

A COMMISSION REPORT

The Intergovernmental Aspects
of
Documentary Taxes



ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
SEPTEMBER 1964

A-23

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PREFACE

This report deals with tax overlapping in a relatively minor area of taxation. The documentary taxes, which contribute some \$300 million of the more than \$130 billion in taxes collected by all governments, consist primarily of taxes on the issuance and transfer of corporate stocks and bonds, on real estate transfers, and on mortgages.

This is a part of a continuing project the Advisory Commission on Intergovernmental Relations is conducting under its mandate to recommend methods of coordinating and simplifying tax laws and administrative practices in order to achieve a more orderly and less competitive fiscal relationship between the levels of government and reduce the burden of compliance for taxpayers.

Information for this report was initially assembled by Mr. H. Clyde Reeves, Vice President of the University of Alabama, and Consultant to the Commission. The staff work was conducted by Jacob M. Jaffe.

This report was adopted at a meeting of the Commission held on September 17, 1964.

Frank Bane
Chairman

WORKING PROCEDURES OF THE COMMISSION

This statement of the procedures followed by the Advisory Commission on Intergovernmental Relations is intended to assist the reader's consideration of this report. The Commission, made up of busy public officials and private persons occupying positions of major responsibility, must deal with diverse and specialized subjects. It is important, therefore, in evaluating reports and recommendations of the Commission to know the processes of consultation, criticism, and review to which particular reports are subjected.

The duty of the Advisory Commission, under Public Law 86-380, is to give continuing attention to intergovernmental problems in Federal-State, Federal-local, and State-local, as well as interstate and inter-local relations. The Commission's approach to this broad area of responsibility is to select specific, discrete intergovernmental problems for analysis and policy recommendation. In some cases, matters proposed for study are introduced by individual members of the Commission; in other cases, public officials, professional organizations, or scholars propose projects. In still others, possible subjects are suggested by the staff. Frequently, two or more subjects compete for a single "slot" on the Commission's work program. In such instances selection is by majority vote.

Once a subject is placed on the work program, a staff member is assigned to it. In limited instances the study is contracted for with an expert in the field or a research organization. The staff's job is to assemble and analyze the facts, identify the differing points of view involved, and develop a range of possible, frequently alternative, policy considerations and recommendations which the Commission might wish to consider. This is all developed and set forth in a preliminary draft report containing (a) historical and factual background, (b) analysis of the issues, and (c) alternative solutions.

The preliminary draft is reviewed within the staff of the Commission and after revision is placed before an informal group of "critics" for searching review and criticism. In assembling these reviewers, care is taken to provide (a) expert knowledge and (b) a diversity of substantive and philosophical viewpoints. Additionally, representatives of the American Municipal Association, Council of State Governments, National Association of Counties, U. S. Conference of Mayors, U. S. Bureau of the Budget and any Federal agencies directly concerned with the subject matter participate, along with the other

"critics" in reviewing the draft. It should be emphasized that participation by an individual or organization in the review process does not imply in any way endorsement of the draft report. Criticisms and suggestions are presented; some may be adopted, others rejected by the Commission staff.

The draft report is then revised by the staff in light of criticisms and comments received and transmitted to the members of the Commission at least two weeks in advance of the meeting at which it is to be considered.

In its formal consideration of the draft report, the Commission registers any general opinion it may have as to further staff work or other considerations which it believes warranted. However, most of the time available is devoted to a specific and detailed examination of conclusions and possible recommendations. Differences of opinion are aired, suggested revisions discussed, amendments considered and voted upon, and finally a recommendation adopted (or modified or diluted as the case may be) with individual dissents registered. The report is then revised in the light of Commission decisions and sent to the printer, with footnotes of dissent by individual members, if any, recorded as appropriate in the copy.

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THE INTERGOVERNMENTAL ASPECTS OF DOCUMENTARY TAXES

1. Findings and Recommendations

The Federal Government, 17 States, the District of Columbia, and a number of local governments impose a group of taxes known collectively as "documentary taxes." Although generally of minor revenue significance to both the Federal Government and the States, they involve tax overlapping for thousands of taxpayers located in a number of States. Compliance with these taxes often requires the purchase of stamps from two sets of officials and computing the tax liability on differing bases, thus placing them in the "nuisance" category. The problems they pose are of the type the Congress contemplated in its mandate to this Commission:

... (to) recommend methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers. 1/

The several Federal documentary taxes fall into two broad groups: (1) those on the issuance or transfer of capital stocks and bonds; and (2) those on the transfer of real property (conveyances). Another, the tax on policies issued by foreign insurers, concerns relatively few persons.

The State and local documentary taxes are patterned, by and large, after the Federal taxes. They include real estate transfer taxes (imposed by 12 States, the District of Columbia, and local governments in 5 States), and securities transfer and issuance taxes (5 States). In addition, a number of States levy documentary taxes on mortgages, which are not subject to Federal taxes.

With few exceptions, the documentary taxes are imposed at relatively low rates. The Federal tax on conveyances, for example, is 55 cents per \$500 of the consideration involved in a real estate sale, excluding the value of any assumed mortgages; most of the State real estate transfer taxes carry comparable rates. The Federal stock transfer tax is 4 cents per \$100 of market value (with a minimum of 4 cents per sale or transfer and a maximum of

1/ P. L. 86-380 (sec. 2:7).

8 cents per share); the New York State tax on stock transfers ranges from 1 cent to 4 cents per share (depending upon market value). Except for the portion of the tax on the transfer of securities that is paid through security exchanges and clearinghouses, the documentary taxes are paid through the purchase of stamps which are affixed to the document at the time the transaction is consummated.

The documentary taxes are relatively small revenue producers. The Federal Government's take amounted to \$140 million in fiscal year 1963, or 1/10 of 1 percent of its tax collections. About three-fourths of the Federal documentary tax revenue comes from the taxes on the issue and transfer of stocks and bonds. The States obtained \$120 million, more than half of which came from New York State's stock transfer tax. Collections from locally imposed taxes are not tabulated. Fragmentary information suggests that they may approach \$40 million. In total, Federal, State, and local receipts from documentary taxes account for about \$300 million of the \$131 billion annual tax collections of these governments.

Of all the documentary taxes, overlapping is in a sense most pervasive in the case of the tax on stock transfers. Although only four States impose such a tax, the fact that New York is one of them means that most stock transactions in the country are subject to both State and Federal taxes, since almost 80 percent of the dollar value of stock transfers occurs in New York City. By virtue of this market concentration, the tax overlapping very largely involves only one State, although its impact is nationwide.

The twofold taxation of stock transfers by the Federal Government and New York State entails little taxpayer compliance burden, because both taxing jurisdictions allow the tax to be paid through a central clearinghouse. This centralized tax payment arrangement provides the stock transfer tax (and the Federal Government's bond transfer tax) with reasonably efficient administration.

From the viewpoint of national policy considerations, a case can be made for the proposition that the States (chiefly New York) relinquish the stock transfer tax and vacate the field for exclusive Federal use. Since the tax is paid on security transactions in all parts of the country, its revenue yield logically belongs to all of them, i.e., their national government. While logical, the suggestion is not practical. New York could not be induced to relinquish its documentary tax, except by constitutional amendment, and would not voluntarily give up a lucrative tax source paid in large part by nonresidents. It has been suggested that the Federal Government might persuade New York to relinquish the tax by reimbursing it for the amount of revenue involved. However, the other 49 States whose

residents pay the tax, would doubtless claim a share, making the cost of the tax simplification too high.

The Commission concludes that no action is indicated with respect to the overlapping of State and Federal documentary taxes on stock transfers. The duplication is largely limited to one State (New York). The compliance burden for taxpayers is minimized by the collection of both taxes through security exchanges and clearinghouses. On the other hand, State withdrawal from the field could be "purchased" only at substantial cost to the U. S. Treasury.

The situation is different with respect to the other important documentary taxes -- the Federal tax on conveyances (real estate transfers) and the State and local real estate transfer taxes. Although secondary as revenue producers (\$35 million Federal and perhaps \$70 million State and local), these taxes involve thousands of individual transactions at the county courthouse level and, in those cases where State and local taxes are also levied, involve overlapping taxation. They create the image of unnecessary Federal-State duplication in the minds of individuals (lawyers and realtors) required to purchase stamps at two different windows and to compute relatively small tax liabilities two different ways.

The Commission's concern with the real estate transfer tax, however, extends beyond tax overlapping. It stems from the possible usefulness to the States of the by-product information on the sales price of property that can be derived from the Federal stamps attached to deed documents.

The relationship between the assessed value and the sales price of real property, a measure that is being developed in many States by means of assessment-sales ratio studies, is a valuable tool for improving the administration of property tax assessment. In its recent report on strengthening the property tax, this Commission strongly endorsed periodic State assessment ratio studies and enumerated a number of uses to which such studies can be put. ^{1/} These include: disclosure of the degree of compliance with the legal basis of assessment; guidance for the individual taxpayer in determining the equity of his assessment; disclosure of full value of taxable property as one index of community fiscal ability; aid in

^{1/} Advisory Commission on Intergovernmental Relations, The Role of the States in Strengthening the Property Tax, (A-17), June 1963, Vol. 1, p. 51.

the development of reliable measurement standards that use taxable valuations as a base; guidance for the equalization of State and local assessing; and indication of interarea nonuniformity in assessment to permit equitable distribution of taxes in taxing districts identified with more than one assessing area, and to permit also equitable distribution of State aid.

The shortcomings of the Federal conveyance tax stamps as an indication of the selling price of property have long been recognized by State officials conducting assessment-sales ratio studies. In the Federal tax system geared to self-assessed income taxes, enforcement of an extraneous revenue source like the conveyance tax falls by the wayside. Except for an occasional check of large property transfers in connection with income tax or inheritance and estate tax audits, the Treasury Department relies upon the voluntary purchase of tax stamps and their attachment to deed documents. Appeals by State tax administrators to Internal Revenue officials for stepped-up enforcement of the conveyance tax are doubtless sympathetically received. However, they have not had and, in the nature of the case, can not be expected to have a significant effect on the quality of compliance. As the conveyance tax is presently constituted, it is unlikely that the Internal Revenue Service can allocate adequate enforcement resources to it.

The inadequate enforcement of the conveyance tax impairs its usefulness for assessment-sales ratio studies since the amount of the affixed stamps often bears no true relationship to the selling price. Analyses in connection with ratio studies have uncovered numerous cases that range from complete noncompliance to under- or over-stamping.

Another factor impairing the validity of the Federal tax stamps for establishing the selling price of realty is the limited base of the tax. ^{1/} Since the tax liability is computed net of assumed mortgages, it is necessary to make a detailed search of the records to determine whether the transfer involved assumption of a mortgage, and if so, to ascertain the amount of the assumed mortgage.

^{1/} During the Civil War, both a mortgage tax and conveyance tax were levied. Both taxes were employed also during the Spanish-American War and when the legislation which became the Revenue Act of 1914 was introduced, it also included both. The mortgage tax, however, was dropped before the legislation was enacted.

Our findings with respect to the real estate transfer tax can be summarized as follows:

- (1) State-Federal overlapping is significant;
- (2) Enforcement of the Federal tax is weak and taxpayer compliance is spotty;
- (3) Federal tax enforcement effort is not likely to be increased because it is tangential to the mainstream of Internal Revenue activity (geared to the income tax) and the revenue yield is minor;
- (4) The principal consideration supporting the retention of this tax has been its alleged by-product value for assessment-sales ratio studies to improve property tax administration; and
- (5) Because of inadequate enforcement and the exclusion of assumed mortgages from the tax base, the stamp value frequently bears little relationship to actual selling price, and this, in turn, severely limits its usefulness for assessment-sales ratio studies.

The deficiencies of the Federal real estate transfer tax for establishing the sales price of realty could be overcome only by shifting enforcement responsibility to the States. To accomplish this, Congress would need to provide the States with fiscal incentives bordering on the coercive.

One possible vehicle is the conditional shared tax arrangement. Under this plan, the Federal tax base would be broadened to include the amount of the assumed mortgage, and under certain conditions the revenue be turned over to the States. In return for all or a substantial share of the proceeds, the States would be required to enact legislation directing appropriate local officials to withhold recordation of real estate transfer documents in the absence of strict compliance with the Federal real estate transfer tax law.

Since this conditional shared tax plan would dedicate virtually all the proceeds of the tax to purchase State and local enforcement responsibility, it might well be argued that the Federal Government would be better advised to step aside and leave both the imposition and the administration of the tax to the States.

The occasion of the Federal Government's withdrawal from the field might be utilized to encourage the States to avail themselves of the by-product utility of such a tax for assessment-sales ratio studies. This might be accomplished by the enactment of a transition tax credit plan. Under this arrangement, the Federal real estate transfer tax would be repealed prospectively to be effective, for example, 3 years after enactment of the plan. During the 3-year phasing out period, a credit would be allowed against the Federal tax for all State real estate transfer taxes. In other words, the requirement of a Federal documentary stamp tax could be fully satisfied with a State stamp.

By adopting the credit device, the Federal Government would be inviting the States to enact their own real estate transfer taxes without adding to the tax burden of their own taxpayers. Since the taxpayers' liability would be the same whether the State imposed the tax or not, the availability of the Federal credit would exert a strong compulsion on the States to impose their own transfer taxes.

Consideration of either the conditional shared tax or transition tax credit plan raises a basic question as to the lengths to which the Congress should go in encouraging the States to obtain reliable data on the sales price of real property. As a basic proposition, intergovernmental fiscal coercion should always be restricted to the attainment of those important national objectives that can be realized in no other way. Moreover, a coercive approach becomes even less tolerable when it is applied to a tax, such as the real estate transfer tax, the existence of which is justified primarily by informational rather than regulatory or revenue purposes.

By the same token, this Commission cannot justify urging the Treasury Department to assign to the stamp tax on conveyances the amount of resources that would be needed to enforce it adequately. Effective Federal enforcement of this tax might well require extensive audit of the deed records at county courthouses throughout the nation. The cost of such auditing would probably be prohibitive in the light of the insignificant revenue return it would yield. We conclude, therefore, that in the interest of tax simplification and the elimination of one area of tax overlapping, the Federal stamp tax on real estate transfers should be repealed.

Recommendation No. 1. The Commission recommends that Congress amend Chapter 34 of the Internal Revenue Code to repeal the stamp tax on conveyances, such repeal to be effective 3 years after its

enactment. 1/

Repeal of the Federal stamp tax on conveyances will rid the Internal Revenue Code of a "nuisance" tax. When the Federal conveyance tax was first imposed in the early days of the Republic it was needed to finance various crises (Civil War, Spanish-American War, etc.). It has long since stopped serving a revenue purpose, which is now the function of the income tax. Neither does it serve any regulatory purpose.

The existence of the Federal tax gives the States a false sense of security in the reliability of assessment-sales ratios computed on the basis of the tax stamps. Since the Internal Revenue Service has little revenue incentive to enforce the tax, and also because assumed mortgages are not in the tax base, the validity of these computations is severely limited. The States can obtain the necessary market value information by other means, such as the enactment of their own real estate transfer taxes or the use of buyer-seller questionnaires and appraisals. The Commission's recommendation to defer repeal of the Federal tax for three years will give the States time to enact their own taxes or develop other means of obtaining real estate market data.

State and local governments are showing a rising interest in real estate transfer taxes. Four of the 12 States using these taxes have enacted them since 1951, and an increasing number of local governments have been authorized to do so since Washington enabled its counties to impose a 1 percent real estate sales tax (1951).

Some of the interest in State and local realty transfer taxes stems from their by-product use in property tax administration. On the other hand, the revenue potential of the tax is attractive to rapidly growing urban communities where property values are rising and a relatively large number of properties change hands. New York City, Washington, D. C., Baltimore, and Montgomery County, Maryland have imposed such taxes as revenue measures in the past five years.

1/ Secretary Dillon comments on this recommendation, as follows: "Our complex Federal excise tax system requires a thorough-going revision, and the Treasury is now cooperating with the Congress in a comprehensive study looking toward this objective. Although in this review repeal of the Federal conveyance tax should and will be carefully considered, until evaluation of the entire excise tax structure has been completed it would be premature for me to join in advocating repeal of any particular excise tax."

Recommendation No. 2. The Commission recommends that when the Federal tax on real estate transfers is repealed, those States without such a tax consider it for use at either the State or local level. The States considering real estate transfer taxes are urged to fortify tax administration by requiring local officials charged with the recordation of transfers of title to verify that the transfer tax had been paid.

Repeal of the Federal conveyance stamp tax would leave the field clear for exclusive State and local use. Some States will want to consider a State tax, some authorizing locally imposed taxes and some may prefer to make this revenue source available to their local governments by sharing a State tax with them, in part as an incentive for the local governments to render effective enforcement services. The recommended 3-year delay in repeal of the Federal tax provides for an orderly transition from Federal to State or local taxation.

The tax on real estate transfers is one of the very few that can be enforced effectively at the local level. Most real estate transactions are recorded by county recorders, many of whom are elected officials. Since the States have it within their means to require such local officials to enforce their laws, the administrative support that local officials can give the tax is available for the enforcement of either State or local taxes.

2. The Federal Documentary Taxes

The Federal documentary stamp taxes, imposed by Chapter 34 of the Internal Revenue Code, embrace a variety of transactions involving: the issue of a certificate of stock or a bond and its transfer, and the securities transactions in connection with corporate reorganizations, mergers, consolidations, recapitalizations, dissolutions and reincorporations, the settlement of estates and the creation, modification and extension of trusts, and the modification and renewal of bond issues; real estate transactions; and insurance and reinsurance contracts. Their rate provisions are as follows:

1. The issuance of capital stock is taxed at the rate of 10 cents per \$100 value, or major fraction thereof. The rate on certain regulated investment companies is 4 cents per \$100.
2. The issuance of corporate certificates of indebtedness is taxed at the rate of 11 cents per \$100 value, or fraction thereof.
3. The sale or transfer of capital stock is taxed at 4 cents per \$100 value, or major fraction thereof, but not more than 8 cents per share nor less than 4 cents on any sale or transfer.
4. The sale or transfer of corporate certificates of indebtedness is taxed at 5 cents on each \$100 value, or major fraction thereof.
5. The transfer of real estate (conveyances) valued in excess of \$100 is taxed 55 cents on each \$500 value, or fraction thereof. The value of liens and encumbrances included in the transfer is exempted.
6. Premiums on casualty insurance policies and indemnity bonds issued by foreign insurers are taxed 4 cents on each \$1 and premiums on life, sickness, accident and annuity policies of foreign insurers are taxed at 1 cent on each \$1.

With some exceptions, payments of these taxes are evidenced by affixing stamps to the relevant documents. The stamps are produced by

the Bureau of Engraving and Printing and are available at local offices of the Internal Revenue Service, at Post Offices, and from agents designated by the Secretary of the Treasury. They are printed in 34 denominations, from one cent to \$10,000.

History

The taxation of conveyances is an English inheritance. Stamp taxes levied by the British Parliament on documents required of ships clearing ports in the American Colonies were the source of the incidents of 1765. In the English tradition the imposition of fees on legal processes was supported by common usage and such taxes were among the last to require consent by representation. The American Colonies imposed taxes on legal processes to raise colonial revenues.

Prior to the 16th Amendment the Constitution of the United States required that direct Federal taxes be laid in proportion to population. Direct taxes were unpopular. 1/ Alexander Hamilton recommended a schedule of documentary stamp taxes in 1794 and Federal taxes on carriages and auction sales were then imposed. Congress first levied documentary stamp duties in 1814. 2/

The Federal documentary stamp taxes were repealed after the close of the War of 1812, but were reimposed during the Mexican War. This time they remained in effect until well after the Civil War (having been increased substantially to help finance that war). They were again levied to help finance the Spanish-American War but were promptly repealed. Re-institution occurred in 1914 with the imposition of the capital stock tax, a tax on the issuance of corporate certificates of indebtedness, and a tax on conveyances, setting a pattern for the documentary stamp taxes which has continued to the present without major modification (table 1). Also imposed in 1914, but since repealed, were documentary taxes on sales of produce for future delivery and on a variety of legal documents, including promissory notes and powers of attorney.

The documentary stamp taxes have been an insignificant source of Federal revenue in recent times. Since the beginning of World War II, documentary stamp tax receipts have accounted for considerably less than 1 percent of internal revenue collections. In the fiscal

1/ David A. Wells, The Theory and Practice of Taxation, N.Y., Appleton, 1900, p. 351.

2/ Davis R. Dewey, Financial History of the United States, N. Y., McGraw-Hill, 1936, p. 139.

TABLE 1. - FEDERAL DOCUMENTARY STAMP TAX RATES, 1914 - 1964

Title of tax	Revenue Act of -					
	1914	1916	1917	1918	1921	1926
Issues of capital stock	5¢/\$100 face value or fraction.	Repealed.	5¢/\$100 face value or fraction or if without face value, 5¢/share. If actual value is over \$100, 5¢/\$100 of actual value or fraction.	No change.	5¢/\$100 face value or if without face value: (a) If actual value is less than \$100, 1¢ on each \$20 or fraction; (b) if actual value is over \$100, 5¢ on each \$100 or fraction.	No change.
Sales or transfers of capital stock	2¢/\$100 face value or fraction.	Repealed.	2¢/\$100 face value or fraction or if without face value, 2¢/share. If actual value is over \$100, 2¢/\$100 of actual value or fraction.	No change.	2¢/\$100 face value or fraction or if without face value, 2¢/share.	No change.
Issues of corporate certificates of indebtedness	5¢/\$100 face value or fraction.	Repealed.	5¢/\$100 face value or fraction.	No change.	No change.	No change.
Sales or transfers of corporate certificates of indebtedness	.....	.....	.....	.....	.....	.....
Transfer of real estate (conveyances)	50¢/\$500 or fraction of the consideration if in excess of \$100 (exclusive of instruments given to secure a debt).	Repealed.	50¢/\$500 or fraction of the consideration if in excess of \$100 (exclusive of instruments given to secure a debt).	No change.	No change.	Repealed.
Foreign insurance policies other than life and indemnity, fidelity or surety bonds (excluding reinsurance)	.....	.....	.....	3¢/\$1 or fraction of premium.	No change.	No change.
Foreign life, sickness, accident, and reinsurance policies	.....	.....	.....	.....	.....	.....

TABLE 1. - FEDERAL DOCUMENTARY STAMP TAX RATES, 1914 - 1964 (Cont'd)

Title of tax	Revenue Act of -				Jan. 1, 1964
	1932	1940	1942	1958	
Issues of capital stock (Cont'd)	10¢/\$100 face value or if without face value: (a) If actual value is less than \$100, 2¢ on each \$20 or fraction; (b) if actual value is over \$100, 10¢ on each \$100 or fraction.	11¢/\$100 face value or if without face value: (a) If actual value is less than \$100, 3¢ on each \$20 or fraction; (b) if actual value is over \$100, 11¢ on each \$100 or fraction.	No change.	10¢/\$100 or major fraction of actual value (No distinction made between par value and no par or face value stock).	No change.
Sales or transfers of capital stock (Cont'd)	4¢/\$100 par or face value or fraction; or if without par or face value, 4¢ per share. If selling price is \$20 or over, whether with or without par or face value, rate is 5¢.	5¢/\$100 par or face value or fraction; or if without par or face value, 5¢/share. If selling price is \$20 or over, whether with or without par or face value, rate is 6¢.	No change.	4¢/\$100 or major fraction of actual value (no distinction made between par value or no par or face value stock).	No change.
Issues of corporate certificates of indebtedness (Cont'd)	10¢/\$100 face value or fraction.	11¢/\$100 face value or fraction.	No change.	No change.	No change.
Sales or transfers of corporate certificates of indebtedness (Cont'd)	4¢/\$100 face value.	5¢/\$100 face value.	No change.	No change.	No change.
Transfer of real estate (conveyances) (Cont'd)	50¢/\$500 or fraction of the consideration if in excess of \$100 (exclusive of instruments given to secure a debt).	55¢/\$500 or fraction of the consideration if in excess of \$100 (exclusive of instruments given to secure a debt).	No change.	No change.	No change.
Foreign insurance policies other than life and indemnity, fidelity or surety bonds (excluding reinsurance) (Cont'd)	No change.	4¢/\$1 or fraction of premium.	No change.	No change, but includes indemnity bonds.	No change.
Foreign life, sickness, accident, and reinsurance policies (Cont'd)	.....	.....	1¢/\$1 or fraction of premium.	No change.	No change.

Source: Annual Reports of the Secretary of the Treasury, 1940, 1950, 1962, and 1963.

year 1963 they yielded \$140 million, about 1/10 of 1 percent of internal revenue collections (table 2).

Compliance

By custom, documentary stamp taxes are paid by the seller (grantor), although all parties to a taxable transaction are equally liable. 1/ The stamps representing the tax imposed on the issuance of stock are required to be affixed to the stock books or corresponding records. In the issuance of corporate bonds or other certificates of indebtedness the stamps are affixed either to the instruments or to the indenture under which they are issued. In the case of the transfer of stocks or bonds the stamps are required to be affixed to the certificate being transferred if it is endorsed to a named transferee or to the memorandum of sale if the certificate is endorsed in blank. The Internal Revenue Code provides an alternative procedure for paying the tax on stock and bond transfers, without stamps. Under this procedure, a member of a securities exchange may appoint the exchange or a clearinghouse as his agent for the purpose of paying the tax. The securities dealer reports daily to the exchange or the clearinghouse the amount of tax due on his transactions. The exchange and clearinghouse, in turn, make daily tax payments directly to the District Director of Internal Revenue. 2/ Deed documents conveying real estate and policies issued by foreign insurers are required to have the stamps affixed. The regulations allow considerable latitude, 3/ and affixing practice varies.

No studies of the cost of administering documentary taxes have apparently been made, either within or outside the Treasury Department. Because the amount of revenue involved is small, the Internal Revenue Service devotes minimal effort to the enforcement of documentary stamp taxes. Payment of the tax by corporations on the issuance of securities is checked when "package" audits are made for income and other tax purposes. Security brokers on rare occasions have been checked and are presumed by Federal authorities to be complying with the law. As mentioned above, in many instances the security transfer tax is paid by the stock exchange or a clearinghouse which charges the broker's account, and the transfer memorandum issued by the

1/ Internal Revenue Service, Documentary Stamp Taxes, Document No. 5286, (12-62).

2/ Internal Revenue Service, Internal Revenue Bulletin, No. 1962-18, April 30, 1962, pp. 13,709 - 13,712.

3/ Ibid.

TABLE 2. - FEDERAL INTERNAL REVENUE COLLECTIONS, TOTAL AND DOCUMENTARY STAMP TAXES, SELECTED YEARS, 1916 - 1963

(Dollar amounts in millions)

Year	Total	Documentary stamp taxes ^{1/}	
		Amount	Percent of total
1916	\$ 512.7	\$ 38.1	7.4
1918	3,699.0	21.9	0.6
1923	2,621.7	61.5	2.4
1933	1,619.8	53.4	3.3
1943	22,371.4	37.4	0.2
1953	69,686.5	82.6	0.1
1963	105,925.4	140.4	0.1

^{1/} Excludes stamp taxes on playing cards and silver bullion transfers.

Source: Annual Report of the Secretary of the Treasury, 1943; Annual Reports of the Commissioner of Internal Revenue, 1953 and 1963.

broker bears an indicia indicating tax payment. Foreign insurers of consequence are few and also enjoy a presumption of compliance.

Compliance with the requirements of the documentary tax on real estate transfers is diffused. Generally, realtors and lawyers who write deeds and financial institutions that make real estate mortgage loans know the law and endeavor to see that the tax is paid. Some purchasers, particularly commercial operators, systematically verify compliance by the seller. Deed recorders frequently make some effort to ascertain that stamps are affixed. Typically when deeds are recorded by photographic processes the recordings show the affixed stamps. It is common practice in other recordings to indicate the amount of stamps affixed. These practices, however, are extra-legal. 1/ Compliance, in fact, is almost completely voluntary and non-compliance and violations may be considerable.

Objective measures of the degree of tax compliance are not available. No record is compiled of delinquent taxes collected on the issuance of corporate securities resulting from audits. Attempts to correlate tax payments with other indices are thwarted by the fact that the same stamps are used for the various types of documentary taxes and receipts from the several taxes as annually reported by the Secretary of the Treasury and the Commissioner of Internal Revenue are necessarily combined. 2/ Endeavoring to apply rates to national

1/ A century ago the documentary stamp tax regulations attempted to invalidate instruments without stamps (Stamp Duties Regulation 1 in George S. Boutwell, A Manual of the Direct and Excise Tax System of the United States, 1863). This was promptly set aside (McBride v Doty, (1867) 23 Iowa 122 and Craig v Dimock (1868) 47 Ill. 308). Unstamped documents are admissible as evidence (Cole v Ralph, 252 U.S. 286); however, States may make payment of a State tax on mortgages a criterion of admissibility as evidence (Greenwood v Price, 27 P. 2d 822).

2/ Annual reports of the Secretary of the Treasury for 1929 and prior years lump all documentary stamp tax receipts. From 1929 through 1952 a different stamp was used to evidence payment of the tax on the transfer of capital stock. Reports of 1930 through 1952 under the head "Bonds, issues of capital stock, deeds of conveyance, etc." included the tax on the premiums of foreign insurance policies and of passage tickets when applicable. A very rough estimate of the \$140 million collected in fiscal year 1963 yields the following breakdown, by source:

<u>Source</u>	<u>Amount (millions)</u>	<u>Percent distribution</u>
Securities	\$100	71.4
Issues	15	10.7
Transfers	85	60.7
Conveyances	35	25.0
Foreign insurers	5	3.6
Total	<u>\$140</u>	<u>100.0</u>

aggregates is equally unproductive for the same reason and additionally because the revenue effects of fractional values and of the exemptions of assumed mortgages from the tax on real estate transfers are not ascertainable.

Some efforts have been made in individual States, in connection with property tax administration, to ascertain the degree of compliance with the tax on deeds of conveyance. One example is Kentucky, which has been concerned with the problem since 1936. A report of a field investigation covering the deed recordings of the first six months of 1953 in eighty-one typical counties, excluding the largest, Jefferson, by the Kentucky Department of Revenue revealed that about 10 percent of the recorded deeds showed no indication of tax payment. Reports on subsequent investigations (1962) verified the earlier results with some outstanding examples of probable violation. In one rural mountain county in an eight-month period, only two recorded deeds evidenced tax payment. In another, only six, and in the latter case at least 200 deeds should have been stamped. 1/ The Kentucky investigations also showed that understamping of deeds was practiced and that subdivision developers and others holding real estate for speculative purposes sometimes overstamped.

1/ Kentucky Department of Revenue, inter-office memorandum, August 2, 1962. This memorandum observes that not more than \$1,000 in Federal tax may have been involved.

3. State and Local Documentary Taxes

In addition to the \$140 million obtained in fiscal year 1963 by the Federal Government -- mainly (about three-fourths) from taxes on securities transactions -- 18 States and the District of Columbia collected \$120 million from a variety of documentary stamp taxes. These consisted of taxes on mortgages, securities transactions, and real estate transfers (table 3). More than half of the total collected by the States accrued to New York from its stock transfer tax. ^{1/} In 5 States (Maryland, New York, Pennsylvania, Virginia, and Washington) local governments impose real estate transfer taxes; in 4 (Kansas, Maryland, New York, and Oklahoma) local governments collect and retain the proceeds from statewide mortgage taxes. The amount of locally collected and retained documentary taxes is unknown, but may approach \$40 million, which would bring the total of Federal, State, and local documentary taxes to the neighborhood of \$300 million.

Of the 18 States and the District of Columbia with State documentary taxes in 1963, 13 (including the District of Columbia) levied such taxes on real estate transfers. These taxes are patterned, by and large, after the Federal tax. State tax rates are frequently identical with the Federal rate (at rates of about 1/10 of 1 percent). In 5 States, assumed mortgages are excluded in computing the tax, as in the case of the Federal tax.

With two or three exceptions, the State real estate transfer taxes are not significant revenue producers. The Pennsylvania tax, at 1 percent of the selling price (exclusive of assumed mortgages) produced almost \$20 million in 1963, and the 1/2 percent District of Columbia tax yielded \$1.7 million. Even in these cases, the amounts are minor relative to these jurisdictions' total tax collections.

As previously indicated, data on Federal documentary stamp tax collections do not provide detail for categories of transactions subject to tax. As a rough indication of the portion that came from the tax on conveyances, the dollar volume of real estate transfers in

^{1/} The New York State tax on stock transfers is a flat rate per share graduated according to its selling price: 1 cent per share when the selling price is less than \$5, 2 cents when it is \$5 to \$10, 3 cents from \$10 to \$20, and 4 cents when \$20 or more.

TABLE 3. - FEDERAL AND STATE DOCUMENTARY TAXES, 1963

State and type of tax	Rate Jan. 1, 1964	Use of stamps	Distribution of receipts		Collections 1963 (thousands) ¹
			State	Local	
Federal Government:					
Issuance of capital stock.....	10¢/\$100 ²	Yes	XX	XX	\$140,371
Transfer of capital stock.....	4¢/\$100	Yes	XX	XX	
Issuance of corporate bonds.....	11¢/\$100	Yes	XX	XX	
Transfer of corporate bonds.....	5¢/\$100	Yes	XX	XX	
Transfer of real estate.....	55¢/\$500 ³	Yes	XX	XX	
Premium on policies issued by foreign insurers.	1¢ or 4¢/\$1 ⁴	Yes	XX	XX	
Alabama:					
Transfer of property.....	50¢/\$500 ⁵	No	2/3	1/3	1,448
Mortgages.....	15¢/\$100	No	2/3	1/3	
Issuance of stocks and bonds.....	25¢/\$100	No	All	All	
Transfer of mineral leaseholds.....	5-15¢/acre ⁶	No		All	
Colorado: Transfer of real estate.....		Repealed in 1963 ⁶			18
District of Columbia: Transfer of real estate.....	0.5%	No		All	1,700 ⁷
Florida:					
Issuance and transfer of stocks and bonds.....	15¢/\$100	Yes	All		18,718
Transfer of real estate.....	30¢/\$100	Yes	All		
Indiana: Transfer of real estate.....	2¢ ⁸	Yes	All		n.a.
Kansas: Mortgages.....	25¢/\$100	No		All	
Maryland: ⁸					
Transfer of property.....	55¢/\$500	Yes		All ⁹	56
Mortgages.....	55¢/\$500	Yes		All ⁹	
Massachusetts: Transfer of real estate.....	55¢/\$500 ¹⁰	Yes	All		1,494
Minnesota:					
Transfer of real estate.....	55¢/\$500 ¹¹	Yes	All	(¹²)	1,206
Mortgages.....	15¢/\$100	No	1/6	5/6	
Mississippi: Transfer of mineral leaseholds.....	6-8¢/acre ⁵	Yes		All	
New York: ¹³					
Transfer of stock.....	1-4¢/share ¹⁴	Yes	All		65,878
Mortgages.....	50¢/\$100	No		All	
Oklahoma: Mortgages.....	2-10¢/\$100	No		All	
Pennsylvania: ¹⁵ Transfer of real estate.....	1% ³	Yes	All		19,523
South Carolina:					
Issuance of stocks and bonds.....	10¢/\$100	Yes	All		1,657
Transfer of stocks.....	4¢/\$100	Yes	All		
Transfer of real estate.....	\$1/\$500 ³	Yes	All		
Tennessee:					
Transfer of real estate.....	\$1.50/\$1000	No	All		1,830
Mortgages.....	10¢/\$100	No	All		
Texas: Transfer of stock.....	3.3¢/\$100	Yes	All		284
Virginia: ¹⁶					
Transfer of real estate.....	15¢/\$100	No	All		4,840
Mortgages.....	15¢/\$100	No	All		
Washington: ¹⁷ Transfer of real estate.....	50¢/\$500	Yes	All		1,077
West Virginia: Transfer of real estate.....	\$1.10/\$500	Yes	All		487
Federal.....					\$140,371
State.....					120,216
Total.....					260,587

n.a.—Data not available.

XX—Not applicable.

¹ Excludes amounts collected and retained by local governments. Data are preliminary.

² Rate is 4¢/\$100 on certain regulated investment companies.

³ Exclusive of assumed mortgages. The Indiana tax is applicable only to corporations subject to the gross income tax.

⁴ Depending on type of policy.

⁵ Depending on length of lease.

⁶ Rate was 1¢/\$100.

⁷ Tax went into effect in May 1962.

⁸ The city of Baltimore and 7 specified counties are authorized to supplement the State tax.

⁹ Except that tax on recordation of instruments granting encumbrances on property situated in two or more counties, as security for corporate bonds of public utilities, are paid to the State.

¹⁰ Rate is \$1 on first \$500.

¹¹ Rate is \$1.10 on first \$1,000.

¹² Except that the tax on mortgages that are secured by property exempt from property taxation is paid to the State.

¹³ New York City imposes a tax of 0.5% on transfers of real property where the consideration exceeds \$25,000. Assumed mortgages are excluded in computing the tax.

¹⁴ Depending on value per share. See text.

¹⁵ Local governments are authorized to impose a real estate transfer tax up to 1% and more than 700, mainly school districts, have done so.

¹⁶ Counties and cities levy a tax of 1/3 the State tax (5¢/\$100).

¹⁷ Counties are authorized to levy a 1% real estate sales tax; all 39 counties have done so.

Source: U.S. Bureau of the Census, *Detail of State Tax Collections in 1963*; and U.S. Commissioner of Internal Revenue, *Annual Report, 1963*. (Pub. No. 55.)

each State for 1962 was estimated from sales data reported by the Bureau of the Census in its 1962 Census of Governments, discounted 10 percent for assumed mortgages, and the Federal rate applied to the residual. This would indicate a maximum Federal take of \$35 million from the tax on conveyances. The State-by-State breakdown of that amount (table 4) indicates approximately the amount each State would have obtained from a real estate transfer tax at the Federal rate of 55 cents per \$500, exclusive of assumed mortgages.

It is clear that the bulk of the Federal (as well as State) documentary tax revenues is derived from the taxes on securities transactions. Real estate transfer taxes, as currently imposed by the Federal Government and by some States, have little revenue impact. The interest in them derives from their possible usefulness in connection with assessment-sales ratio studies for property tax administration purposes.

TABLE 4. - FEDERAL DOCUMENTARY STAMP TAXES COLLECTED, BY STATE, 1962
(in thousands)

State	Total ^{1/}	Conveyances ^{2/} (deeds)	Other
Alabama	\$ 728	\$ 308	\$ 420
Alaska	66	n.a.	n.a.
Arizona	823	409	414
Arkansas	387	192	195
California	18,138	7,952	10,186
Colorado	1,285	619	666
Connecticut	1,558	387	1,171
Delaware	663	163	500
District of Columbia	397 ^{3/}	180	217
Florida	2,893	1,702	1,191
Georgia	1,336	501	835
Hawaii	315	98	217
Idaho	216	111	105
Illinois	11,413	1,971	9,442
Indiana	1,094	665	429
Iowa	789	321	468
Kansas	654	491	163
Kentucky	747	415	332
Louisiana	1,424	292	1,133
Maine	194	112	82
Maryland	1,611 ^{3/}	756	855
Massachusetts	3,817	808	3,009
Michigan	2,793	1,090	1,703
Minnesota	1,954	677	1,277
Mississippi	354	176	178
Missouri	2,320	832	1,488
Montana	199	114	85
Nebraska	702	247	455
Nevada	299	79	220
New Hampshire	177	96	81
New Jersey	2,770	995	1,775
New Mexico	332	166	166
New York	61,931	2,153	59,778
North Carolina	991	502	489
North Dakota	127	69	58
Ohio	4,358	2,087	2,271
Oklahoma	965	571	394
Oregon	954	373	581
Pennsylvania	5,953	1,551	4,402
Rhode Island	338	113	225
South Carolina	407	176	231
South Dakota	164	83	81
Tennessee	1,065	392	673
Texas	5,273	1,641	3,632
Utah	356	169	187
Vermont	97	56	41
Virginia	1,408	921	487
Washington	2,048	810	1,238
West Virginia	263	128	135
Wisconsin	1,304	485	819
Wyoming	121	59	58
Total	150,572 ^{4/}	35,263	115,242

See footnotes on next page.

TABLE 4.-FEDERAL DOCUMENTARY STAMP TAXES COLLECTED, BY STATE, 1962 (Concl'd)

n.a. - Data not available.

- 1/ Excludes receipts from stamp taxes on playing cards and silver bullion transfers.
- 2/ Estimated on the basis of data in the Census Bureau report, Taxable Property Values, (1962 Census of Governments, Vol. II). The "total" estimated sales price of sold real properties during a six-month period, 1961, for each state was multiplied by two, arbitrarily discounted 10 percent for assumed mortgages, divided by \$500 and multiplied by 55 cents.
- 3/ The District of Columbia and Maryland are reported as a unit by the Commissioner of Internal Revenue. The data are separated on the basis of the 1960 census of population.
- 4/ Detail does not add to total because of unavailability of data for Alaska.

Source: Commissioner of Internal Revenue, Annual Report 1962, Table 1, pp. 140-141; estimate of conveyance taxes by staff of Advisory Commission on Intergovernmental Relations.

4. The States' Interest in Real Estate Transfer Taxes

The Internal Revenue Code requires that a tax be paid on every piece of real estate that is sold, at the rate of 55 cents per \$500 of the consideration, exclusive of any assumed mortgages. As already noted, the tax is paid by the purchase of Internal Revenue stamps, which must be affixed to the deed.

When the tax is computed accurately and the proper amount of stamps attached to a deed document the stamps provide an indication -- usually the only indication on the deed -- of the price (or transfer consideration) paid for real estate. This selling price information is useful to tax administrators concerned with the assessment of real estate for property tax purposes.

The most widespread use by the States of the Internal Revenue stamps attached to deed documents is in connection with assessment-sales ratio studies. In essence, an assessment ratio study compares the selling price of real estate with its assessed value in order to estimate the level in relation to "fair" or "market" value at which real property is assessed for property tax purposes in a particular taxing jurisdiction. This measure is called the "assessment ratio." Although almost all State property tax laws require uniform assessment, usually at full value, this requirement is more often than not honored in the breach. Thus, even in the same State, assessment ratios for local jurisdictions vary considerably. This problem is discussed in some detail in another report of this Commission. 1/

This interjurisdictional variation in assessment levels poses numerous problems, the solution of which can be aided by the data that result from assessment ratio studies. Their usefulness for improving the property tax has long been recognized by State tax administrators. This Commission has enumerated some of the uses to which the findings of assessment ratio studies can be put, including: disclosure of the degree of compliance with the legal basis of assessment; guidance for the individual taxpayer in determining the equity of his assessment; disclosure of full value of taxable property as one index of community fiscal ability; aid in the development of reliable measurement standards that use taxable valuations as a base; guidance for the equalization of State and local assessing; and

1/ Advisory Commission on Intergovernmental Relations, The Role of the States in Strengthening the Property Tax, (A-17), June 1963, Vol. 1.

indication of interarea nonuniformity in assessment to permit equitable distribution of taxes in taxing districts identified with more than one assessing area, and equitable distribution of State aid. 1/ The national organization of State Tax Administrators has elaborated on the "equalization" aspects of assessment ratio studies. 2/

Railroads and other public utilities, whose property holdings are generally assessed on a unitary basis by the States but are taxed at local property tax rates, have long been concerned with the inter-area differences in assessment levels. 3/ They have usually contended that the States assess public utility properties at close to full value while the local jurisdictions' property tax rates are levied on the basis of various fractional values, and that as a result the utilities are relatively overtaxed. Much litigation has resulted from these contentions and the utilities have themselves conducted assessment ratio studies to bolster their case.

Over the past several decades the courts have come to recognize that officials may not achieve uniform assessments and the legal requirements of full value and they have increasingly granted judicial relief to taxpayers able to demonstrate systematic and substantial relative overassessment. The quest for equality in assessment has been spurred by the recent increases in property tax rates and litigation clarifying the right of overassessed taxpayers has developed in practically every State.

The usefulness, indeed the necessity, of measuring the level of local assessments is thus widely acknowledged and such measurements are now being developed routinely by many States. There are two generally accepted methods of accomplishing this: either by comparing the assessments of properties selected at random from among the various classes of property with the independent and professional

1/ Ibid., p. 51.

2/ National Association of Tax Administrators, Equalization Programs and Other State Supervisory Activities in the Property Tax Field, Federation of Tax Administrators, Chicago, 1957, footnote 17, table III.

3/ For explanation and discussion, see Committee on Unit Valuation, National Association of Tax Administrators, Appraisal of Railroad and Other Public Utility Property for Ad Valorem Tax Purposes, Federation of Tax Administrators, Chicago, 1954.

market value appraisal of the same properties; or by conducting assessment-sales ratio studies. These methods of computing assessment levels have been compared many times and if capably done either method gives reliable results. The assessment-sales ratio study method, however, is simpler, quicker, and less expensive. 1/ It is therefore most widely used.

In 1956 at least 20 States were conducting statewide assessment ratio studies annually, 3 others biennially, while another State made a special study that year. 2/ Of these, 12 used sales data only, 3 appraisal data only and 9 used both types of data. Statewide and local interest in the use of sales ratio data has been increasing, and more than half of the States and the District of Columbia are now conducting assessment ratio studies on a regular basis (table 5). 3/

An assessment-sales ratio study typically involves drawing a sample of transferred properties from the deed records and developing the necessary sales price and assessed value data pertaining to those properties. Additional information is also needed about each sample transaction, such as the relationship between the buyer and seller, special circumstances surrounding the sale, etc., to make sure it was a bona fide arm's length sale involving a willing buyer and a willing seller. 4/

By tradition, the legal documents filed in connection with realty transfers do not indicate the actual price paid, but merely recite some nominal consideration such as "One dollar and other

1/ For a recent judicial recognition of this, see: The People ex rel Mike Wenzel, County Collector v Chicago and North Western Railway Company, Docket Nos. 37584-85-86-87, Supreme Court of Illinois, May 1963.

2/ National Association of Tax Administrators, Equalization Programs and Other State Supervisory Activities in the Property Tax Field, Federation of Tax Administrators, Chicago, 1957.

3/ See Advisory Commission on Intergovernmental Relations, op. cit., Vol. 2, for brief accounts of the assessment ratio studies being conducted by the several States.

4/ The procedures are described in detail in Committee on Sales Ratio Data, National Association of Tax Administrators, Guide for Assessment-Sales Ratio Studies, Federation of Tax Administrators, Chicago, 1954.

TABLE 5. - STATES CONDUCTING PERIODIC ASSESSMENT RATIO STUDIES

Arizona	Missouri
Arkansas	Nebraska
California	Nevada
Colorado	New Jersey
*Dist. of Columbia	New York
*Florida	North Dakota
Hawaii	Oregon
Illinois	*Pennsylvania
**Indiana	Rhode Island
Kansas	South Dakota
Kentucky	Utah
*Maryland	*Virginia
Michigan	*Washington
*Minnesota	Wisconsin

NOTE: In most instances the States rely on sales data, sometimes supplemented by appraisals. Some States, notably California and Michigan, rely entirely or almost entirely on appraisal data.

*Imposes a real estate transfer tax.

**Imposes a limited real estate transfer tax.

valuable consideration." However, those interested in sales prices for assessment ratio studies quickly discovered that the price could be computed from the tax payment indicated by the Internal Revenue stamps attached to the deed. The fact that assumed mortgages were excluded from the tax computation complicated the procedure, for this necessitated checking mortgage records when the deed indicated assumption of a mortgage.

Investigators examining the deed records for assessment ratio studies have found numerous instances where Internal Revenue stamps should have been attached but were not. And even when stamps were attached, the sales price estimates derived from them often indicated prices that on further investigation were found to be inaccurate.

Since the accuracy of the selling price is crucial to the validity of the findings of an assessment-sales ratio study, effective use of Federal tax stamps to compute the price is limited by poor compliance, as well as by the exemption of assumed mortgages. State tax administrators charged with conducting ratio studies have been concerned with this problem for decades. 1/

Both understamping and overstamping often result from misinterpretation of the assumed mortgage exclusion. In some instances, the value of a mortgage may be excluded whether it is assumed by the purchaser or a new mortgage is placed. In other instances, stamps are attached for the full price, just to be on the safe side. In addition to the discrepancies arising from misunderstanding of the statutes there are cases where the seller has deliberately increased the amount of tax stamps on a transaction to give the impression that the selling price involved is higher than the actual amount paid. When the real estate market is very active and resales of the same property occur frequently, subdivision developers have been known to "overstamp" for the purpose of overstating the price paid for a property.

The Federal Government's tax system is predicated upon self-assessment with spot audits by the Internal Revenue Service. It is reasonable to expect that the enforcement efforts of the Internal Revenue Service are concentrated on those taxes that yield the bulk of the revenue -- personal and corporate income taxes, inheritance and estate taxes, and manufacturers' excise taxes. The insignificant

1/ For some record of this, see: George W. Mitchell, "Using Sales Data to Measure the Quality of Property Tax Administration," National Tax Journal, Vol. 1, p. 336, Dec. 1948.

yield of the low fractional rate conveyance stamp tax makes it unprofitable to put even token resources into its enforcement which would require auditing efforts in some 3,000 county courthouses. Therefore, reliance is placed upon the voluntary purchase of tax stamps, mainly by lawyers and realtors. The argument that States derive useful by-product information from the tax is poor justification for retaining a tax that has little revenue significance and no regulatory purpose.

Furthermore, States have access to other means of obtaining information on the selling price of real estate. A number of States and the Bureau of the Census obtain the information required, by questionnaire, from the parties to the transaction. This has been found to produce satisfactory results. The questionnaire serves also to obtain other kinds of information needed for the ratio studies, such as the relationship between buyer and seller, the value of any personal property included in the sale, and any unusual circumstances surrounding the sale. For its 1962 Census of Governments, the Census Bureau obtained responses from over 90 percent of the 154,000 parties to real estate transactions it solicited for information. 1/

Another means States have at their disposal is to enact their own real estate transfer taxes. As has been indicated, 12 States and the District of Columbia, as well as a number of local governments in 5 additional States, have done so. A real estate transfer tax is particularly well suited to State administration through local officials. Counties are creatures of the State, and their officials are utilized in many areas as agents in enforcing State laws. Those States that have levied their own real estate transfer taxes can and do require the local recorders to enforce the law. Almost without exception, the State real estate transfer tax laws require the recorder to verify that the State tax has been paid before he can accept the deed for recordation. In many instances there is a penalty for noncompliance.

Pennsylvania, West Virginia, and the District of Columbia require the parties to a real estate transaction to submit a sworn affidavit as to the selling price of the property. The West Virginia law contains the following provision: 2/

1/ U. S. Bureau of the Census, Taxable Property Values, 1962 Census of Governments, Vol. II, p. 16. The questionnaire used by the Census Bureau is reproduced on pages 20 and 21 of that report.

2/ W. Va. Code, Sec. 6, Act 22, Ch. 11.

"When offered for recording...each instrument subject to the tax as herein provided shall have appended on the face or at the end thereof, a statement or declaration signed by the grantor, grantee or other responsible party familiar with the transaction therein involved declaring the consideration paid for or the value of the property thereby conveyed...."

The States could, if they were so inclined, tie their real estate transfer taxes directly to assessment-sales ratio studies. 1/ However,

1/ Colorado did this when it enacted the Realty Recording Act in 1957. The recording fee under this law was nominal -- only 1¢ per \$100 of value -- but the law required the county clerk and the county assessor to report each real estate transaction to the Legislative Council which was authorized to conduct assessment ratio studies primarily for the information that was needed in connection with the State school aid program. Section 118-6-31 of the Colorado Revised Statutes, 1953 (1960 Supplement) reads as follows:

Disposition of records

(1)(a) The clerk and recorder of each county, on or before the fifteenth day of each month:

(b) Shall file with the county assessor all certificates submitted to him pursuant to the provisions of section 118-6-25 together with the daily records provided for in section 118-6-30;

.....

(2)(a) The county assessor for each county, or his deputy, on or before the last day of each month:

(b) Shall enter on the daily records received from the clerk and recorder the assessed value of the real estate listed in such daily records and a certificate subscribed to under oath, that such assessed values are true and correct;

(c) Shall file with the legislative council a copy of each document received from the clerk and recorder in accordance with the provisions of sections 118-6-21 to 118-6-33.

The Colorado Realty Recording Act was repealed by the 1963 Legislature.

even if there is no direct reference in the State real estate transfer tax law to assessment-sales ratio studies, the evidence of tax payment attached to the deed is a matter of public record, and the State or any individual wishing to use this evidence to compute the selling price from the tax is at liberty to do so. Six of the States and the District of Columbia with their own real estate transfer taxes conduct regular assessment-sales ratio studies, utilizing the tax as one tool for this purpose. On the other hand, three of the States that develop outstanding assessment ratio data -- Wisconsin, New Jersey, and New York -- have not found it necessary to rely on tax information, preferring to solicit the selling price and related information directly from the parties to real estate transactions.

To summarize, the States' need for valid real estate market value information (as measured by selling prices) could be met by an adequately enforced, broad-based Federal tax on conveyances. As a practical matter, however, an adequately enforced Federal conveyance tax law is not readily reconciled with rational allocation of enforcement resources. Furthermore, other means are available to the States for obtaining realty market value information, including the use of questionnaires and enactment of their own real estate transfer taxes.

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1/ Single copies of reports may be obtained without charge from the Advisory Commission on Intergovernmental Relations, Washington, D. C., 20575. Multiple copies of items marked with asterisk (*) may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D. C., 20402.

