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REASON FOR, AND EFFECT OF, THE 1968 VIRGINIA ASSEMBLY TAX CHANGES

CARRINGTON WILLIAMS

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Dr. Atkeson, ladies and gentlemen, it's always, of course, a pleasure to be at William and Mary. I feel honored when asked to come here to speak. I also feel honored to be introduced by the gentleman whom we on the Revenue Resources Commission of the General Assembly consider as the man who holds the anchor and keeps the ship from going on the rocks, so to speak, because when it comes to deep, perceptive analysis of where we are going revenue-wise and fiscally in the Commonwealth of Virginia, we intuitively turn to your chairman and our good friend, Dr. Atkeson, because he has given a great deal of good citizens's unpaid time to the State of Virginia. I am deeply grateful to him for what he has done and what he is continuing to do.

I would like in that connection to start off with something which you may know about. This is the study of the conformity bill which was introduced into the General Assembly this past year after a very deep and careful study to which Dr. Atkeson gave unstintingly. It was an excellent report. Based upon that a bill was introduced which, with four major exceptions, would have brought the Virginia Income Tax law into general conformity with the federal law. The bill passed the House of Delegates overwhelmingly. It got into the Senate. Constitutional objections were raised. It was my feeling, individually certainly, that the constitutional objections could have been overcome by a suit for declaratory judgment which would have tested the law before it actually went into effect. But there were a substantial number of people, including Judge Morrissett, who had sufficient misgivings about this that their viewpoint prevailed and the bill did not pass. It is, however, being considered by the Constitutional Revision Commission of which you undoubtedly know and which, we hope will be rendering its report shortly. So we expect in the Special Session of the General Assembly to start next February to consider constitutional revision, assuming that it is called by Governor Godwin, and I think that the question of conformity will probably be coming up again.

I would like to go through the high points of some of the things that

happened. Some of them may appear trivial but you may have questions as to what was done and why. So I would like to discuss in three general topics these changes that the General Assembly made. First, under the heading of income taxes, then one change in the inheritance tax, and then miscellaneous. I will divide the income tax between procedural and substantive.

One of the things I am sure which the accountants are worried about, because they are writing to me, is the new law which applies after January 1, 1969 relating to monthly withholding returns of \$300 or more and why they must be made quarterly and monthly. The amendment was part of a group of bills which accelerated payment of taxes in Virginia, including the bill I am going to mention in a minute about the corporate income tax liability, declarations and payment. Of course, part of the purpose of these bills was to accelerate payments for revenue purposes. A bookkeeping thing and yet it is very real because at the same time we were considering a tight budget which did not come up with enough money to do the things that I personally felt needed to be done; and so the bill was also introduced for the Administration for the bond issues which have just passed. As part of this acceleration process it was felt that the requirement for these withholding returns was reasonable. It was put in to provide for the filing of these returns by the fifteenth day of the month following the quarter in which the return is due except that if it is \$300 or more it would be monthly, beginning next year. For January the date would be January 31st.

The accountants have become increasingly concerned about this—so much so that the Northern Virginia chapter of the Society wrote to me and said, “What can you do?” Now we think it is going to produce all kinds of problems so I wrote to Judge Morrissett and frankly suggested that perhaps we give “some relief”. The Judge’s answer I give you in part now. He says: “The legislation on the change and the date for the filing of quarterly returns was carefully and considerably prepared; It expressly provides that the Department of Taxation may grant an extension in meritorious cases of ten days without penalty or interest. In such cases, such an extension may be a continuing one so that it will not be necessary to ask for it every quarter”. Of the hardship provisions he says, “This extension substantially solves the problem. I may add that no accountant mentioned the problem during the time the bill was pending in the General Assembly. We hope this extension will not be used in any case just to postpone payment of the quarterly income tax withheld.” Now, that’s all I can give you ladies and gentlemen on that. If it becomes too onerous you should make your views known to your local legislators and I think Judge Morrissett would be amenable to a change later on if it, in fact, does not work out as he thinks it

should work out. But your views should be made known if it becomes an onerous situation.

Because I don't think I need to go into the corporate declarations with the \$5,000 or more expected liabilities—you have undoubtedly become familiar with that—I want to talk a minute about the change in the definition of residence. To those who are in the Norfolk-Newport News area, less so perhaps those in the Richmond area, but certainly in the Northern Virginia area, this question of residence and the payment of Virginia income tax of individuals has been quite annoying. Mr. Fischer, who is Commissioner of Revenue for Arlington, is going to touch on this briefly. It seems to me that Mr. Fischer, certainly for Arlington, has worked out as good a continuing procedure with the military people in the Judge Advocate's office in the Pentagon, for example, as he can. This bill was introduced in an attempt to simplify the problem. It doesn't have any revenue implications particularly, one way or the other. I don't know whether the state ends up ahead or behind. The idea was to simplify it for practitioners and taxpayers.

Very briefly, we made three major changes as to residence. One was in the definition of resident. Second was with relation to the people who come in and go out of Virginia during the tax year. And, third, the non-resident of Virginia who has income from sources within Virginia. The old law provided that a resident was every person domiciled in Virginia on the last day of the tax year and every other person, not a domiciliary, who lived in Virginia for more than six months of the tax year. Some people said that meant six continuous months, others said no. We changed this definition to provide that a resident is (1)—any person who is domiciled in Virginia at any time during the tax year, not just December 31st; (2)—any other person who maintains an abode here for more than a hundred and eighty-three days aggregate in the tax year. So for civilian employees of the government in the Norfolk area or wherever who are moving in and out and the question is whether or not they meet the definition of resident. If they have 183 days aggregate, regardless of where their domicile is, they are considered a resident for Virginia income tax purposes.

The second major change in this residence question was that which relates to the movers, those who leave Virginia during the year or those who come in. The old law was that the person moving in or out was taxed on the proportion of the total taxable income for the year which was the same as the ratio between the number of days he lived in Virginia and 365. In other words, there was a proportion made up of the number of days lived in Virginia over 365 to get a fraction to multiply against his total income. That has been changed so that you take it on a cut-off basis. If the man moves into Virginia, has income of \$1,000 from outside sources and he makes \$50,000 in the 183 days that he is in

Virginia, he is going to pay income tax on the \$50,000. If it falls the other way he is ahead of the tax collector by that amount. But there will be no more proportion; instead of "proportion" under the old law it now says "portion" of his income.

The personal exemptions are reduced in the same ratio as they were. Of course, no credit is given for income tax paid to other states and, as a presumption, if you move back to Virginia within a six months period, that's prima facie evidence that you did not intend to move out in the first place.

With regard to the third major change, i.e. non-resident income, we changed that to simplify it and say that if you are out of Virginia, a non-resident, and you have income from sources within Virginia, from trade or business or property, you are going to pay just like a non-resident would. The purpose of this was to simplify and make what we thought was a fair exchange.

Next is the question of exclusion of military retirement income. A \$2,000 income exclusion for civilian retirees of the Federal Government was given in the 1966 Session. Should we do the same thing for the military? If I may digress for a moment, this is an example of what you might say was successful taxpayer strategy, because the approach for time immemorial had been, I am told, that both the military retirees and the civilian retirees would come before the General Assembly and say, "Give us some retired income exclusions; give us at least \$2,000 or \$3,000 or whatever." They didn't get anywhere so they changed the strategy, and decided to let the civilians go first and see if they could get it and then if they got it, the military people could come back and say, "Well, look, you gave it to them. You can't discriminate against us." So, this is what they did and we as law makers were caught in the trap. As Judge Morrisett said "I just don't understand where I was or what I was thinking about when I let that bill get through." I only say, in my own behalf, in the '66 Session I was a freshman member; I didn't know who was pitching or who was catching. But the Judge just shakes his head and says: "We should never have done that." Well, we did, so the military came along and said you have got to relieve us from the discrimination, so we gave it to them but said you have got to be 65 or over when you retire because there are many young military retirees but not many young civilian retirees of the Federal Government.

Another thing that may puzzle you, perhaps. This is the change we made about the parent corporation dividend. I'll only touch on this briefly because it relates to insurance companies. It has little practical application for the vast majority of you. We did it very frankly because one of the foundations, I believe it was the Ford Foundation, wanted to make a very substantial gift to one of the educational institutions in

Virginia. They had some stock which they wanted to give which was insurance company stock. It was in a holding company. There was the question of whether or not by doing this they would upset the appletart on income taxation as far as the insurance company and the parent company were concerned, and so at the request of that group, it being for a very laudable purpose and to help the taxpayers generally, and doing no violence to the law, we did make that change. It is more in the nature of a clarifying amendment than a truly substantive amendment.

Then we did something which relates to the income tax exemption of employee trusts, something which we weren't sure we needed to do, but we wanted to make sure that pension, profit sharing, stock bonus and annuity trusts would not have to pay income tax and so we specifically said so. We also said that an exemption granted such a trust under the Federal Revenue Code would be presumptively correct for the Virginia income tax law.

The next item is amortization of air pollution control. I suddenly feel that I am polluting the air by talking on like this so you can amortize this by saying that we did give a five year amortization write-off on air pollution control facilities. We have got to do more, I think, as part of this urbanization process that we all face, not only with air pollution but with stream pollution. Otherwise we are going to be, as taxpayers, taking care of a lot of these problems which we might take care if in this tax way.

Corporate mergers—this is an amendment to the corporation law which had previously provided that a 95% owned subsidiary could be merged into the parent without action by the stockholders of either corporation, provided the plan set forth the means of converting the stock in the subsidiary, which was not held by the parent, into stock of the parent. We merely added that the conversion plan could also provide for conversion for those non parent-held shares into shares of another corporation and not only of the parent corporation. Obviously, in these days of a lot of mergers you might have a subsidiary you want to merge into a parent but don't want to give shares in the parent to the small minority group and shares in another corporation might be perfectly acceptable to them.

So much for the income tax provisions. The big question still hanging over the whole income tax future is, of course, the conformity bill—what will come out of that. I feel as a legislator that while I have some severe misgivings about certain aspects of the Federal income tax law, yet as a matter of pure expediency and saving taxpayer time and frustration, and your time and frustration in advising them, they probably would come out ahead if the conformity bill were passed.

We made one small change in the inheritance tax law. There was a

case, the *Davis Case*, a while back under which the Department of Taxation went pretty far in taxing the powers of appointment on a non-resident decedent. There was a beneficiary in Virginia of a non-resident decedent. The power of appointment of which the resident of Virginia was the beneficiary was never exercised. The Department of Taxation said "taxable". So, again with the approval of the Department of Taxation, we provided relief for this type of situation so as not to be too unreasonable in reaching out for inheritance tax.

On the subject of real estate—we didn't do anything very earth-shattering. We provided that the real estate assessment—maybe one of the Commissioners will want to comment on this—could be changed based upon not only the up or down movement in value but could also be changed based upon easements which are granted. The reason for this is that in 1966 we provided that you could give open space scenic easements, etc. to the Virginia Outdoors Recreation Commission or to a locality—a local government—and if people do this they should get some relief from the real estate tax. This is to conform to that. We made certain changes about public service corporations in the ad valorem tax, but I don't think that has sufficient general interest to discuss any further. We made a change in the license tax for insurance companies to provide that the gross premium income would be "measured by" rather than the vaguer words "based upon."

Then, of course, we recognized the increasing sophistication of cows by providing that dairy machinery and tools would not be considered as capital subject to tax by the state but that they would be locally taxable. This is in conformity to what we had done with other items.

We made some changes requiring apartment owners to give lists of tenants, and operators of marinas to do the same thing with boats. This is strictly to facilitate local tax collection.

In closing—I would like to say this. Apropos of what we are trying to do as far as the state is concerned and its revenue sources, I believe that this offers a very real challenge to government in the United States and in Virginia. In Virginia we have in many ways led the United States in forms of local government. It is amazing that it has worked out so well. I guess the biggest brawls have occurred about annexation and they still do. But as part of this very real problem of a proper balance between local, and national government, obviously one of the biggest keys is the question of revenues. It happens to be my personal view that in Virginia, while overall we have a fair system of taxation—quite fair—except that the income tax rate is, I think, frankly, too low. That doesn't keep up with inflation. We have not done for the localities revenue-wise what we ought to have done. The state has gotten to be practically debt free and the localities have built up over a billion dollars in direct obligations. I think there has got to be some rectification

for this. What I am getting at is that there is going to be a lot more discussion about this in the future and I hope that both for your personal interest as taxpayers as well as for the interests of your clients you will watch closely what is happening in the Virginia Assembly and the Constitutional Revision session which we think is coming up. In the next few years as this urbanization process continues we will need your help. We need your suggestions. I wish, for example, that the accountants had come up and told us—maybe they didn't know about the meeting—when we considered this withholding change which now is bothering them quite a bit. But I hope that you will watch closely what we are doing and if we are making mistakes, call us and say—"Wait a minute. You've got something more to think about here." Because whether you are a private practitioner and have nothing whatever to do with the government or not, we need your help all the time.

Thank you very much.

