

STATE AND LOCAL TAXATION
OF PRIVATELY OWNED PROPERTY
LOCATED ON FEDERAL AREAS

Summary of Report A-6



ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

August 1965

First Issued June 1961

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

(As of June 1961)

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PREFACE

Pursuant to its statutory responsibilities, the Commission from time to time singles out for study and recommendation particular problems, the amelioration of which, in the Commission's view, would enhance cooperation among the different levels of government and thereby improve the effectiveness of the federal system of government as established by the Constitution. One problem so identified by the Commission relates to the property tax status of privately owned properties located in areas under the exclusive jurisdiction of the National Government.

In the following report the Commission has endeavored to set forth what it believes to be the essential facts and policy considerations bearing upon this problem and respectfully submits its conclusions and recommendations thereon to the Executive and Legislative Branches of the National Government and to the States.

This is a summary of a report that was adopted at a meeting of the Commission held on June 15, 1961.

Frank Bane
Chairman

1. FINDINGS

The tax status of private property located on Federal areas is one of those problems, not infrequent in Federal-State relations, in which principle rather than a potentially large material gain or loss is at stake. For some years, State and local governments have expressed concern over their inability to tax privately owned property located on certain Federal installations, particularly when the use to which such property is put does not differ from that of taxable property which happens to be located outside Federal areas. The problem is a by-product of two related constitutional institutions: (1) the exercise of legislative jurisdiction by the National Government over lands in the Government's possession (where a State or local government's jurisdiction is correspondingly limited); and (2) intergovernmental tax immunities.

In a practical sense, the immunity from State and local taxation of privately owned property located within Federal areas is a limited problem, for two reasons. First, although legislative proposals to grant States authority to tax such property would have nationwide effect, their potential fiscal impact would be significant only in a very small number of communities which suffer both from an inadequate tax base and from the inclusion within their borders of Government installations where privately owned, nontaxable property of relatively large value is employed.^{1/} Second, States generally are barred from taxing private property on Federal land only when the National Government exercises exclusive legislative jurisdiction over the area; Federal land in this category is only a minor fraction of total land holdings of the National Government.^{2/}

^{1/} Proposals to grant the relevant taxing authority to States are embodied in H. R. 710, introduced by Congressman Aspinall of Colorado, and H. R. 1585, introduced by Congressman Waggonner of Louisiana in the 89th Congress, 1st. Session.

^{2/} Total Federal holdings comprise 34 percent of the land area of the continental United States, or approximately 20 percent if Alaska is excluded.

Jurisdictional Status of Government Properties^{1/}

The concept of exclusive Federal jurisdiction, the basis for exempting privately owned property on Federal land from State and local taxation, derives ultimately from Article I, Section 8, Clause 17, of the Constitution:^{2/}

The Congress shall have power...to exercise exclusive legislation...over all places purchased by the consent of the Legislature of the States... for the erection of forts...and other needful buildings.

During the Republic's first 50 years, the National Government generally exercised its right of jurisdiction over most light-houses, over forts and arsenals, and over some other properties. But it often purchased land from the States without also acquiring legislative jurisdiction, and in other frequent instances, when it purchased land without State consent, it did not acquire exclusive legislative jurisdiction.

A Joint Resolution of Congress approved September 11, 1841 (40 U.S.C. 255) prohibited expenditures for public buildings on land purchased by the United States unless the Attorney General approved title to the land and the legislature of the State involved consented to the purchase. To encourage Federal construction, most States enacted general consent statutes granting the United States rights to buy and exercise exclusive jurisdiction

^{1/} This discussion of the jurisdictional status of the Government's properties draws heavily on the Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas Within the States, entitled, Jurisdiction over Federal Areas Within the States: Part I, the Facts and Committee Recommendations, GPO (250 pp.), April 1956; and Part II, A Text of the Law of Legislative Jurisdiction, GPO (351 pp.), June 1957, cited hereafter as "Report of the Interdepartmental Committee."

^{2/} "Exclusive Federal legislative jurisdiction, it seems well settled, serves to immunize from State taxation privately owned property located in an area subject to such jurisdiction. The leading case on this matter is Surplus Trading Co. v. Cook, 281 U. S. 647 (1930), wherein the Supreme Court held that Arkansas was without authority to tax privately owned personal property located on a military reservation which was purchased

over land within State borders. A century later, in 1940, an amendment to the Joint Resolution eliminated the requirement that the Government gain State consent to Federal acquisition of land before expending funds for construction on such land. By specifying that exclusive Federal jurisdiction over land purchased from the States may be asserted only when the head of a governmental agency files notice of such jurisdiction with the appropriate State official, the amendment, which is still in effect, has resulted in the imposition of less than exclusive Federal jurisdiction on much land acquired by the Government since 1940. In fact, as of June 30, 1957, only 2 percent (8.1 million acres) of all Government land holdings in 48 States fell under exclusive jurisdiction.^{1/} State and local taxation of private property located on the rest of the Government's land is generally not prohibited.

by the Federal Government with the consent of the legislature of the State in which it was located. The Supreme Court based its conclusion on the following proposition of law (p. 652): It has long been settled that where lands for such a purpose are purchased by the United States with the consent of the State legislature the jurisdiction theretofore residing in the State passes, in virtue of the constitutional provision (viz., Article I, Section 8, Clause 17), to the United States, thereby making the jurisdiction of the latter the sole jurisdiction." (Report of the Interdepartmental Committee, Part II, pp. 177-178).

^{1/} Statistics on the Government's land holdings cited herein are from "Inventory Report on Jurisdictional Status of Federal Areas Within the States, as of June 30, 1957," prepared by the General Services Administration and cited hereafter as "Inventory Report." It covers only 48 States; not the District of Columbia, Alaska, or Hawaii. While the legislation providing statehood for Alaska reserves the Government's right to exercise exclusive jurisdiction over certain military areas that right has not been exercised as of this writing. The Hawaii statehood legislation reserves the State's right to tax private property on Federal areas. Therefore, the omission of the data for these two States does not affect the argument.

Categories of Federal Legislative Jurisdiction

An Interdepartmental Committee chaired by the Department of Justice has recently divided the Government's land holdings into four categories of jurisdictional status.

Exclusive Jurisdiction had its genesis in the Constitution, as noted above. The Government also can and has acquired exclusive jurisdiction through cession by a State and by means of reservations in legislation admitting States into the Union.^{1/} In areas of exclusive jurisdiction, the Federal Government theoretically preempts the State's executive, legislative, and judicial authority, including the State's authority to impose taxes, except to the extent (discussed below) Congress has permitted States and localities to tax the incomes, activities, and transactions of private persons.^{2/} The Report of the Interdepartmental Committee notes that in areas of exclusive jurisdiction, States cannot enforce their criminal laws, nor tax privately owned property, nor can they either impose obligations of State citizenship upon residents of areas of exclusive jurisdiction, or extend the privileges and benefits of State citizenship to them.^{3/}

Concurrent Jurisdiction, under which about one-tenth of one percent of Federal holdings are governed, identifies cases in which the State has both granted exclusive legislative jurisdiction to the National Government and retained for itself the right to exercise all of the same authority. In such areas, States and the National Government both retain the same authority to govern land and people.

^{1/} However, with the conspicuous exception of the Yellowstone National Park and a few lesser cases, exclusive jurisdiction over public domain lands has not been reserved for the National Government in the enabling acts by which the States were created.

^{2/} A reservation by a State of only the right to serve civil and criminal process in the area, resulting from activities which occurred off the area, is regarded not to be inconsistent with exclusive Federal jurisdiction.

^{3/} Report of the Interdepartmental Committee, Part II, p. 4.

Under Partial Jurisdiction, which applies to about 1.9 percent of Federal holdings, the State has granted some authority to the National Government but reserved for itself other authority, held either exclusively or concurrently, over the area. Typically, under this category, States have reserved the right to tax private property.

Proprietorial Jurisdiction is exercised by the Government over 95 percent of its holdings. In this case, the National Government resembles a private property owner in that it bears some right or title to the property but no measure of the State's jurisdictional authority; the Government differs from a private owner in that it possesses powers and immunities private landholders cannot acquire.

The following table summarizes the findings of a General Services Administration inventory with respect to the legislative jurisdictional status of Federal areas in 48 States as of June 30, 1957:

<u>Legislative Jurisdiction</u>	<u>Acres (in millions)</u>	<u>Percent of total</u>
Exclusive	8.1	2.0
Concurrent	0.2	0.1
Partial	8.0	1.9
Proprietorial interest only	<u>388.8</u>	<u>95.2</u>
Total classified	405.1	99.2
Unknown	<u>3.4</u>	<u>0.8</u>
Total	408.5	100.0

Distribution of Exclusive Jurisdiction Properties

The following table shows the principal Federal agencies which have custody over the 8.1 million acres of Government land held under exclusive jurisdiction:

Agency	Exclusive legislative jurisdiction	
	Acres (in millions)	Percent of total
Defense	4.3	53.1
Interior	3.6	44.5
Agriculture	0.1	1.2
Other agencies (11)	<u>0.1</u>	<u>1.2</u>
Total	8.1	100.0

These holdings range in size from 0.1 acres, most of which are sites for Coast Guard lights, to the 2.2 million acres of Yellowstone National Park, all but 0.2 million acres of which is located in Wyoming.

The principal States in which the National Government has exclusive legislative jurisdiction over its lands are shown below. A tabulation of exclusive jurisdiction acreage in relation to the total acreage of each of the 48 States is presented in Appendix 2 of the original full version of this report.

State	Exclusive legislative jurisdiction	
	Acres (in millions)	Percent of total
Western:		
Wyoming	2.2	27.2
Arizona	0.7	8.6
California	0.4	4.9
New Mexico	0.2	2.5
Others (7)	<u>0.6</u>	<u>7.4</u>
Total Western	<u>4.1</u>	<u>50.6</u>
South Atlantic & South Central:		
Georgia	0.5	6.2
Texas	0.4	4.9
Kentucky	0.2	2.5
North Carolina	0.2	2.5
Others (12)	<u>1.3</u>	<u>16.0</u>
Total South Atlantic & South Central	<u>2.6</u>	<u>32.1</u>

Northeast & North Central:		
Indiana	0.2	2.5
Others (20)	<u>1.2</u>	<u>14.8</u>
Total Northeast & North Central	<u>1.4</u>	<u>17.3</u>
Total exclusive jurisdiction	8.1	100.0

The large aggregate holdings in certain western and southern States are exceptional, for 39 States each include within their borders less than 200,000 acres which fall under the exclusive jurisdiction of the National Government.

Although the Government owns nearly all land over which it exercises exclusive jurisdiction, States have also ceded such jurisdiction to the Government over a nominal amount of land in which the Government has merely a leasehold interest. Exceptions in this category do not materially affect the problem under examination.

Retrocession of Federal Taxing Jurisdiction

Congress has permitted States and local governments to impose several kinds of taxes on private income, transactions, activities, and property located on land under exclusive Federal jurisdiction, both in order to preserve equal taxation within and without Federal enclaves, and to provide States and localities with a source of tax revenue which the conditions of exclusive jurisdiction otherwise would prevent them from gaining.

The Hayden-Cartwright Act, enacted in 1936 (4 U.S.C. 104) and amended in 1940 by the Buck Act (4 U.S.C. 105-110), grants States the right to tax motor vehicle fuel sold by commissaries and similar agencies located on United States military and other reservations, provided such fuel is not for the exclusive use of the United States.

The Buck Act, moreover, permits States and their subdivisions to impose sales, use, gross receipts, and gross and net income taxes upon persons within Federal areas. It was passed expressly to prevent avoidance of these taxes. It exempts from State taxes the sale, purchase, storage or use of properties by or to authorized purchasers and the United States or any of its instrumentalities; authorized purchasers are defined as persons permitted to purchase

from commissaries and similar agencies.^{1/}

The Wherry Housing Act of 1949 authorizes private individuals to lease land on military reservations for the purpose of constructing housing and renting it to military personnel. Associated legislation, the Military Leasing Act of 1947 (10 U.S.C. 1270d), specifies the taxability of a lessee's interest by States and local governments.

In 1936 (40 U.S.C. 290) and 1939 (26 U.S.C 3305d), Congress permitted the application of State workmen's compensation laws and unemployment compensation laws, respectively, to Federal areas.

Through these enactments, Congress has restored to States and their political subdivisions a large measure of their power to tax private persons and activities located in areas of Federal exclusive jurisdiction, but it has continued to prohibit imposition either of property taxes or so-called severance taxes, generally imposed in lieu of property taxes on the extraction or sale of the natural resources of mines and forests. These statutes have left untouched the immunity from State and local taxation enjoyed by the Government itself under the Constitutional doctrine of intergovernmental immunities, as developed by the Courts.

Categories of Untaxed Private Property

Certain proposed legislation, such as H. R. 4059 and H. R. 5362 to amend the Buck Act, would permit States and local governments to tax private property which is located within Federal areas and which is not already subject to taxes. Most such property would be personal rather than real, principally because one important category of real property--privately owned Wherry housing constructed on leased property on military reservations--is already subject to State and local taxation under the Military Leasing Act of 1947, as noted above.^{2/}

^{1/} The Buck Act legislation leaves unaffected the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 under which military personnel stationed in a State or local taxing jurisdiction do not become residents for tax purposes and are therefore exempted from income taxes, personal property taxes, and motor vehicle license requirements.

^{2/} Offut Housing Corp. vs. Sarpy County, 351 U. S. 253 (1956) interpreted this legislation to be applicable to housing projects located on areas subject to exclusive jurisdiction.

The types of untaxed private personal property likely to be found within some of the Federal enclaves probably include one or more of the following:

- (1) Data processing and automotive equipment on lease to the Government;
- (2) Industrial machinery, equipment and inventories within standby Government facilities on lease to private parties for use in production, processing, or storage;
- (3) Equipment and materials of contractors engaged on Government contracts;
- (4) Equipment and inventories, including various kinds of vending machines, of concessionaires and of other trade and service establishments;
- (5) Properties of utility enterprises; and
- (6) Household goods, motor vehicles and other classes of personal property of persons residing on Federal areas, particularly in military and veterans' facilities and in National Parks.

Even on Federal land not subject to exclusive jurisdiction, the above classes of property would be subjected to taxes only in those States which tax personal property; moreover, among such States, some of these classes would be specifically tax-exempt.

Scope of Personal Property Taxes

Four States, Delaware, Hawaii, New York and Pennsylvania, do not levy general personal property taxes. Although personal property taxes vary among the rest, all States tax stock in trade and include industrial machinery in their property tax bases. Twenty-seven States (including Delaware and New York) assess machinery, mostly that attached to realty, as real property.

Twenty-two of thirty States which tax motor vehicles do so under local general property taxes; the remaining eight tax them under special property tax provisions. Thirty-five States allow, with varying exemptions or maximums, local taxation of household

personal property; 43 States with personal property taxes include livestock and 42 include farm machinery with taxable personal property.

The above exemptions or exceptions, and the fact that taxable property is rarely assessed anywhere at its full value, further limit the extent to which tax bases would be expanded if privately owned property on Federal areas of exclusive jurisdiction became taxable.

A full summary of the scope of personal property taxes in all States as of January 1, 1961, is shown in Appendix 3 of the original full version of this report.

Revenue Significance

No accurate calculation has been made of the total tax revenue which would become available if private property under exclusive Federal jurisdiction were made taxable. However, this Commission, in cooperation with the National Association of Tax Administrators, was able to gain a rough idea of the potential amount of such revenue from estimates made by the appropriate tax officials of a number of States and local jurisdictions. The largest estimate, made by the Executive Secretary of the California State Board of Equalization, placed the assessable value of private property on Federal areas in California "somewhere between \$5 million and \$35 million, and probably closer to the lower figure than to the higher one. Assessed value of this magnitude would produce some \$350,000 to \$2,450,000."

On the basis of evidence from extensive correspondence, the Commission believes that \$10 million is probably the highest warranted estimate of aggregate additional revenue that would accrue to all taxing jurisdictions in the United States if Congress consented to the taxation of private property located on areas under exclusive Federal jurisdiction.

Legislative History of Proposals to Authorize Taxation

Bills to grant Congressional consent to State and local taxation of private property located on Federal areas have been pending before the Congress for several years.^{1/} Both H. R. 4059 and H. R.

^{1/} H. R. 8278, 85th Congress; H.R. 4845 and S. 2993, 86th Congress; H. R. 4059 and H. R. 5362, 87th Congress; H. R. 2071, 88th Congress; H. R. 710 and 1585, 89th Congress.

5362, introduced in the 87th Congress (as well as H. R. 710 and H. R. 1585, introduced in the 89th Congress) would amend the Buck Act by adding to it this subsection:

(a) No person shall be relieved from liability for payment of any otherwise applicable property tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the property taxed is located, in whole or in part, in a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area were not a Federal area.

(b) For the purpose of this subsection, a property tax means any tax imposed directly on, or measured by the value of, property owned by any person other than the United States.

Legislation having the object of these bills has the support of numerous State and local officials, the National Association of Tax Administrators, the National League of Cities, and the National Association of Assessing Officers. On the other hand, such legislation was opposed by representatives of Federal agencies at the final meeting, held October 26, 1959, of the Joint Federal-State Action Committee, which could agree only that the problem "should be studied (in conjunction with related problems) by a special ad hoc committee."

The view of President Eisenhower's Administration, and reportedly that of the present administration, resembles the attitude expressed in a statement made by the Senate Committee on Government Operations during the 86th Congress, when it took no action on a similar bill: "...this subject should be handled on a comprehensive basis rather than by the piecemeal approach."^{1/} Such a comprehensive approach would have been provided under S. 1617 of the 86th Congress, S. 154 of the 87th Congress, and S. 1007 of the 89th Congress. This measure would return general legislative

^{1/} Activities Report of the Senate Committee on Government Operations for the 86th Congress, 87th Congress, First Session, Senate Report No. 52, p. 30.

jurisdiction (including the power to tax private property) over Federal areas to the States as rapidly and extensively as requirements of governmental agencies permit.

Proposals for the Readjustment of Legislative Jurisdiction

In 1954, President Eisenhower appointed an Interdepartmental Committee for the Study of Jurisdiction over Federal Areas Within the States and asked it to develop a procedure for solving the problems arising out of the uncertain jurisdictional status of Federal lands. Since 1956, the Department of Justice, acting on the recommendations of the Committee, has drafted a number of bills which would limit Federal jurisdiction over land acquired from the States to the minimum necessary for Government operations.^{1/}

The Interdepartmental Committee found that the Federal Government has been acquiring and retaining too much jurisdiction over too many areas on the basis of laws and conditions which are at least a century old. It concluded that:

...the legislative jurisdictional status of many Federal installations and areas is in need of major and immediate adjustment to bring about the more efficient management of the Federal operations carried out thereon, the furthering of sound Federal-State relations, the clarification of the rights of the persons residing in such areas and the legalization of many acts occurring on these installations and areas which are currently of an extra-legal nature. Many adjustments can be accomplished unilaterally by Federal officials within the framework of existing statutory and administrative authority by changing certain of their existing practices and policies. Others may be capable of accomplishment by cooperative action on the part of the appropriate Federal and State officials. In perhaps the majority of instances, however, there is neither Federal nor State statutory authority which would permit the adjustment of the jurisdictional status of Federal lands to the mutual satisfaction of the Federal and State authorities involved.^{2/}

^{1/} The bills were S. 4196 and H. R. 11950, 84th Congress; S.1538 and H. R. 2553, 85th Congress; S. 1617, H. R. 5785, H. R. 8105, H. R. 6675, H. R. 7411 and H. R. 7412, 86th Congress; S. 154, 87th Congress; and S. 1007, 89th Congress.

^{2/} Report of the Interdepartmental Committee, Part I, pp. 70-71.

It was clear to the Committee that most forms of legislative jurisdiction vested in the Federal Government could be returned to the States only by an act of Congress, except in those cases where the State had imposed a limitation when it ceded jurisdiction.

With the provision that jurisdiction relinquished by the Federal Government would be subject to acceptance by the State in the manner prescribed by State law, legislation based upon the Committee's recommendations would establish the policy that:

(1) the Federal Government shall receive or retain only such measure of legislative jurisdiction over federally owned or operated land areas within the States as may in particular cases be necessary for the proper performance of such of its functions as are performed upon such areas; and

(2) to the extent consistent with the purposes for which the land is held by the United States the Federal Government shall avoid receiving or retaining concurrent legislative jurisdiction or any measure of exclusive legislative jurisdiction.

The legislation for the comprehensive adjustment of legislative jurisdiction over Federal lands was developed in collaboration with a Special Committee on Legislative Jurisdiction, established by the Council of State Governments, and with Federal agency representatives by the Senate Committee on Government Operations, with cooperation from Governors, States' Attorneys General and others. It is supported by the Council of State Governments.

Enactment of this legislation by earlier Congresses is said to have been prevented by the concern of some of the Members with its possible effects on civil rights, conservation, Alaska and Indian lands.

The Advisory Commission, whose views on S. 154 were solicited along with those of other interested parties, advised Senator McClellan on March 8, 1961 that it endorsed the bill's objective "to return to the States some of the 'State-type' authority now exercised by the Federal Government over Federal lands." The Commission also noted in this communication that it was currently studying a specific aspect of the jurisdictional problem, i.e., the immunity from State and local taxation of private property located

on Federal areas, and that it expected the study to result in proposals for appropriate remedial legislation not inconsistent with the aims of S. 154.

The issue now before the Advisory Commission is not whether it should support restitution of State and local taxing authority over private property located on Federal lands, but whether this should be accomplished through separate legislation or as part of a broad Federal-State program which would attempt to resolve as well other problems of the jurisdiction of Federal areas.

2. SUMMARY EVALUATION

The immunity from taxes enjoyed by private property located on land under exclusive Federal jurisdiction should be revoked on the ground that private persons in essentially similar circumstances ought to be accorded substantially similar tax treatment. Congress has already approved the principle at stake by permitting States and localities to impose many kinds of taxes other than property taxes upon private persons, activities, and transactions within Federal areas.

Admittedly, taxes on the property of Government contractors, or upon privately owned equipment leased to the Government, and located within Federal areas, would probably be borne ultimately by the Government itself. Indeed, the Government's standard supply schedule contract under which most data processing equipment is leased, for example, explicitly commits the Government to absorb any tax increases or new tax enactments. In addition, the Government might have to increase the wages and salaries of Federal personnel housed on Federal installations in order to compensate them for taxes imposed on their personal property.

In a few situations, the Government might avoid these added costs by altering its method of doing business. It might, for example, buy instead of lease data processing equipment. However, the compulsion to change a method of procurement otherwise deemed to be efficient might in itself result in added costs.

The added economic burden that the taxation of private property on Federal areas would impose on the National Government is, of course, no greater (apart from any turnover mark-up) than the revenue benefits such taxation would bestow on State and local governments, and as already indicated, the latter would not be substantial. In any event, the tax activities of one level of government

inevitably affect the costs of another. Private property located on the vast majority of Federal installations is presently taxable (at least partly at Federal expense) because States have reserved their authority within them. Governments' procurement costs at all levels--Federal, State, and local--inevitably include significant amounts of each others' (as well as their own) taxes.

The important consideration is not the potential increase in Federal costs, but the fact of present discrimination of several sorts among citizens which results from the current jurisdictional status of certain Federal lands. We are concerned that State and local taxing rights are now impaired within certain Federal areas, and that some private interests consequently enjoy inequitable tax relief. We are also concerned that a substantial number of residents of Federal areas are deprived of certain rights and privileges which should be available to them on the same basis as to residents outside Federal areas.

States are free to deny--and have denied--services and facilities to persons living and working in areas under the exclusive legislative jurisdiction of the National Government. In fiscal year 1960 alone, for example, the Federal Government invested over \$6 million (more in other years) in the construction and \$9 million in the operation of schools in 14 States for the education of children on Federal installations who were denied access to public school facilities. From the beginning of this program in 1950, through fiscal year 1960, the cost of constructing schools on Federal properties has exceeded \$100 million. Frequently, police and fire protection, health and sanitation programs, water and road facilities are similarly provided entirely at Federal expense.

Here too, however, the actual amount of these and similar costs to the U. S. Treasury is not very important, partly because these costs are minor in comparison with the aggregate amount of Federal payments made to State and local governments in recognition of the fact that Federal properties and activities are immune from local taxes.

In this connection, too, we are less concerned with cost than with the point that those persons who are denied benefits of State governments must be considered second-class citizens. A governmental system dedicated to democratic ideals cannot afford to indulge in institutional arrangements among the governmental units composing it, which impair rights of citizens and discriminate among them.

The amendment of the Buck Act as proposed by H. R. 4059 and H. R. 5362 would achieve one of the two goals we favor: it would restore tax equity among private individuals. But it would not do away with other forms of discrimination which are inherent in the current jurisdictional status of certain Federal lands. Moreover, since the amendment would be a unilateral Federal action, it might well retard progress toward this second goal by removing an incentive for the States to cooperate with the National Government in a comprehensive effort to dispel the other discriminatory aspects of legislative jurisdiction.

Intergovernmental relationships and immunities are reciprocal in a Federal system, and the institutional arrangements which are the result of the constitutional doctrines of tax immunity and legislative jurisdiction do not lend themselves to unilateral adjustment. They can best be altered through bilateral Federal-State negotiations. The legislation embodied in the bill, S. 154, already endorsed by the Commission, represents an approach of this sort. It would provide a statutory basis for a cooperative Federal-State effort to restore rights and obligations to States and local governments on the one hand and to a group of residents on the other.

3. RECOMMENDATIONS

This Commission concludes that the immunity from State and local property taxation enjoyed by privately owned property within certain areas under the jurisdiction of the National Government impairs the equal tax treatment of substantially similar properties and should be terminated. However, the jurisdictional circumstances which give rise to this tax inequality also deprive the residents of such areas of certain rights, privileges, services, and responsibilities available to other residents of the States in which the properties are located. Legislation limited to the restoration of tax equality would contribute nothing to insuring the equal treatment of the residents of Federal areas with respect to services, privileges, etc., and may in fact retard it. The situation requires a dual approach designed to adjust both sides of the equation by retroceding to the States and the States accepting legislative jurisdiction over Federal areas as rapidly and to the extent consistent with essential national program needs and State and local requirements.

Accordingly, this Commission,

(1) Recommends to the Congress that it give early and favorable consideration to legislation authorizing and directing Federal agencies to cede to States legislative jurisdiction over Government owned properties as rapidly and extensively as is consistent with their essential program needs;

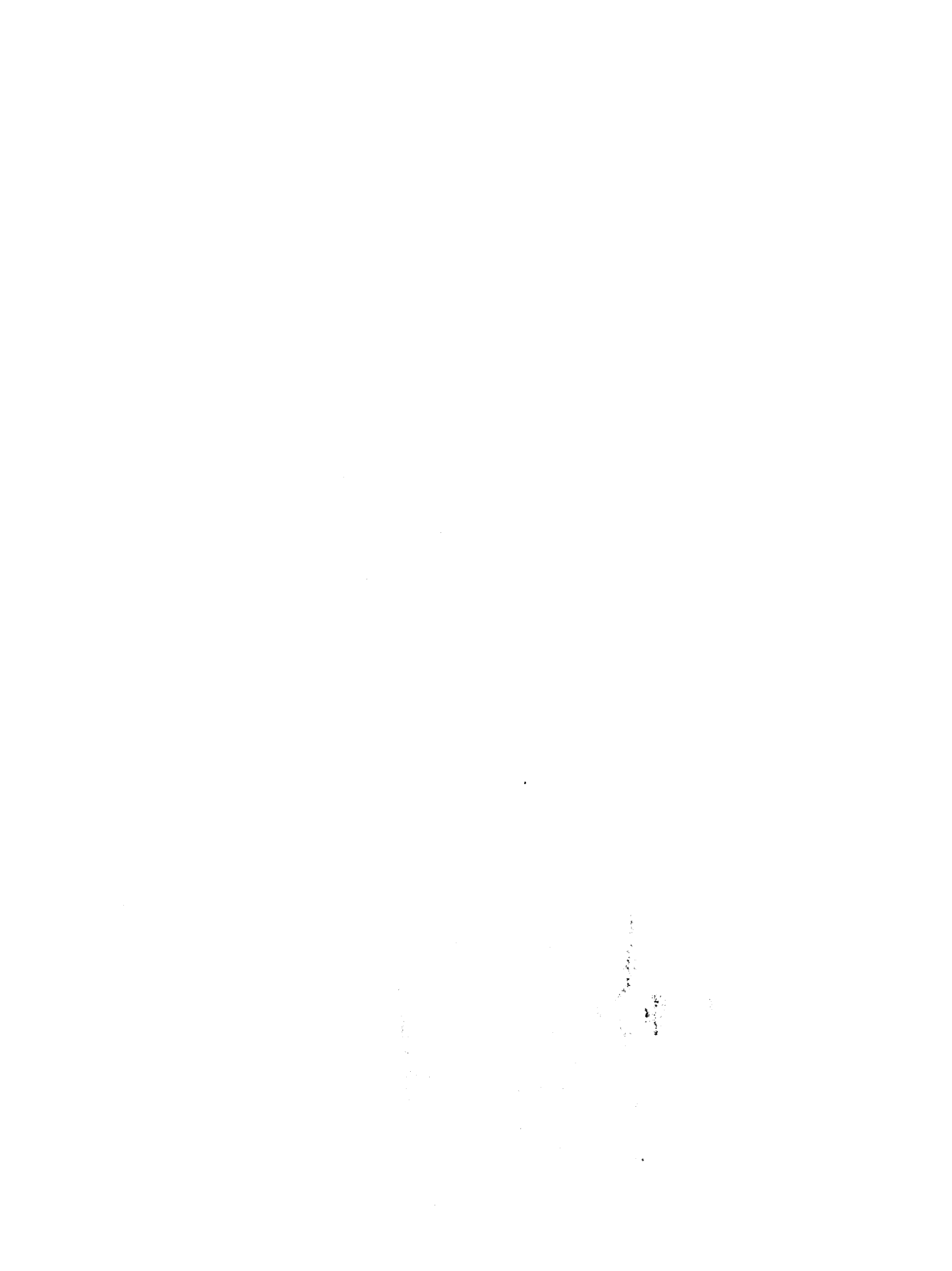
(2) Recommends to the States that to the extent required they proceed with the enactment of legislation recommended by the Special Committee on Legislative Jurisdiction of the Council of State Governments to enable them to accept jurisdiction over Federal properties; and

(3) Recommends to the President and the Governors that they support enactment of this legislation and its subsequent implementation by their respective administrations.

The Commission makes these recommendations in the belief that it is and will remain the policy of the National Government to restrict severely the scope of exclusive legislative jurisdiction over its installations; that upon enactment of the necessary legislation it will press the retrocession of legislative jurisdiction as rapidly and extensively as program needs permit; and that the States in turn will desire and are preparing themselves to accept corresponding degrees of jurisdiction over these areas. We will need to reassess this matter at a future time to ascertain whether the program here outlined has in fact resolved the question of State and local taxing jurisdiction over private properties within the Federal areas.

We have considered the possibility that the general program of retrocession of jurisdiction to the States contemplated by the foregoing recommendations will not be realized in the reasonably near future, say five years. It is possible that the enabling legislation will not be enacted or that if enacted, will not be widely implemented and that a substantial amount of private property will continue to escape taxation. These kinds of developments will have established a compelling case for unilateral Congressional consent to the taxation of this property. The converse conclusion will have been indicated if the lack of progress proves to have been due to the unwillingness of States to accept jurisdiction over these areas.

Inasmuch as legislation has made no progress in the Congress, the Commission reexamined its position on May 14, 1965. On that occasion it unanimously agreed to reaffirm its earlier position and to consider the matter again a year later.



PUBLISHED REPORTS OF THE ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS 1/

- Coordination of State and Federal Inheritance, Estate and Gift Taxes. Report A-1. January 1961. 134 pp., printed.
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