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PROFESSOR T.S. ADAMS (1873-1933) ON FEDERAL TAXATION: DEJA VU ALL OVER AGAIN

by

THOMAS EARL GEU*
Times editorial after his death to memorialize him as "a real tax expert." He was also a member of the Fiscal Committee of the League of Nations. His greatest legacy, however, was the income tax. As his obituary in the Saturday Evening Post stated:

Professor Adams installed the first workable income tax law in this country [Wisconsin], and his powerful intellect was centered upon this single very important field until he became a world authority on the subject. He was a pioneer in advocating the income tax, but he had no illusions regarding its merits; he always held it should be low enough to assure collection, and he did not believe in making it unduly burdensome. He was among the very first who tried to popularize the study of the unpopular subject of taxation, and without his aid it would be an even more troublesome question than it is.7

In addition to his other activities, he was Tax Commissioner of the State of Wisconsin; a founding member of the National Tax Association, its secretary and later its president; a member of tax advisory committees of the United States Chamber of Commerce and the National Industrial Conference Board; a special employee of the U.S. Treasury to study the problems of war revenue in 1917; a member and chairman of the Excess Profits Advisors group for the federal government; the chief spokesperson of the U.S. Treasury in drafting the Revenue Act of 1918; and a member of the first Tax Advisory Board appointed under the authority of the Revenue Act of 1918.8

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6 A Useful Professor, N.Y. Times, Feb. 10, 1933, at 16 (the implication of the headline is not lost on the author of this current piece who is himself a faculty member). Examples of his work on tax subjects other than the income tax include T.S. Adams, Tax Exemption Through Tax Capitalization: A Fiscal Fallacy, 6 A.M. Econ. Rev. 271 (1916) (property taxes) [hereinafter Tax Exemption]; and T.S. Adams, Valuation of Railway Property for Purposes of Taxation, 23 J. Pol. Econ. 1 (1915). For a complete bibliography of Adams' articles see E.S. Furniss, Bibliography of Professor Thomas S. Adams, 24 A.M. Econ. Rev. 280 (1934).

7 Tommy Adams, supra note 1. Professor Adams received many other accolades both while he was alive and after his death. See, e.g., id. (House Speaker Rainey stated "No man has rendered a service to this country in the last twenty years greater than has been rendered by Professor Adams."); Internal Revenue: Hearings on H.R. 8245 Before The Committee on Finance of the United States Senate, 67th Cong., 1st Sess. (1921) (statement of Dr. T.S. Adams, Tax Advisor, Treasury Dept.), reprinted in 95A Internal Revenue Acts Of The United States 1909-1950, Legislative Histories, Laws, and Administrative Documents 256 (Bernard D. Reams Jr ed. 1979) [hereinafter Statement of T.S. Adams on The Revenue Act of 1921]. (Senator LaFollette stated "I want to say I have the greatest confidence in you and I think you know more of the subject [taxation] than anybody else in the world . . . "); A Useful Professor, N.Y. Times, Feb. 10, 1933, at 16; Lawrence v. Commissioner of Internal Revenue, 44 B.T.A. 128, 130, n.2 (1941) (citing JOSEPH E. STERRETT, IN APPRECIATION OF THOMAS SEWELL ADAMS (memorial pamphlet, no date given)).


8 Lawrence, 44 B.T.A. at 130 n.2; FAIRCHILD, supra note 1, at 10.
His impressive tax and public service vita notwithstanding, he was lauded for his common sense and gave the following practical standard for the economics profession: "The economist who is rusty on statistics and history, but who guesses well the future decline and fall of economic powers... is a better economist in my opinion, than he who is master only of the facts of the past." In other words, the future is the true judge of the economist.

PROFESSOR ADAMS ON THE PROBLEMS OF FEDERAL INCOME TAXATION

Professor Adams stated that during World War I the income tax "proved elastic," "marvelously productive," and "responded superbly, when brought to the test." He said illustratively, that in 1914 the income tax (both personal and corporate) yielded less than 10% of the "ordinary" government receipts, but that four years later that percentage had risen to 68%. Nonetheless, he observed "the necessity of thoroughly revising the income tax law at this session of Congress..." and he identified many of the problems associated with the income tax in his numerous articles, reported speeches, and in his transcribed testimony before Congress. Adams lived in a different time, but the problems he identified are important because they illustrate that from its inception, income tax policy has struggled with the same basic issues it faces today.

The High Rate Problem

Adams identified the high additional personal surtax (i.e., graduated) rates, which had reached 70% as of his writing, as the income taxes' principal problem. He stated that "[i]t should never be forgotten that the income tax rests for its success primarily upon the honesty of the taxpayer" and that "[t]he morale of the taxpayer may be depended upon so long as rates do not 'reach his price.'" Compared to rates, he claimed that the other

9 Adams, supra note 2, at 3.
10 Id. at 528.
11 Id. at 528.
12 Illustrating the changing times, at the time of his writings, excise tax issues included whether Coca-Cola was a "heart stimulant"; whether grape juice should be taxed as a wine under the pre-prohibition rate schedule for alcoholic beverages; and, whether skis should be taxed at rates for necessities or at recreational rates. Statement of T.S. Adams on the Revenue Act of 1921, supra note 7, at 113-17, 123. It was also a time when "Price-Waterhouse & Co., probably the most prosperous firm of accountants in the world... [had] 16 or 18 partners." Id. at 245.
13 Unfortunately it was also a time when racism was rampant. Even so, it shocked the consciousness of this author to read the following words penned by Professor Adams in a discussion of the capital gains tax: "When I find responsible authorities so divided, I begin to look for a nigger." T.S. Adams, Capital Gains and the Federal Income Tax, 9 TAX MAG, 208, 211 (1931). It is even more difficult to be an apologist for Adams quote because it was made in 1931 after the issue of race was squarely forced upon polite society in 1929 by Mrs. Hoover's inviting an Afro-American Congressman's spouse to a tea at the Whitehouse. The tea, known as the "DePriest Incident," is detailed and analyzed in David S. Day, Herbert Hoover and Racial Politics, The DePriest Incident, 65 J. NEGRO HIST. 6 (1980).
14 Adams, supra note 10, at 536.
problems attendant to the tax were "insignificant." He opined generally that rates should not exceed one-half of income and, further, that "except in time of war or emergency, [taxpayer honesty and morale] begins to crumble when [the income tax] takes more than one-third of the income." Professor Adams based his opinions about the rates on the fact that the revenue yields from wealthy taxpayers "fell off in a way which can hardly be otherwise explained than as a result of avoidance through... [certain tax avoidance] devices..." He illustrated this decline by comparing the 1917 and 1918 aggregated return data for the wealthy, which showed a 46% drop in reported dividends and investment income.

The effect of such high rates of tax on savings also concerned Adams, and he stated (perhaps foreshadowing what later became known as "trickle down" economics) that: "a sharp limitation in the surtaxes to a maximum rate... would permit wealthy taxpayers to invest in taxable securities... which would stimulate or start the great volume of profit taking which has been held up by existing tax rates."  

The Business Tax Problem

Adams also identified problems that were caused by the application of the income tax to corporations and other businesses. Nonetheless, he clearly expressed his belief that taxing business income was both economically just and necessary, arguing that a "large part of the cost of government is traceable to the necessity of maintaining a suitable business environment." He reiterated the latter point by saying that "business is responsible for much work which occupies the courts, the police, the fire department, the army and the navy." Moreover, he added that the income tax on business was productive and relatively inexpensive to administer and he generally favored the double taxation of corporations. Consistent with his favorable view of the income tax as a business tax, he stated that taxing businesses through property tax alone was inadvisable because its levies were fixed costs and, over the long run, "you cannot charge for access to the market... more than the market is worth."

Even though Professor Adams favored taxing business with the income tax, he observed that rates should not be so high that they would "repress industry." He further

15 Id.  
16 Id.  
17 Id. at 530.  
18 Id.  
19 Id. at 540.  
21 Id. at 187-88.  
22 Id. at 188.  
suggested alleviating the discrepancies between corporate income tax rates and tax rates levied on individual returns. This would foreclose the avoidance opportunity "arising from the possibility of investing through the corporation and having the latter do your saving for you." He further stated that one of Congress' chief tasks should be "a modification of the income tax as will make that tax apply equally to incorporated and unincorporated business concerns." Thus, he believed rates needed to be equalized between corporations, partnership and individuals. Even within the corporate tax, however, he perceived a breakpoint in the application of the excess profits tax between large and small corporations. He stated that corporations are "not homogenous" and the law should "authorize the extension of the partnership procedure to small corporations . . . when the stockholders therein are actively engaged in the conduct of the business."

He expressed similar concerns in testimony before Congress where he suggested (after noting that personal service corporations were exempt from the excess profits tax, which was based on return on capital) that the income tax encouraged incorporation to avoid the high individual surtax rates. He framed the issue by stating that the problem was to define the type of corporation usually formed for avoidance purposes and taxing that entity as a partnership. He stated further that "I am trying to do that, and it requires a good deal of thought." He also testified that "[i]f you want to go over to the scheme of taxing partnerships and small corporations on the same basis, then you want an entirely different definition of a small corporation or a close corporation."

Interestingly, another avoidance technique was causing tax classification problems for the first time in the early 1920's. Professor Adams testified:

In that connection, there is a new trust springing up at the present time. I do not know whether you recognize to what extent this particular trust form is succeeding the business corporation.

In Massachusetts, for instance, they organized this form of trust in order to avoid the payment of taxes. The Massachusetts Trust has been developed in this country extensively . . . [largely to avoid the excess profits tax on corporations]."

Id. at 70-71 (emphasis added).
As a matter of business taxation Professor Adams was also concerned with the allocation of gain between related taxpayers, and he testified to Congress that:

I am afraid the device is being used increasingly to incorporate a subsidiary and throw the profits one way or the other. If that subsidiary is a foreign corporation you can throw the profits to it; in other words, by selling products... at artificially high prices... you have got to know that they are not milking the subsidiary.\textsuperscript{22}

Of course allocating profit and loss between related parties also raised the issue of tax jurisdiction, which touches the heart of international taxation. Therefore, Professor Adams suggested a foreign tax credit, which “[t]o [his] surprise... was accepted and approved...”\textsuperscript{33}

Finally, several more of his criticisms of the excess profits tax, in retrospect, sound in later income tax policy. For example, he recognized that the annual accounting period was “too short a time” to reflect business results fairly and, as a result, he discussed both the advantages and disadvantages of adopting the British system “of smoothing or averaging” profits “over a period of years, usually three, for purposes of taxation.”\textsuperscript{34}

Other Problems Associated with the Income Tax

Of all the income tax problems Adams addressed, he discussed few more vociferously than he did tax free securities. On an economic level, his writings and speeches reveal his concern that the government adopt a policy that encouraged “normal” saving and investment. He believed that the exemption “perverts the normal and natural habits of investment”\textsuperscript{35} and that the exemption was also one of the primary avoidance techniques used by the very wealthy to unfairly shift their tax burden to poorer taxpayers.\textsuperscript{36}

In a speech reported in 1922, Professor Adams noted that the exemption yielded a tax savings of two and one half per cent to an investor in the 50\% rate bracket, but only one per cent to an investor in the 20\% rate bracket.\textsuperscript{37} His now well-worn argument was that because there were not enough taxpayers in the 50\% bracket to buy all the tax-free securities issued, the market interest rate for such securities would be forced “up” to provide an after-tax competitive yield for taxpayers in the 20\% tax bracket. This higher

\textsuperscript{22} Id.
\textsuperscript{34} Adams, supra note 26 at 382-83. See also \textit{Statement of T.S. Adams on the Revenue Act of 1921, supra note 7}, at 31-34, 207.
\textsuperscript{36} Id.
\textsuperscript{37} Id. at 264-65.
market interest rate, he explained, then provided wealthy taxpayers with an after-tax yield premium.\textsuperscript{38} The result of this process, according to Adams, was capital market perversion. Government securities, he said, "are gilt-edged, they offer ... the nearest approach to absolute safety we have... [and] ought to be investments of those persons who have small amounts to invest."\textsuperscript{39} The after-tax yield on these securities, however, discouraged the lower bracket taxpayers from investing while "the men who ought to be taking the grave industrial chances ... which are legitimate and necessary" received an after-tax premium from investing in tax-free securities.\textsuperscript{40}

While Professor Adams disagreed with the investment perversion caused by tax-free securities, he embraced a policy that would encourage savings and investment at all levels. For example, he endorsed a lower tax rate be applied to capital gains as "a solution urged by many able students of federal taxation."\textsuperscript{41} His endorsement of capital gain rates, however, was largely a personal compromise because, writing in 1921, he thought it was "very unlikely that Congress [would change course by] ... allowing the losses only to the extent of the corresponding gains."\textsuperscript{42} He personally favored the latter approach because he thought it would discourage the sheltering of income through the "voluntary taking (through sale) of losses on securities."\textsuperscript{43}

In testimony before the Senate Finance Committee that same year, he explained a provision in the House bill that would limit the capital gains rate to 12 1/2\% (the same rate as applied to corporate income) without personal comment.\textsuperscript{44} Nonetheless, two weeks later in the same testimony, he noted several administrative problems with fixing a flat rate for all capital gains (and the worth of the corresponding deductions) and "devised a different method."\textsuperscript{45} His "different method" was to take into income only 40\% of the capital gain or loss and, therefore, make the tax reduction independent of the rate structure.\textsuperscript{46}

Ultimately Congress adopted the 12 1/2\% rate and, six years later, Adams advocated dropping the rate to 6\% but applying ordinary rates to "professionals" and "dealers." The reason for the proposal was to increase revenue and discourage speculation during the

\textsuperscript{38} Id. at 265.
\textsuperscript{39} Id. at 264.
\textsuperscript{40} Id. See Adams, supra note 10, at 530-31. In 1921 Adams testified before Congress concerning the Treasury proposal to repeal the expense deduction for interest on loans used to carry tax exempts. See Statement of T.S. Adams on the Revenue Act of 1921, supra note 28, at 77.
\textsuperscript{41} Adams, supra note 24, at 306. Therein he also stated and rhetorically asked: "The wage-earner or salaried man, who saves and buys bonds, is doing his family, industry, and the world a service. Why throw cold water on the impulse to save?" Id. at 311.
\textsuperscript{42} Adams, supra note 10, at 534-35.
\textsuperscript{43} Id. at 534.
\textsuperscript{44} Statement of T.S. Adams on the Revenue Act of 1921, supra note 7, at 37-39.
\textsuperscript{45} Id. at 305.
\textsuperscript{46} Id. Professor Adams also discussed the basis of property in his testimony. Id. at 24.
depression. Revenue would increase according to Adams, because he predicted that there would be more losses than gains in the near-term stock and bond market and that revenue would, therefore, increase if loss deductions were factored under the lower 6% rate.47 Furthermore, he stated that the lower rate might provide less inducement for the taxpayer to sell securities at year-end in order to generate capital loss.48

In addition, Professor Adams suggested that high rates of income taxation caused taxpayer avoidance by encouraging them to take doubtful deductions and to engage in income-splitting. He stated that the high rates led to much “extravagant and doubtful expenditure,” and therefore suggested a limit on “abnormal” advertising expenditures (among others), thereby requiring the capitalization of expenditures beyond the deduction limit.49 Moreover, he identified possible tax avoidance through the use of short-years when taxpayers changed fiscal years, and he explained a Treasury proposal that sought to resolve the problem by annualizing the short year.50

Professor Adams identified income splitting as an avoidance technique saying that “rich men have recently divided their property by gift, conveying it usually to members of the family and so dividing the former income into several parts.”51 He proposed, therefore, that “[g]ifts could be made subject to the income or estate tax; or the difference between the original cost and the value of the gift when transferred to the donee might possibly be taxed either to donor or donee.”52 He added, that in any event, the donee should receive only a carry over basis in the gifted property.53 He admitted that a federal estate tax caused friction between state and federal governments because many states used death taxes for a measure of their revenue. To ameliorate that friction, he suggested that the federal government “redistribute” a portion of the federal estate tax back to the states; a suggestion that obviously resembles the current federal estate tax credit for state estate taxes paid.54

Thus, in retrospect, Adams identified many of the basic “problems” with (or planning techniques afforded by) the income tax. Further, he made direct suggestions or hinted at solutions to these problems. He identified problems caused by the rate differ-

47 Adams, supra note 13, at 208.
48 Id. at 209-10. Professor Adams also described as an avoidance technique the sale of a security for a loss followed by an immediate repurchase of the same security. Statement of T.S. Adams on the Revenue Act of 1921, supra note 7, at 50.
49 See Adams, supra note 10, at 535. See also, Adams, supra note 23, at 308.
50 Statement of T.S. Adams on the Revenue Act of 1921, supra note 7, at 74-75.
51 Adams, supra note 10, at 533.
52 Id. at 534.
53 Id. See also Statement of T.S. Adams on the Revenue Act of 1921, supra note 7, at 24.
54 Adams, supra note 23, at 308-09. Adams understated that “[a]ll valuations are difficult.” Statement of T.S. Adams on the Revenue Act of 1921, supra note 7, at 367 (the quote was given in the context of the basis of securities for income tax purposes but seems equally applicable to the estate and gift tax area).
ential between corporations and other business entities, the need for distinguishing the
taxation of large and small corporations, the allocation of income between related cor-
porate taxpayers, and the splitting of income by gift. He also proposed the foreign tax
credit and discussed income averaging. He probed the associated problems of income
sheltering (though he did not use that term) through the use of taking losses by voluntary
sales of investments, the taking of “extravagant deductions” for such things as advertis-
ing, and the economic “perversion” caused by tax-exempt securities, (an avoidance
 technique later addressed to some extent by the alternative minimum tax). Furthermore,
he endorsed a capital gains tax to encourage savings and thereby came close to endorsing
trickle-down economics. Professor Adams was an economist who guessed the future
well and, therefore, he met his own standard for the performance of an economist.55
Moreover, his cataloguing of the problems associated with the income tax gives one, who
is armed with even a passing knowledge of tax law, the feeling of *deja vu*.

**PROFESSOR ADAMS ON THE ADMINISTRATION AND LEGISLATION OF TAX LAW**

**Tax Administration**

Professor Adams was concerned with the practical application of tax law and, as
such, he was a student of both the administration and the legislation of those laws. His
comments on administration of the tax law may be bifurcated between administrative
provisions contained in the law itself and the organizational behavior of the bureaucracy
required to collect taxes on a national scale.

He commented at some length on legislative provisions governing the collection
process, including such things as the appeals process, return and reporting requirements,
and penalties and interest.56 Moreover, Adams based many of his opinions about tax
policy on whether the taxes provided for in a provision were collectible and whether the
revenue yield was significant enough to warrant the continued inclusion of the particular
provisions in the Code.

One of his biggest concerns with tax legislation was that it would outstrip the
capacity of the Treasury to enforce it. Indeed, in 1921 he stated that “‘[a]s a matter of fact,
it seems to be beyond doubt that the administration of these two taxes [the income tax
and the excise profits tax] is in danger of collapse’”57 and that it would take years to fix
the administrative problems.58 The biggest administrative problem, according to Adams,
was the high rate of personnel turnover in the Bureau of Internal Revenue. He noted that "among the 'key men' in the Bureau ... the turnover or resignations have frequently been at the rate of more than 100% a year."59 The Professor then said that "it is practically true to say that nearly all of the best officials enter the service in the expectation of acquiring a technical education and then leaving for private practice."60 He pointed out that the "roots of this administrative disease" were the lack of civil service protection for more than one-third of the Bureau's employees61 and less than competitive pay when compared with private tax practice.

Moreover, Professor Adams suggested that more discretion be given to all levels of Bureau employees and to the Bureau itself with the expectation that the decentralization of power would enhance the efficiency and finality of rulings.62 In short, although he generally saw centralized tax authority as an advantage of the American system,63 he believed that the Bureau itself should be decentralized.64

The decentralization of authority and the need for competency and experience within the Bureau were mutually dependant variables that, when not both present, clogged the administrative machinery. According to Adams,

[y]ou have got somehow to get a class of people in the Treasury Depart- ment who can be trusted safely to pass on ... [large claims] ... and unless the Comptroller or the Secretary of the Treasury feel that men of that caliber are around them, there is an endless amount of red tape [and delay] connected with it.65

Professor Adams also opined that the collection process would be more efficient if the Bureau's position on matters were certain. Therefore he argued for the publication of what later probably became private letter rulings. Adams stated:

[c]onsiderable uncertainly is created by the departmental practice of keep- ing secret the rulings on some important points ... [t]he taxpayer is entitled

59 Id. at 372.
60 Id.
61 Id. at 372-74.
62 Id. at 374.
63 T.S. Adams, Public Finance, 1 AM. ECON. REV. 906, 908 (1911). Therein he stated: "Where the law differs most sharply from its American (commonwealth predecessors and resembles most closely the successful European income taxes, is in its centralized administration." Id. at 908. He further stated that the Wisconsin Income Tax "therefore marks another step away from the excessive decentralization which characterized ... the property tax." Id. at 909 (emphasis added). For a brief introduction to the history of the Wisconsin Income Tax see supra note 7.
64 Adams, supra note 26, at 373-74.
65 Statement of T.S. Adams on the Revenue Act of 1921, supra note 7, at 97. Elsewhere in his testimony he reiterated "[t]here is a conflict between administrative complexity and equity," Id. at 278.
to know, on practically every point, what interpretation and attitude the
department thinks the law requires. . . I believe the Treasury Department
should go to greater lengths than it has ever reached, in advising taxpayers
of the tax liability resulting from prospective courses of action.66

Indeed, he suggested that "revenue agents should make out the returns of many business
men from their books, thus completing the audit before the return is filed."67

Finally, as a conclusion to his views on administration and an introduction to his
views on tax legislation, he emphasized the administrative efficiency born of equitable
tax laws. He stated:

There are some things about taxation that you learn only with practice.
There is one thing that you can be absolutely certain of, and that is that any
provision judged by moral law, that is unduly unfair tends to demoralize
your officials. If it strikes him that it is unfair, he will not carry it out. He
will not enforce it. I know that from my service on the Wisconsin tax
commission and my service in connection with other bodies.68

Tax Legislation

Professor Adams had a well defined sense about tax legislation based upon practical
political and drafting constraints in addition to his identification of thoughtful tax prin-
ciples. In hearings before the Senate Finance Committee in 1921, for example, he noted
that drafting tax laws demanded technical care. Most tax law provisions, he warned,
must be drafted with "extreme exactitude" because the "courts study these sections word
by word; it is a meticulous process."69 On the other hand, he noted as a practical matter
that "[y]ou can not write a bill that nobody will misconstrue."70

Further, he recognized that interest groups were an important part of the legislative
process. He observed that legislators "can not fairly be expected to sacrifice local
interests for what some might call the general interest, except in times of war or emer-
geny."71 Tax law, he concluded, therefore, "is only in part a matter of thinking; it is in

66 Adams, supra note 24, at 316. Further, also sounding similar to current private letter ruling policy, he stated:
"Except in extraordinarily complex cases, taxpayers should be able to obtain, within a couple of months at most,
authoritative rulings upon bona fide questions which arise in their business, involving interpretations of the law." Id.
67 Id.
68 Statement of T.S. Adams on the Revenue Act of 1921, supra note 7, at 256.
69 Id. at 255.
70 Id. at 367.
large part a balance of powers and forces.”72 He bluntly asserted that “[c]lass politics is the essence of taxation.”73 Beyond recognizing interest groups as part of the legislative and political process he rationalized that “[s]uch attitude or action is inevitable, and I believe in legitimizing the inevitable.”74 To understand Professor Adams meaning, however, one should not infer too much from his use of the words “legitimizing” and “inevitable.” In another of his writings, for example, he noted advantages in legislative conflict and debate. He explained that the “creative inspiration of [this] contest is . . . needed” adding that “[c]lashing litigants have made more good law than wise legislators and disinterested judges.”75

Adams also held true to his stated belief that “guessing well” was the standard for economists when he noted the importance of revenue forecasting in the legislative process.76 He stated:

in matters of the kind with which we are now dealing, sound policy is necessarily based upon a judgment of the future. . . . I should put much more faith in the estimates of an able financier who knew little about statistics, than I should in the estimates of a consummate statistician, who knew little about finance.77

Additionally, he was aware of the effect of projections on the competitive process of legislation. He said, for example, that the “economist’s own work sets in motion influences which modify the group action which he studies . . . forecasting, thus, has appreciably affected the character of the recent business cycle.”78 Later, after admitting he had been a statistician, he wrote that “[p]ast statistics . . . are not [alone] a safe guide to future financial conditions; where kaleidoscopic changes are frequent.”79 Thus, he both “respected figures and feared them” and he stated with apparent bravado that “nothing could be more stupid than to forecast the future on the assumption that future conditions and factors will be essential as they have been in the immediate past.”80

In order to help guide and shape tax legislation he urged that Congress recognize certain “basic principles as overarching policies which should guide . . . tax legislation.”81

72 Adams, supra note 2, at 2.
73 Id. at 1.
74 Adams, supra note 72, at 7.
75 Adams, supra note 2, at 1.
76 Adams, supra note 13, at 210-11.
77 Id. at 210.
78 Adams, supra note 2, at 3. The title of another of his articles also evidences a belief that tax legislation was evolutionary. See Adams, supra note 24.
79 Adams, supra note 13, at 210.
80 Id. at 210-11.
81 Adams, supra note 72, at 7.
Thus, there was more to tax legislation, according to Adams, than drafting statutes that were technically acceptable. In testimony before Congress, for example, he advised that one "question will be settled not on the machinery [drafting] but on the question of the policy involved;" and, more broadly, (in defense of a proposed provision) that "[o]ur people must have some philosophy and some principle... [t]his proposal is not a largess." 

Professor Adams proposed that five "neglected principles" guide tax legislation. In the order of their perceived importance, he stated the principles as (1) tax rates and penalties should be temperate; (2) "[t]he tax which each individual is bound to pay ought to be certain and not arbitrary;" (3) "tax laws should be made by the legislative power and not the courts;" (4) certainty; more particularly, that the statute of limitation should be short; and, (5) The "Golden Rule of Tax legislation" should be observed. 

The "golden rule," he explained, was to "[l]et the tax legislator do unto the taxpayer what he would have the latter do unto him if their situations were reversed... ."

All the principles thus described notwithstanding, the good Professor also apparently believed that tax law was a tool of economic policy, as well as a way to fund government in the least painful way. His testimony before Congress clearly reflected his desire to make equitable adjustments within classes of taxpayers and to tune the tax law to stimulate the economy. Regarding the former, for example, he endorsed lowering the excise tax on beverages to protect the fledgling "neer beer" industry while maintaining a higher rate on other beverages such as table waters. He also testified in favor of specific tax proposals applicable to savings and loan associations in order to stimulate expansion.

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83 Id. at 306.
84 Adams, supra note 72, at 7. He further explained:

The good tax is in danger, most of all, from its friends and advocates. It works well and so we proceed to extend its application and raise the rates until the load is heavier than the machine can bear and we cripple it. Evasion is stimulated. Litigation is multiplied. The morale of the taxpayer is broken.

Id.
85 Id. at 8.
86 Id. He stated that, "In general, the courts are too slow, necessarily, to afford the best machinery for interpreting and settling the difficult questions that arise in tax law." Id.
87 Id.
88 Id.
89 Id. In summation, though it seems to have the most direct relationship with the "golden rule", he stated: "There is such a thing as interstate or international good manners in the field of tax legislation. It is easy to violate the spirit of this code, and the penalty for violation is neither plain nor swift. But in the end it is sure." Id. at 32.
home building and in favor of other proposals regarding the taxation of foreign source income in order to "stimulate this very necessary export trade." 91

THE PLACE OF THE INCOME TAX IN THE FEDERAL INCOME SCHEME:
"DEJA VU ALL OVER AGAIN"

Professor Adams' acuity in criticizing and identifying income tax-specific problems, his clarity in describing the legislative process, and the depth and breadth of his experience, lend a certain poignancy to his more global observations concerning the general scheme of federal taxation. By way of introduction, Adams suggested a federal tax portfolio that included an income tax with low rates that would exempt much of the income derived through saving and investment, the maintenance of relatively minor tariffs, a combination federal estate and gift tax, a high consumption tax on luxuries, and an "expenditures tax" on non-income producing expenditures. Perhaps above all, Adams saw himself as a "friend of the income tax." 92 He did not assume, however, that the income tax should be this country's only tax. He stated, for example, that "no single tax . . . alone is justifiable - there are many sound taxes" 93 and further, that "[t]here is an innate tendency to fall into the error of the single tax doctrine." 94 He explained that there "is a tendency to overdo or abuse the old taxes" and that "[i]intemperance in taxing is wrong for much the same reason that pressing in golf is wrong . . . [e]xcessive effort kills efficiency." Nonetheless, Adams did not necessarily agree with the common complaint that the income tax was too complex to be workable, stating: "No net income tax, with a substantial rate, . . . can be made simple." 95

Further, he recognized that the income tax would not completely fulfill its potential as a revenue source because of the realities and vagaries of the legislative process. "[Congress] will conclude . . . that the remedies are worse than the cure." 96

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91 Id. at 49, 312.
92 See Adams, supra note 24, at 306.
93 Adams, supra note 72, at 7.
94 Id.
95 Adams, supra note 24, at 314. In the same article he continues by stating:

The plumbing, heating, lighting, and cooking arrangements of our homes, upon which our daily comfort depends, are not simple and grow more complex with the passage of time; but we shall not abandon them on that account. Not one man in twenty-five who drives an automobile understands the details of its mechanism, but we shall not replace the automobile . . . .

Id.

Even so, needless complexity caused by "holes" and "leakages" for special interest groups drew the ire of Professor Adams who described the result of this type of legislation by saying "[c]omplexity has been piled on complexity." T.S. Adams, Professor Adams on Federal Tax Reform in 1924, 9 NAT'L TAX ASS'N BULL. 130, 131 (1924).

96 Id.
Moreover, he refused to answer the clarion call that greater "economy and efficiency" in government would replace raising additional revenue by taxation. He asserted, that the "history of democratic government is littered with 'economy and efficiency' campaigns of which about 99% have utterly failed." He did admit, however, that there was "enormous waste in government - just as there is waste in the American kitchen and in the ordinary expenditures of the average American." 

So how would Professor Adams raise this additional revenue without resorting to ever higher income tax rates? He made several suggestions. For example, he favored the federal estate tax and, in an exceptional statement in light of his views concerning single tax theory, he commented that "most of what is sound in the single tax theory (and in socialistic theory as well") is found in the taxation of inheritance." In 1919 he also suggested that a national sales tax "is distinctly a proposal worth careful consideration," though he identified the following problems with such a tax: (1) "colossal" administrative work; (2) the premium that the tax would place on the vertical integration of business, giving a clear advantage to large businesses; and, (3) classification problems inherent in any attempt to remedy the vertical integration problem. In a more formal article two years later, however, he did not mention the sales tax.

Certain consumption taxes also played a relatively large role in his favored tax portfolio, and he clearly favored the taxation of luxuries. In that regard, he stated: "[t]here is no possible excuse for [the federal government] borrowing or for taxing necessities, when a huge stream of wasted income lies at our elbow ready to be tapped by the tax gatherer if he resolutely applies himself to the task." Thus, in his opinion, consumption taxes should play a greater role in federal taxation, "not because [the articles subject to the tax are] harmful . . . but because they represent effective and convenient points at which to tap the taxable surplus of the consumer." The consump-

97 Adams, supra note 23, at 301.
98 Id. In the context of public borrowing, Professor Adams apparently departed from his prepared speech with the following remarks:

I want to say one other thing while I am on my feet; I personally am getting tired, and I am getting good and tired of hearing representatives of corporations and business enterprises and of private undertakings who literally float in luxury, whose men smoke twenty-five cent cigars, and walk over velvet carpets, and indulge in every evidence of luxury . . . continually harping upon the extravagance of our government. It makes me considerably tired, and I want to call your attention to a few facts . . . .

Adams, supra note 35, at 272.
99 Tax Exemption, supra note 6, at 281.
100 Adams, supra note 23, at 312-13.
101 See Adams, supra note 10.
102 Adams, supra note 23, at 311.
103 Adams, supra note 10, at 554.
tion tax, according to Professor Adams, would reach people with the ability to pay the tax who were not paying their fare share because of exemptions from the income tax. As for the somewhat related import tariffs and duties, he stated that their purpose would need to be clearly identified because "[a]fter a certain point is reached, there comes to be an irreconcilable difference between a tariff for protection and a tariff for revenue." Moreover, he opined that any increased revenue from higher tariffs would be largely insignificant in comparison with the total revenue the nation needed.

Adams' professed attitude toward luxuries, the importance of savings in the economy, and the necessity of keeping the surtax rates of income tax relatively low all converged in his opinion that a federal "expenditures tax" was necessary. He called the expenditures tax a "scientific solution" to the problems associated with the income tax and stated that the income tax would "continue to be avoided or evaded so long as we attempt to apply... [high income surtaxes] to income which is saved or reinvested." He noted, however, that an expenditures tax would "present its own peculiar problems" including the one of bifurcating between "personal expenditures and expenditures for profit." He described his expenditure tax only in the broadest of outlines. First, it would contain a relatively large exemption of $5,000 (expressed in 1921 dollars), in order to exempt expenditures for "minimum of subsistence." Second, it would apply only to personal expenditures rather than to expenditures for profit. Third, it would exempt certain personal expenditures, such as those for health, education, and for "travel, on vacations, [and] in paying golf fees rather than doctor's fees." This bare outline caused one comentation to remark that "the early favorable reception given to VAT [the value added tax] by the U.S. tax profession can trace its origins to the writings of T.S. Adams."

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104 Id. It is unclear whether Adams viewed cigarettes as a luxury. Concerning the excise tax rate on cigarettes he hedged a question from a Senator whom asked whether increasing the rate would increase revenues by stating "I do not want to answer it very certainly for this reason: The cigarette consumption fell off... and if it is falling off it ought not to be further taxed." Statement of T.S. Adams on the Revenue Act of 1921, supra note 7, at 120.

105 Adams, supra note 23, at 312.

106 Adams, supra note 10, at 538-39, 553.

107 Id. at 539.

108 Id. at 539-40. In 1921 Professor Adams generally supported the establishment of a Commission to study and investigate, among other things, "the taxation of expenditures and the reduction of the tax rates upon savings, as a means for raising revenue, stimulating thrift, and redistributing the burdens of taxation." Statement of T.S. Adams on the Revenue Act of 1921, supra note 7, at 341-42.

109 Adams, supra note 10, at 539-40.

110 Id.

111 Id. at 538.

112 VALUE-ADDED TAX, ENCYCLOPEDIA OF ECONOMICS 944 (Douglas Greenwald, ed. 1982).
CONCLUSION

As catalogued above, Professor Adams identified many specific problems with the income tax. His solution to these problems, generally, was to diversify revenue sources to include consumption taxes on luxuries and an expenditure tax. In many respects, therefore, reading the work of Professor Adams which was produced from 1911 through 1933 is as fresh as reading current tax literature in the 1990's.

*Deja vu* all over again.