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Michael K. McChrystal
michael.mcchrystal@marquette.edu

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FOREWORD

WISCONSIN TAX POLICY: SERIOUS FLAWS, COMPELLING SOLUTIONS

MICHAEL K. MCCHRYSAL*

State and local government funding is subject to intense pressures nationally and in Wisconsin. The fierce gubernatorial race in 2002,¹ the politically polarized process leading to the current biennial budget,² and the failed special legislative session in the summer of 2004³ demonstrate the central importance and partisan difficulties of state tax policy issues in Wisconsin. In this contentious environment, the Marquette University Law School convened an extraordinary assemblage of persons whose knowledge, experience, and insight on these issues would be almost impossible to match. The Wisconsin Tax Policy Colloquium took place at the Law School on April 15–16, 2004, and the materials published in this special issue of *Marquette Law Review* are the products of that gathering. The colloquium was limited to 25 invited participants, in order to foster high-level discussions and a published record that would be useful and important in improving Wisconsin tax policy.

We included in this important discourse a number of governmental leaders. Marc Marotta and Michael Morgan, Secretaries of the Wisconsin

* Professor of Law, Marquette University. My thanks to Dean Joseph D. Kearney for his extraordinary efforts and support in sponsoring the Wisconsin Tax Policy Colloquium, Professor Vada Waters Lindsey for her expertise and diligence in producing this special issue of the Law Review, Professor Alison McChrystal Barnes for her counsel and encouragement, Katherine Mongoven and the *Marquette Law Review* for their outstanding contributions, and Andrew Bridgman for his excellent research assistance.

1. See, e.g., Steven Walter, *Mud in Governor's Race May Stick to Winner*, MILW. J. SENTINEL, Oct. 26, 2002, at <http://www.jsonline.com/news/state/oct02/91074.asp>; Don Walker, *Taxes, Budget Top Concerns, Poll Finds*, MILW. J. SENTINEL, Oct. 9, 2002, at <http://www.jsonline.com/news/state/oct02/86414.asp>.

2. See, e.g., Steven Walters, *Doyle Uncaps Veto Pen as GOP Approves Budget*, MILW. J. SENTINEL, June 24, 2003, at <http://www.jsonline.com/news/state/jun03/150507.asp>.

3. See Editorial, *TABOR as Farce*, MILW. J. SENTINEL, July 28 2004, at <http://www.jsonline.com/news/editorials/jul04/247083.asp> ("At the end, the call for a special legislative session to approve a constitutional amendment to limit government spending appeared more like a comedy routine than deliberative debate.")

Departments of Administration and Revenue, respectively, are the most important players in the state, along with Governor James Doyle, in developing and implementing Wisconsin tax policy. Their keynote addresses describe the thinking with respect to tax policy at the highest levels of Wisconsin state government.⁴ Mark Bugher, who was Secretary of both the Department of Administration and the Department of Revenue during the administration of Governor Tommy Thompson, was a key participant throughout the colloquium and provides his comments on the value of tax incentives.⁵ Joseph Czarneski, whose resume includes service as Budget Director for the City of Milwaukee and as Wisconsin state senator, also participated; his comments on the “taxpayer bill of rights” (“TABOR”) offer a local government perspective.⁶

We sought the involvement of renowned scholars in state tax policy. Professors Richard Pomp and William Fox are preeminent in this field, and their distinctive contributions to this body of scholarship are reflected in the papers they delivered at the colloquium.⁷ We publish the papers of two distinguished tax policy scholars from Wisconsin, Professors Vada Waters Lindsey and Andrew Reschovsky,⁸ who address critical issues involving state finances and public services.

The colloquium included prominent tax attorneys and leaders of key nongovernmental organizations with a keen interest in state tax policy. Attorney Jere McGaffey, former chair of the American Bar Association Section of Taxation, presented a paper on the legal and practical constraints under which state tax policies are established.⁹ James Haney, President of Wisconsin Manufacturers and Commerce and a former Department of Revenue deputy, asserted the need for some form of legal limits on the growth of state and local taxes.¹⁰ Jack Norman, Research Director at the Institute for Wisconsin’s Future, and Michael Butera, Executive Director of the Wisconsin

4. Marc J. Marotta, *Taxing Thoughts*, 88 MARQ. L. REV. 5 (2004); Michael L. Morgan, *The Department of Revenue Perspective*, 88 MARQ. L. REV. 11 (2004).

5. Mark D. Bugher, *Comments on the Value of State Tax Incentives*, 88 MARQ. L. REV. 129 (2004).

6. Joseph J. Czarneski, *A Local Government View of TABOR*, 88 MARQ. L. REV. 177 (2004).

7. William F. Fox, *The Ongoing Evolution of State Revenue Systems*, 88 MARQ. L. REV. 19 (2004); Richard D. Pomp, *State Tax Reform: Proposals for Wisconsin*, 88 MARQ. L. REV. 45 (2004).

8. Vada Waters Lindsey, *The Vulnerability of Using Tax Incentives in Wisconsin*, 88 MARQ. L. REV. 107 (2004); Andrew Reschovsky, *The Taxpayer Bill of Rights: A Solution to Wisconsin’s Fiscal Problems or a Prescription for Future Fiscal Crises?*, 88 MARQ. L. REV. 135 (2004).

9. Jere D. McGaffey, *Wisconsin Tax Policy Within a Federal System*, 88 MARQ. L. REV. 93 (2004).

10. James S. Haney, *Comments on Taxpayer Bill of Rights*, 88 MARQ. L. REV. 173 (2004).

Education Association Council, challenged the assertion that government spending is out of control.¹¹ Edward Huck, Executive Director of Wisconsin Alliance of Cities, suggests ways to redefine the structures for municipal services.¹² In sum, the colloquium included disparate informed voices who offer incisive diagnoses and prescriptions concerning what ails the Wisconsin tax system.

Four themes emerge from these excellent papers. One is that the state tax system is deeply flawed. James Haney sees the flaw as a budget process that starts by designing desirable programs rather than by calculating available revenues. Professor Fox criticizes short-term assessments of revenue requirements that lead to policies that are bound to encounter crises with every change in the business cycle. Professor Pomp warns about state tax policies that can be gamed too readily by skillful tax planning. Professor Lindsey is concerned that tax breaks may not be the best way to promote business or education. Jere McGaffey points out that the failure to coordinate tax policies of the federal and state governments creates inefficiencies that serve no one's interests.

A second theme is that there are fixes for the problems. These fixes take different forms in different hands. Professor Fox envisions a smoother road than states recently have traveled by the use of tax policies that look to a long economic view instead of being recalibrated retrospectively after every short-term change in the economy. Edward Huck sees boundless possibilities for improving local services and reducing costs by enhanced planning and cooperation on a regional level. James Haney imagines a system in which the cost of local government remains stable in relation to the rest of the economy, unless local voters expressly decide otherwise. Professor Pomp suggests important technical fixes that can have a large impact on transaction costs of state tax systems and on the extent to which money and time are devoted to gaming the system. Jere McGaffey takes a similar tack, in suggesting ways to iron out expensive wrinkles that arise from state and federal tax policies that are poorly reconciled with one another. Mark Bugher proposes rigorous standards for adopting tax incentives and for judging their effectiveness. These pages are full of ideas—thoughtful ideas from experts with substantial experience—that warrant very careful consideration by Wisconsin's political leaders.

11. Michael Butera, *Comments on Taxpayer Bill of Rights*, 88 MARQ. L. REV. 181 (2004); Jack Norman, *Is There Really a Property Tax Crisis?*, 88 MARQ. L. REV. 161 (2004).

12. Edward J. Huck, *Tiebout or Samuelson: The 21st Century Deserves More*, 88 MARQ. L. REV. 183 (2004).

A third theme concerns the “taxpayer bill of rights” (“TABOR”). This controversial proposal to limit the taxing authority of state and local governments strikes sparks throughout these pages. Professor Reschovsky and Jack Norman suggest that TABOR cures the wrong problem and would itself cause serious problems of under-financed government services if adopted. Joseph Czarnezki thinks the Wisconsin Legislature, far more than municipalities, may be engaged in profligate spending that would justify new constraints. Michael Butera is concerned that TABOR emphasizes the wrong issue by focusing on what we want to pay in taxes rather than what we want to buy with taxes.

But the fourth theme should concern us most. An undercurrent running through these pages is that the politics of short-term self-interest too often circumvent the adoption of sound policy. Mark Bugher is especially direct in pointing out that narrow political interests often succeed in getting tax laws enacted that circumvent the budget process and are not subjected to rigorous analysis. Indeed, their troubling role leads him to propose a quasi-public think tank on Wisconsin tax policy to vet tax proposals before they are enacted.

Throughout these papers, the call for bipartisan leadership in the public interest resonates. While these experts, for the most part, are optimistic that improvements can be made, there is deep concern about the will of political leaders to set aside special interest politics to produce necessary change. The problem clearly is bipartisan; any true solution will have to be bipartisan as well.