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TAX SHARING AND THE CONSTITUTIONAL CONVENTION

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WHEN I was invited to contribute an article which would be meaningful to this dialogue on the possible Illinois Constitutional Convention, my thoughts raced immediately to the problems which tax sharing could bring in the event it is enacted. Tax sharing is the payment back to the states of a certain percentage of federal income tax revenues. The theory is that these payments would be carved from a predicted budget surplus. At a time when the anticipated budget deficit for fiscal 1968 approaches \$21.6 billion and the anticipated deficit for 1969 is expected to run about \$24.7 billion,¹ the possibility that this theory will come into being, for the moment seems remote.

In writing this paper, I want to emphasize that I am taking the position of a stakeholder, an innocent observer, or, if you like, a virtual Surveyor satellite attempting to relay back to Illinois the strange impulses which impinge upon the lunar surface of Capitol Hill. I do not intend by this discussion to either endorse or foreclose a change in the tax policies of Illinois. My one and only purpose is to raise the problems and suggest arguments for and against taking action.

Tax sharing is not a new concept. It appeared in this country during the presidency of Andrew Jackson. At that time, a large federal surplus had accumulated as a result of the substantial revenues received from the sale of public lands and customs receipts. The public debt, marvelous to relate, had been wiped out and accordingly Congress passed the Surplus Distribution Act of 1836 which provided for distribution to the states on an unconditional basis.² Over many years, in addition

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¹ *Hearings before the House Comm. on Ways and Means on the President's Surtax Proposal*, 90th Cong., 2nd Sess. 61 (1968).

² 5 Stat. 52, 55 (1846).

to the Surplus Distribution Act, the United States government has shared some percentage of revenues derived from the sale of federal public lands, grazing leases and permits and the use of national grassland, with state and local governments. Canada,³ Australia, West Germany and Argentina presently have varying arrangements for sharing tax revenues with their local governing bodies.⁴

While not a new idea, there has been a great amount of pressure over the last few years for legislation in this area. During the 89th Congress, fifty-seven legislators sponsored or co-sponsored fifty-one tax sharing bills.⁵ Both political parties have been involved in this legislation with the Democratic party presently not as deeply committed as the Republican party. Since it was originally a Democratic party idea, it takes on the status of a non-partisan area.

One of the leading proponents of tax sharing is Dr. Walter W. Heller, former Chairman of the President's Council of Economic Advisors during the Kennedy Administration. Dr. Heller proposed his formula in 1960, but no serious consideration was given to it until 1964. With the enactment of the Revenue Act of 1964, the Administra-

³ Federal-Provincial Tax-Sharing Arrangements Act of 1956, 4 & 5 Eliz. II, c.29 (Can.).

⁴ As a brief example, the Dominion of Canada has had various tax sharing provisions with regard to the Provinces for a number of years. Originally, the Minister of Finance was authorized to pay to a Province a sum which, when added to the standard taxes of the Province, would cause the per capita revenue production of that Province to equal the per capita revenue production of the two leading Provinces for that year. In addition to tax equalization payments, there was also a provision for payment to the Provinces of revenue stabilization payments, *i.e.*, the amount by which tax equalization payments were exceeded by tax rental payments and basic stabilization payments. Tax rental payments were made to the Provinces by the Minister, where agreements had been made between the Provinces and the Canadian Government, in which the Canadian Government would collect the revenues and give the Province its share, eliminating the necessity for the Province to collect individual and corporate income taxes, and estate and gift taxes through a separate tax collection procedure.

The provisions above were applicable to the period from April 1, 1957 to March 31, 1962. The present law, The Federal-Provincial Fiscal Arrangements Act of 1967, 14, 15 & 16 Eliz. II, c. 89 (Can.), proposes a similar form of sharing with stress on tax equalization and provincial stabilization payments. Instead of the tax rental payments, the Provinces and the Canadian Government have adopted a form of tax collection agreement which provides, in part, for the following:

Canada, as agent of the Province, will collect for and on behalf of the Province the income taxes imposed under the provincial act for each of the years comprising the term of this agreement and remit amounts in respect thereof to the Province in accordance with this agreement. . . .

The Province will, in respect of each year during the term, impose income tax under the provincial act in the following manner: . . .

(2) In imposing income tax . . . the Province will, in respect of each year, impose only one rate of individual income tax and one rate of corporation income tax.

⁵ *Digest of Public General Bills and Resolutions*, 89th Cong., 2nd Sess. (1966).

tion's feelings were sanguine as to the impetus that tax reductions would give to the economy. The prospects of achieving a budget surplus looked just over the horizon.⁶ The Democratic party platform for the 1964 campaign contained a provision for tax sharing so as to assist state and local governments. During the Presidential campaign of 1964, both candidates expressed support for some form of tax sharing.

The plan of Dr. Heller can be stated briefly as being a setting aside by the federal government of between one to two percent of the individual federal income tax base.⁷ The sums collected for the states would be placed in a trust fund and periodic distributions would be made to the states on the basis of population. The states would be given a "no strings attached" distribution because the very purpose of revenue sharing is to enlarge the states' area of fiscal discretion. Because there is a possibility of the states reducing taxes in the face of receiving shared revenue, the plan suggests reduction of revenue vis-à-vis any state tax reduction.

In today's economy, the national growth increases revenues by \$8 to \$9 billion per year without the necessity of raising taxes.⁸ State and local government growth is only about half of this figure. On the other side of the coin, while the state and local growth rate goes on at half that of the national, its expenditure rate for services is rising sharply, while the federal rate, but for Viet Nam, is declining. A budget surplus is predicted at the federal level when and if there is a denouement of the Viet Nam crisis. If a surplus does develop, a "fiscal drag" will occur wherein demand will consist more of investment and less of consumption.⁹ Under this surplus condition there may be the possibility that our economy will be depressed. While a depression is not the necessary corollary of "fiscal drag," the thinking in tax sharing circles is that it would be far better to share this surplus with the states, thereby lessening the chance of depression.

⁶ HELLER, *NEW DIMENSIONS OF POLITICAL ECONOMY* ch. III (1966).

⁷ STAFF OF JOINT ECONOMIC COMM., SUBCOMM. ON FISCAL POLICY, 90TH CONG., 1ST SESS., REPORT ON REVENUE SHARING AND ITS ALTERNATIVES 750 (Joint Comm. Print Vol. II 1967).

⁸ *Hearings before House Comm. on Ways and Means on the President's Surtax Proposal*, 90th Cong., 2nd Sess. 155 (1968).

⁹ McBreen, *Federal Tax Sharing: Historical Development and Arguments for and against Recent Proposals*, in STAFF OF JOINT ECONOMIC COMM., SUBCOMM. ON FISCAL POLICY, 90TH CONG., 1ST SESS., REPORT ON REVENUE SHARING AND ITS ALTERNATIVES 724 (Joint Comm. Print Vol. II 1967).

In the ten years from 1955 to 1965 state and local expenditures have increased from \$34 billion per annum to \$75 billion, an increase of 123%. During this same period the federal expenditures have shown only a 55% increase.¹⁰ State and local taxes, though they have risen drastically, have not kept pace with this tremendous rise in the cost of improvements and services. The picture rounds out to an ever expanding state and local increase in costs coupled only to regressive state and local taxes which cannot, by the wildest stretch of the imagination, begin to keep up with these costs.

On February 27, 1968, the Tax Foundation, Inc., reported that tax increase proposals totaling about \$1 billion are coming to a vote before the legislatures of twenty-four states. In 1967, the new tax increases totaled \$2.5 billion.¹¹ Increases in income, sales, use, gasoline, tobacco and liquor taxes are being sought in sixteen states. Rhode Island and South Dakota will consider adopting personal income taxes for the first time, and South Dakota is contemplating a tax on corporate income. At this writing ten states do not have a corporate income tax and fifteen have no personal income tax.

Today, almost all of the increase in revenues from the state and local sources comes from higher property tax revenues. In many cities and towns, property tax rates are already too high and further substantial increases in these rates are undesirable. The problem is, that while federal taxes respond to and automatically increase with economic growth, state and local property taxes do not.

Of the fifty states, thirty-five impose an income tax. Fifteen states at present have no income tax and of these, there are some states, Illinois included, which are prevented from having such taxes because of constitutional provisions. Of the states that do impose an income tax, twelve impose a tax that amounts to less than one percent of federal adjusted gross income, fourteen have income tax burdens of under two percent and nine have rates over two percent to a maximum of approximately three percent.¹² The view among the tax sharing proponents is that since the federal government's taxing power is so

¹⁰ Pechman, *Financing State and Local Government*, Proceedings of a Symposium on Federal Taxation, March 26, 1965, Washington, D.C.

¹¹ Tax Foundation Inc., Press Release Feb. 27, 1968.

¹² Heller, *Strengthening the Fiscal Base of our Federalism*, in STAFF OF JOINT ECONOMIC COMM., SUBCOMM. ON FISCAL POLICY, 90TH CONG., 1ST SESS., REPORT ON REVENUE SHARING AND ITS ALTERNATIVES 756 (Joint Comm. Print Vol. II, 1967).

superior to that of the states, the old maxim should read, "The whole is greater than the sum of all of its parts."

ILLINOIS CONSTITUTIONAL BARRIERS

The people of Illinois have had two opportunities to express themselves on the Revenue Article of the 1870 Constitution through the state-wide referendum.¹³ In addition, several amendments to the Article have been submitted to the voters in the following years: 1916,¹⁴ 1926,¹⁵ 1930,¹⁶ 1942,¹⁷ 1952,¹⁸ 1956,¹⁹ and 1966.²⁰ On these occasions, a majority of those voting at the election expressed no voice with respect to these amendments and they failed to pass. These statistics show that it would be extremely difficult to meaningfully change Article IX.

As the law now stands, it appears that property taxes classified by the legislature rather than by administrative agencies, a graduated income tax, and perhaps other types of taxes not enumerated in section one and levied on other than an *ad valorem* basis, can only be achieved by constitutional amendment modifying sections one and two of Article IX.²¹ The present restrictions might be stricken from the Constitution altogether and the legislature given freedom to prescribe the most expeditious and efficient method of taxation. This result could be achieved by an amendment permitting the legislature to classify whatever category it desired. This would open up all classes of choice. The present imminence of another Constitutional Convention calls for an examination of Article IX to ascertain the present posture of the state's taxing power. An adequate knowledge of what can and cannot be done under the Illinois Constitution will give us a view of the possible problems we might have if tax sharing comes into being.

The judicial tribunals of this state have accepted the theory that

¹³ 1904, 1912.

¹⁴ S.J. Res. 21, ILL. SEN. J. 348 (1951).

¹⁵ S.J. Res. 4, ILL. SEN. J. 1126 (1925).

¹⁶ S.J. Res. 28, ILL. SEN. J. 1332 (1929).

¹⁷ H.J. Res. 35, ILL. H. J. 493, 643 (1941).

¹⁸ H.J. Res. 40, ILL. H. J. 1865 (1951).

¹⁹ S.J. Res. 16, ILL. SEN. J. 2485 (1955).

²⁰ H.J. Res. 71, ILL. H. J. 5419 (1965).

²¹ *Bachrach v. Nelson*, 349 Ill. 579, 182 N.E. 909 (1952).

the state has inherent power to tax. Under this theory, the specific enumeration in a constitutional provision of certain types of taxes should not foreclose and restrict our General Assembly just to those specific items. But the courts have repeatedly stated that the legislature is limited to three types of taxes; property, occupation and franchise.²²

Reform of the Revenue Article has been an aim of the state legislature for some time. In 1912, on a policy question submitted to referendum, it was the will of the majority that the General Assembly should proffer a constitutional amendment to provide for the classification of property. In 1916 an amendment was proposed which would have excepted personal property from the *ad valorem* and proportionate value requirements. Under either of these proposals the legislature might have had leeway to impose an income tax. The 1916 amendment was defeated.

If there was any doubt as to the will of the people of this state on the issue of income taxes, it was quelled in 1922 when a new constitution which included a Revenue Article that would have installed the income tax in Illinois was submitted to the electorate. The proposed constitution went down to an ignominious defeat.²³ The antipathy of the voters to an income tax places a property tax upon the people which is largely an inequitable proposition.

In 1959 and 1961 there was a wide split on proposals to amend the Revenue Article the upshot of which has been frustration. The proposal for 1959²⁴ was to include real and tangible personal property under the *ad valorem* and proportionate value area but except intangible personal property into a special class. There was also a provision for a non-graduated income tax. But although constitutional revenue revision was held to be widely needed, the 1959 proposals were summarily rejected in the General Assembly.

In 1961,²⁵ the need for revision was even more pressing—so much so that the Governor, in a message of March 28, 1961, called for the constitutional reform of the Revenue Article.²⁶ The proposals follow-

²² *Id.*

²³ Affirmative votes 185,298, negative votes 921,398.

²⁴ ILL. SEN. J. 630 (1959).

²⁵ ILL. H. J. 56 (1961).

²⁶ Message to a specially convened session of the 72nd General Assembly.

ing this message were fraught with strife over the graduated income tax. The Governor called for the demise of constitutional restrictions upon the General Assembly's power to tax. Certain proposals offered in the Legislature would have transferred from constitutional limitation to legislative discretion the powers to effect the necessary revenue provisions.²⁷ These proposals were rejected, as were their predecessors, and it is widely believed today that no such legislation can hope to stand without an enabling constitutional amendment.²⁸

The state of Illinois without some form of constitutional reform would be barred from realizing the benefits of a tax credit approach to a share of the national revenues. A tax credit (one method of tax sharing) is a device to prevent double taxation. The theory is that if a single or uniform result is to take place, then the income tax charged by one jurisdiction should be subtracted from the tax of the other jurisdiction in order to effectively tax the individual at a single rate. The credit differs from a deduction, which is merely an amount subtracted from gross income before applying an independent and partly doubling tax rate to the income previously taxed.²⁹

²⁷ ILL. CONST. art. IX, § 3.

²⁸ *Supra* note 21.

²⁹ A tax credit method is defined as one which would permit a straight offset of the state taxes paid against the federal tax liability. Under the tax credit plan, if the people received a credit directly against their federal income tax, the state would raise revenues with no difficulty and with no added burden upon the population. In other words, depending upon the amount of tax credit available, the state could finance almost any expense against the revenues of the federal government. The tax credit is almost an unlimited invitation to spend, whereas the block grant is a specific and limited amount of money. The tax credit would prove to be more of an inducement to the state governments to increase their expenditures and at the same time would be less of an inducement to the reduction of taxes.

The tax credit should prove to be of assistance to the poor states, because the credit, having fostered state spending, tends to work to the benefit of the needy. They would receive more from expenditures made at the state level than from reduction of income taxes which they are probably not required to pay in any event. Under the Heller Plan, block grants are to be made on the basis of population, and it is anticipated that this would work to the detriment of small and less richly endowed states whereas the tax credit could provide the inspiration of increased state activity.

Since the conclusion that block grants tend to reduce taxes and tax credits tend to increase expenditures seems to be the opposite of intuitive expectation, the following example is given to delineate the difference:

If the governor of a state had just determined that an additional \$100 million in taxes was necessary and that a cut in the budget program of \$10 million was also necessary, would the receipt of a block grant of \$20 million logically cause him to add back to that budget the \$10 million program? The thinking of the experts is that if the \$10 million program which was cut was not worth the \$10 million before the grant, it would not be worth \$10 million afterwards and there would be an inducement

Under the usual tax credit plan, the taxes have to be of the same nature. In other words, an income tax paid in one jurisdiction would be credited against income taxes of the other. An avoidance of double taxation could not be effected by crediting a real property tax against an income tax because they would not duplicate one another. Property and income being separate entities, the principle of the tax credit would not apply. There is a proposal which would permit the crediting of all state taxes against the federal income tax. This type of approach, however, has heretofore not been considered proper in the tax credit area.³⁰

VARIOUS APPROACHES TO TAX SHARING

The alternatives with which we are faced are shared revenue, tax credits, direct federal operation, program grants, block grants, block grants with an equalization feature, and negative income taxation.

Briefly, these alternatives may be described as follows:³¹

(1) *Shared Revenue*. A fixed percentage of the federal income tax base would be set aside and distributed to the separate states on the basis of population, amount of state revenue production and possibly on the basis of equalization.

(2) *Tax Credits*. This alternative permits a credit of state taxes against federal income tax liability. The credit differs from a deduction in that it would directly offset the tax rather than merely be used to reduce taxable income to which the overall tax rates would be applied.

(3) *Direct Federal Operations*. Increased federal expenditures could be made for new domestic operations which would be carried on by the federal government in the states. The type of operation referred

to raise taxes less and not spend more. In other words, if the program cut was not necessary, the block grant would not change that situation.

On the other hand, supposing the same circumstances but instead of a block grant the governor received news that a tax credit plan had been voted into law, would this change the governor's thinking? The visceral reaction is that nothing would be different. However, assuming that the \$10 million for the abandoned program could be directly credited against federal income taxes, the governor could then say that these projects, which admittedly were not worth \$10 million before, were a big bargain now because the entire check would be picked up by the federal government.

³⁰ American Metal Co. v. Comm'r, 221 F.2d 134 (2d Cir. 1955).

³¹ Wiedenbaum, *Federal Aid to State and Local Governments: The Policy Alternatives*, in STAFF OF JOINT ECONOMIC COMM., SUBCOMM. ON FISCAL POLICY, 90TH CONG., 1ST SESS., REPORT ON REVENUE SHARING AND ITS ALTERNATIVES 651 (Joint Comm. Print Vol. II 1967).

to would be mass transportation or other improvement programs. The help here would be in removing a burden which the states would otherwise have to carry.

(4) *Program Grants*. An increase in the number of federal programs, such as the construction of medical facilities and interstate highways, where the federal government keeps a tight control and sets detailed standards to be carried out by the states. It would not require direct federal operation, but again, would assist the states in relieving much of the financial burden.

(5) *Straight Block Grants*. A grant which is an unconditional gift from the federal government to the state. The thought is to set up a permanent trust fund for distribution on a per capita basis.

(6) *Block Grants with an Equalization Feature*. Such grants provide for the setting up of a trust fund out of a percentage of the federal income tax base, but instead of a distribution on the basis of population, a certain percentage would be distributed purely on a per capita basis and the remaining percentage on the basis of need. In this approach, certain portions of the distribution would be determined on the basis of the tax efficiency of the state. An important part of this approach, as in any approach in the tax sharing area, would involve making sure that any shared revenues were properly "passed through" to the political subdivisions of the state.

(7) *The Negative Income Tax*. This type of program would replace many of our categorical welfare aids—aid to dependent children, old age assistance, and aid to the blind and the disabled.³² This plan would assist individuals and families who were not on welfare but with income below the poverty line. A negative income tax would transfer much of the burden of welfare administration to the Internal Revenue Service. That agency, so proficient and experienced in collecting taxes, would be assigned the task of verifying the accuracy of low income returns and paying out funds according to an established schedule. The negative income tax approach would relieve state and local budgets of a substantial drain and present matching aids would be eliminated. The financial transfer of such a major function to the national government, it is claimed, would permit present state and local budgets to expand in other areas without increasing taxes.

As is readily perceptible, these approaches all try to do the same

³² Statement by Clara Penniman presented at the hearings before the Joint Economic Comm., Subcomm. on Fiscal Policy, 90th Cong., 1st Sess., 32 (July 31, 1967).

thing in more or less different ways. The important thing to remember is that whatever approach the trail blazers in this field will use, the day is coming in the near future when our increasing population and our demand for the best in facilities and services at the state and local level will force our hand.³³ How soon it will come will depend upon the states themselves. The belief that the states will not be able to keep up with the demand for services is founded on what is termed the states' regressive tax programs. They are regressive in that they have, in taxing property, reached the point of diminishing returns. Their usefulness for revenue, rather than improving the financial picture, will tend to decline rather than expand with the nation's growth pattern.³⁴

ARGUMENTS IN FAVOR OF TAX SHARING

The primary argument for federal tax sharing with state and local governments is the contention that the federal government has pre-empted the major revenue-producing source—the income tax. It is argued that the federal government has an insurmountable advantage over the state and local seats of authority; and during an era of economic prosperity, it will collect more than it needs to finance its own programs. It is the contention of the experts that once the conflict in Viet Nam is concluded and the level of federal spending is reduced, additional tax revenues, generated by a booming economy, would siphon off too much money from the private sector of the economy. A federal surplus would result before full employment of manpower and resources is achieved. A surplus could retard growth and it is feared that "fiscal drag" could promote a recession.

While it is true that cutting taxes would reduce a budget surplus, it is evident that the legislative process required for such a cut takes a great deal of time and a recession could be well underway before the President had an opportunity to sign such a bill into law.³⁵ Current thought in this area is that an automatic transfer of a surplus to the

³³ *Supra* note 10.

³⁴ Statement by L. Laszlo Echer-Racz presented at hearings before the Joint Economic Comm., Subcomm. on Fiscal Policy, 90th Cong., 1st Sess., 36 (July 31, 1967).

³⁵ The Tax Council, *The Dialog Grows*, in STAFF OF JOINT ECONOMIC COMM., SUBCOMM. ON FISCAL POLICY, 90TH CONG., 1ST SESS., REPORT ON REVENUE SHARING AND ITS ALTERNATIVES 1205 (Joint Comm. Print Vol. II 1967).

states would accomplish the double good of stemming a recession and supplying vitally needed revenues.

Advocates of this program assert that the simplicity of this proposal makes it all the more desirable. Block grants with "no strings attached," made to state and local governments will enable them to operate more independently, without the burden of federal controls. Local officials will be freed from the red tape involved in meeting stringent federal conditions which are now imposed for qualification under existing grants-in-aid. Many of the programs now being handled from Washington could be more effectively controlled at the state and local level by the state personnel who are most familiar with their own state's particular needs and who can make the best distribution of the funds. This will not only cut down on the increase in the size and cost of administering our federal government but it will also relieve the federal employees from the additional details now required in handling existing grant-in-aid programs. Mr. Paul N. Ylvisaker, Commissioner of Community Affairs of the State of New Jersey, testified on this point before the Subcommittee on Fiscal Policy of the Joint Economic Committee during the summer of 1967:

Still another argument for decentralizing and for moving away from what we now have is the confounding array of present Federal grant programs. I can give you the full horror story of what it is like to deal with 440 separate Federal programs. This is probably the purgatory to which a former foundation official should be assigned.³⁶

The tax sharing provisions, having no federal strings attached other than that they be fairly passed through to the political subdivisions of the states, would be a boon to low-income areas. The strict matching requirements now imposed by federal grant-in-aid programs make it extremely arduous for these local governments to utilize such aid. When they do, the outpouring of matching funds usually drains a portion of the requirements from other vital services.

ARGUMENTS AGAINST TAX SHARING

The basis for tax sharing is that the states are running far behind in adequate revenues and the prediction is that there will be a surplus in the federal budget. However, a study by the Tax Foundation lends

³⁶ Statement presented at the hearings before the Joint Economic Comm., Subcomm. on Fiscal Policy, 90th Cong., 1st Sess., 42 (July 31, 1967).

some support to the proposition that the states are not as badly off financially as everyone seems to think. It indicates that the states have sufficient fiscal resources to finance their projected expenditures. The report entitled *Fiscal Outlook for State and Local Government to 1975* states that, "Under the conditions assumed, aggregate general revenues will grow somewhat more rapidly than spending in the decade ahead, without an increase in over-all rates."³⁷ It estimates that general expenditures of state and local units of government will rise from \$75 billion in 1965 to \$142 billion by the year 1975. This projection estimates an increase of 89% as opposed to the general consensus of an increase of 123% between 1955 and 1965 as earlier herein set out. The report also predicts a rise in state revenues which will be \$5 billion in excess of the anticipated expenses by the year 1975. This projection, if true, would effectively undercut the major premise of tax sharing.

But, in addition to this serious consideration, there is a strong feeling that any surplus we may be able to develop at the federal level could be better used in the reduction of the national debt.

A great many federal officials feel that the answer lies in improving our grant-in-aid programs which keep strong controls on the expenditures of these monies. It is rather widely felt that the states will not spend these wisely or in keeping with the good order of many of our national programs.

At the present time federal grants account for more than one fourth of all the revenue of Illinois. For the years 1963 to 1965 Illinois received about \$840 million from the federal government. For the period 1965-1967 federal grants to Illinois amounted to \$1.089 billion.³⁸ Federal aid accounts for 57.3% of the appropriations to the Department of Public Health or \$33.5 million. In the construction of highways, federal aid accounts for 59.2% of Illinois' program. Out of \$1.048 billion designated for this purpose by the state, federal grants-in-aid for 1965-1967 totaled \$620 million.

State monies in Illinois are constitutionally subject to expenditure only by virtue of legislative appropriations. The Illinois legislature meets every two years and adopts a biennial budget. Because federal

³⁷ Government Finance Brief No. 7, Tax Foundation, Inc. 1 (1966).

³⁸ Illinois Legislative Council *Federal Aid: Prospects and Problems in Illinois*, in STAFF OF JOINT ECONOMIC COMM., SUBCOMM. ON FISCAL POLICY, 90TH CONG., 1ST SESS., REPORT ON REVENUE SHARING AND ITS ALTERNATIVES 268-77 (Joint Comm. Print Vol. I 1967).

grants-in-aid are allocated to Illinois on an annual basis rather than biennially, the state is at a distinct disadvantage in determining how much will be needed in matching funds. Since a quarter of the state's revenue now comes via grants-in-aid, it might behoove Illinois to take a second look at the proposition of having annual legislative sessions, if only for the purpose of looking into budgetary considerations. Such a constitutional amendment was submitted to the voters in 1964 but failed to pass.³⁹

The difference between present grants-in-aid and the tax sharing proposals lies in the degree of control that the federal government retains. Whether we get tax sharing or whether we stay with the federal grants-in-aid, we should not leave Illinois in such an inflexible position that she will suffer any loss.

It is also rather widely believed that if we go on a tax sharing program, the states may reduce their taxes and cut down on essential programs.⁴⁰ Another apprehension is that many of the states will not pass on the shared revenues to their political subdivisions. Allocation of the revenues, therefore, will be utilized to the disadvantage of the majority of citizens and failure of the federal government to exercise a degree of control on the distribution of the funds below the state level will foment bitter controversies in the state's tier of authority which will be impossible to solve.⁴¹

It is argued further that tax sharing, rather than having the salubrious effect which its proponents claim, will not contribute toward the decentralization of the federal government but will make the states more and more dependent upon it. It is the fear of many that the federal government, already a giant in all fields, will become a colossus from the institution of this idea.

WHAT SOLUTION SHOULD ILLINOIS SEEK WITH RESPECT TO THE CONSTITUTIONAL CONVENTION?

The General Assembly of Illinois on May 16, 1967, adopted Senate Joint Resolution No. 2 providing as follows:

³⁹ H.J. Res. 40, ILL. H. J. 4057 (1963).

⁴⁰ *Hearings before the Joint Economic Comm., Subcomm. on Fiscal Policy*, 90th Cong., 1st Sess., 130 (1967).

⁴¹ *Hearings before the Joint Economic Comm., Subcomm. on Fiscal Policy*, 90th Cong., 1st Sess., 112 (1967).

Resolved, by the Senate of the Seventy-fifth General Assembly of the State of Illinois, the House of Representatives concurring herein, that a convention is necessary to revise, alter or amend the Constitution of this State, and that the question of the calling of such a convention shall be submitted to the electors of this State at the next general election, as provided in Article XIV of the Present Constitution.⁴²

The State of Illinois must weigh the factors and decide whether it is in the type of financial condition predicted in *Fiscal Outlook for State and Local Government to 1975*.⁴³ If it is, then the Constitutional Convention, as it pertains to the Revenue Article, will not have the same sense of importance. If, on the other hand, the state's finances do not project an adequate amount to cover anticipated expenditures, it is suggested that some thought might be given to placing it within the province of the legislature to adapt to a more flexible policy which could take advantage of possible changes in federal use of its tax revenues.

I know of one field already in which the State of Illinois will incur additional expenses. Last year in the case of *Johnson v. Robinson*,⁴⁴ brought in the United States District Court for the Northern District of Illinois, it was held that the one year residency requirement for applicants for public assistance was unconstitutional. Similar residency requirements were struck down in *Ramos v. Health and Social Services Board*,⁴⁵ *Harrell v. Board of Commissioners*,⁴⁶ *Thompson v. Shapiro*,⁴⁷ and *Green v. Department of Welfare*.⁴⁸

The *Thompson* case is presently on direct appeal to the Supreme Court of the United States and application in the *Harrell* case has been made. It seems fairly obvious from the District Courts' actions in the above cases that the Supreme Court will affirm. The removal of the residency requirements is expected to increase the costs to Illinois by several million dollars in the area of welfare alone.

Heller, in speaking of the ever increasing state burdens, points out:

A very large part of what we do through government is done through state and local units. They are the ones to whom we usually turn as we seek to maintain

⁴² S.J. Res. 2, ILL. H. J. 47 (1967).

⁴³ *Supra* note 38.

⁴⁴ — F. Supp. — (N.D. Ill. 1967).

⁴⁵ 276 F. Supp. 474 (E.D. Wis. 1967).

⁴⁶ 269 F. Supp. 919 (D.D.C. 1967).

⁴⁷ 270 F. Supp. 331 (D. Conn. 1967).

⁴⁸ 270 F. Supp. 173 (D. Del. 1967).

and upgrade our educational efforts, improve our physical and mental health, re-develop decaying urban areas, build safer and better highways, overcome air and water pollution, and equip our suburbs with water systems, sewers, roads, parks, schools and the like. This list is striking partly because each item of it represents either an essential function or a reasonable aspiration of a great and growing society; partly because each item falls squarely within the traditional sphere of State-local operation; and partly because so many items on the list are suffused with a national interest that transcends State and local lives. . . .

Meanwhile, prosperity generates demands for better schools, roads, and parks, for new and better services. And it generates them faster than it produces added State and local revenues. Further, the growth that confers such a bountiful harvest of revenues on the Federal government leaves the States and their subdivisions a bitter harvest of air and water pollution, disappearing green space and urban rot. Truly, prosperity gives the National Government the affluence and the local governments the effluents.⁴⁹

The population of Illinois today is 10,893,000⁵⁰ and by the year 1975 we anticipate that it will be 11,879,000. This growth rate, of necessity, must put more pressure on schools, on utilities and services and administration. Will Illinois derive sufficient revenue under the restrictions of Article IX to maintain the added million individuals?

In its report, the Advisory Commission on Intergovernmental Relations set forth guidelines to assist the states in proceeding expeditiously with property tax reform.⁵¹ Article IX has withstood many efforts to put Illinois taxing power on a more flexible basis. I am wondering whether the time has arrived when Illinois will open the windows on the stuffy halls of the past and place herself in a position to maneuver should the tax sharing movement come into being.

CONCLUSION

The question of tax sharing has not wanted a forum for discussion. As a matter of fact, it would appear that the discussion has spawned a number of basic differences on just how the proposals, if they come into being, should be handled. Should taxable income or actual taxes collected be the basis for determining the amount available for distribution? Should the money be set aside in a trust fund or be subject to annual Congressional review via the appropriation process? Should

⁴⁹ HELLER, *NEW DIMENSIONS OF POLITICAL ECONOMY* 121, 127 (1966).

⁵⁰ Series P-25, #380 & #384, Pub. Nov. 24, 1967-Bureau of Census.

⁵¹ *The Role of the States in Strengthening the Property Tax*, in STAFF OF JOINT ECONOMIC COMM., SUBCOMM. ON FISCAL POLICY, 90TH CONG., 1ST SESS., REPORT ON REVENUE SHARING AND ITS ALTERNATIVES 213 (Joint Comm. Print, Vol. I 1967).

the funds be allocated to the states on the basis of population or allocated on the basis of the percentage of revenues derived? What weight shall be given to state-local tax effort? What provision will be made to pass the funds through to the political subdivisions of the states? How much federal control and supervision will be exercised over the disbursement of these tax sharing funds? As I said before, I take no position on this area other than to suggest that it is gaining greater currency. It is suggested that the Revenue Article be looked into with this possibility in mind.