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MD. SPECIAL REPORTS

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REPORT

ON

TAX ON OFFICIAL COMMISSIONS AND NOTARIES PUBLIC

TO

THE MARYLAND TAX REVISION

COMMISSION OF 1939

November 19, 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. NOTARIES PUBLIC

1. The statutes. The 1939 Code requires the following payments to the State by notaries public:

Art. 68, Sec. 1: \$5.00 to the State Treasury for commission (in addition to which a 50¢ registration fee is required to be paid to the Clerk of the Court delivering the commission).

Art. 36, Secs. 24-27: One-half of all protest fees received by any notary in excess of \$350 a year in the Counties and in excess of \$500 a year in Baltimore City.

Art. 81, Sec. 101: Tax of \$5.00 as part of the tax on official commissions.

In addition to the above, Art. 36, Sec. 25 and Art. 68, Sec. 2 require notaries public to file a surety bond and the general practice is to use corporate surety bonds, on which the premium is \$5.00.

The amounts required to be paid to the State for a commission or as a tax on the issuance of the commission are payable only at two year intervals, the same being true of the surety bond which covers the full two year period for which the commissions are issued. The tax on protest fees is on an annual basis but is required by the law to be paid quarterly.

2. Application of the law in practice. In practice only one \$5.00 payment is exacted by the State from notaries public for the full two year period of their commission, this being true both in Baltimore City and in the Counties. As the statutes are written the \$5.00 tax on the notary's commission would appear to be in addition to the fee payable on the issuance of the commission, requiring a total payment of \$10.00

but the administrative practice is well settled to the contrary and notaries in both the Counties and Baltimore City have been paying only \$5.00 to the State every two years.

There are over 5,000 notaries in Maryland of which slightly under 3,000 are in Baltimore City, and the amount which they pay the State for commissions for a two year period is approximately \$24,000, from which must be deducted the collection fees payable to the Clerks of Court amounting to 5% in the Counties and 1% in Baltimore City. In the Comptroller's reports the net amount paid by notaries is included in the general item "Tax on Civil Commissions".

It is a matter of common knowledge that most notaries public are employed on a salary basis and perform notarial services as part of their ordinary work, this being the customary practice in law offices, banks, real estate offices, etc. In this situation the cost of the notary's commission is normally borne by the employer and where this is done the State does not receive any possible return by way of income tax from the fees which notaries are authorized by law to charge. There is nothing improper in this practice, but it seems open to serious question whether the State receives adequate compensation for the privilege which it grants in the issuance of a notary's commission.

3. Tax on Protest Fees. The tax on protest fees is illogical in that it is only payable on fees received in excess of a fixed annual limit (\$350 a year in the Counties and \$500 a year in Baltimore City) but is required to be paid quarterly. In practice it is collected semi-annually. Very few notaries actually pay anything to the State under this tax, the total amount paid and the number of notaries paying it during the past five fiscal years having been as follows:

	<u>Number of Notaries Paying Tax</u>	<u>Amount received by State</u>
1936	11	\$ 2,900.82
1937	13	2,175.00
1938	18	3,110.00
1939	16	3,481.00
1940	13	2,160.00

Approximately one-half of the total amount has apparently been paid by a single notary,

4. Notary's Bond. By Section 2 of Article 68 (to be read in conjunction with Section 25 of Article 36) each notary public is required to give a surety bond (in the penalty of \$2,000 in the County and \$6,000 in Baltimore City) conditioned upon the payment to the State Treasurer of notarial fees received for the use of the State. We are advised that over 90% of the bonds given by notaries in Baltimore City are corporate surety bonds and we understand that somewhat the same situation exists in the Counties, although the proportion of corporate surety bonds may be lower. The premium required for a corporate surety bond of this type (both County and City) is \$5.00 for the two year period covered by the notarial commission.

The only fees which are received by notaries for the use of the State and therefore the only items covered by the notary's bond are protest fees which are taxed as outlined above. Except for the tax on protest fees there would be no occasion under the existing law for requiring notaries to file surety bonds and we have the peculiar anomaly of a law which protects the payment of a tax by requiring surety bonds which necessitate a cash outlay of about four times the amount of the tax.

5. Conclusion and recommendations: The answer to the above seems obvious, namely to do away with the tax on protest fees and the consequent necessity for surety bonds and to require notaries public to pay to the State the \$5.00 which under the present law nearly all of them pay to surety companies. It seems foolish to keep on the books a tax which in the last five years has yielded the State an average of less than \$3,000 a year and which in 1940 was paid by only 13 notaries out of some 5,000 holding commissions, one-half the total tax having been paid by a single notary. We therefore recommend the repeal of the tax on protest fees to be accompanied by an increase of \$5.00 in the amount which is payable to the State every two years by notaries public.

To give effect to the above recommendations would require the amendment of Sections 1 and 2 of Article 68 and the repeal of Sections 24 through 27 of Article 36 of the 1939 Code. In the event that the tax on official commissions is not repealed in toto, as suggested hereafter, the above recommendations would also necessitate the amendment of Article 81, Section 101.

B. TAX ON OFFICIAL COMMISSIONS

1. The statutes. Section 101 of Article 81 requires certain officials, when their commissions are delivered to them, to pay a tax to the Clerk of the Court from whom they receive the same. The amount of the tax ranges from \$2.00 to \$50.00 and the average revenue yield is approximately \$13,000 a year. With the exception of notaries public, who are required to pay a tax of \$5.00, and of weighers of grain, hay, straw and live stock, who are apparently no longer in existence, all the officers named in Section 101 are apparently on a salary basis at the present time.

The present law in this respect is derived from Chapter 284 of the Laws of 1843 and Chapter 302 of the Laws of 1844. These Acts followed upon the heels of the Income Tax Law of 1841 and represented an attempt to reach and equalize the remuneration received by various State officers and especially by those who were at that time paid on a fee basis. (See H. S. Hanna, A Financial History of Maryland, Pages 112, 115).

2. Application of the law in practice. As most commissions subject to the tax are issued on a biennial basis the revenue yield has a two year cycle, a much larger amount being paid in the odd years in which most of the commissions are issued. During the past five fiscal years the yield to the State from this source has been as follows:

1936	\$ 2,633.30
1937	23,819.35
1938	2,841.95
1939	27,729.49
1940	2,806.30

approximately 90% of the above amounts were paid by notaries public.

Notaries Public are on a different basis from the other officers affected by the tax on official commissions and they are treated under a separate heading in this report. This portion of the discussion is, therefore, limited to the remaining officers all of whom are on a salary basis.

As to salaried officers the effect of the tax is merely to decrease the amount of remuneration which such officers receive and increase administrative expense on the part of the State. It seems absurd both in theory and in practice for the State or its subdivisions to pay a salary with one hand and take back part of it with the other, especially when the amounts taken back are subject to collection fees

paid to the Clerks of Court and an indeterminate amount of bookkeeping expense. In addition the tax works in a haphazard and unfair way as it is payable only once for each term of office regardless of the length of the term. This unfairness is especially apparent in the case of judges, some of whose commissions are in force for 15 years and others for only a year or two, the length of term depending upon whether they are appointed or elected and, if appointed, upon the date.

3. Conclusion and recommendations. Salaries of judges and other officers were made subject to the State Income Tax pursuant to the constitutional amendment embodied in Chapter 771 of the Laws of 1939 and approved by the voters on November 5, 1940. There accordingly seems to be no possible reason for retaining the tax on official commissions insofar as it applies to such officers and we recommend that the tax on official commissions be repealed, any revenue loss to be avoided by a \$5.00 increase in the amounts payable to the State by notaries public under Section 1 of Article 68 (as previously outlined). This will involve the repeal of Sections 101-103 of Article 81 and the amendment of Section 4 of that Article.

