CURRENT LEGISLATION

TAXATION

THE EXCISE TAX REDUCTION ACT OF 1965

On June 21, 1965, President Johnson signed the Excise Tax Reduction Act of 1965,[1] thus bringing an end to many excises which were levied during periods of national crisis and which continued to exist despite the passing of the emergencies necessitating their imposition. Briefly stated, the new act repealed many retailers', manufacturers', and miscellaneous excise taxes as of June 22, 1965; repeals more on January 1, 1966; gradually reduces the manufacturers' excise tax on passenger automobiles to one per cent by January 1, 1969; gradually repeals the excise tax on telephone and teletypewriter service; and extends and/or makes permanent certain other excises categorized as user and regulatory charges. In addition, the act established procedures enabling dealers, consumers, and manufacturers to obtain refunds for certain taxes paid, but for which no actual tax liability was or will be incurred. Finally, the act makes certain structural changes affecting those taxes which remain.

I. Background and Purposes

The term "excise" has been defined and described in many ways. At the time of the Spanish-American War, in a case involving a tax on tobacco and snuff, the Supreme Court accepted the following definition:

> An inland imposition, paid sometimes upon the consumption of the commodity, or frequently upon the retail sale, which is the last stage before the consumption.[2]

An excise has been also defined as:

> "a fixed, absolute and direct charge laid on merchandise, products or commodities, without any regard to the amount of property belonging to those on whom it may fall, or to any supposed relation between money expended for a public object and special benefit occasioned to those by whom the charge is to be paid."[3]

An excise has been called any tax not falling within the classification of poll or property tax;[4] something cut off from the price paid for sale of goods as contribution to government;[5] tax imposed on performance of an act, engagement in occupation, or enjoyment of privilege.[6] Courts have

[1] 79 Stat. 136 (1965), amending Int. Rev. Code of 1954. Hereinafter, all sections cited are from the Excise Tax Reduction Act of 1965.

[2] Patton v. Brady, 184 U.S. 608, 617 (1902).

[3] Opinion of the Justices to the Senate, 282 Mass. 619, 622, 186 N.E. 490, 491 (1933) (quoting Oliver v. Washington Mills, 93 Mass. (11 Allen) 268, 274-75 (1865)).

[4] Diedendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932).

[5] City of Louisville v. Churchill Downs, 267 Ky. 339, 102 S.W.2d 10 (1936).

[6] State v. Fields, 27 Ohio L. Abs. 662, 35 N.E.2d 744 (Ohio App. 1938).

used "excise" as synonomous with "privilege tax"[7] and with "license tax."[8] Synthesizing these various definitions, an excise tax is not an income or property tax, although the price received or the monetary value of a taxed commodity may be used to determine the amount of tax due. It is, rather, a charge levied on manufacture, consumption or privilege, to be paid by the manufacturer or user of such, without direct regard to the economic circumstances of the one who pays the tax.

An excise tax system can be used to achieve several ends. It is often employed as a purely revenue raising device. While this revenue is not considered the prime purpose of an excise in this country, the various excises have produced significant amounts of revenue, particularly during times of national emergency. Excises are also employed to recover the cost of a project or service from those who use it. This is likely to occur where a particular government activity confers such distinct and valuable benefits upon certain segments of society that those segments should properly bear all or a significant portion of the cost. This type of excise is appropriately considered a "user" charge. Another end accomplished by excises is the regulation and restriction of sales of certain commodities. A prominent example is governmental control of narcotics and firearms by the use of excises placed upon their sale. Also, an excise can be effectively used to discourage consumption of certain taxed commodities. This may be necessary because of the pressing need to reallocate productive resources during a national emergency, or because society's best interest requires that consumption of a particular commodity be curtailed. The tax on alcohol is an excise imposed at least partially for this reason.

The federal excise tax system has been a selective, rather than a general system, but its selectivity has often left much to be desired. If one considers that all goods and services are in competition with all other goods and services for the consumer dollar, a selective system in which the things to be taxed are not determined with the utmost care will result in inequities among competitors because the tax will affect consumers' choices. As Representative Mills expressed the situation:

> Some industries are taxed, and others are not. Some consumer products are taxed and others are not. It has been very difficult for me in the past to justify these taxes on any ground other than the fact that they raised needed revenue. In one case a product will be taxed while in the case of a closely competing product, no tax is levied. This is true, for example, in the case of sterling silverware and fine crystal. Although these products serve quite different purposes, they usually are thought of as being closely competing products because they frequently represent alternative fit choices. In the case of silver, a tax is imposed, while crystal can be purchased tax free. The same type of comparison can be repeated time and again in the case of almost every one of the selective excise taxes which this bill repeals.[9]

7 American Airways, Inc. v. Wallace, 57 F.2d 877 (M.D. Tenn. 1932).
8 Shannon v. Streckfus Steamers, Inc., 279 Ky. 649, 131 S.W.2d 833 (1939).
9 111 Cong. Rec. 11872 (daily ed. June 2, 1965).

Much of the discussion and criticism of any excise tax system centers on the dual questions of whether the taxes are direct or indirect, and whether they are progressive or regressive. In discussing the first of these questions, Professor Eckstein analyzed several different bases for distinguishing between direct and indirect taxes, including (1) shiftability, (2) tax consciousness, (3) taxing income as opposed to taxing spending, (4) tax on individual income as opposed to a tax on transactions. A tax is usually considered indirect if the payment can be shifted forward to the consumer, or if the one actually paying the tax is unconscious of the extent to which he is paying a tax, or if the tax is on transactions or spending. Acknowledging inherent ambiguities in each of these as a basis for making the direct-indirect distinctions, Professor Eckstein advanced the following

> . . . as a working definition on the grounds that it catches more of the meaning generally attributed to these terms than any other: that a direct tax be one levied on a person or business on the basis of his individual income or wealth as opposed to an indirect tax which is incidental to a transaction involving the expenditure rather than the receipt of money by the taxpayer.[10]

Using this definition, sales and excise taxes are classified as indirect taxes. Generally it is felt that indirect taxes tend to be regressive, whereas direct taxes are more easily made progressive. Excise taxes are thus criticized because they fail to meet our Government's commitment to progressive taxation. (It is well to keep in mind, however, the warning of Professor Samuelson that the words "progressive" and "regressive" are technical terms relating to proportions that taxes bear to different incomes, and that the use of "progressive" does not carry with it emotional overtones of being up-to-date or right-minded.[11]) Whether a particular excise tax is actually regressive or not depends upon the item taxed, for an excise on a true luxury item, purchased only by the wealthy, is in actuality a progressive tax. However, excises have been levied on many items other than those of a purely luxury nature. When these items have been taxed, other considerations such as the need to raise revenue, or to reallocate resources, have overridden this concept of progressive taxation.

In his paper presented to the House Ways and Means Committee during the 1964 hearings on excises, Professor Due outlined the generally accepted standards of taxation to which an excise tax system should conform.[12] They are: (1) The tax structure should not interfere with the efficient functioning of the economic system. That is, it should cause neither distortions of consumer preferences, nor consumer switching, nor an

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10 Eckstein, Indirect versus Direct Taxes: Implications for Stability Investment, House Comm. on Ways and Means, Compendium of Papers on Excise Tax Structure, 88th Cong., 2d Sess. 43, 44 (1964).

11 Samuelson, Economics, An Introductory Analysis 165 (6th ed. 1964).

12 Due, Criteria for Evaluating Possible Reductions in the Federal Excise Tax System, House Comm. on Ways and Means, Compendium of Papers on Excise Tax Structure, 88th Cong., 2d Sess. 1 (1964).

undesirable reallocation of the factors of production, unless other considerations necessitate these. (2) The tax structure should be consistent with the accepted norms of equity as to the distribution of the tax burden. (3) Taxes should be such that they can be effectively enforced at a reasonable cost. (4) Revenues from particular taxes should be sufficiently great as to make the tax a worthwhile part of the overall tax structure. (5) Taxes should not induce a cost-push type of inflationary pressure. Applying these standards to the selective excise tax system prevailing prior to the act under consideration, certain deficiencies are apparent. (1) A selective system will interfere with the efficient functioning of the economic system. The prices of some commodities will be raised relative to others, and thus consumers will switch in their purchasing patterns, and resource allocation will be altered. (2) Excise taxation provides an incentive to spend less and save more, or spend less on taxed items and more on nontaxed items, thereby avoiding the tax. (3) Inequities in the tax burden develop, (a) causing discrimination against consumers having a preference for the taxed commodities, and (b) installing into the tax structure a regressive aspect by means of a tax placed on a commodity having widespread use. (4) In a widespread system of excises, there are likely to be some taxes of very limited revenue potential. (5) With regard to the economy as a whole, an excise tax system is of its nature less sensitive to an income change than is our income tax system.

At a panel discussion conducted by the House Ways and Means Committee, each of the participants, leading economists in the field of taxation, presented a paper on the aspects and economic effects of excise taxes.[13] They indicated their desire to see reforms in the then extant excise tax system because of the adverse economic effects it created. Not all of the panelists were anti-excise tax in their approach, but they were all in general agreement that the present system was by no means a perfect model.

It was with the foregoing in mind that the President called for wide excise tax repeals and reductions, totaling nearly four billion dollars. In addressing Congress on May 17, 1965, he stated that many of the wartime excises needed to be re-examined to assure that they were not holding back an expanding economy.[14] Referring to the success of the 1964 income tax cut as a stimulus to economic growth, the President recommended a program of excise tax cuts and revisions as a further spur to economic growth by removing an unnecessary drag on consumer and business purchasing power; by lowering prices to consumers; and by lessening the burden of regressive taxation on low income families.[15] In accord with these objectives, he called on business "to translate lower excise taxes promptly into lower retail prices for consumers."[16]

[13] House Comm. on Ways and Means, Compendium of Papers on Excise Tax Structure, 88th Cong., 2d Sess. (1964).

[14] Message of the President to Congress on Proposed Excise Tax Reductions, 111 Cong. Rec. 10215, 10216 (daily ed. May 17, 1965).

[15] Ibid.

[16] Ibid.

The House report affirmed the President's objectives and presented a tax bill differing very little from his recommendations.[17] This report noted that in the proposed bill, the remaining excise taxes were to be of three categories: user charges, regulatory taxes and sumptuary taxes; and that the bill "removes entirely this miscellany of selective excise taxes except those designed to serve certain specific purposes."[18] Similarly, the Senate report was closely aligned with the President's program, restating the objectives of the excise tax cut proposals.[19] Of prime importance to the Senate, as well as to the President and the House, was the fact that the tax cut would serve to sustain the current economic upswing which was then in its record fifty-second consecutive month.[20] Revenue considerations and the effect of the tax cut on the 1965 and 1966 budgets produced consistent results. The President had stated that, due to increased revenues, above the estimates for fiscal 1965 and 1966, actual deficits would be well below estimates even if the proposed tax cuts were approved.[21] The House[22] and Senate[23] estimates produced concurring conclusions.

II. The Bill in Action

The reduction in the passenger automobile tax is especially interesting and important to the consumer. The President requested a permanent reduction of this tax to five per cent, urging its retention primarily as a revenue raising device.[24] The House bill proposed that this tax be gradually reduced and finally repealed. Since the remaining excises were those for special purposes other than the raising of revenue, the House Ways and Means Committee believed that retention of a five per cent excise on automobiles for this purpose could not be justified.[25] Senate action modified the House bill to the extent of retaining a one per cent tax on automobiles and allocating the revenue from the tax to a special fund to aid in the disposal of old and wrecked automobiles, and making the reduction from five per cent to one per cent contingent upon the provision that the manufacturer install certain safety devices in passenger automobiles.[26] The compromise result was the retention of a one per cent tax on automobiles, with the Senate retreating from its position that the fund be utilized for the disposal of old cars, and that the reduction from five per cent to one per cent be contingent upon the installation of the safety

[17] H.R. Rep. No. 433, 89th Cong., 1st Sess. (1965) in U.S. Code Cong. and Ad. News 1057 (1965).

[18] Ibid.

[19] S. Rep. No. 324, 89th Cong., 1st Sess. (1965) in U.S. Code Cong. and Ad. News 1102 (1965).

[20] Ibid.

[21] Message of the President to Congress on Proposed Excise Tax Reductions, supra note 14.

[22] H.R. Rep. No. 433, supra note 17, at 1068.

[23] S. Rep. No. 324, supra note 19, at 1117.

[24] Message of the President to Congress on Proposed Excise Tax Reductions, supra note 14.

[25] H.R. Rep. No. 433, supra note 17, at 1076.

[26] S. Rep. No. 324, supra note 19, at 1121-23.

devices.[27] The net effect of the safety device provision would have been to offset the price decrease occasioned by the tax reduction by the price increase resulting from the cost of the safety devices. The House rejected this proposal, feeling that proper jurisdiction of the question resided in the Interstate and Foreign Commerce Committee.[28]

The act also provided that the initial reduction in the tax on automobiles,[29] from ten per cent to seven per cent, be retroactive to May 15, 1965, and established a refund procedure relating to taxes paid on automobiles purchased between May 15 and the day after enactment.[30] Some feared that public expectation of a reduction or repeal in the tax would cause consumers to defer their purchasing plans, especially in the case of automobiles, where the tax represented a significant dollar amount, even though a relatively small percentage of the total purchase price.[31] Also important with regard to the refund made to manufacturers of the tax paid on automobiles purchased during this period is the provision that no manufacturer become entitled to a refund until he furnishes adequate evidence of reimbursement of the tax to the consumer.[32]

The reduction of the passenger automobile tax was established via a series of reductions, the rate to reach one per cent on January 1, 1969.[33] Aside from revenue considerations, the primary reason for the gradual reduction was the impact of new car prices on the used car market. Many believed that too drastic a reduction in the new car tax would lower the price of new cars to such an extent as to create severe dislocations in the used car market.[34] To prevent this, the bill as passed provides that no reduction, save the initial one, will be greater than two percentage points.[35]

The only other item on which the effective date of this repeal was made retroactive to May 15, and on which a refund is available to consumers is self-contained air-conditioning units.[36] This was necessary because the great percentage of total sales of this item occur during May and June.[37] As regards other items, consumer refunds were not provided for because (1) the dollar amount of the tax was so small as not to cause purchase deferrals, e.g., electric light bulbs, the tax on which could be as little as two cents per bulb, or (2) should deferrals occur, they would be of short term duration and the total sales for the two months prior to the reduction and the two months after the reduction would at least equal and probably better the expected total sales under pre-existing conditions.[38]

[27] Conf. Rep. 525, 89th Cong., 1st Sess. (1965) in U.S. Code Cong. and Ad. News 1164 (1965).

[28] 111 Cong. Rec. 13464 (daily ed. June 17, 1965) (remarks of Representative Mills).

[29] Section 201(a), amending Int. Rev. Code of 1954, § 4061(a)(2).

[30] Section 209(c).

[31] H.R. Rep. No. 433, supra note 17, at 1072.

[32] Section 209(a), amending Int. Rev. Code of 1954, § 6412(a)(1).

[33] Section 201(a), amending Int. Rev. Code of 1954, § 4061(a)(2)(A).

[34] H.R. Rep. No. 433, supra note 17, at 1072.

[35] Section 201(a), amending Int. Rev. Code of 1954, § 4061(a)(2)(A).

[36] Section 209(c)(1).

[37] H.R. Rep. No. 433, supra note 17, at 1072.

[38] Id. at 1073.

Refunds are available to retailers who have prepaid the retailers' excise tax, and to their suppliers who have agreed with the Internal Revenue Service to return and pay the retailers' excise tax on all taxable items supplied to retailers, on stock held by them as of the date of repeal. The refund is due the retailers because the actual tax liability does not accrue until the time of the retail sale, and thus no tax liability will ever accrue on items held in stock on the date of repeal.

Refunds with respect to floor stocks held by dealers at the time of repeal or reduction apply to certain items, and the procedure for obtaining the refund is substantially the same for all of them. The items are:[39]

Passenger automobiles	Radios
Auto parts and accessories	Electric, gas and oil appliances
Refrigerators and freezers	Television sets
Air conditioning units	Phonographs and records
Sporting goods (where tax repealed)	Musical instruments
Business machines	Photographic equipment
Electric light bulbs	Playing cards

The refund is due where a manufacturer has sold the item to a dealer before the date of repeal or reduction and, on the date of repeal or reduction the item is in the dealer's stock, unused and intended for sale.[40] In order to obtain the refund, the manufacturer must make a timely claim for it based on a request submitted to the manufacturer by the dealer,[41] and must reimburse the dealer for the tax decrease or have written consent from the dealer permitting him to credit the dealer's account for such amount.[42] Thus, the manufacturer must pass the tax reduction on to the dealer, and this has the effect of keeping the dealers' inventory costs in balance and reducing the incidence of inventory depletion by the dealers as a reduction date approaches.

The tax cut also affects installment sales and similar financing arrangements. Heretofore, upon payment of each installment, a tax payment became due bearing the same proportion to the total tax as the payment bore to the total money due from the buyer.[43] The relevant section of the Internal Revenue Code has been amended to make the tax due at the time of payment the appropriate portion of the total tax based on the rate *in effect on the date the payment is due*.[44] Thus, if the tax has been repealed, no tax payment becomes due when the installment is paid, because the tax rate in effect would be "zero" at that time. However, the reduced or repealed tax must be passed on to the consumer by reducing the amount of future installments to make this section applica-

39 Section 209(b).
40 Section 209(b)(1).
41 By terms of § 209(b)(1)(A), this must be before the tenth day of the eighth month after repeal or reduction.
42 Section 209(b)(1)(B).
43 Int. Rev. Code of 1954, ch. 32, § 4216(c).
44 Section 207(a), amending Int. Rev. Code of 1954, § 4216(c).

ble. If this is not done, the original tax must be paid. This amendment gives a buyer a partial advantage of the tax cut where his installments straddle the date of repeal or reduction. It favors the consumer who defers his purchase, and penalizes the consumer who pays cash before the effective date.[45]

A technical note of interest is that while the ten per cent excise on radios and televisions was repealed,[46] radios and televisions used in automobiles are no longer exempt from the automobile accessories tax,[47] and thus are now subject to an eight per cent tax until that tax is repealed on January 1, 1966.[48] As a consequence of this, the floor stock refund available on these items at the date of repeal of the radio and television tax is limited to two percentage points, with an eight per cent refund available as of January 1, 1966.

In order to keep the remaining system within the guidelines established by the policy of retaining user, regulatory and sumptuary taxes, certain structural changes and redefinitions were incorporated into the act. Exemptions to the excise on trucks and buses and on truck parts were widened.[49] The term "gasoline" has been redefined.[50] The excise on fishing equipment has been retained[51] "to aid the states in fish restoration and management in respect to fish having material value for sport and recreation."[52]

The taxes on alcoholic beverages and cigarettes are made permanent at the present rates, the reductions scheduled for July 1, 1965 having been repealed.[53] The tax on air travel is retained indefinitely.[54]

III. Basic Economic Considerations

As mentioned above, the 1964 income tax reduction is thought to have been successful in terms of stimulating economic growth, and the excise tax reductions and repeals are expected to have the same results. Representative Mills, while admitting that he did not know exactly how much economic buildup would flow from the tax cut, said in an address to the House,

> . . . I have yet to discuss the matter with an economist qualified in the field who does not tell me that we get just as much eco-

[45] Assume the price of a refrigerator to be $300, plus $20 excise tax if bought before June 22, 1965. "A" buys on June 1, paying cash; "B" buys on June 1, paying the first five monthly installments; "C" defers his purchase until June 22. "A" pays $320; "B" pays $304 (the tax originally due at the time of the last four installments no longer being due); "C" pays $300.

[46] Section 204, repealing Int. Rev. Code of 1954, §§ 4141-43.

[47] Section 201(b)(1), amending Int. Rev. Code of 1954, § 4061(b).

[48] Section 701(a)(1).

[49] Section 801, amending Int. Rev. Code of 1954, § 4063(a).

[50] Section 802(a)(1), amending Int. Rev. Code of 1954, § 4082(b).

[51] Section 205(a), amending Int. Rev. Code of 1954, § 4161.

[52] H.R. Rep. No. 433, supra note 17, at 1084.

[53] Section 501, amending Int. Rev. Code of 1954, §§ 5001(a), 5022, 5041(b), 5051(a), 5063, 5701(c)(1). Section 502, amending Int. Rev. Code of 1954, §§ 5701-02, 5704.

[54] Section 303(a), amending Int. Rev. Code of 1954, § 4261.

> nomic impetus out of $2 billion of excise tax reduction as we do out of general income tax reduction.[55]

It is expected that lower prices will follow the tax cuts, leading to expanded sales, more jobs, and increased capital formation. The tax cut will lower federal receipts, but if the expected growth of the economy follows, the general tax base will be enlarged.

It is impossible to predict accurately how the economy and its component parts will react to the tax cut, but some preliminary observations are in order. It can safely be said that prices will decrease on most, if not all, items affected by the cut. The competitive structure of our markets is such that, while some sellers will try to hold the line, prices will have to be decreased if a seller is to remain competitive. A more troublesome aspect of the tax cut's effect on prices is to determine by how much these prices will decline. Professor Somers discussed this topic during the House Ways and Means Committee hearings, arguing that the common belief that the consumer bears the total burden of an excise tax may be fallacious.[56] The concept of the incidence of taxation is a highly complex one, and well beyond the scope of this note, but the distribution of the immediate burdens and benefits of price changes due to an excise tax can be illustrated graphically,[57] showing that, when an excise is imposed, the consumer bears only part of the tax through a price increase, while the seller absorbs the rest of the tax through a decrease in after-tax receipts. Conversely, where a tax is repealed, the consumer benefits by a decrease in prices, but the seller also benefits by an increase in net receipts. Under

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55 111 Cong. Rec. 11873 (daily ed. June 2, 1965).

56 Somers, Some Economic Implications of Sales and Excise Taxation, House Comm. on Ways and Means, Compendium of Papers on Excise Tax Structure, 88th Cong., 2d Sess. 24 (1964).

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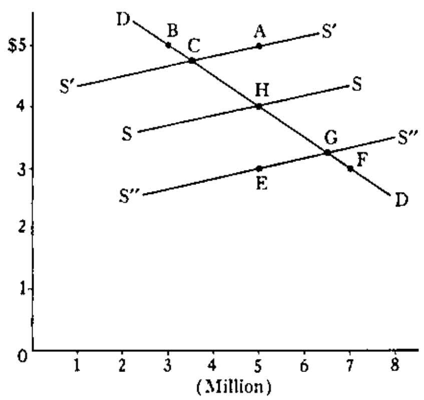

Assume a condition of equilibrium for widgets, supply and demand intersecting so as to have 5 million widgets sold at $4.00 apiece. (1) A one dollar tax is levied on widgets. This causes a shift in the supply curve, the new curve S′S′ being parallel to the old curve SS. If the seller attempted to price widgets at five dollars his supply would remain unchanged (point A), but only about three million widgets would be demanded (point B). To achieve equilibrium, the seller must raise price to about $4.75 (point C), where equilibrium is achieved at a smaller production level, with the seller absorbing one-fourth of the tax. (2) A tax of one dollar in the original price of four dollars is repealed, giving a new supply curve S″S″. If the seller were to reduce price by the full amount of the tax cut, supply would remain the same (point E), but a greater quantity would be demanded (point F). To achieve equilibrium the seller will reduce price to about $3.25 (point G), absorbing one-fourth of the tax cut while expanding output. Thus, the buyer neither bears the entire burden of the tax imposed, nor reaps the entire benefit of the tax reduction.

the assumptions of perfect competition, if a seller were to raise prices by the full amount of the tax, there would be a condition of disequilibrium. (There is nothing about the imposition of an excise tax to suggest that it will cause a change in demand; what occurs is merely a shift of the supply curve along the demand curve, indicating that a lesser quantity is demanded at a higher price.) The forces of competition would then cause prices to decrease to a point of equilibrium. Conversely, were a seller to decrease prices by the full amount of the tax repeal, a state of disequilibrium would exist in which buyers would bid prices up, until equilibrium were achieved.

While we do not have examples of perfect competition in our economy, we do have competitive markets, and to the extent that a particular market compares with perfect competition, we can expect greater or lesser portions of the tax cut to be passed forward to the consumer.

The goals of business also bear importantly on the price effect of the tax cut. Perfect competition assumes the goal of profit maximization, which may or may not be the case. Maximum gross sales is one possible alternative, and, in this case, the social-minded goal of heeding the President's request that the reductions be passed forward is another. For example, the motor companies passed the entire tax cut on to the consumer in the form of reducing the manufacturer's list price.

The price effect in many markets, but especially in consumer durables, is complicated by the fact that often a product is purchased at a price which is less than the list price established by the manufacturer. What the consumer finally pays is a result of bargaining, trade-in allowances, and the like, over which the manufacturer has little control. The dealers will be in a position to retain a greater or lesser amount of the tax cut, depending upon how these various factors affect each particular sales situation.[58]

As to sales increases, the determining factors will vary in different markets. The amount of the price decrease will, of course, be important. But a given price decline will produce different results according to the price sensitivity of each commodity. The less price-sensitive an item is, the less will be the sales increase, and conversely, the more price-sensitive, the greater the increase. Another consideration is that, while in economic analysis the demand curve is usually pictured as being smooth, in reality the curve is more likely to be "kinked," indicating that the quantity demanded is likely to remain relatively stable within a range of prices, rather than to vary with every different price. Thus, it becomes important, in terms of sales, whether a price decrease is contained within the present range, or whether it is sufficiently large to cause the price to move into a lower range.[59]

Whatever the effect of prices on sales, it is unlikely to be inflationary, as there is sufficient idle capacity to be used to increase output, and this is the desired result. Some increase in employment will result as production is expanded. There will also be some increase in investment, with its

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58 Wall Street Journal, June 21, 1965, p. 4, col. 1.

multiplier effect on the economy. The result will be an economic gain, with the degree of growth to be determined according to the way in which the various sectors of the economy react to the tax decrease.[60]

Yet another aspect of the effect of the tax cut on the economy is worthy of comment. For the tax cut to result in economic growth, the spurs to that growth must not be dulled. However, the Massachusetts House Ways and Means Committee has recommended, with all due haste, that the state alter its excise tax system so as to levy taxes similar to certain taxes being repealed or reduced by the federal government.[61] This is certainly not consistent with the spirit of the federal program. Excise taxation is a legitimate method of revenue raising at the state level, but, were every state to follow the lead of the Massachusetts proposal, the federal program would be for naught. To be sure, it is a politically expedient thing to do, since the consumer has not yet become accustomed to paying the lower prices and thus the tax may be somewhat "painless" to him, but it defeats whatever goals the federal government had hoped to achieve. Let us hope that this action will not be a model to be emulated by other states to the extent that they look upon the federal tax cut as a windfall to the state coffers.

IV. CONCLUSION

Both Senate and House reports contain the obvious misstatement that the act comprehensively overhauls the federal excise tax structure. This writer respectfully maintains that, if the word "structure" is used in any meaningful sense, there has been no such comprehensive overhaul, but, at best, only the first step toward one, with other steps necessary to complete the task. The legislative reports reveal that the congressional

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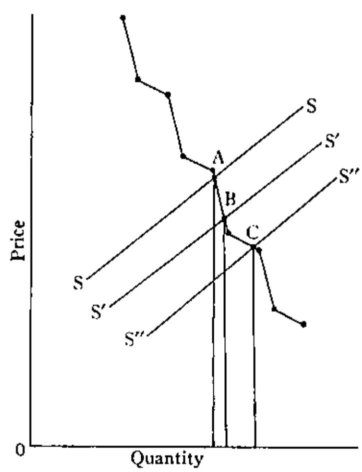

Not every change in price will cause a change in the quantity demanded, because small changes in price do not affect the consumer on some items. A shift in the supply curve from SS to S′S′ causes price to decline from A to B, but quantity demanded remains about the same, because the new price is in the range with the old price, and quantity demanded is relatively fixed as to any price in that range. If price were to drop to C, quantity demanded would increase, since price C is in a new and lower range.

60 Early surveys indicate that most sellers have reduced their prices and that about seventy-five per cent of the tax cut has been passed on to the consumer. See Wall Street Journal, August 18, 1965, p. 26, col. 4.

61 MASS. H.R. REP. No. 4220 (1965).

claim was primarily based upon the fact that many taxes have been either repealed or reduced, and that those which remain are special purpose taxes. This alone is insufficient to support the legislators' view of the act's effect. In reality, all that has happened is a reduction of some taxes from "X%" to "Y%," and a reduction of others from "X%" to "Zero%." This is nothing more than a change in the tax rate *within the existing structure.* The expressed intent utilizes only special purpose excise taxes, but this has been the avowed philosophy of excise taxation in this country during peacetime for many years.

Were this act effecting a comprehensive overhaul, an observer would expect it to answer one basic question as to the future of excise taxes, which question is largely unanswerable at this point. We are in an expanding, peacetime economy in which the reasons for the imposition of many of the excises no longer exist. The basic question is: what will happen if the need for these excises reappears? One cannot give a meaningful answer to this question. Congress may pass a logical, well-planned set of excises, designed to achieve particular ends while disturbing the economy and its interrelationships as little as possible, or it may enact another set of taxes without such logic and planning—the very thing that was decried in the House and Senate. A structural overhaul should permit one to answer the posed question with the former alternative. While we can see the peacetime excise philosophy, what will this philosophy be during a time of crisis? What planning is being done to prepare for this time? Have we learned from the mistakes of the past? The act does not say. This is not to imply that the act is a poor one, for it brings definite benefits to the economy and to society. But it is only the first step in a series which should not be left to stand alone. Planning should be initiated immediately with a view towards the future, to insure that, if and when the need for excises reappears, the system imposed will be without the ills that the present act temporarily cures.

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