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MD. SPECIAL REPORTS

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REPORT

OF

THE SUBCOMMITTEE ON LICENSE TAXATION

TO

THE MARYLAND TAX REVISION

COMMISSION OF 1939

November 12, 1940

Huntington Cairns

William L. Henderson

H. H. Walker Lewis, Chairman

The recommendations in this report have been tentatively approved by the Commission. Comments and criticisms are requested.

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A. SCOPE OF REPORT

As the Commission is primarily interested in business licenses imposed for revenue purposes it seems desirable to exclude from present consideration licenses which are primarily regulatory. There are also some fields of license taxation, such as motor vehicle, horse racing, and liquor licenses, which are so broad and so important that it would seem improper to group them in the general field of business licenses. For these reasons, the following groups of licenses have been eliminated from the scope of this report:

Regulatory Licenses

- Air Navigation
- Conservation
- Dog
- Health
- Marriage
- Regulatory Boards
- Solid Fuel

Separate License Fields

- Horse Racing
- Gasoline
- Liquor
- Motor Vehicles

In order to give a clearer understanding of the licenses intended to be covered by this report, a list of such licenses is appended showing as to each (a) the amount collected for the fiscal year 1939, and (b) the number and names of the counties (including Baltimore City) from which collections were effected in that year.

All the licenses shown on the attached list are issued by the clerks of court and no investigation is required or authorized as to the fitness of any applicant. They cannot, therefore, be considered regulatory except in the economic sense that the imposition of the tax increases the cost of the activity and therefore has a limiting effect on the business licensed.

B. DEFECTS OF EXISTING LICENSE TAX SYSTEM

1. Confusion. The law relating to business licenses is in unbelievable confusion and it is impossible to determine from the statutes what business licenses are actually enforced and how. There are at least 4 licenses on the books which are obsolete and have not been enforced for years, 2 of the licenses required by the law not having been issued for over 20 years. There are some cases in which the practice is at substantial variance with the law. The situation is made worse by the fact that some State licenses are provided for by local law and some local licenses by general law.

2. Lack of Uniformity. Of the 32 licenses or types of licenses listed in the attached schedule, only 7 show collections from every County in the State and 13 show collections from less than one-third of the Counties. To make it worse, in the case of at least one license (auctioneer's), the license fee is paid to the State in some places and to County funds in others.

3. Limited Application. 3 of the types of licenses listed in the attached schedule produced revenue of less than \$100 in 193 and 10 less than \$1,000. In 3 cases only one person has been licensed during the last five years and possibly longer.

4. Overlapping Licenses. Some business activities are subject not only to a State-wide license, but also in some places to local licenses in addition. Where this is done the effect is to nullify the privilege supposedly conferred by the State license and also to build up local business barriers within the State itself.

C. GENERAL PRINCIPLES TO BE APPLIED

We have approached the problem from the standpoint of the general principles which we feel should be applied in this situation, although we realize that the chief difficulty lies in their application rather than in their substance. The principles recommended are as follows:

(1) All State business licenses should be applied on a State-wide basis and no part of the State should be exempted therefrom.

(2) State business licenses should have a State-wide effect and no additional local licenses should as a general rule be permitted for the same business or activity.

(3) Low yielding and obsolete licenses should be discontinued, as should those in which the licensees are restricted to an unduly small number of persons.

(4) Local licenses should as far as possible be limited to matters involving the public health, safety and morals.

(5) Regulatory licenses should not in general exceed the cost of regulation.

(6) To the extent that any changes affect local licensing they should be made with due regard for local revenue.

D. STATE LICENSES TO BE RETAINED

The subcommittee feels that the State should concentrate on the 10 business licenses which produce the great bulk of its revenue in this field as follows:

<u>Type of License</u>	<u>1939 Receipts</u>
Billiard or Pool Table	\$ 6,138.18
Bowling Alley	12,383.23
Chain Store	77,891.71
Cigarette	268,798.65
Garage	20,364.87
Motion Pictures & Entertainment	34,263.83
Music Box	64,678.95
Restaurants	63,786.30
Soda Water Fountains	30,084.22
Traders	434,391.25

In addition, the subcommittee recommends the retention and revision of the Hawkers and Peddlers license as a protection to those required to pay the Traders license, this subject being dealt with more fully in sub-division "F" below.

The State law requiring billiard and pool tables to be licensed (1939 Code, Art. 56, Secs. 10-12) has for a long time contained a specific provision permitting the imposition of additional city licenses thereon, and it does not seem desirable to disturb this rule at the present time. We recommend that the other State licenses listed above (as well as the licenses for Hawkers and Peddlers and for coin operated vending machines, as described in subdivision "F" of this report) be exclusive and that local licenses on such business activities be repealed and prohibited except to the extent that they constitute regulations in the interests of the public health, safety or morals, in which case the license fee, if any, should not exceed the cost of regulation.

E. STATE LICENSES TO BE ELIMINATED

The subcommittee recommends the elimination of the other State licenses enumerated on the list attached hereto (as well as licenses which still appear on the statutes but which are wholly obsolete). Some

of these licenses produce no substantial revenue, others are unduly restricted in their application and others are defective in one or more particulars as follows:

Auctioneers (1939 Code, Art. 56, Sec. 9; Charter & P. L. L. Baltimore City (1938), Secs. 322-326). All but \$42.75 of the \$6,242.75 received by the State under this license in 1939 came from Baltimore City, although a number of the Counties have auctioneers' licenses the proceeds of which are retained locally. There is no justice in having the same type of license payable to the State in one place and to the County in another and the sub-committee recommends the elimination of the State license.

The Charter and Public Local Laws for Baltimore City (Secs. 322-326) already make provision for an auctioneers' license, although the proceeds are made payable to the State. In view of the elimination of the State license and of the fact that several of the Counties have such licenses which are payable to County funds, we feel that Baltimore City should be permitted to take over the auctioneers' license now contained in its local laws.

Brokers (1939 Code, Art. 56, Secs. 13-22, 34-39; Charter & P.L.L. Baltimore City (1938), Secs. 776, 809-812). This category embraces a number of separate licenses, namely: bill brokers, coffee brkers, cotton brokers, exchange brokers, grain brokers, horse brokers, merchandise brokers, pawnbrokers, real estate brokers, shipping brokers, stockbrokers and sugar brokers. Our investigation discloses:

- (1) That some of these licenses are either obsoete or are ignored in practice.

(2) That the only license in this class productive of substantial revenue on a State-wide basis in 1939 was that required of real estate brokers (as to which see below).

(3) That other existing State brokerage licenses are apparently enforced only in Baltimore City.

Real Estate Brokers. As to real estate brokers it should be noted that Chapter 351 of the Laws of 1939 created a permanent Real Estate Commission with broad regulatory powers and provided for a new scale of real estate brokers licenses. Under the new law the proceeds of the license go to the Commission which is required to pay to the State Treasurer only the excess remaining after the deduction of its expenses. We have no figures as to the effect of this change on the State's revenues.

All Counties were apparently subject to the old real estate brokers' license, but seven Counties were excepted from the 1939 law creating the Real Estate Commission. As the new law repealed the old license, the effect was to relieve real estate brokers in these seven Counties of the necessity of paying any license, either old or new. This situation should be remedied and we recommend that the Real Estate Commission law be extended to cover all the Counties in the State.

Pawnbrokers. The pawnbrokers' license for which provision is made in Sections 16 and 17 of Article 56 of the 1939 Code is not in any sense regulatory and does not even appear to be generally enforced. Separate pawnbrokers' licenses are required in some localities by local law or ordinance and such licenses are generally accompanied by regulations as to office hours, the keeping of books and records, and the posting of a bond. For example, in Baltimore City, in addition to the \$100

license required by the general law, pawnbrokers are subject to the following license requirements:

P.L.L. Baltimore City (1938), Secs. 809-810: \$500 license payable to the State, provision being made for a bond, for the keeping of records, etc.

Baltimore City Code (1927), Art. 25, Secs. 30-40: \$200 license payable to the City, provision being made for a bond, limited office hours, etc.

In other localities in which a pawnbrokers license is enforced the proceeds are apparently retained locally.

We recommend the elimination of the non-regulatory pawnbrokers' license for which provision is made in Secs. 16 and 17 of Art. 56 of the 1939 Code. We also recommend that the proceeds of local pawnbrokers' licenses be payable to the localities in which such licenses are operative, rather than being paid to the State in one place and retained locally in others.

Aside from the above this report is not concerned with the real estate brokers' license, which must now be considered a regulatory license, or with other regulatory brokerage licenses such as those required locally of pawnbrokers and those issued by the State insurance department. With this qualification, we recommend that all the brokerage licenses listed above be eliminated.

Construction firms (1939 Code, Art. 56, Sec. 291). Foreign construction firms are required to pay a license fee of \$50.00 for each County in which they operate, whereas residents of Maryland engaged in the same business are required to pay only \$10.00 per County and do not

need to pay this unless and until their gross business exceeds \$5,000 a year. As applied to foreign construction firms we believe that the license is unconstitutional and as applied to residents it is largely unworkable, due to the fact that in many cases there is no practical method by which the licensing authorities can determine when the work done by a contractor in any one year mounts up to \$5,000. In view of the fact that the subcommittee on local property assessment is recommending a system of building permits for the purpose of getting new construction on the assessment rolls and in view of the defects of the present construction company license, we recommend its elimination.

The other State licenses listed on the attached schedule should, in our opinion, be eliminated, either because they do not produce sufficient revenue to justify their continuation or because they are unduly restricted in their application or are otherwise defective. In addition certain obsolete licenses, from which there have been no recent collections and which are not therefore shown on the attached list, should be repealed. The licenses which we recommend eliminating under these heads are as follows, the section number (in Art. 56 of the 1939 Code, unless otherwise indicated) being shown as to each:

Licenses included in list

Auctioneer (9)	Merchandise Brokers (15;
Cash register -	also P.L.L. Balt. City,
Adding Machine (265)	Sec. 811)
Check room (286)	Non-resident Wholesale
Cleaning & Dyeing (287)	Tobacco Dealers (292)
Coffee Brokers (15)	Pawnbrokers (16-17)
Commercial, etc.	Plumbers & Gas Fitters (290)
Protective Agencies (267)	Shoe Shining & Hat
Construction Firms (291)	Cleaning (288)
Cotton Brokers (15)	Stevedore (P.L.L. Balto. City,
Detective Agencies (262)	Sec. 820)
Florists (66)	Stockbrokers (15)
Grain Brokers (15)	Storage warehouse (285)
Horse and Jack (131-132)	Sugar brokers (15)
Junk Dealers (279)	Trading Stamp Cos. (280)
Laundries (278)	Typewriting Machine (266)
Livery Stable (283)	Wholesale Farm
	Machinery Dealers (281)

Obsolete Licenses

Bill Brokers (14)
 Exchange Brokers (13)
 Horse Brokers (P.L.L. Balt.
 City, Sec. 776)
 Ordinary Keepers (76-91)
 Shipping Brokers (34-39)
 Stage Players, Ventriloquists,
 etc. (103-111)
 Telegraph & Express Cos. (134-140)

To the extent that the activities heretofore licensed in these categories affect the public health, safety or morals it would seem proper for the Counties or City of Baltimore to impose regulatory licenses thereon. We strongly recommend, however, that, no local licensing be permitted of business activities which are not clearly subject to special regulation under the police power.

It should be borne in mind that the State licenses referred to above are issued by the clerks of court without any investigation as to the fitness of the applicant, and they cannot properly be regarded as regulatory licenses.

F. CHANGES IN RETAINED LICENSES

Certain of the State licenses to be retained require revision, the changes which the subcommittee recommends being as follows:

Restaurants (1939 Code, Art. 56, Sec. 289). The present license on restaurants or eating places requires a \$10 fee for places of business in cities or towns of less than 8,000 inhabitants and a \$25 fee for cities or towns of 8,000 or more inhabitants. No provision is made for any license in the case of restaurants or eating places outside city or town limits and in practice the license does not appear to be generally

enforced in towns which are not incorporated. The artificiality of this last distinction becomes apparent when it is considered that incorporation does not depend upon size but upon the desire of the inhabitants of the town and upon the policy of the County government; for example there are no incorporated towns whatever in either Baltimore or Howard Counties.

It does not seem to us proper to continue the discrimination in favor of restaurants or eating places outside the limits of an incorporated city or town and we recommend that the license be changed so as to provide for a \$25 fee, as at present, for restaurants in cities or towns of 8,000 inhabitants or over and to require a \$10 license fee from all other restaurants or eating places.

Traders' License - General (1939 Code, Art. 56, Secs. 40-71).

The traders' license has been on the books for over 100 years and is a substantial and stable source of State revenue, having produced the following net amounts during the last six fiscal years:

1935	\$410,773.01
1936	418,315.41
1937	423,792.46
1938	429,469.57
1939	434,391.25
1940	439,864.55

We consequently feel hesitant to suggest any fundamental changes therein at this time, especially as sufficient data is not available to accurately forecast their revenue effect. On the other hand it seems clear that certain changes are desirable and we hope that the creation of a central State Department of Revenue will make it possible to assemble and consider the necessary data. The changes which we especially recommend for further consideration are as follows:

(a) Tax base. The amount required to be paid under the present traders' license is based upon the value of the stock in trade at the principal season of sale. This is obviously unfair as between businesses having a slow turnover and businesses having a rapid turnover, and also has the effect of imposing a heavier tax when business is bad and inventories large than when business is good. Accordingly it was suggested in the final report of the Tax Revision Commission of 1927 (pps. xxxiv and xxxv) that it would be more equitable to substitute some form of sales tax for the traders' license so as to measure the tax by the amount of sales rather than by the amount of stock in trade. This is unquestionably a desirable reform but our subcommittee does not feel that it will be practicable without a fundamental change in the administrative machinery and without more statistical information than we have means of accumulating.

(b) Wholesalers. The present traders' license applies to wholesalers as well as retailers but is not required of manufacturers which sell their products at retail. It is in substance a tax on selling, the amount of the tax being based upon the amount of merchandise held for sale and it seems illogical and unfair to use the same merchandise twice as a basis for tax, once in the hands of the wholesaler and then again in the hands of the retailer, especially when manufacturers selling competitive products at retail are exempt. We accordingly believe that the law should be changed so as to cover all retailers (or sales at retail) and to exclude wholesalers (or sales to licensed retailers). However, figures are not available from which the revenue effect of such a change could be accurately determined and we feel that it is too fundamental to be effected without complete data and a revision of administrative machinery.

To facilitate further consideration of these matters we recommend that the form of application now required for a traders' license be changed so as to include the gross sales or estimated gross sales of the applicant during the prior year and so as to show whether such sales were at whole-sale or at retail.

Traders' license - protection against unlicensed competition.

It seems only proper that persons licensed as traders, as well as the State which derives such a large annual revenue from this source, should be protected from unlicensed competitive selling, our attention having been especially called to the following:

- (1) Coin operated vending machines
- (2) Hawkers and peddlers

The first of these is not now subject to license in Maryland (except in the case of cigarettes), and the license imposed on the second is virtually unenforced and unenforceable. The subcommittee accordingly believes that a reasonable and enforceable license should be provided as to each, the recommendations being set out in more detail in the next succeeding paragraphs:

Coin operated vending machines. The State of Virginia (as well as certain other States) imposes a license tax on coin operated vending machines and we have had the benefit of the advices of its taxing officials with respect thereto. On the basis of such advices and other data submitted to us we recommend that coin operated machines vending goods or merchandise (including specifically candy, ice-cream, soft drinks, and peanuts, but excluding cigarettes which are already covered by such a license) be subjected to license on the following annual basis:

\$1.00 per machine charging 1 cent

\$5.00 per machine charging 2 to 5 cents

\$10.00 per machine charging more than 5 cents.

Where the same machine vends more than one type or brand of article, the basis for the fee should be calculated by adding the number of cents required to purchase each type or brand of article sold.

The license should not apply to machines selling articles for which no traders' license would be required for ordinary sales, as for example newspapers and postage stamps. There should, however, be no exemption of manufacturers.

Metal tags should be issued for each licensed machine and should be required to be conspicuously affixed thereto.

Hawkers and peddlers (1939 Code, Art. 56, Secs. 24-33). The system of licensing hawkers and peddlers has been a failure, both from the standpoint of revenue and from the standpoint of adequately checking competition with persons operating stores. No license in recent years has given more trouble to both police and revenue authorities. Although purporting to be a revenue measure the hawkers' and peddlers' license is clearly prohibitory in many of its applications, as is obvious from the fact that foot peddlers are required to take out a \$100 State license for each County in which they operate and additional local licenses in most of the Counties and many of the cities and towns.

The net receipts to the State from the hawkers and peddlers license during the last six fiscal years have been as follows:

1935	\$1,171.93
1936	598.48
1937	826.07
1938	1,081.85
1939	7,047.31
1940	1,448.61

The large increase in 1939 was apparently due to a special campaign against hawkers and peddlers.

A different State license must be obtained for each County in which such business is done, in addition to such County or other licenses as may be required locally. The law further provides that no such license may be granted in the name of a partnership or company, which means that any company engaged in selling in this manner is required to obtain a separate license for each person whom it employs for this purpose.

The effect of the harshness and inelasticity of the existing law as to hawkers and peddlers has been that the courts have restricted its application (so as, for example, to exempt the milk companies and the bread companies) and grand juries have refused to indict petty offenders. As a result the law is largely unenforced and amounts to little more than a painful headache to the police and taxing authorities.

We submit the following recommendations as to the revision of this license:

(1) There should be an effective hawkers' and peddlers' license to protect persons who operate from a fixed place of business and are required to pay the traders' license, and to protect the large revenue which the State derives from the traders' license.

(2) For any such license to be effective the scale of fees must be reasonable and the following are recommended:

(a) Foot peddlers: no fee, with local authorities authorized to license and regulate.

- (b) Each vehicle other than a motor vehicle, \$10.
- (c) Each motor vehicle, on the basis of capacity, \$15 for each 1/2 ton or fraction thereof.

(3) A metal license tag should be issued for each vehicle and should be required to be conspicuously attached thereto.

(4) The license should not be required of persons who already hold a traders' license covering the goods sold in this manner; special license tags should be issued for vehicles owned by such persons for a small fee not to exceed \$1 per vehicle.

(5) The license should not be required of wholesalers selling only to licensed traders.

(6) The license should apply to corporations as well as to individuals and should apply to manufacturers, although persons selling their own farm produce should be exempted.

(7) The license should be given a State-wide application and should supersede all local hawkers' and peddlers' license requirements.

It is not possible to estimate the amount of revenue which would be derived from a license of this sort, but it should produce a substantial amount and this is relied upon in our recommended elimination of the various other business licenses which have less justification. Local hawkers' and peddlers' licenses, like the State license, are largely prohibitory in effect and they have not produced any substantial revenue. Consequently their elimination will not materially affect local revenues.

In addition to the revenue consideration the adoption of a State-wide hawkers' and peddlers' license seems to us the only practicable way of eliminating the present system of County and local trade barriers as regards this type of selling.

General. Although it is contemplated that licenses will be issued by the various clerks of court as heretofore, they should be issued only upon application forms to be prescribed by the State Department of Revenue, and the original or a duplicate copy of each application should be forwarded by the clerks to that Department. In this way, statistics can be collected that may suggest further modifications of the retained licenses.

G. ACKNOWLEDGMENT

The subcommittee has been materially assisted by the State License Bureau with respect to the problems covered by this report and has had the further benefit of discussing its conclusions and recommendations with Messrs. Bratten and Powers of that office.

LICENSES COVERED BY REPORT

(From Comptroller's Report for Fiscal Year Ended 9/30/39)

<u>License</u>	<u>1939 Receipts</u>	<u>Number of Counties Issuing Such Licenses in 1939</u>	<u>Name</u>
Auctioneer	\$ 6,242.75	2	(\$6,200.00 Balto. City- (42.75 Anne Arundel
Billiard Table	6,138.18	22	All but Calvert, St. Mary's
Bowling Alley	12,383.23	21	All but Caroline, Howard, Queen Anne's
Brokers	30,488.44	23	All but Garrett
Cash Register & Adding Machine	1,522.25	2	Frederick, Baltimore City
Chain Store	77,891.71	24	All Counties
Check Room	118.20	1	Baltimore City
Cigarette	268,798.65	24	All Counties
Cleaning & Dye- ing	3,823.25	20	All but Calvert, Charles, Garrett, Kent
Commercial, Mercan- tile & Mutual Prct. Agency	99.00	1	Baltimore City
Construction Firms	2,405.65	18	All but Calvert, Caroline, Garrett, Howard, Kent, St. Mary's, Talbot, Worcester
Detective Agencies	1,014.76	1	Baltimore City
Florists	1,346.20	1	Baltimore City
Garage	20,364.87	21	All but Kent, St. Mary's, Somerset
Hawkers & Peddlers	7,047.31	7	Baltimore, Carroll, Cecil, Garrett, Howard, Montgomery, Baltimore City
Horse & Jack	989.91	22	All but Wicomico, Baltimore City

<u>License</u>	<u>1939 Receipts</u>	<u>Number of Counties Issuing Such Licenses in 1939</u>	<u>Name</u>
Junk Dealers	\$ 6,126.29	14	Allegany, Anne Arundel, Baltimore, Carroll, Charles, Frederick, Garrett, Harford, Kent, Queen Anne's, Talbot, Washington, Wicomico, Baltimore City
Laundries	5,143.41	20	All but Calvert, Charles, Somerset, Worcester
Livery Stable	59.60	1	Baltimore City
Motion pictures & entertainment	34,263.83	24	All Counties
Music Box	64,678.95	24	All Counties
Non-res. wholesale Tobacco Dealer	49.50	1	Baltimore City
Plumbers & Gas Fitters	6,849.82	16	All but Allegany, Calvert, Caroline, Charles, Frederick, Garrett, Somerset, Talbot
Restaurants	63,786.30	24	All Counties
Shoe Shining & Hat Cleaning	698.87	15	All but Baltimore, Caroline, Calvert, Charles, Dor- chester, Garrett, Howard, St. Mary's, Worcester
Soda Water Fountains	30,084.22	24	All Counties
Stevedore	202.13	1	Baltimore City
Storage Warehouse	5,425.49	8	Allegany, Anne Arundel, Frederick, Montgomery, Prince George's, Washington, Wicomico, Baltimore City
Traders	434,391.25	24	All Counties
Trading Stamp Companies	544.50	1	Baltimore City
Typewriter Machine Companies	151.46	5	Allegany, Frederick, Prince George's, Washington, Baltimore City
Wholesale Dealers Farm Machinery	594.00	1	Baltimore City

Location	1933 Receipts	Number of Counties	Number of Counties
Bank Building	\$ 6,100.00	12	12
Laundry	\$ 1,400.00	20	20
Livery Stable	\$ 80.00	1	1
Hotel Rooms & Entertainment	\$ 4,200.00	24	24
Radio Box	\$ 4,000.00	24	24
Houses, Wholesale Tobacco Dealer	\$ 200.00	1	1
Plumber & Gas Fitter	\$ 200.00	1	1
Restaurants	\$ 200.00	1	1
Shoe Shining & Hat Cleaning	\$ 200.00	1	1
Hot Water Heating	\$ 200.00	1	1
Refrigerators	\$ 200.00	1	1
Storage Warehouse	\$ 200.00	1	1
Trucks	\$ 200.00	1	1
Trading Stamp Companies	\$ 200.00	1	1
Typewriter Machine Companies	\$ 200.00	1	1
Wholesale Dealer Parts Machinery	\$ 200.00	1	1

