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THE PHYSICIAN AND TAXING HIS  
BUSINESS

**A FOREWORD**

In this country, the physician is taxed on his income but not on his business. (A jurat person engaged in medical profession is subject to the business tax.) In its attempt to revise the national income tax necessitated by the proposal to transfer the land and business taxes from the Central Government to local governments, the Government in its plan of 1929, established in addition to the old progressive tax a new proportional tax which was intended to take the place of taxes on products. This new tax was to be levied on capital income as well as business income but not on earned income. In the same scheme the physician's income was to be regarded as "business income." Although this new proportional tax on income was formally a part of the income tax, in reality it was a special income tax, and a substitute for taxes on products; and may be regarded as the income tax mainly transformed from the old taxes on land, capital, and business.

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Had the plan been adopted by the Diet, it would have proved a new tax burden on the physician. He had not been required to pay the business tax but would have to pay the aforementioned proportional tax which amounted to a business tax in all its practical purposes. It certainly constituted a serious problem for the physician, though the same may be said of others such as the lawyer, writer, and artist. But I shall confine the following discussion to the physician. Whether the physician should be regarded as a business man is a serious as well as interesting question in taxation.

The foregoing tax plan passed the House of Representatives but was killed in the House of Peers, and thus the problem disappeared from the public attention. However, it may come up again in the future, probably in the next session of the Imperial Diet.

#### 1. INSTANCES OF TAXING THE PHYSICIAN'S BUSINESS

Should the business tax be imposed on the physician? Shall such a tax be the same as the business tax in general? There are various answers to these questions. Before entering into theoretical discussion, however, I shall set forth the various instances found in foreign countries.

(1). Instances in which the tax is the same as the business tax.

(A). Instances of heavy taxes—The first example is found in Austria where there exists a general profit tax (Allgemeine Erwerbsteuer) which corresponds to a business tax which is levied side by side with the income tax. This tax is imposed on the business men as well as professionals including physicians. Similar taxes are also levied professional including physicians in the following members of the German Republic—Lübeck, Bremen, Lippe, Braunschweig, Oldenburg and Hessen.

(B). Instances of light taxes.—Such taxes are levied in England where earned income is taxed lighter than unearned

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income. Business income, professional income and salaries are all alike subject to light tax as earned incomes.

(2). Instances in which the tax is lighter than the business tax.

(A). Instances which are treated the same as earned income—In Japan no business tax is levied on the physician. Although in the United States as in the case of England ones earned income is taxed lightly, when his business or combination of capital and labor is taxed, its 20 per cent is given the treatment of earned income. The income of the physician enjoys the treatment of earned income in its entirety on the theory that capitals is not its main element. In many states of Germany, the physician and other professionals are exempted from the business tax (*Gewerbsteuer*). In Sachsen, Thüringen and Baden, their income was included in the list of the tax objects of the business tax but later was taken out of the list because of its undesirable results.

(B). Instances in which the tax is lighter than the business tax but heavier than the tax on earned income.—This system is found in France where besides the general income tax (*L'impôt generale sur le revenu*) there are special income taxes (*L'impôts cédulaires sur le revenu*).

## 2. THEORIES ON THE TAXATION OF THE PHYSICIAN'S BUSINESS

(1). Different kinds of the tax under consideration—

(A). There is no question about taxing the physician on the same level with the business men in the case of the general income tax or super tax on income, in which the incomes of all treated on the same basis. Nor will there be any question when a property tax is levied as a supplementary tax. So long as such a property tax is levied according to the amounts of properties and on a common and unified standard, without regard to the differences in their owners, there will be no occasion for the grievances

of inequality. It is desirable that different rates of taxes should be levied on the same amount of business income in case the taxpayers have different amounts of property and in consequence different abilities to pay. Similarly, it may also be said that different rates of taxes should be levied on the same amount income of the physicians having different amounts of property. However, an equitable taxation is made automatically through the property tax.

(B). But when a supplementary tax becomes a tax on products, a partial income tax or the normal tax on income, then there will arise the problem of business and of the earning of the physician. His income may be taxed the same as business income, the rate being higher than that for earned income; his income may again be taxed lower than business income and higher than earned income—that is at a rate somewhere between the two; it may be taxed lower than business income and the same as earned income; and again, all the three—business income, the physician's income, and earned income—may be taxed alike.

All this has been shown in the actual instances already presented in the foregoing pages, involving mainly such taxes as the tax on products, the partial income tax, and the normal tax on income. In the case of these taxes, tax differentiation on abilities must be made according to the kinds of vocation or profession, and no unified and precise standard such as the sizes of properties can be adopted. This need of adopting some arbitrary tax differentiation has given rise to divergent views regarding this matter among the legislators of different countries. I would recommend the property tax as a supplementary tax; but when this is not actually adopted and such taxes as the tax on products, the partial income tax, and the normal tax on income, are actually adopted, we must decide in what position the physician should be placed. Even supposing that the property tax is adopted as a supplementary tax to the national taxes, its application to local taxes is regarded as undesirable so that in the latter case the tax on products is substi-

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tuted; and this necessarily will give rise to the problem of deciding on the status of the physician in taxation. We shall therefore enquire into this perplexing problem.

(2). Arguments pro and con regarding the taxation of the physician on his business.

(A). Considered from the meaning of the word "business."

(a). Negative argument—medical practice cannot be rightly regarded as "business" if the term as taken in its traditional usage and meaning. The physician cannot be said to be a business man according to the popular use of the word.

(b). Affirmative argument—

(i). Refutation of the negative argument—The meanings of terms undergo changes with the lapse of time. The concept of medical profession is also subject to change, so that the physician may be justly regarded as a business man. As the idea of business is broadened and that of medical profession is advanced, the latter may be appropriately regarded as belonging to the category of the former. One need not be engrossed by the popular or traditional meaning of a word.

(ii). Reasons for affirmation—Business in taxation should be defined as vocation for profitable purposes or as an organisation that exists for securing compensation in transaction economy; or it may be more rigidly defined as follows: an enterprise which is carried on industrially, that is, through the combination of capital and labour and for the purpose of making profits. If the last mentioned definition is adopted, nearly all physicians would be said to be carrying on business. At least those who have offices of their own and advertise their occupations must be held as business men. Of course, when an assistant of a hospital has no office of his own but merely treat his patients at some friend's house, he cannot be said to be engaged in any business; what he does is simply labour, and not business.

(B). Considered from tax system.

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(a). Negative argument—

The purpose of imposing the business tax in addition to the general income tax in tax system is to tax property income more heavily than labour income. Now, the income of the physician should be held simply as labour income and not the income from the joint working of either capital and labour or of property and labour. True, he uses various instruments, which, however, must be regarded as the same as pianos or violins for musicians or as books for scholars, though they may be valuable in prices; they exist inseparably from the physician's profession and not independently of it. In consequence, he should be taxed simply as the recipient of earned income and not as that of business income.

(b). Affirmative arguments.

(i). Refutation of the negative arguments—It is true that the business tax is levied in addition to the general income tax in the system of taxation, because of the need to tax property heavily. But a physician only gets earned income even though he may use required instruments provided he does not keep any consultation office or a hospital. His income need not be regarded as income from the combined working of property and labour. On the other hand, those physicians having consultation offices or operate hospitals should not be treated the same as labourers. Thus, at least the majority of physicians should be treated on the same level as the business men.

(ii). Reasons for affirmation—The view has been put forth that the business tax may be levied on the majority of physicians on the basis of the faculty theory which favours the heavy taxation of property. When the business tax is levied as a local tax, the benefit principle is adopted to a certain extent. Now, the physician possessing a consultation office or a hospital has close relations with the development and facilities of the locality in which he is engaged in his medical profession, and receives benefits from these as in the case of ordinary business men. He therefore

cannot be treated the same as a salaried man or labourer. This point, in my opinion, is the sufficient reason for the taxation of the majority of physicians on their profession.

(C). Considered from the object and execution of medical profession.

(a). Various negative views—

(i). From the old time medical profession has been looked upon as having closer relations with public weal than any other profession. In Japan it is popularly believed to be “a humanistic profession.” Basing the argument on this fact, it is claimed that the physician should be given special allowance in taxation. Thus, the essential object of this profession is made the basis of arguments against the taxation of the physician on his medical practice.

(ii). Secondly, the practice of medicine on its business side is far reaching in its effects on public welfare and its dangers are correspondingly great. In consequence, it is subject to various limitations by the Government. In this respect the physician is subjected to more limitations than the ordinary business men and professionals such as musicians or artists. Considered from this viewpoint, the physician should enjoy compensation in taxation by means of allowance. Moreover, the physician often voluntarily gives free medical treatment to the poor; this also entitles him to special consideration in taxation. Lastly, his income under the prevailing social customs is uncertain to a certain extent both in respects of amount and manner of receipt. This also constitutes a reason for consideration in his favour.

(b). Affirmative arguments—

(i). Refutation of negative arguments—It is asserted that the physician's profession involves public interests. This is true enough but it also involves profit-making, and so long as this is the case he should be made to pay the business tax. Moreover, the object of serving the public is not limited to medical profession: it is true of all business undertakings, especially those engaged in the supply of the commodities of daily necessity or in the production of basic

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products. And, so long as these enterprises are subject to the business tax, the physician should have the same obligation, at least when he is in possession of material facilities or equipment, and engaged in the profession for the purpose of profit-making. That he is subject to special state limitation and control must be admitted, but the fact is more or less true of all professions and business undertakings; and consequently it cannot constitute a justifiable reason for the physician's special consideration in taxation.

Moreover, of various business enterprises the "ryoriya" (Japanese style restaurant) and the "kashizashiki" (restricted quarters) are placed under a very strict control by the State; so that the physician cannot be said to be alone in this respect. The uncertainty of his income and his free treatment to the poor should prove no difficulty if the tax is levied on his net income, and certainly are no reason for his exemption from the tax. If the tax is levied on some external basis, consideration on rates can be given for these points. Furthermore, both free medical treatment and the uncertainty of medical income are phenomena which are becoming decreased with the general progress of society.

(ii). Reasons for affirmation—Thus, it has been seen that the differences between the physician and other ordinary business men are only slight. Public benefits become his main object when he is engaged in some research work at his own expense without seeking any profit or undertakes a medical enterprise free or at cost. Under such circumstances, the exemption of the tax may be made, but inasmuch as the majority of the physicians have material facilities and receive remunerations for their work, it is impossible to draw a line of demarkation between them and ordinary business men. Moreover, their consultation offices and hospitals resemble the factories and business offices of ordinary business men; their use of advertisements and their possession of machinery and other physical facilities make their occupation to approach the nature of business in its traditional sense. In some extreme cases, physicians virtually engage in the hotel

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and restaurant business by keeping houses to let for sick people and supplying food to them. It would be a great injustice to treat them separately from ordinary business men.

In some cases, personal elements assume predominant and material elements, only secondary, in importance. But inasmuch as manual industry, agencies and brokerage are regarded as business, medical profession cannot be exempted from the business tax, on that account. Of course, a physician having no office and who calls on patients at their houses may be exempted just as those business men having no business office or factory. The same thing may be said of the physicians employed in a hospital. Nor does the uncertainty of income receipt or free medical treatment have any great importance. On the contrary, the profit of physicians is comparatively large, so that if they are exempted when small traders are taxed, there would be a great injustice.

(D). Considered from economic and social policies.

(a). Negative arguments—If the business tax is levied on physicians, the tax would be shifted to patients and thus it would amount to a tax on sickness and in consequence a tax on the poor. It would further impoverish the poor and would be highly objectionable from the standpoint of social policy. Moreover, it would tend to increase the cost of production inasmuch as it will result in raising the rates of wages. Thus, the tax would place a nation in a disadvantageous position in its competition with foreign powers. It is evident then that the tax will have undesirable effects on a nation's economic policy.

(b). Affirmative arguments—The negative arguments from the standpoint of social policy is most difficult to refute; it is by far the best reason for the exemption of physicians from the business tax. However, the same argument will more or less forcefully be applied to those engaged in the trade of daily necessities because the tax on these persons will also be shifted on to the poor; and therefore the tax on the rice dealers and grocers would be unjustifiable. And if they are taxed in actual practice, it may be contented

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that physicians should be similarly taxed. As to the effects of the taxation of physicians on a nation's industrial and trade competition with foreign powers, one may say that they are brought to bear upon the nation's economic activities only indirectly through the shifting of the tax burden, and that the tax under consideration is much more bearable than the direct tax on business.

(E). Considered from tax technique and financial revenue.

(a). Negative arguments—The imposition of the tax is most difficult when considered from the standpoint of tax technique, while the cost of its collection is quite heavy so that its net income is comparatively small.

(b). Affirmative argument—The same difficulty is seen in the general tax on business and therefore it cannot constitute a reason against the tax. The net income is taken in the case of the income tax, and the same system would be sufficient. Even though there may be some difficulty in its collection, the tax is one source of state revenue which should not be neglected.

(3). The scope of taxation of physicians.

Supposing, as I have already discussed, that some or majority of physicians must pay the business tax, there arises the question as to the proper scope of the tax. There are several answers to this question.

(A). The broadest basis of differentiation between those physicians that should be held obligatory to pay the business tax and those who are exempted is to levy the tax on all physicians who are engaged in medical practice excepting those who are working on salaries. However, when considered from the general business, it seems better to exempt those physicians who are engaged in medical profession but who have no consultation offices and who call on patients at their homes, for they should be exempted from the heavy tax on property from the standpoint of the faculty theory as they are mere wage workers; also from the standpoint of the benefit theory they should

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be exempted as they do not receive benefits from the locality as much as those having their consultation offices.

(B). The second method is to tax all the physicians engaged in the practice of medicine and hospitals owners except those employed and those engaged in the profession independently but who have no offices of their own. In taxing hospitals, no differentiation should be made between those operated by physicians and those operated by non-physicians. Of course, charity hospitals and those attached to universities or research institutions should be exempted on the ground of their close relations with the public interests. Because of the reasons I have already given, this method is the best.

(C). The third method is to tax only hospitals on the ground that they have attained the status of industrial enterprises with their man power and various elaborate material facilities. Other physicians are exempted under this method even when they have consultation offices of their own because such offices are absolutely necessary for medical practice. But this would make too great differences between hospital owners and office owners, especially in view of the possibility that some consultation offices are more adequately and elaborately equipped than hospitals—which possibility would give rise to injustice in the taxation of medical profession. When the general business tax is considered, the better method is to regard the existence of consultation offices a pivoting point in taxing or exempting physician.

(D). The fourth method is to exempt all physicians employed or having no consultation offices; to tax the consultation offices and hospitals when they are managed by non-physicians; and in the case of those managed by physicians, to exempt those which are regarded as necessary for personal medical practice, those going beyond this point being made to pay the tax. The taxation of the consultation offices and hospitals managed by non-physicians is quite legitimate as they show their commercial nature most explicitly, but it would be very difficult to distinguish those

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offices and hospitals which are necessary for personal medical practice from those which are not, so that if a liberal attitude is shown in deciding on this question, all offices and hospitals would have to be exempted. The method herein presented is the same as Prussia's under which professional practice as a physician is exempted from the business tax. But the application of this rule is most difficult, and in actual practice it is interpreted as meaning that a physician may be taxed so long as he derives commercial profits from his profession. The accounting of his profits is accompanied by a great difficulty and there is much doubt as to the legitimacy of the method of accounting. A much better method is to place all those having consultation offices or hospitals subject to the tax, provided their net income exceed a certain amount. If this method is adopted those medical enterprises which regard profit-making with levity and place importance to research, or charity or public interests, will in actual practice be exempted from the tax.

(E). The last and most liberal method would be to tax the medical enterprises operated by corporations and to exempt those operated by individuals—a method which will be similar to the business profit tax now in force in this country. While the taxation of the medical enterprises run by corporations is right because they are purely commercial undertakings, it would be too sweeping to exempt all undertakings by individuals. It would be an excessive liberality to treat the same as earned income the incomes from hospitals and consultation offices in which vast amount of investment is made especially in the case of sanatorium which place greater importance on material equipment than medical treatment.

### CONCLUSION

There are instances of the taxation of physicians on their business as well as those of their exemption. Both

sides have their theoretical grounds, the negative side being stronger in the social and economic standpoints, while the affirmative side occupying an advantageous position when considered from the standpoint of such things as the meaning of business, the tax system, the object and operation of medical profession, tax technique and state revenue. In taxing the physicians, there are various methods, but the best one seems to exempt physicians employed, those having no consultation offices, and those engaged in charity and other public service, and to tax those having consultation offices or hospitals, or corporations or individuals who employ physicians.

MASAO KAMBE

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