of taxes above the reasonable budgets of the local taxing authorities shall be collected by the county treasurer and paid over to the state tax commission for the use of the state.

§6. Repeal of taxes on industry and labor products.

Except as limited by the preceding section all taxes on industry and labor products are to be abolished as hereinafter provided to wit:

The following taxes shall be abolished and the laws providing for them repealed to take effect on the last day of the second year following the passage of this act:

Tax on gasoline and similar motor fuel (article 12A of tax law), tax on milk (article 19 of tax law), cigarette tax (article 20 of tax law), taxes on alcoholic beverages (article 18 of tax law), excise taxes on business transactions, occupancy, tickets of admission to places of public exhibits, patent medicine, tobacco, vending machines, possession of telephone connections, and all other excise taxes and taxes on sales of merchandise whether under a state law or under any local law.

The following taxes shall be abolished and the laws providing for them repealed to take effect on the last day of the third year following the passage of this act:

Tax on mortgages (article 11 of tax law), tax on transfers of stock and other corporate certificates (article 12 of tax law), corporation tax (article 2 of tax law), franchise tax on business corporations (article 9a of tax law), franchise tax on state banks, trust companies and financial corporations (article 9b of tax law), tax on national banking associations (article 9c of tax law).

The following taxes shall be abolished and the laws providing for them repealed to take effect on the last day of the fourth year following the passage of this act:

Taxes upon personal incomes (article 16 of tax law), taxes on inheritance (articles 10, 10a and 10b of tax law).

§7. Construction. This chapter shall be construed liberally to effectuate the purposes hereof, and the enumeration of specific powers in this chapter shall not operate to restrict the meaning of any general grant of power contained in this chapter or to exclude other powers comprehended in such general grant.

§8. Separability clause. If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause,

sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§9. Saving clause. The provisions of this chapter shall not affect or impair any contract or remedy, or any act done or any right accruing, accrued or acquired, taxes, tax obligations, or exemptions from taxation, the validity of or rights as to taxes collected or proceeds thereof or the validity as to any acts done or rights or exemptions accruing, accrued, or acquired under any tax laws, general, local, or special, or any penalty, forfeiture or punishment under or by virtue of the laws in existence prior to the time when this chapter or any section thereof takes effect, but the same may be asserted, enforced, prosecuted or inflicted.

§10. Repeal of inconsistent laws. All general or special laws or provisions thereof inconsistent with this act or with any part thereof, are hereby repealed.

This law shall take effect immediately.

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keep!

EXPLANATION
of the
LAND VALUATION TAX BILL

Proposed for the
STATE OF NEW YORK

WALTER FAIRCHILD
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11 Park Place
New York City

LAND VALUE TAX LAW

FOR New York State

As the title of the bill points out, the primary purpose is to eliminate business depressions and end unemployment and restore to all men equal rights to the use of the earth. To accomplish this the bill amends the present tax law by repealing taxes on labor products and industry and substituting therefor one tax upon the value of land.

The main requirement of the bill is that 99% of the full annual value of land exclusive of improvements shall be taken in taxation by the state and its subdivisions for public use.

The secondary but nevertheless highly important requirement is to repeal taxes on labor products and industry.

The annual value of any piece of land exclusive of improvements, usually called "ground rent" is a value directly due to the presence and activities of the state's population and to the manner and amount of its expenditures public and private. No part of this value can be attributed to any one individual. It therefore constitutes the natural source of revenue for the government which should be exhausted before the taxation of individual wealth be resorted to. (1)

Relief from taxation of improvements would result in a tremendous stimulus to building construction and improvement in the number and character of buildings.

(1) Ground Rent--the Natural Municipal Revenue. American City, January, 1940.

The abolition of sales taxes would increase purchasing power, stimulate trade, decrease unemployment, increase ground rent and hence still further increase public revenue. (1)

Problems Involved

In preparing the text of the bill many concrete problems of law and fact presented themselves. We mention some of the important ones.

Constitutional Limitations.

The power of the legislature over the subject of taxation, except as limited by constitutional restrictions, is unbounded. It is for that body, in the exercise of its discretion to select the objects of taxation. It may impose all the taxes upon lands, or all upon personal property or all upon houses or upon incomes. It may raise revenue by capitation taxes, by special taxes upon carriages, horses, servants, dogs, franchise and upon every species of property and upon all kinds of business and trades. In re McPherson, 1887, 104 N. Y. 306, 10 N. E. 385.

There are two existing constitutional limitations on the power of the legislature to tax. One (Art. VIII, sec. 10) limits the real property tax to 2% of the total tax roll in addition to the debt burden in certain counties. The second (Art. VIII, sec. 4) limits the borrowing power of certain communities to 10% of the total tax roll.

The power to tax necessarily carries with it the power of distributing the burden of taxation and this power of apportionment is as unlimited as the taxing power itself.

Thus, not only is the taxing power of the legislature unlimited as to the extent and subjects of taxation, but also as to the manner thereof, whether general, upon all the property of a locality, or upon such only as is supposed to be benefitted by the purpose of the tax. Gautier v. Ditman, 1912, 204 N.Y. 201, 97 N.E. 464. People v. Mensching, 1907, 187 N.Y. 8, 79 N.E. 884.

Home Rule Provisions

The legislature of the State of New York has the power to enact legislation for cities having home rule as long as the legislation is general in its scope and applies to all cities.

Article IX of the New York State Constitution:

"§11. The legislature shall act in relation to the property, affairs or government of any city only by general laws which shall in terms and effect apply alike to all cities, * * *."

In the absence of state legislation, cities have the power to enact local laws not inconsistent with the constitution or state legislation which shall apply within the confines of the particular city.

"§12. Every city shall have power to adopt and amend local laws not inconsistent with the constitution and laws of the state relating to its property, affairs or government. * * *"

Taxation in proportion to benefits received

The bill applies the principle that taxation should be in proportion to benefits conferred. Taxation in proportion to benefits received has long been the keystone of our tax policy, as the Court of Appeals pointed out in People v. Renner, 1906, 185 N. Y. 285, 77 N. E. 106:

"There can be no doubt of the correctness of the general proposition that the principle upon which taxation is founded is that the taxpayer is supposed to receive just compensation in the benefits conferred by government, and in the proper application of the tax; and that in the exercise of the taxing power the legislature ought as nearly as practicable, to apportion the tax according to the benefit which each taxpayer is supposed to receive from the object upon which the tax is expended."

Assessment of Land at Full Value

Assessment of land at its full value "as though unimproved and free from tax" covers the economic fact that increasing the land value tax increases the proportion of land value taken into the public treasury and correspondingly decreases the amount left in private hands and reduces the "selling price" or market value of land although the actual full value of land will not be reduced and as prosperity rises the full value of land will also tend to rise. Full economic value and not market value is made the base of assessment value on which the rate is calculated.

Ninety-nine per centum of the full value of land is taken rather than 100% for two reasons: 99% is probably as close as human estimation can come and any margin of error is indicated to be in favor of the land owner rather than against him. The second and more important reason is to come within the constitutional provision as indicated in the next paragraph.

Improvements are assessed at full value but the tax rate at the same rate as for land value is applied to one per centum of the improvement value. Improvements to land are

labor products and should not be taxed any more than personal property which is free from tax but it is considered necessary to include improvements in the tax base because of the provision in the New York state constitution which limits the real property tax to 2% of the total tax roll in addition to the debt burden in counties having more than 100,000 population.⁽²⁾ The constitution also limits the borrowing capacity of certain communities to 10% of the total tax roll.⁽³⁾ The constitution should be amended by eliminating the first if not both of these two provisions. If anything is substituted in the constitution it should be on the basis that the total annual value of land exclusive of improvements should be taken in taxation by the state and its subdivisions for public use.

Land and Improvements Separately Assessed

The bill does not include a provision as to separate assessments of land and improvements as Article 2, Section 21, paragraph 3 of the present Tax Law expressly states that in all tax districts there shall be set down in separate columns the value of the real property and the value of the land exclusive of the buildings thereon.

Utility Franchise Values

The present utilities law⁽⁴⁾ defines a special franchise as including the value of tangible property. The courts have held that the value of the naked franchise or the intangible franchise right, may be determined by deducting the

(2) New York State Constitution, Article VIII, Section 10.

(3) New York State Constitution, Article VIII, Section 4.

(4) Sub. 6, Sec. 2, Tax Law.

value of tangible property from the total value of the special franchise. The bill takes 99% of the intangible value which corresponds with the land value tax.

"The net earnings rule contemplates a valuation upon the basis of the net earnings of the corporation which are attributable to its enjoyment of the special franchise. The method is thus applied: (1) ascertain the gross earnings; (2) deduct operating expenses; (3) deduct a fair and reasonable return on that portion of the capital which is invested in tangible property. The resulting balance gives the earnings attributable to the special franchise. If this balance be capitalized at a fair rate we have the value of the special franchise." People v. State Board of Tax Com'rs, (1909) 196 N. Y. 39, 89 N.E. 581, affirming 128 App. Div. 13, 112 N.Y.S. 392. To the same effect, see People ex rel. Central Hudson Gas, etc., Co. v. State Tax Commission, (1928) 218 App. Div. 44, 217 N. Y. S. 707, affirmed on reargument (1927) 219 App. Div. 227, 219 N. Y. S. 445, which was affirmed on this point (1928) 247 N.Y. 281, 160 N.E. 371.

Allocation of Land Value Taxes

The collection of the tax is made in existing local tax districts. The total tax collected for land value should be apportioned among the local authorities and the state in proportion to their respective budgets. The bill proposes to have the state tax commission determine the respective budgets which must be reasonable and any surplus is paid over to the state for state purposes.

Repeal of other Taxes

Repeal of taxes on industry and labor products is staggered over 2, 3 and 4 years. It will take a year or more to make necessary adjustments. The bill divides the taxes to be repealed into three classes. First, consumption taxes like sales taxes are to be repealed at the end of second year after the law takes effect; second, taxes on industry generally such as business corporation franchise taxes are to be repealed at

the end of the third year; third, income taxes and inheritance taxes which are direct taxes are to be repealed at the end of the fourth year.

License Fees

There are many so-called license fees which are really taxes in disguise, that is, for automobile registration plate taxes, liquor dealers' licenses, etc. The liquor dealer's license is in addition to the tax on liquor which is in the bill for repeal. We think that this item must be handled separately and the correct rule should be that the state tax commission should determine the cost of regulating any profession or trade for which a license is required and the license fee should be in proportion to the cost of regulating the profession or trade. This bill does not touch the unemployment insurance taxes and if it is desired to repeal the unemployment insurance law we think it should be handled in a separate bill.

Constitutional Amendments

Two constitutional amendments are recommended.

The first amends Article I, Section 10, by adding the following:

"The value of land, however, being created by the presence and activities of all the people is declared to be the common asset of the people of the state and the legislature shall pass appropriate laws to recover the full annual value of all lands exclusive of improvements within the jurisdiction of the state for the use of the state and its subdivisions."

The second repeals Article VIII, section 10, which removes the 2% limitation.

The 10% debt limitation, we believe, will become a dead letter because when the entire ground rent is collected for public use the necessity for public debt will disappear.