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The
Corporation License Tax
In Kentucky

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THE CORPORATION LICENSE TAX IN KENTUCKY

BY DAVID H. MCKINNEY*

The methods which have been devised for the application of special taxes to general business corporations may be divided into four classes: (a) taxes of a fixed sum, (b) taxes based on capital stock, (c) taxes based on net income, and (d) taxes on the corporate excess. There are three distinct variations of the second class mentioned above: authorized capital stock, issued capital stock, and asset value of capital stock. Some writers add "capital employed in the state," but this clearly amounts to the asset value of stock, allocated to the state on the basis of property, and for this reason can be included under "asset value of capital stock." However, in determining the asset value of capital stock, states use variously book value, appraised value, or market value. Some variations also exist in the methods employed by the several states in arriving at net income and corporate excess.

Many states attempt to tax only a proportionate part of the capital stock, net income, or corporate excess of corporations doing business in two or more states.¹ The methods used to make such allocations are strictly speaking only two in number: (a) on the basis of the proportion of property located within the taxing state to the total property of the corporation, and (b) on the basis of the proportion of business done within the taxing state to the total business of the corporation.

The following are some of the questions, answers to which will be attempted in this paper. Which of the methods of applying special taxes to general business corporations does Kentucky employ? What has been the history of the license tax in Kentucky? How is it administered? What litigation has it occasioned? That is, on what points has it been attacked, and what have been the decisions of the Court? What is the status of the

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¹The Supreme Court of the United States has held that not to do so is a direct burden on interstate trade, and is in violation of the due process clause of the Fourteenth Amendment. See pp. 12 ff.

Kentucky corporation license tax law in the light of decisions of the Supreme Court of the United States involving similar laws? What portion of its total taxes does Kentucky derive from this source? What types of corporations are the most numerous in Kentucky? What types of corporations pay the largest amounts of license tax? What types of corporations pay the largest average individual taxes? How does the number of domestic and foreign corporations compare? How do the amounts collected as license taxes from domestic and foreign corporations compare?

I. DEVELOPEMENT OF THE KENTUCKY LICENSE TAX

The Kentucky license tax on corporations was first enacted in 1906.² It applied without distinction to both domestic and foreign corporations. Certain designated types of corporations were expressly exempted, namely, foreign insurance companies of all kinds, "foreign and domestic building and loan associations, banks and trust companies, and all corporations which . . . are liable to pay a franchise³ or license tax."

The basis selected for the tax was the authorized capital stock of the corporation, and was assessed at

"thirty cents on each one thousand dollars of that part of their authorized capital stock represented by property owned and business transacted in this State, which shall be ascertained by finding the proportion that the property owned and business transacted in this State bears to the aggregate amount of property owned and business transacted in and out of this State."⁴

However, corporations could pay the rate upon their entire authorized capital stock if they preferred to do so. Assessment

² *Acts of the General Assembly, Kentucky*, 1906, chap. 22, art. XI, pp. 179-183. (Hereafter referred to as *Acts*).

³ The following corporations were liable for a franchise tax—"Every railway company or corporation, and guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company, sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise . . ." *Acts*, 1906, chap. 22, art. IV, pp. 126-127.

⁴ *Acts*, 1906, chap. 22, art. XI, p. 179.

was made by the Board of Valuation and Assessment; but the Auditor of Public Accounts furnished blanks to the corporations and issued notification to make reports. The Auditor also notified the corporations of the amount of their assessment as certified to him by the Board of Valuation and Assessment and collected the tax.

Domestic corporations incorporated after approval of the act were not required to pay the annual license tax for the year in which they were organized. Ten dollars was the minimum tax; and fines were provided for delinquency and for making false statements and false reports.

During the next eleven years tax problems were a live issue in the state and three special tax commissions⁵ were created to study the tax situation.

As a culmination to these efforts a special session of the General Assembly was called in 1917 for the purpose of revising the revenue system of the state. Probably the most important change instituted by it was the creation of a permanent Tax Commission.⁶ Closely allied to this was an amendment of the capital-stock license tax on corporations, transferring the administration of the tax from the Board of Valuation and Assessment⁷ to the newly created Tax Commission.⁸ Thereafter, it became the duty of each corporation to file its report with the Tax Commission, which was to make the assessment and itself notify the corporation of the amount assessed. A more significant change from the point of view of revenue derived from this particular tax was an increase in the rate from \$0.30 to \$0.50 per \$1,000.00 of authorized capital stock.⁹ Other features of the original law, such as exemption of domestic corporations from paying the tax in the year of their incorporation, penalties imposed, and a minimum fee of \$10.00 remained unchanged.

An amendment passed by the General Assembly at its next regular session gave the Tax Commission power to extend time

⁵ The Tax Commissions of 1909, 1912-14, 1916.

⁶ *Acts*, Special Session, 1917, chap. 1, pp. 3-23. Other innovations were taxes on: bank deposits, building and loan associations, oil production, race tracks, whiskey, beer, and mortgage recording.

⁷ This Board ceased to exist.

⁸ *Acts*, Special Session, 1917, chap. 7, pp. 33-37 (May 2, 1917). The following discussion of changes made in the law at this time is based on this statute.

⁹ See Table I.

for filing reports for a period not longer than thirty days.¹⁰ As thus amended, the law remained unchanged for eight years, during which time the Supreme Court of the United States

TABLE I
COMPARISON OF THE AMOUNTS OF THE KENTUCKY CORPORATION LICENSE TAX WITH TOTAL TAXES*

Year	Corporation License	Total Taxes†	Per Cent Corporation License of Total
1907	\$ 49,748.88	\$5,578,396.22	.89
1908	54,304.62	5,653,375.32	.96
1909	76,483.26	6,001,455.36	1.27
1910	84,680.01	5,268,595.56	1.61
1911	94,664.63	6,389,233.61	1.48
1912	85,847.37	6,309,764.31	1.36
1913	96,114.97	6,370,881.57	1.51
1914	114,694.13	7,175,167.09	1.60
1915	119,229.59	6,901,588.88	1.73
1916	111,776.75	7,304,294.33	1.53
1917	137,849.80	7,594,703.81	1.82
1918	209,591.45	8,604,038.50	2.44
1919	253,443.47	10,931,173.05	2.32
1920	253,916.22	9,992,448.81	2.56
1921	265,960.68	13,404,125.02	1.98
1922	257,455.60	13,223,479.32	1.95
1923	277,826.52	16,976,585.86	1.64
1924	273,280.24	15,365,433.65	1.78
1925	263,719.64	18,723,468.00	1.41
1926	258,182.45	20,928,127.84	1.23
1927	271,475.22	23,646,578.17	1.15
1928	392,486.85	25,267,428.58	1.55
1929	339,884.81	27,468,155.98	1.24
1930	386,342.85	29,564,186.34	1.31
1931	384,506.64	29,381,122.98	1.31

*Compiled from *Biennial Reports, Auditor of Public Accounts, Kentucky*.

†Computed from selected sources of revenue, an attempt being made to exclude all revenue other than state taxes.

became ever more critical of the constitutionality of laws based on capital stock. Indeed, the probable immediate cause of the revision of the Kentucky law in 1926 is to be found in the decision of the Supreme Court in *Airway Corporation v. Day*.¹¹

The most far-reaching change effected at this time (1926)

¹⁰ Acts, 1918, chap. 124, p. 546 (March 29).

¹¹ 266 U. S. 71 (Oct. 20, 1924). This opinion was expressed by Mr. John W. Farmer, who was at the time Secretary of the Tax Commission.

was in the basis on which the tax was computed. As in former acts the tax applied alike to domestic and foreign corporations; but, instead of using apportioned authorized stock as had been done previously, the new law was based upon the asset value of the corporation's stock. This was apportioned to the state on the basis of property owned and business transacted as in the former laws. At the same time the rate was raised from \$0.50 a \$1,000.00 to \$0.70 a \$1,000.00.¹²

The following modification which was the direct outgrowth of several Court decisions, apparently gross blunders, was also incorporated.

"A corporation which may be liable to pay a special license tax under chapter 12 of the Kentucky Statutes, will not be required to pay the corporation license tax provided for herein when such special license tax shall be equal to or greater than the corporation license tax, but when the amount of such special tax shall be less than the amount which would be due as determined under . . . this act, such corporation shall pay as corporation license tax the difference between the amount required to be paid as special tax and the amount which would be due under this act if such corporation were not engaged in any business requiring a special license tax."¹³

The method and date of reporting and assessing, penalties and minimum tax remained as in the 1917 law; but the exemption to domestic corporations for the year of incorporation was omitted.

If changing the basis of the tax from authorized stock to asset value of the stock lessened the base of the tax, it was more than offset by the change in rate and the failure to exempt domestic corporations the year of their incorporation.¹⁴ However, considerable revenue was lost to the state by the provision allowing offsets for all special licenses paid.¹⁵

¹² *Acts*, 1926, chap. 74.

¹³ *Acts*, 1926, chap. 74, sec. 7, pp. 207-8.

¹⁴ See Table I.

¹⁵ Some idea of the amount lost each year may be gained from the following statement of the Tax Commission. "Our records show that 4,660 corporations paid a license tax based upon reports as of December 31st, 1929; 924 other corporations reported, but were found to owe no tax for said year, due almost wholly to the fact that such corporations paid other special taxes, the exemption of which left no corporation license tax due." (Personal communication.) Others escape a portion of the tax, though not all of it. One interesting type of example is that of coal corporations which operate commissaries and reduce their corporation license tax by selling cigarettes, soft drinks, oleo, etc.

II. LEGAL CONSIDERATIONS

Kentucky Litigation.—A brief resume of the litigation occasioned by this law and some comparisons made with decisions of the Supreme Court of the United States will be of interest. Decisions regarding the basis of the tax may be considered first.

In assessing the American Tobacco Company, the Board of Valuation and Assessment erroneously considered issued rather than authorized capital stock. The state afterward sought to recover the amount of the tax not assessed and was successful in its suit, the Court holding that in such circumstances “the Commonwealth is entitled to recover the amount which, *by reason of this mistake*, it has been deprived of, although settlement has been made and receipt in full given.”¹⁶

Furthermore, if the corporation were a foreign one, but had all its property located, and conducted all its business within this state, and had no income aside from that received in Kentucky, it could be taxed on its entire authorized capital stock, although it had issued only a portion of it.¹⁷

More to have been expected than the question of basis were problems of apportionment. “Business transacted in this State” was held to include purchases as well as sales in *Lorrillard v. Scott*,¹⁸ when the plaintiff, a nonresident corporation owning property and doing business in the state, was denied an order enjoining the Tax Commission from including purchases in ascertaining business done in and out of the state to determine the portion of its capital stock employed in the state.

Whether sales or purchases made without the state should be included in ascertaining the amount of “business transacted in this State” is answered in *Stewart Iron Works Co. v. James, Auditor*.¹⁹ A Kentucky corporation having no tangible property located in other states and no branch factories made only a small portion of its total sales in Kentucky. Sales from Kentucky to nonresidents, the Court held, should be taxed somewhere, but to tax them in the state where the purchaser resides

¹⁶ *American Tobacco Co. v. Commonwealth*, 162 Ky. 716 (Feb. 11, 1915). Italics are not in original.

¹⁷ *Hillman Land & Iron Co. v. Commonwealth*, 174 Ky. 755 (March 20, 1917). In the same case, the Court also explicitly held the law constitutional.

¹⁸ 184 Ky. 312 (May 30, 1919).

¹⁹ 138 Ky. 120 (April 26, 1910).

would be legally impossible. Kentucky, therefore, was the only state which could tax the business in question.²⁰ Thus, sales made directly to persons without the state are included in "business transacted in this State," but purchases from without the state are not included.

We come now to a consideration of those cases occasioned by that part of the law which exempted from the purview of this act "all corporations . . . which are liable to pay a franchise or license tax." The inclusion of the words "or license" was certainly an unhappy construction in the earlier laws. The first case to be considered is *Merchants Ice & Cold Storage Company v. Commonwealth*.²¹ The company manufactured ice and conducted a cold storage business in connection. It sought to avoid payment of any capital-stock license tax because it paid a license tax for doing an ice business. The Court held that if the company's sole business were the manufacture and sale of ice it would not be liable for the capital-stock license tax in addition to the license tax on the ice business as such; but

"Where a manufacturing company conducts both an ice manufacturing business and a cold storage business, and pays a license tax only on its ice factories, it is liable for the payment of a license tax on so much of its capital stock as is employed, or used by it in the conduct of its cold storage business."²²

The other cases bearing on this point did not arise until after the enactment by the 1917 General Assembly of a special liquor-license tax. E. H. Taylor, Jr. & Sons, a domestic corporation, paid the special liquor-license tax and the corporation capital-stock license tax, under the belief that both were due. Later the company successfully sued to recover the latter. The Court held that both were license taxes, that the company was liable for the tax on distilled spirits, but that payment of this

²⁰ The opinion reached in this case, affirming the right of a state to include out-of-state sales in determining business transacted in the state, was the same as that reached by the United States Supreme Court in *Hump Hairpin Co. v. Emmerson* (253 U. S. 290) and *Cheyney Bros. v. Mass.* (246 U. S. 147). In the former case the right of Illinois to do so was upheld, and in the latter Massachusetts was denied the right to include such sales made in Massachusetts by a foreign corporation located elsewhere. These two cases thus attacked the problem from opposite points, but with analogous results. They are discussed below, but from a different point of view. See below p. 13, and footnote 53.

²¹ 154 Ky. 452 (June 17, 1913).

²² 154 Ky. 452, 453 (Syllabus).

exempted it from liability for the corporation tax based on capital stock.²³ This decision is in conformity with that reached in *Merchants Ice & Cold Storage Company v. Commonwealth*,²⁴ but this agreement does not necessarily mean that the conclusions reached in both cases were correct. Rather, it was the perpetuation of a most illogical interpretation of the statute, which was followed in later cases, and finally exerted its influence when the law was redrafted and amended in 1926. Granting that the corporation capital-stock tax and the tax on distilled spirits were both license taxes, as pointed out by the Court, it does not follow that one was to be in lieu of the other, or that the imposition of both would have been unjust double taxation. They were both license taxes, *but they were licenses for different privileges*—the one to function and do business as a corporation, the other to carry on a business selected for special taxation.

The Court has been consistent in following this principle. Thus, in *Craig, Auditor v. Frankfort Distilling Company*²⁵ a case similar in all respects to *Greene, Auditor v. Taylor, Jr. & Sons*,²⁶ the Auditor was required to draw his warrant in favor of the company for the amount of the taxes “unjustly” paid, as he had in the previous case.²⁷ Parellel to these cases²⁸ was that of *Craig, Auditor v. Security Producing & Refining Company*.²⁹ The only essential difference is that in this instance relief from the capital-stock tax was granted on the ground that payment of an oil-production license tax³⁰ entitled the company to exemption.

Litigation Before U. S. Supreme Court Involving Domestic Corporations.—Turning now to a consideration of kindred cases which have come before the Supreme Court of the United States, a brief summary will be given of the more important ones bearing on the basis of the tax. Those to be considered all have to

²³ *Greene, Auditor, v. Taylor, Jr. & Sons*, 184 Ky. 739 (June 17, 1919).

²⁴ 154 Ky. 452 (June 17, 1913).

²⁵ 189 Ky. 616 (Nov. 23, 1920).

²⁶ 184 Ky. 739 (June 17, 1919).

²⁷ See also *Rober' L. Greene, Auditor, v. Frankfort Distilling Company, Incorpora cd.*, 2 9 Ky. 427 (May 29, 1925).

²⁸ *Greene, Auditor, v. Taylor, Jr. & Sons*, 184 Ky. 739; *Craig, Auditor, v. Frankfort Distilling Co.*, 189 Ky. 616.

²⁹ 189 Ky. 565 (Nov. 16, 1920).

³⁰ The law levying this tax was passed at the same time as the special whiskey tax. See *Acts, Special Session, 1917 chap. 9, pp. 40-43.*

do with the constitutionality of capital-stock taxes as applied to domestic and foreign corporations, and are in no way concerned with the question of exemptions.

No case specifically challenging the right of a state to tax domestic corporations on the basis of authorized, rather than issued, capital stock came before the Supreme Court until 1926. True, as early as 1894, approval was given by implication to this principle in an organization tax case.³¹ That the opinion of the Court as given in this case was influential in directing thought relating to the taxation of corporations on a capital-stock basis is shown in *Kansas City, Memphis, & Birmingham Railroad Company v. Stiles*,³² in which *Ashley v. Ryan*³³ was cited as authority. Here, the right of Alabama to impose a franchise tax based on entire paid-up capitalization was upheld. In rendering the decision, the Court also applied *Kansas City, Fort Scott and Memphis Railway Co. v. Botkin, Secretary of State of the State of Kansas*,³⁴ in upholding the right of a state to measure a franchise tax within its authority by capital stock which is in part represented by property beyond its taxing power.

In *Roberts & Schaefer Company v. Emmerson*,³⁵ which was decided in 1926, the Court decided that as applied to domestic corporations doing only an intrastate business, a franchise tax measured by authorized capital stock was not an infringement of the equal protection clause of the Fourteenth Amendment, thus affirming the Illinois Court.³⁶

From these decisions it is seen that insofar as domestic corporations are concerned the Kentucky law has always been within constitutional limits. Even under the original law, Kentucky, although basing the tax on authorized capital stock, apportioned this base according to property and business. In *Roberts & Schaefer Company v. Emmerson*, it was definitely held that a state could levy a franchise tax on domestic corporations doing only an intrastate business measured by its authorized capital stock. This case, it is true, does not specifically apply to a domestic corporation doing an interstate business; but it would

³¹ *Ashley v. Ryan*, 153 U. S. 436 (May 14, 1894).

³² 242 U. S. 111 (Dec. 4, 1916).

³³ 153 U. S. 436 (May 14, 1894).

³⁴ 240 U. S. 227 (Feb. 21, 1916).

³⁵ 271 U. S. 50 (April 12, 1926).

³⁶ 313 Ill. 137.

necessarily be an illogical application, in the light of this decision and that reached in *Kansas City, Memphis & Birmingham Railroad Company v. Stiles*,³⁷ that would declare a franchise tax on domestic corporations based on allocated authorized capital stock unconstitutional merely because the corporation does an interstate business or owns property outside the state. However, in view of *Airway Corp. v. Day*,³⁸ it is doubtful what would be the Court's ruling were such a case brought before it.

Litigation Before U. S. Supreme Court Involving Foreign Corporations.—The Kentucky law when viewed in the light of cases brought about by the attempted taxation of foreign corporations on capital stock appears to have been rather chameleon-like as to its constitutionality. At the time of its passage in 1906, it was apparently within the bounds of approval of the Supreme Court. That body had, in 1892, held a New York law imposing an annual tax computed by a percentage of its whole capital stock valid when applied to a Utah corporation doing only a small portion of its business in New York.³⁹

Some doubt was introduced concerning the Court's view of this matter when, in 1910, it held an entrance tax based on entire authorized capital invalid.⁴⁰ Before the Kentucky law was amended in 1917, this doubt had apparently been removed by *Baltic Mining Co. v. Massachusetts*.⁴¹ The law in question here, one imposing an excise on certain classes of foreign corporations measured by authorized capital, but setting a definite limit, was held to be constitutional.

Both the Kentucky cases discussed on this score⁴² came after the Baltic Mining Co. decision in 1913, and were, therefore, at the time, in apparent conformity with the view of the United States Supreme Court.

They did not remain so long, however, for the Supreme Court in *Looney v. Crane*⁴³ denied Texas the right to tax for-

³⁷ 242 U. S. 111 (Dec. 4, 1916).

³⁸ 266 U. S. 71 (Oct. 20, 1924).

³⁹ *Horn Silver Mining Company v. New York State*, 143 U. S. 305.

⁴⁰ *Pullman Co. v. Kansas*, 216 U. S. 56 (75 Kansas 664, reversed). See also *Western Union Telegraph Co. v. Kansas*, 216 U. S. 1 (75 Kansas 609, reversed), and *Ludwig v. Western Union Telegraph Co.*, 216 U. S. 146.

⁴¹ 231 U. S. 68 (Nov. 3, 1913).

⁴² *American Tobacco Company v. Commonwealth*, 162 Ky. 716 (Feb. 11, 1915); *Hillman Land and Iron Company v. Commonwealth*, 174 Ky. 755 (March 20, 1917). See above p. 8.

⁴³ 245 U. S. 178 (Dec. 10, 1917).

eign corporations on the basis of authorized capital, or true value when this exceeded the amount authorized. The Court's decision in this case hinged upon the fact that the Texas law did not name a specific limit as did the Massachusetts law involved in the Baltic Mining Company case.⁴⁴

Other elements, present in this case, were not involved in the International Paper Co. and Locomobile Co. cases⁴⁵ which were decided the following year. The Massachusetts law had, in effect, been amended so as to remove the limit mentioned above.⁴⁶ The Massachusetts Court upheld the law;⁴⁷ but the Supreme Court, in conformity with *Looney v. Crane*,⁴⁸ held in both cases that an excise on a foreign corporation of a certain percentage of the entire authorized capital was unconstitutional.

This same distinction was adhered to in *Cheyney Bros. v. Mass.*⁴⁹ The decision in this case, although rendered on the same date as the International Paper Co.⁵⁰ and Locomobile Co.⁵¹ cases, concerned the application of the Massachusetts excise before the limit was removed, and was construed to be like the Baltic Mining Co.⁵² and unlike the International Paper Co. and Locomobile Co. cases.

It seemed that the Supreme Court had adopted a clear-cut attitude toward the constitutionality of a state's right to tax foreign corporations on the basis of authorized capital stock; that is, a tax levied on the entire authorized stock was permissible, even though all the stock had not been issued, provided it set a definite limit to the amount that should be due from any corporation; it was not permissible if it did not set such a limit.⁵³

⁴⁴ 231 U. S. 68 (Nov. 3, 1913).

⁴⁵ *International Paper Co. v. Mass.*, 246 U. S. 135 (March 4, 1918); *Locomobile Co. of America v. Mass.*, 246 U. S. 146 (March 4, 1918).

⁴⁶ A supplementary law had been passed in 1914 (*Massachusetts Stats.*, 1914, chap. 724, sec. 1) taxing authorized stock above \$10,000,000.00 at .01 per cent, so that the 1914 law, conjointly with the 1909 law (the one referred to above, p. 12) exacted a single tax based on the par value of the entire authorized capital stock of a corporation of .02 per cent of the first \$10,000,000.00 and .01 per cent of the excess.

⁴⁷ 228 Mass. 101, and 228 Mass. 117.

⁴⁸ 245 U. S. 178 (Dec. 10, 1917).

⁴⁹ 246 U. S. 147 (March 4, 1918).

⁵⁰ 246 U. S. 135 (March 4, 1918).

⁵¹ 246 U. S. 146 (March 4, 1918).

⁵² 231 U. S. 68 (Nov. 3, 1913).

⁵³ A reversal of this attitude might be inferred from the decision in *Hump Hairpin Co. v. Emmerson* 258 U. S. 290 (March 27, 1922). Illinois attempted to tax a foreign corporation having an authorized

The Court went further in *Airway Corp. v. Day*⁵⁴ than in previous cases in disavowing the constitutionality of taxes on authorized capital stock. In those discussed above, where the legality of such taxes was denied, the taxes levied were on unapportioned authorized stock. In *Airway Corp. v. Day*, however, an Ohio statute prescribing a tax on foreign corporations based on apportioned authorized stock and applied to those having common stock without par value at the rate of "five cents per share upon the proportion of the number of shares of authorized common stock, represented by property owned and used and business transacted in this State" was declared unconstitutional.⁵⁵

The invalidity of taxes on authorized stock was further emphasized in *Cudahy Packing Co. v. Hinkle*,⁵⁶ in which a Washington statute taxing foreign corporations upon the basis of authorized capital stock was held unconstitutional. The Washington act, like the earlier Massachusetts statute,⁵⁷ set a maximum limit, but this fact carried no weight with the Court.

Although no cases of similar nature have arisen under the Kentucky law, it should be noted before leaving this discussion that a state "cannot levy any special annual taxes on foreign corporations whose business activities within the taxing state are exclusively interstate, that is, which are engaged solely in selling goods manufactured in, and delivered from, another state."⁵⁸

capital stock greater than the amount of its stock actually issued on the basis of authorized stock, apportioned to the state according to the proportion that the property owned and business transacted in the state was of the total property owned and business transacted in and out of the state. However, the ground on which the law was contested was the method of apportionment, and not the fact that it was levied on authorized stock when same had not all been issued. The United States Supreme Court, in affirming the judgment of the Illinois Court, considered only those points made in the case.

⁵⁴ 266 U. S. 71 (Oct. 20, 1924).

⁵⁵ This decision left the position of the Kentucky tax beyond the pale of the Supreme Court's sanction, and was no doubt instrumental in bringing about the 1926 amendment.

⁵⁶ 278 U. S. 460 (Feb. 18, 1929).

⁵⁷ The one referred to above, p. 12.

⁵⁸ National Industrial Conference Board, *State and Local Taxation of Business Corporations*, p. 62. See also *Cheyney Bros. v. Mass.* 246 U. S. 147 (1918), *Alpha Portland Cement Co. v. Mass.* 268 U. S. 203 (1925), *Ozark Pipeline Corp. v. Monier*, 266 U. S. 555 (1925), Thomas R. Powell, "Business Taxes and the Federal Constitution," *Proceedings of the Eighteenth National Tax Conference*, 1925, p. 169.

III. PRODUCTIVITY

Table I⁵⁹ shows that the amounts received as corporation license taxes have always been a very small portion of the total tax receipts of the state. Table II shows that the types of corporations containing the greatest numbers of license tax payers are retail merchandising and manufacturing. These two types are nearly equal in number and together constitute approximately half of all corporations paying the tax. Manufacturing concerns, however, pay approximately half of the total tax, or over five times the amount paid by retail merchandising corporations. Indeed, manufacturing concerns pay a larger percentage of the tax than any other general type. The group paying the next largest amount is mineral producers; however, these pay but 15 per cent of the total tax. The proportions of the total tax received from the other four general types (wholesale merchandising, retail merchandising, real estate, and miscellaneous) are approximately 10 per cent each.

While it is true that manufacturing concerns pay a total tax over three times that contributed by mineral producers, who pay the second largest amount, the median tax paid by manufacturers is \$21.72, only \$1.33 larger than the median tax paid by wholesale merchandising concerns, which pay the smallest part of the total tax of any general type. Real estate corporations rank third in the size of the median tax paid (slightly under \$17.00). The median tax paid by each of the other three general types of corporations (mineral producers, retail merchandising, and miscellaneous) approaches the minimum tax of \$10.00.

It is seen that the arithmetic mean tax is not only in every instance above the median tax, but it is in every case greater than the third quartile. Attention is called in particular to the mineral producers and manufacturing groups where the arithmetic mean is in each case more than twice the third quartile. At the same time, the first quartile, without exception, is a corporation which pays the minimum tax. These facts indicate that in each group there is a large number of corporations (amounting to approximately half the group in the case of mineral producers, retail merchandising, and miscellaneous) which

⁵⁹ See above p. 6.

TABLE II
TYPES OF CORPORATIONS PAYING KENTUCKY LICENSE TAX
AND THE AMOUNTS PAID BY EACH, 1931*

Type of Corporation	Number Paying Tax	Percentage of Number Paying Tax	Amount Paid	Percentage of Total Tax	Mean Tax (Arith.)	Median Tax	Q ₁	Q ₃
Mineral Producers	252	11.3	\$27,264.18	14.5	108.19	10.50	10.00	52.77
Manufacturing	522	23.4	89,783.39	47.9	172.00	21.72	10.00	82.03
Wholesale Merchandising	205	9.2	15,167.24	8.1	73.99	20.39	10.00	54.44
Retail Merchandising	554	24.8	16,588.83	8.9	29.94	11.18	10.00	23.06
Real Estate	299	13.4	20,206.77	10.8	67.58	16.94	10.00	42.28
Miscellaneous	401	17.9	18,388.78	9.8	45.86	10.00	10.00	21.00
Total	2,233	100.0	167,399.10	100.0	83.92	11.90	10.00	42.00

* The data in Tables II-IX were taken from the original reports made by corporations to the Tax Commission for the purpose of assessment. Reports as of December 31, 1930, on which the 1931 fiscal year assessments were based, were selected because they were the latest available at the time. Approximately half the reports were used, the method employed being to take every other file in alphabetical order. Some idea as to the adequacy of this sample is indicated by the fact that the total tax assessed against those corporations selected amounted to \$187,399.19. The total corporation license for the fiscal year ending June 30, 1931, was \$384,506.64. That is, the total tax paid by those corporations selected as a sample amounted to 48.7 per cent of the total tax collected from this source. Although a small percentage of the corporations could not be classified definitely, this number is small enough to justify their being ignored. These data are discussed as though the corporations included comprised the total. If the figures for the total are desired, they can be obtained within a close degree of accuracy by multiplying respectively by two the numbers of corporations as given in columns 2 of Tables II-IX inclusive, and the amounts collected, as given in columns 4 of Tables II and V-IX inclusive, and in columns 5 of Tables III and IV. All percentages, averages, and quartiles as given in these tables would remain practically unchanged were a check made of all corporations.

pay the minimum tax, and a very few paying a comparatively large amount of tax.⁶⁰

A comparison of the total number of domestic corporations

⁶⁰ Consequently the median is a more characteristic figure.

(Table III) with the total number of foreign corporations (Table IV) paying the tax reveals that domestic corporations make up nearly three-fourths of the total. This same ratio does not hold as between groups, however, foreign corporations constituting a considerably greater portion of the first three groups (mineral producers, manufacturing, and wholesale merchandising), and domestic corporations constituting a considerably greater portion of the last three groups (retail merchandising, real estate, and miscellaneous).⁶¹

TABLE III
TYPES OF DOMESTIC CORPORATIONS PAYING KENTUCKY
LICENSE TAX AND THE AMOUNTS PAID BY EACH, 1931.
(See footnote,* Table II)

Type of Corporation	Number Paying Tax	Percentage of Domestic Corp. Paying Tax	Percentage of all Corp. Paying Tax	Amount Paid	Percentage of Domestic Tax	Percentage of Total Tax	Mean Tax (Arith.)	Median Tax	Q ₁	Q ₃
Mineral Producers	145	8.9	6.5	\$ 9,516.24	9.6	5.1	65.63	10.00	10.00	35.68
Manufacturing	338	20.7	15.1	40,130.26	40.4	21.4	118.73	22.43	10.00	79.81
Wholesale Mer'dis'g	124	7.6	5.6	11,744.80	11.8	6.3	94.72	29.62	10.00	70.55
Retail Mer'dis'g	455	27.8	20.3	13,248.81	13.3	7.1	29.12	13.04	10.00	29.45
Real Estate	244	14.9	10.9	10,069.45	10.1	5.4	41.27	14.93	10.00	34.21
Miscellaneous	330	20.2	14.8	14,612.10	14.7	7.8	44.28	10.00	10.00	21.00
Total	1,636	100.0	73.2	\$99,321.66	100.0	53.1	60.71	12.60	10.00	38.83

Retail merchandising is found to be the domestic type of corporation with the greatest number of license-tax-paying concerns, this type constituting one-fourth of all domestic corporations paying the license tax. This is followed by the manufacturing group which constitutes one-fifth of the total domestic corporations.

⁶¹ Compare columns 2 of Tables III and IV.

TABLE IV
TYPES OF FOREIGN CORPORATIONS PAYING KENTUCKY
LICENSE TAX AND THE AMOUNTS PAID BY EACH, 1931.

(See footnote,* Table II)

Type of Corporation	Number Paying Tax	Percentage of Foreign Corp. Paying Tax	Percentage of all Corp. Paying Tax	Amount Paid	Percentage of Foreign Tax	Percentage of Total Tax	Mean Tax (Arith.)	Median Tax	Q ₁	Q ₃
Mineral Producers	107	17.9	4.8	\$17,747.94	20.1	9.5	165.87	18.23	10.00	78.53
Manufacturing	184	30.8	8.2	49,653.13	56.3	26.5	269.85	14.70	10.00	94.45
Wholesale Merchandising	81	13.6	3.6	3,422.44	3.9	1.8	42.25	10.00	10.00	38.60
Retail Merchandising	99	16.6	4.4	3,340.02	3.8	1.8	33.74	10.00	10.00	13.70
Real Estate	55	9.2	2.5	10,137.32	11.5	5.4	184.31	35.00	10.00	114.05
Miscellaneous	71	11.9	3.2	3,776.68	4.3	2.0	53.19	10.00	10.00	31.89
Total	597	100.0	26.7	\$88,077.53	100.0	47.0	147.53	10.01	10.00	52.12

The type of foreign corporation having the largest number of license paying concerns is manufacturing, this type constituting nearly one-third of the total foreign corporations. This is followed by the mineral producers and retail merchandising groups, each being over half as numerous as the manufacturing group, with wholesale merchandising corporations not far behind.

In contrast to the approximate one-fourth that foreign corporations are of the total number paying, this group pays approximately one-half of the total tax that Kentucky derives from the corporation license tax.

Manufacturing corporations pay, as a group, a larger amount of tax than any other foreign type. The second largest amount is paid by the mineral producers group. In both instances the actual amounts paid are greater than those paid by the corresponding domestic groups. Indeed, the total tax re-

ceived from foreign manufacturing corporations amounts to a little more than half of the total received from all foreign corporations and to slightly more than one-fourth of the total tax from all corporations. The tax from the mineral producing group amounts to one-fifth of the total received from all foreign corporations and to one-tenth of the total tax from all corporations.

Foreign retail and wholesale merchandising corporations contributed smaller amounts of tax than any other groups, domestic or foreign.

Among domestic corporations, the greatest amount of tax is not paid by the type most numerous, as in the case of foreign corporations; the greatest amount is paid by manufacturing corporations. This group of corporations accounted for two-fifths of the total tax paid by domestic corporations and one-fifth of the total from all.

Excluding the manufacturing group, the amounts collected from the different types of domestic corporations all fall within a comparatively small range, the lower limit, which is determined by mineral producers, being slightly less than 10 per cent of the total domestic tax and the upper limit, which is determined by the miscellaneous group, being slightly less than 15 per cent of the total domestic tax.

Directing attention to the sizes of the tax payments made by individual domestic corporations, it is apparent that the largest median tax paid is approximately \$30.00, and that it is paid by wholesale merchandising establishments. The domestic group paying the next highest median tax is manufacturing (nearly \$22.50). Real estate and retail merchandising corporations follow next in the order mentioned, with median taxes of approximately \$15.00 and \$13.00 respectively.

The largest median tax paid by individual foreign corporations is found in the real estate group. Indeed, it is the largest of any group, domestic or foreign, amounting to \$35.00. The second largest is found in the group of mineral producers, and the third largest, amounting to only \$14.70, is found in the manufacturing group.

Judging from the number of corporations paying and the total amounts collected from them, it would be expected that the median for foreign manufacturing corporations would also be

larger than that for similar domestic corporations. That this is not the case, however, indicates that the tendency of corporations to be bunched about the lower license-tax-paying figures, with a few very large taxpayers at the top, is pronounced in the case of foreign manufactures, as is true in the case of foreign mineral producers.

Table V shows that coal companies constitute a little more than half of the license-tax payers in the mineral producing groups, and account for 85 per cent of the tax from this group. The coal producing group does not pay the largest median tax,⁶² however, its median tax being \$21.00 as compared with \$38.50 for stone quarrying concerns. Stone quarrying corporations, however, amount to but slightly more than 3 per cent of the number of mineral producing corporations, and account for a still smaller percentage of the total license collected from this group. Oil and gas companies combined⁶³ make up approximately 30 per cent of the total number of mineral-producing concerns, but pay a little less than 5 per cent of the total tax from this group.

The outstanding fact shown in Table VI is the lack of any one kind⁶⁴ of manufacturing corporation paying the largest portion of the tax. It is significant in this connection that with the exception of two, the iron and steel group and the miscellaneous group, no manufacturing group contributed as much as 10 per cent of the total tax paid by manufacturing corporations. Nevertheless, the iron and steel group and the miscellaneous group each account for approximately one-third of the total tax from manufacturing corporations. This does not mean, however, that within these groups there are uniformly larger concerns. Quite the contrary is true, one rolling mill concern paying a license tax of over \$12,000, thus accounting for nearly 14 per cent of the total tax from manufacturing concerns, and over 40 per cent of the total received from the iron and steel group. In a similar manner, a few tobacco companies pay over two-thirds of the license tax received from the miscellaneous manu-

⁶² See above, footnote 15, p. 7.

⁶³ It is probable that the distinction made between them in Table V is not at all as definite as indicated.

⁶⁴ The word "kind" is used when referring to those types of corporations which are subdivisions of general types discussed above. The word "group" is used in connection with both, but in such manner that no confusion should result.

TABLE V
TYPES OF MINERAL PRODUCING CORPORATIONS PAYING
KENTUCKY LICENSE TAX AND THE AMOUNTS
PAID BY EACH, 1931.

(See footnote,* Table II)

Type of Corporation	Number Paying	Per Cent of Group	Amount Paid	Per Cent of Amount Paid by Group	Mean Tax (Arith.)	Median Tax	Q ₁	Q ₃
Coal	140	55.6	\$23,138.87	84.9	165.28	21.00	10.00	103.55
Fluospar	10	4.0	573.93	2.1	57.39	10.25	10.00	46.91
Oil	33	13.1	540.84	2.0	16.39	10.00	10.00	18.84
Gas	15	5.6	301.96	1.1	20.13	10.50	10.00	19.60
Oil and Gas	28	11.1	448.56	1.6	16.02	10.00	10.00	16.35
Sand and Gravel	9	3.6	229.16	0.8	25.46	11.20	10.00	43.50
Stone Quarrying	8	3.2	348.21	1.3	43.53	38.50	10.00	73.96
Miscellaneous	9	3.6	1,682.65	6.2	186.96	14.62	10.00	126.95
Total	252	100.0	\$27,264.18	100.0	108.19	10.50	10.00	52.77

facturing group, and over one-fifth of the total from all manufactures. Moreover, tobacco manufacturers on the whole pay the largest individual taxes of any specific kind of corporation.⁶⁵

The most numerous kinds of manufacturing corporations are those listed under the iron and steel and the food groups, each of these containing less than one-fifth of the total.

Table VII reveals that wholesale merchandising corporations are also of a very diversified character, half of them having been classed as miscellaneous. Only one group, the sellers of metal products, pays a disproportionate part of the tax. This group contains approximately one-fifth of all wholesale corpora-

⁶⁵ The one steel rolling mill corporation mentioned pays the largest tax of any corporation encountered. There are a few coal companies which pay taxes in the range of those paid by tobacco companies.

TABLE VI

TYPES OF MANUFACTURING CORPORATIONS PAYING KENTUCKY LICENSE TAX AND THE AMOUNTS PAID BY EACH, 1931.

(See footnote,* Table II)

Type of Corporation	Number Paying	Per Cent of Group	Amount Paid	Per Cent of Amount Paid By Group	Mean Tax (Arith.)	Median Tax	Q ₁	Q ₃
Food and Kindred Products	97	18.5	\$7,944.31	8.9	81.90	33.21	10.00	87.02
<i>Animal Products</i>	24	4.6	2,602.67	2.9	108.44	58.48	12.54	133.71
<i>Vegetable Products and Beverages</i>	73	13.9	5,341.64	6.0	73.17	23.56	10.00	63.40
Textiles and Their Products	34	6.4	3,200.23	3.5	94.12	36.72	14.00	90.41
Forest Products	57	10.8	7,935.87	8.8	139.23	31.07	10.00	125.45
Printing, Publishing, Allied Industries	75	14.4	5,567.88	6.1	74.24	10.00	10.00	40.45
Chemicals and Allied Products	58	11.0	4,510.43	4.9	77.77	10.38	10.00	58.21
Leather and Its Manufactures	7	1.3	414.86	0.5	59.27	51.82	10.00	93.99
Stone, Clay and Glass Products	28	5.3	2,541.90	2.9	90.78	31.01	13.56	55.91
Iron and Steel and Their Products	99	18.9	30,113.38	33.4	304.18	23.03	10.00	115.80
<i>Other than Machinery</i>	54	10.3	21,188.90	23.3	392.39	21.29	10.00	163.38
<i>Machinery</i>	45	8.6	8,924.48	9.9	198.32	31.05	10.00	231.33
Miscellaneous	67	12.8	27,554.53	30.6	411.26	18.90	10.00	71.89
Total	522	100.0	\$9,783.39	100.0	172.00	21.72	10.00	82.03

tions and pays nearly half of the total corporation license tax collected from wholesale merchandising concerns. The large proportionate payment from this group is due almost entirely to hardware concerns, which pay the largest individual license taxes of any kind of wholesale corporation.

Table VIII shows that the group of corporations selling metal products ranks first in number among retail merchandising corporations and that this same group ranks high in the percentage of tax paid by this type. This is due, however, to corporations engaged in the garage business which constitute almost one-fifth of the retail merchandising corporations and account for almost one-seventh of the total license tax from retailers.

Next in number are two groups, retailers of clothing and of building materials, each of which contains the same number of corporations; neither group, however, is as numerous as

TABLE VII
TYPES OF WHOLESALE MERCHANDISING CORPORATIONS PAYING KENTUCKY LICENSE TAX AND THE AMOUNTS PAID BY EACH, 1931.

(See footnote,* Table II)

Type of Corporation	Number Paying	Per Cent of Group	Amount Paid	Per Cent of Amount Paid by Group	Mean Tax (Arith.)	Median Tax	Q ₁	Q ₂
Dealers in Farm Products	23	11.2	\$ 903.71	6.0	39.29	24.75	10.00	48.72
Food Dealers and Distributors	38	18.5	1,773.02	11.7	46.66	13.50	10.00	68.38
Metal Products	45	21.9	7,162.33	47.3	159.16	46.26	16.75	118.51
Miscellaneous	99	48.3	5,328.18	35.0	53.82	12.12	10.00	45.44
Total	205	100.0	\$15,167.24	100.0	73.99	20.39	10.00	54.44

garages alone. These are followed by stores classed as of a general character, which pay over one-fourth of the total license tax of all retail corporations. In terms of amount paid, department stores are the most important kind of general character stores, paying three-fifths of the license from this group and over one-seventh of the total from all retail concerns. Department stores also pay by far the largest individual license taxes of any kind of retail corporation.

Retailers of building materials and clothing pay approxi-

TABLE VIII
 TYPES OF RETAIL MERCHANDISING CORPORATIONS PAYING
 KENTUCKY LICENSE TAX AND THE AMOUNTS
 PAID BY EACH, 1931.

(See footnote,* Table II)

Type of Corporation	Number Paying	Per Cent of Group	Amount Paid	Per Cent of Amount Paid by Group	Mean Tax ((Arith.))	Median Tax	Q ₁	Q ₃
Food Dealers	27	4.9	\$ 594.53	3.5	22.02	10.02	10.00	21.58
Clothing, Shoes, etc.	77	13.9	1,680.71	10.2	21.83	10.00	10.00	19.25
Of a General Character	66	11.9	4,472.46	26.9	67.76	22.41	10.00	61.73
Fuels	40	7.3	617.37	3.7	15.43	10.00	10.00	14.00
Metal Products	181	32.6	3,721.38	22.5	20.56	10.00	10.00	20.85
Building Material other than Plumbing, Heating and Sheet Metal†	77	13.9	2,894.27	17.4	37.59	25.20	11.40	39.66
Miscellaneous	86	15.5	2,608.11	15.7	30.33	10.26	10.00	26.72
Total	554	100.0	\$16,588.83	100.0	29.94	11.18	10.00	28.06

†Some building materials are sold by certain coal companies and are included under fuels above.

mately one-sixth and one-tenth respectively of total retail license tax. About half the kinds of retail merchandising concerns pay as a median the minimum tax, or an amount very little larger.

Over half the tax from the real estate group (Table IX) is collected from corporations dealing in mineral and timber lands, although this kind is slightly less than one-fourth of the total number of real estate corporations. This group of corporations is almost without exception composed of companies holding or dealing in coal lands.

TABLE IX

TYPES OF REAL ESTATE CORPORATIONS PAYING KENTUCKY
LICENSE TAX AND THE AMOUNTS PAID BY EACH, 1931.

(See footnote,* Table II)

Type of Corporation	Number Paying	Per Cent of Group	Amount Paid	Per Cent of Amount Paid by Group	Mean Tax (Arith.)	Median Tax	Q ₁	Q ₃
Other than mineral lands, and cemetery companies	232	77.6	9,461.71	46.8	40.78	14.20	10.00	33.32
Owning coal, mineral and timber lands	67	22.4	10,745.06	53.2	160.37	35.00	10.00	105.00
Total	299	100.0	\$20,206.77	100.0	67.58	16.94	10.00	42.28

The miscellaneous group, for which no special table is shown, is made up of corporations of a widely diversified character. They are, for the most part, small concerns and pay small license taxes. For instance, in over half the cases, the median tax is but \$10.00. The kind paying by far the largest median tax is auto finance companies (\$119.19). Securities and investment companies pay the greatest amount of tax as a group, accounting for one-fourth of the total corporation license from miscellaneous corporations. Corporations dealing in tobacco and operating loose leaf floors pay one-fifth of the tax collected from miscellaneous corporations. Contracting and construction companies are the most numerous kind of miscellaneous corporations, constituting one-tenth of the total number.