

June 30/61



CIVIC AFFAIRS

A BULLETIN ISSUED BY THE BUREAU OF MUNICIPAL RESEARCH, 32 ISABELLA STREET, TORONTO 5

A RETAIL SALES TAX FOR ONTARIO

Ontario, one of the few remaining provinces not utilizing this revenue source, enters the Retail Sales Tax field on September 1st, 1961. What are the implications to the Province, to municipalities, to Metropolitan Toronto? This report presents an analysis of the development of the sales tax provincially and attempts to provide information on the questions raised.

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June 30, 1961

(This statement on the Ontario Retail Sales Tax was originally prepared for circulation by the Citizens Research Institute of Canada. To adapt the bulletin for publication by the Bureau of Municipal Research, revisions have been made that emphasize the significance of the tax from the standpoint of municipalities generally and Metropolitan Toronto in particular.)

THE BUREAU OF MUNICIPAL RESEARCH

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THE IMPOSITION OF THE ONTARIO RETAIL SALES TAX

The Ontario Retail Sales Tax, long anticipated, becomes a practical reality on September 1st, 1961.

The provincial government has insisted for years that its needs have vastly exceeded its revenues. Simultaneously, the Government has contended that in tax measures it is necessary to keep Ontario equally, indeed favourably, competitive with other jurisdictions in the levels of corporation taxes imposed in order to "impart the maximum stimulus to industry". No other readily available tax promised as generous a yield as the Retail Sales Tax, which is conservatively expected to produce \$50 million annually for each percent levied. The enactment of the Retail Sales Tax Act came therefore as no great surprise.

The Sales Tax is an area that has been thoroughly canvassed by many writers. The Bureau feels, however, that an examination of the basis of the sales tax and a consideration of its impact upon our local governments will be especially valuable at this time, when the storehouse of alternative forms of taxation available to governments is being rapidly depleted.

CONSTITUTIONAL POSITION

The authority to impose taxation in a province comes from head 2 of section 92 of the British North America Act which lists as one of the "exclusive powers of Provincial legislatures, — direct taxation within the province in order to the raising of a revenue for provincial purposes". This quite naturally gives rise to the second question: what is a 'direct' tax? The Privy Council in a long series of cases accepted the definition of John Stuart Mill that "a direct tax is one which is demanded from the very persons who it is intended or desired should pay it. Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another . . .

The producer or importer of a commodity is called upon to pay a tax upon it not with the intention to levy a peculiar contribution upon him, but to tax through him the consumers of the commodity, from whom it is supposed that he will recover the amount by means of an advance in price".

One must now look at the manner in which the courts have treated a retail sales tax imposed by a province. The Privy Council in *Attorney-General of British Columbia v Kingcome Navigation Company*⁽¹⁾ upheld the right of British Columbia to impose a sales tax upon the consumers of fuel oil. In the *Atlantic Smoke Shops*⁽²⁾ case the Privy Council validated a province's attempt to impose a sales tax on the retail price of tobacco at the time of the making of a purchase, by anyone for his own or another's consumption. The method of collection of these taxes has been validated by implication if not explicitly. The usual procedure is to designate the retailer as agent of the province for collection purposes and his remuneration is usually established as a percentage of the tax collected.

Inevitably, attempts to secure exemption for certain classes of commodities from the payment of provincial retail sales tax grow more sophisticated as time passes. The most recent decision on the matter was by the Supreme Court of Canada (in 1949 appeals to the Privy Council were abolished and thus the Supreme Court is now our Court of last resort) in *Cairns Construction Limited v Government of Saskatchewan*⁽³⁾ where a province's right to collect a sales tax upon non-consumables (or durable goods), specifically prefabricated building materials used by a building contractor, was upheld.

In summary then, the principle has been upheld and the only problem is a technical one in phrasing legislation to fit the decisions handed down.

(1) (1934) AC 45.

(2) (1943) AC 550.

(3) (1960) 24DLR 2nd 1.

THE PRESENT PICTURE IN CANADA

Table 1 shows the present situation with respect to provincial sales tax. All Provinces but Alberta and Manitoba utilize this revenue source.

TABLE 1

	Title	Basis of Measurement	Rate	Exemptions
B.C.	Social Services Tax Act	retail price	5%	foodstuffs, motor and heating fuel, farm machinery and supplies, fishing apparatus, drugs, sales to the Federal Government, sales for consumption outside of Province, sales less than 15c, certain children's clothing and footwear, and meals priced at \$1.00 or less.
Nfld.	Social Security Assessment Act	retail price	5%	gasoline, certain boats and vessels, fishing apparatus and supplies, drugs, sales to Federal Government, sales for consumption outside of Province, food, meals priced at 17c or less, and sales less than 17c.
N.B.	Social Services and Education Tax Act	retail price	3%	fuel, agricultural feeds and seeds, orthopaedic appliances, production machinery and apparatus, goods purchased for the purpose of being processed, fabricated or manufactured into or incorporated into goods for sale, purchases of foodstuffs, drugs, machinery and implements for fishing and farming, children's clothing, footwear, books, school supplies, tobacco, goods sold for consumption outside the province, all purchases of 14c or less, and meals priced at \$1.00 or less.
N.S.	Hospital Tax Act	purchase price	5% purchases over 15c	foods, gasoline, fuel and electricity, motor vehicles, meals priced at \$1.00 or less, children's wear, and a number of other consumer goods, machinery, equipment and materials used in agriculture, fishing, mining, construction and manufacturing, tangible property purchased by a municipality or agency thereof.
P.E.I.	Revenue Tax Act	retail price	4%	foodstuffs, fuel, farm machinery and equipment, farm livestock, fishing boats and apparatus, orthopaedic appliances, hearing aids, dental and optical appliances, machinery and goods used in the production of articles for sale, agriculture feeds, fruit trees, fertilizers, goods for consumption outside of the Province, meals priced at 75c or less, magazine and newspaper subscriptions, children's clothing and children's footwear, aircraft, cigarettes, tobacco, school supplies, and all purchases under 25 cents.
Que. ⁽¹⁾	Retail Sales Tax Act	retail price	2% ⁽²⁾	foodstuffs, children's clothing and footwear, farm implements and tools, fishing apparatus, drugs, beer, tobacco, sales to Federal and Provincial Government, sales for consumption outside the Province and all sales of 10c or less.
Sask.	Education & Hospitalization Tax Act	retail price	3%	food and drink (non-spirituous), drugs, orthopaedic appliances, hearing aids, dentures, farm machinery, gasoline used for agricultural purposes, fishing nets and land. Meals are not taxed.

(1) Provincial legislation permits municipalities and school corporations to levy sales taxes which, by agreement, are collected by the province and remitted by it to the corporations.

(2) In Quebec some municipalities impose an additional 2%, and some school corporations a further 2%.

SOURCE:

Principal Taxes and Rates — Federal, Provincial and Selected Municipal Governments 1960. Dominion Bureau of Statistics — August, 1960.

It is interesting to observe that in all cases foodstuffs are exempt while in most provinces such items as drugs (5 out of 7), children's clothing, footwear (5 out of 7) are in classes which are exempt. Tobacco, already subject to a heavy tax, is allowed a further exemption in 3 out of 7 provinces.

From an examination of the exemptions it is quite readily apparent that these are usually framed to protect occupational groups that suffer from depressed or fluctuating employment levels or who are politically important.

The Maritimes, British Columbia and Quebec, for example, exempt fishing and farming apparatus and machinery. Newfoundland, where farming assumes economic importance only in the Avalon Peninsula, does not provide the exemption for farm machinery, whereas Saskatchewan, the only Prairie province with a retail sales tax, exempts "gasoline for agricultural purposes", a category which obviously reflects the majority economic interest of the province.

Effective September 1st, 1961, there will be a retail sales tax in Ontario imposed at the rate of 3%. The claim that the exemptions "will be the broadest and most generous of any province in Canada" as will be seen is not a matter open to dispute. Among the exemptions are:

- (1) Any purchase of less than 17 cents.
- (2) All food products with the exception of candy, confections and soft drinks will be exempt. Candy, confections and soft drinks will also be exempt where the purchase price is less than 17 cents.
- (3) All children's clothing will be exempt.
- (4) All drugs, medicines and dental and optical appliances sold on the prescription of a physician, dentist or optometrist, and artificial limbs, wheel chairs and hearing aids will be exempt.
- (5) All meals costing \$1.50 or less purchased in restaurants.
- (6) All machinery included in the production of goods or tangible personal property when such goods or personal property are subject to sale at retail will be exempt no matter where sold.
- (7) All products that are for sale outside the province or sold for shipment outside the province will be exempt.

- (8) Products used by the farmers in the business of farming will be substantially exempt from tax.

Argument will undoubtedly be heard on the possibility of the retail sales tax achieving the two main purposes claimed in the Budget Speech read in the Legislative Assembly on March 9th, 1961. These purposes are:

"(a) To be progressive in its incidence. By exempting necessities such as food and children's clothing, it will bear lightly upon persons of relatively low incomes and more heavily upon persons with high incomes in accordance with the principle of ability to pay;

(b) to maintain a high rate of economic development. By exempting from the tax, machinery used in the production of goods and tangible personal property whether sold inside or outside the Province, we best ensure the continuing expansion of our industry and our exports to other provinces and to other countries."

A curious sidelight is the announced decision of the Province to tax itself on the grounds that if it exempted its purchases the records of every company having dealings with the Province would be complicated and the job of checking on possible tax evasion by these firms would be made almost impossible. An anomaly is that Ontario will pay firms to collect the tax for the Province on items taxed and charged to the Provincial Government's account.

HISTORICAL SURVEY

The first Canadian entry into the retail sales tax field was by a municipal government, the City of Montreal, which in 1935 imposed a tax at a rate of 2 percent. The Province of Quebec after allowing five years to pass during which time the state of the tax in Montreal was scrutinized carefully, i.e. as to public reception and productivity, imposed its own 2 percent tax. It caused little reaction. Of possible long range interest to Metropolitan Toronto is this use of the sales tax as a municipal revenue source. The method of collection is the same as that used for the provincial sales tax; the provincial machinery handles administrative detail to avoid costly duplication. The Province then remits to each municipality in the taxing area its share of the municipal sales tax on a population basis and for this service charges 1 3/4 percent of the tax collected. The importance of this as a revenue source is vividly displayed in the following table.

TABLE 2
SALES TAX REVENUES OF THE MUNICIPALITIES OF QUEBEC, 1950 - 1958
Thousands of Dollars

	Total	Cities	Towns	Other than Urban
Average 1950-54	\$21,445	\$19,100	\$2,029	\$445
1955	30,128	26,420	3,153	555
1956	33,509	28,875	3,943	691
1957	34,897	30,234	3,836	827
1958	36,580	31,918	3,712	950

SOURCE:
Province of Quebec, *Statistical Year Book*, 1960.

Alberta imposed a 2 percent retail sales tax in 1936. Due to a strengthening of the province's finances, however, the tax was repealed the following year. Saskatchewan entered this tax area in 1937 with a 2 percent levy which in 1950 was increased to 3 percent. New Brunswick and Newfoundland both introduced a retail sales tax in 1950, the former imposing a rate of 4 percent which was reduced in 1954 to 3 percent; the latter's imposition was 5 percent. Nova Scotia's Tax in 1959 was 3 percent but effective April 1st, 1961 it was raised

to 5 percent: here the monies go to the provincial hospitalization programme. 1960 saw harmony in the Atlantic Provinces over a sales tax with Prince Edward Island entering the field with its "Revenue Tax" at 4 percent. The British Columbia tax of 5 percent is a provincial sales tax which has the shared tax feature, the partner being the B.C. municipalities.

The productivity of a Sales Tax is beyond question as the table below illustrates:

TABLE 3
PROPORTION OF GENERAL RETAIL SALES TAX REVENUE
TO TOTAL PROVINCIAL REVENUE
(Fiscal Year Ended March 31st, 1959)

Nfld. %	N.B. %	P.Q. %	Sask. %	B.C. %
12.9	11.0	11.4	14.8	28.7

SOURCE:

Financial Statistics of Provincial Governments, Revenue and Expenditure. 2nd Analysis 1959. D. B. S.

ATTITUDE TOWARDS SALES TAX

The most common attitude expressed towards a sales tax is a negative one. Its antagonists say the highly regressive nature of the tax makes it most repugnant in that because the lower income groups in general must spend more of their incomes on taxable goods than persons in the higher income levels, the percentage of income that they pay in tax is likely to be greater than in the case of the wealthy and thus the tax burden is likely to be distributed in a regressive fashion. Also, in Canada, with the Federal government imposing a general 11% sales tax which is included in the retail price and the provinces imposing a retail sales tax calculated on the retail price including the federal imposition, we have a clear example of double taxation. This double taxation aspect was of course an argument the Province of Ontario sought to overcome in its attempts to secure a constitutional amendment to allow a provincial indirect tax which would allow for its application in a similar manner to the Federal government's. Finally, the matter of computation and its nuisance factor are areas of direct concern to a retailer who claims he encounters enough sales resistance now without added deterrents.

A favourable element of the tax is its built-in buoyancy of revenue in that when the economy expands

the yield is automatically higher. No special legislation is required to increase the revenue as with a property tax. The tax attaches itself to all regardless of position or status in the community, and according to the way the argument is desired to be framed, this is either good or bad.

It is fair to say that with few exceptions the tax fields open to Federal and Provincial governments are characterized by the feature of buoyancy, while left to the municipality as its chief source of tax revenue is the property tax. The vital element of the property tax in the Ontario picture is that if one is to give force to the over-riding principle of local government in Ontario — local autonomy — no better method of approach could be found, in that most citizens feel its impact more directly and believe that they can control its level more readily than any other form of taxation.

PROVINCIAL IMPLICATIONS

Now that we have canvassed the constitutional status of a retail sales tax and other general aspects of the impact it bears, let us turn to the position of Ontario.

As the table of figures below shows, perhaps we should question the appellation of Ontario as a 'have' province by asking "A 'have' province but at what cost?"

TABLE 4
COMPARATIVE FINANCIAL STATISTICS OF THE CANADIAN PROVINCES
As of March 31st, 1960

	Population	Net Public Debt ⁽²⁾	Net Debt Per Capita	Contingent Liabilities and Guarantees
Alta.	1,218,000	\$ 27,303,803 ⁽³⁾	\$ 22.42	\$ 169,665,911
B.C.	1,606,000	Nil	Nil	590,230,415
Man.	899,000	92,154,413	102.51	94,955,400
N.B.	600,000	111,481,932	185.80	12,945,185
Nfld.	459,000	63,258,988	137.82	18,725,000
N.S.	723,000	152,970,067	211.57	9,960,089
Ont.	6,089,000	993,554,759	163.17	1,465,042,589
P.E.I.	103,000	32,275,197	313.75	1,684,512
Que.	5,106,000	182,806,247 ⁽⁴⁾	35.80	760,742,567
Sask.	910,000	48,159,600	52.92	12,146,566

SOURCE:

- (1) Dominion Bureau of Statistics, June 1960.
- (2) Gross Debenture Debt and other obligations outstanding less total sinking funds and net self-supporting public utility debt, except where noted otherwise.
- (3) Gross debenture debt and other obligations outstanding. All debenture debt outstanding is in serial form.
- (4) Gross debenture debt and other obligations outstanding, less total sinking funds.

This information, compiled from the public accounts and official reports of the Provinces is believed to be accurate but is not guaranteed.

Ontario, with a larger concentration of industrial wealth and slightly less than a million more people, has a net public debt five times that of Quebec. An examination of revenue and expenditure shows a similar gap between the two provinces. Ontario's revenues in 1959-60 were \$702,469,593 contrasted with Quebec's \$598,094,009, expenditures in Ontario reached \$701,605,902 against \$489,553,235 for Quebec.

In "net debt per capita" Ontario would seem to be in a comfortable position by comparison with the Atlantic Provinces. But the comparison is not realistic. One must not forget that the corresponding revenues for the Atlantic Provinces are far lower than Ontario's, for reasons that are well known.

Ontario probably has developed and expanded its services proportionately beyond those of other provinces. Naturally the citizens demand that the level of services at least remain constant and preferably rise. Municipalities, schools, welfare services, highways, hospitals and the whole host of provincially supported services demand funds to meet the developing and expanding requirements of this province: it is well to want but are we prepared to pay? A recent estimate is that health and welfare expenditures alone will consume 25% of Ontario's revenues, which presents the possibility that we have established through these services an almost insatiable creation.

The Provincial Treasurer in bringing down the budget told the Legislature that the province's net debt increased by an estimated \$118,200,000 in the fiscal year which ended March 31st, 1961. This raises the overall debt total to \$1,112,000,000 which is \$644,000,000 higher than at March 31st, 1948.

A strong point in favour of the imposition of the sales tax would have been the allocation of some of its revenues to a reduction of the debenture debt rather than what is to be the case, namely that the revenues are to provide a warehouse of funds for increased provincial expenditures. Already in net debt per capita Ontario's citizens are carrying four times the load of Quebec citizens. Quebec, on a population basis and considering its emergence as an industrial force combined with a new emphasis on Provincial programmes in the field of social welfare, is the only province that affords a valid comparison with Ontario.

MUNICIPAL IMPLICATIONS

On March 9th, 1961 when the Retail Sales Tax Bill was given first reading no mention was made in the list of exemptions of municipal expenditures which would be liable to this method of taxation. At Second Reading and after Third (and final) Reading, Section 39 appeared providing authority for the Cabinet to make "such regulations as are considered necessary and advisable". There was a subsection (2) which extended

exemptions to religious, charitable, or benevolent organizations, hospitals, nurses' homes, schools or universities on purchases of tangible personal property, and a further clause (2) (e) iii, exempting

"a municipal corporation, or a local board thereof, in respect of tangible personal property that enters into and becomes part of the construction of capital works."

Many municipal officials hold the rather hopeful view that this exemption will be applicable to all municipal expenditures, but it has not been clarified. The potential saving to the taxpayer would be immense in Metropolitan Toronto if this interpretation is accepted when one considers large expenditures by such departments as roads, parks, works and welfare. Specific exemptions are provided for road-cleaning⁽⁴⁾ and fire-fighting⁽⁵⁾ vehicles purchased at a cost of more than \$1,000 per vehicle.

A matter of particular interest is the saving in construction costs on the Bloor-University subway by virtue of the exemption. T.T.C. officials estimate this to total about \$300,000. This exemption will extend to most T.T.C. rolling stock and capital expenditures. By a peculiar quirk of draftsmanship or by intent, buses will not be afforded this advantage.

In the list of exemptions relief is given to the aircraft industry and to railway rolling stock and in both instances repairs are included in the category of exemptions. Representations are being made by the bus industry on the basis that it is being discriminated against and by the T.T.C. to attempt to have relief extended in this direction. Since each bus purchased by the T.T.C. costs at least \$45,000, and an average year sees 25 new buses on the road, the additional cost to the Commission would be \$33,750 per year.

A probable T.T.C. argument to be put to the Treasury Department is that since under The Municipality of Metropolitan Toronto Act⁽⁶⁾ (the now famous 'Bill 80'), "The Commission (T.T.C.) shall be deemed to be a street railway company for the purposes of the Railway Act" and since "railway rolling stock and repairs" are exempted from the tax, therefore buses as part of the rolling stock under a railway company should share in this exemption.

In essence what this points up is that until the Act is operative for a number of months all forms and variations of hardships actual and mythical will come to the fore. The real test of the Retail Sales Tax Act's acceptability will depend to a large extent upon the skill and diplomacy the administrators evidence in making initial interpretations and the speed with which apparent ambiguities are clarified.

(4) Retail Sales Tax Act 1960-61 s. 5, 24.

(5) *Ibid.*, s. 5, 43.

(6) R.S.O. 1960. C. 260, s. 118(8).

One aspect of the productivity of the sales tax that is no doubt acutely interesting to the citizens of Metropolitan Toronto is the probable annual yield from the Toronto area.

The record of the municipal sales tax in Montreal may be instructive. In view of the special pattern of exemptions in Ontario and variations in local personal income and expenditure, one would not go so far as to say that the productivity of the tax in Toronto will be exactly the same as in a place like Montreal. For what it may be worth, however, the experience of the City of Montreal with its *municipal* sales tax of 2 percent for the five latest available years is:

TABLE 5
2% SALES TAX REVENUES, MONTREAL

	Total Sales Tax Revenues	Population 000	Revenues Per Capita	Amount Per Capita Represented by 1%
1955-56	\$17,587,879	1,370	\$12.80	\$6.40
1956-57	18,165,406	1,380	13.20	6.60
1957-58	18,825,630	1,388	13.60	6.80
1958-59	19,350,615	1,394	13.90	6.95
1959-60	20,246,944	1,398	14.50	7.25

Given the rate of 3 percent it would appear not unreasonable to expect sales tax collections in Ontario to be at least of the order of \$21-\$22 for every man, woman and child in the coming year. On that basis, and giving Metro a population of 1,500,000, the residents of this metropolis may expect to contribute \$30 to \$35 million to the Province in sales tax in 1962. This estimate is, if anything, conservative. This accords reasonably well with the expectations of the Provincial Treasury. The Ontario population is about 6,150,000 and the 3 percent tax is expected to yield about \$150,000,000. This works out to approximately \$24.50 per person, a shade higher than Montreal's experience.

Sums of money in the millions of dollars are not easy to appreciate: it might be more meaningful to point out that \$35 million would have met approximately half the total general administrative expenditures of the Municipality of Metropolitan Toronto for the year 1960, i.e. the expenses of the assessment and administrative departments, health and welfare services, parks, protective services, roads, sewage and debt charges — everything except education and waterworks. This is one way of expressing what the people of Metro will *add* to their present annual provincial tax contributions next year.

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Now Support is United

32 ISABELLA STREET, TORONTO 2, ONTARIO
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