

***WILL THE REAL ZOMBIE TAX PLEASE STAND UP!
A RANGE OF TAXING OPTIONS
DURING AND AFTER THE ZOMBIE APOCALYPSE.***

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ABSTRACT

While possibly not the first thing most people think of when it comes to a zombie apocalypse, various forms of taxing will play an important part throughout, but especially in the rebuilding phase. With frequent discussions of zombie taxes in the media, it is important to understand what taxing methods, such as consumption taxes, death taxes or income taxes, may be useful and achievable at certain stages of the apocalypse, should of course any organised government survive it. An apocalypse is likely to send society backwards and therefore more rudimentary options such as barter and tithing are also discussed.

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I INTRODUCTION

*'This is the way the world ends. Not with a bang but a whimper.'*¹

If 'taxes are what we pay for civilised society',² what happens when society is no longer civilised? As evidenced by the many pop culture comics, books, zombie movies and TV shows,³ breakdown of society is inevitable during the zombie apocalypse and this is also assumed in the timeline proposed for this edition.⁴ With a zombie apocalypse underway and the threat of brain eating monsters lurking around every corner, paying your taxes will likely be the last thing on your mind. Combine personal survival with a lack of government to pay your taxes to, and the result is that revenue stops flowing, while the blood starts!

Once the immediate threat is over and the zombie menace is eradicated or at least under control and it is clear that humanity will in fact survive, how do we collectively return to the civilised society that we once had? This article starts by examining why we have taxes and explores some of the taxing options available at various stages of the apocalypse in chapter II, aligning scenarios along the way with the experiences of the characters of *The Walking Dead*. Chapter III looks beyond the apocalypse and whether a state/territory income tax is a legally viable option for rebuilding, while chapter IV discusses how a state/territory income tax could work, including an overview of potential models.

II WHY DO WE HAVE TAXES AND WHAT OPTIONS ARE AVAILABLE DURING AN APOCALYPSE?

*The power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy, but it is also the power to keep alive.*⁵

A Revenue & Social Services

Without revenue, governments cannot fulfil their policies. Tax plays an important role in society, as it is the means of generating that revenue. It pays for the roads we drive on, Medicare, education, hospitals, public service employees to serve the community, and much more. In 2014-15 the Australian Taxation Office (ATO) collected

¹ T.S. Eliot, 'The Hollow Men' (1925).

² Oliver Wendell Holmes Jr, *Compania General De Tabacos De Filipinas v. Collector of Internal Revenue*, (1927) No. 42.

³ *The Walking Dead*, *World War Z*, *Fear the Walking Dead*, and many more.

⁴ 14(1) Canberra Law Review Zombie Apocalypse timeline, 4.

⁵ *Nicol v Ames* 173 U.S. 509 (1899) US Supreme Court, quoted in Mills, 1. Julie P. Smith, 'Taxing Popularity: The Story of Taxation in Australia' (Federalism Research Centre, Australian National University, Research Study 43, 2004), 7.

\$368.9 billion in tax revenue⁶ of which \$183.6 billion was from individual income tax,⁷ and a further \$75.3 billion from company and resource rent taxes.⁸ This was used for ‘health care, education, social security and welfare payments, defence force funding and other government-funded services’.⁹ \$145.8 billion or approximately 40% of revenue collected, funds social security and welfare payments to support unemployment and our ageing population.¹⁰

Post apocalypse, revenue will be needed to rebuild government, infrastructure, homes, schools and perhaps even exclusion zones where zombies can be locked up in the hope that a cure will be found. State and federal governments already provide funding in the event of national emergencies, or declared disaster zones,¹¹ but if these governments no longer exist, temporarily or permanently, where will the funding come from? In addition, during and immediately after the zombie apocalypse, there is unlikely to be essential services or an economy to speak of. This means survivors will need to look to other ways of getting the essential items they need, and those ways will vary depending on which stage of the apocalypse we are at.

B Stage One – Mosso

‘... in this world nothing can be said to be certain, except death and taxes’¹²

During the *Mosso* stage the Federal government fails, and state and territory governments must step up, becoming the primary defence against the zombies. There is no food left in the supermarkets, internet and mobile phones have been rendered useless, and electricity is patchy at best. Panic has set in with theft and looting becoming the norm, any semblance of the rule of law has gone out the window. With no economy to speak of, there are few options left for those who want to legitimately purchase goods. At this stage barter becomes the primary mechanism of trade.

It is likely survivors will band together under the direction of a leader, for example Rick in *The Walking Dead*. We have seen the development of the Alexandria community under the leadership of the now deceased Deanna, which resulted in the shift of responsibility to Rick, Maggie, Glenn and Michonne.¹³ They have realised that their community must trade with others (such as the Hilltop) in order to survive.

⁶ This figure excludes non-tax revenue of \$22.5 billion. Australian Government, *Appendix B - Revenue and spending Budget 2014-15* <http://budget.gov.au/2014-15/content/overview/html/overview_31.htm>.

⁷ Ibid.

⁸ Ibid.

⁹ Australian Taxation Office, *Building Confidence* (29 October 2015) <<https://www.ato.gov.au/General/Building-confidence/>>.

¹⁰ Ibid and Australian Government, above n 6.

¹¹ Australian Government, *Disaster Assist* <<https://www.disasterassist.gov.au/Pages/home.aspx>>.

¹² Benjamin Franklin, in a letter to M. Le Roy in 1789 <<http://oll.libertyfund.org/titles/franklin-the-works-of-benjamin-franklin-vol-xii-letters-and-misc-writings-1788-1790-supplement-indexes>>.

¹³ Season 6 of *The Walking Dead*, AMC.

Trade or barter dates back for centuries¹⁴ and is defined as ‘a process of exchange in which a person or organisation directly exchanges (swaps) one form of goods or services for another instead of using money as a medium of exchange’.¹⁵ It is also a form of countertrade which developed in the 1960s as a means of importing for countries with non-convertible currencies (examples include the Soviet Union and other Communist States in Eastern Europe).¹⁶ Barter was most commonly used where there was a ‘continued absence of reliable money’,¹⁷ which we saw most recently in the mid-2000s during the Zimbabwe hyperinflation crisis.¹⁸ During the height of the apocalypse there would be no reliable currency and barter would become the default.¹⁹

No new laws would need to be implemented as there is a market for barter transactions even now through companies like Bartercard,²⁰ which perform an agent like role,²¹ and the ATO considers barter transactions to be assessable income and therefore subject to tax.²² It is worth noting that it is unlikely there would be any formal commercial processes available in an apocalyptic event, so this would mean utilising the simplest forms of barter, through private and direct exchange of goods and services.²³ For barter to be profitable, the establishment of a market place where people could bring their goods would be the most effective option. As a way to make a profit/tax, the organisers could charge a fee (in the form of goods themselves) to the stallholders.

¹⁴ Trischa Mann (ed), *Australian Law Dictionary* (Oxford University Press, 2010) ‘Barter’ [63].

¹⁵ Trischa Mann (ed), *Australian Law Dictionary* (Oxford University Press, 2010) ‘Barter’ [63]. Also see Australian Taxation Office, *Bartering and barter exchanges* (30 April 2014) <<https://www.ato.gov.au/Business/GST/In-detail/Rules-for-specific-transactions/Barter-transactions/Bartering-and-barter-exchanges/>>.

¹⁶ Hill, C. W., Cronk, T. & Wickramasekera, R., 2013. *Global Business Today*. 3rd ed. North Ryde, NSW: McGraw-Hill Education (Australia, 2013).

¹⁷ Citing Bloom, R. and Solotko, J, (2004), ‘Barter Accounting in the US during the late Eighteenth and early Nineteenth Centuries’ 9(1) *Accounting History* 91-108, Garry Carnegie, ‘Re-examining the determinants of barter accounting in isolated communities in colonial societies’ (2004) 9(3) *Accounting History* 73, 75.

¹⁸ Since 1914 there have been hyperinflation crises in, inter alia, Germany, Austria, Poland, Hungary and the Soviet Union. Zimbabwe ended up in a situation where they dollarized their currency and introduced a number of other currencies including the US and Australian dollars. Jayson Coomer and Thomas Gstraunthaler, ‘The hyperinflation in Zimbabwe’ (2011) 14(3) *The Quarterly Journal of Austrian Economics* 311, 312.

¹⁹ *Zimbabwe sinks into hell of hyperinflation: The world is running out of time to prevent a failed state* (15 March 2007), Financial Times,

²⁰ BarterCard, *About* <<http://www.bartercard.com.au/about.html>>.

²¹ Trischa Mann (ed), *Australian Law Dictionary* (Oxford University Press, 2010) ‘Barter’ [63].

²² Australian Taxation Office, above n 15.

²³ Australian Taxation Office, Taxation Ruling No. IT 2668 ‘*Income tax: barter and countertrade transactions*’, <<https://www.ato.gov.au/law/view/view.htm?docid=itr/it2668/nat/ato/00001&pit=99991231235958>>.

C Stage Two - *Prestissimo*

*'No king should rule absolutely, like a dictator.'*²⁴

During the *Prestissimo* phase of the outbreak even the state and territory governments have temporarily disbanded. Instead we see fortified but isolated groups of people working together to fight the zombies. Power lies with dictatorial or oligarchical style leaders like the Governor in season 3 of *The Walking Dead*, or the newly introduced Negan in season 6. These groups are scrounging for whatever food, weapons or valuables they can lay their hands on and their main goals are survival and security. In this phase, the economy has returned to bartering but trade cannot be the only form of obtaining necessary goods and the establishment of communities has led to the need for more. This is where historical taxing options of tithing and feudal systems may be utilised.

1 *Tithing*

Tithing is considered to be one of the earliest forms of tax, and its origins date back to biblical times, the concept being one of moral Christian obligation.²⁵ There are many bible references discussing tithing or almsgiving,²⁶ which weren't always monetarily based,²⁷ and were often given directly to the poor.²⁸ In an apocalyptic world, tithing could be likened to Yakuza or mafia style payment for protection, and enforced through a percentage of money or valuables found during scouting expeditions, or even on food produced as was expected by Negan in season 6 of *The Walking Dead*. It could be used to pay troops to protect the borders from zombies or other hungry survivors in the style of feudalism. Given the immediacy of tithing, it could be a viable form of obtaining goods or raising funds in smaller communities.

2 *Feudal taxes*

Feudalism in England existed for centuries from the time of William the Conqueror in 1066. It seems to have several meanings, being variously described as a social system where nobility exchanged military services for lands, and peasants owed their nobles 'homage, labour and a share of the produce ... in exchange for protection'.²⁹ Comminel

²⁴ Hamad bin Isa Al Khalifa, King of Bahrain. Alexander Smolczyk and Souad Mekhennet, interview with Hamad bin Isa Al Khalifa, King of Bahrain, Spiegel Online, 'Arab Spring? That's the Business of Other Countries' (13 February 2012) Der Spiegel Online. <http://www.spiegel.de/international/world/spiegel-interview-with-the-king-of-bahrain-arab-spring-that-s-the-business-of-other-countries-a-814915.html>.

²⁵ Eric Shuler, 'Caesarius of Arles and the development of the ecclesiastical tithe: From a theology of almsgiving to practical obligations' (2012) 67 *Traditio* 43, 44.

²⁶ Such as *Luke* 11:42 and *Matthew* 5:20. Ibid, 46. Also in Deuteronomy, Numbers and Leviticus. J. M. Powis Smith 'The Deuteronomic Tithe' (1914) 18(1) *The American Journal of Theology* 119-126, 119.

²⁷ References to herds, flocks, crops etc. J. M. Powis Smith 'The Deuteronomic Tithe' (1914) 18(1) *The American Journal of Theology* 119-126, 120.

²⁸ Schuler, above n 25, 47.

²⁹ Oxford Dictionary of English (3 ed.), Publisher: Oxford University Press, Published online: 2010, Current Online Version: 2015, eISBN: 9780191727665.

referenced a further two meanings, the first covering only the relationship between lords, the second confirming the idea of a social structure.³⁰ This also aligns with references to a pyramidal arrangement, with the sovereign at the top, the lords next, free subjects and then dependent tenants (the peasants)³¹ at the bottom, resulting in everyone being ranked and having some form of master.³²

Marx went one step further suggesting that feudalism was actually the basis of the class system that allowed the lords to exploit the peasants.³³ Noting that under the feudal system, noblemen were given plots of land to look after on behalf of the sovereign, in exchange for specific services, which included aid, financial and military support,³⁴ as well as an obligation to collect the sovereign's taxes from the tenants of the land.³⁵ Peasants were restricted in their ability to move and were obliged to fight on behalf of their noble lord to whom they owed fealty or loyalty.³⁶

In the latter stages of season 6 of *The Walking Dead*, Negan adopts a feudal like arrangement whereby the other communities are working to provide for him, as he sees himself as sovereign.³⁷ Though currently in *The Walking Dead* it is not by choice, smaller council style governments or communities could set themselves up in this way by making specific areas safe from zombies, and allowing other survivors to live there in return for their labour and a portion of any goods they find, or valuables they bring with them.

D Stage Three - Allargando

'Qui vult dare parva non debet magna rogare.

Translation: He who wishes to give little shouldn't ask for much.'³⁸

In the *Allargando* phase, the aftermath of the apocalypse, rebuilding will be a priority and rebuilding takes money. At this phase, there is no centralised government to assist in the rebuilding efforts, nor to collect or redistribute funds, however the states and territories have started to resume services. Restoration of electrical power, television and radio has occurred and centralised food distribution has been set up in each state and territory. The economy is in the process of shifting away from barter and returning

³⁰ The first quoting F.L. Ganshof, the second quoting Marc Bloch. George C. Comninel 'English feudalism and the origins of capitalism' (2000) 27 *The Journal of Peasant Studies* 4, 1-53, 9.

³¹ Ibid, 24.

³² Anonymous, 'Feudalism' (1907) 30(20) *The Annals of the American Academy of Political and Social Science*, 11-26, 11.

³³ Comninel, above n 30, 9.

³⁴ Chris Davies, *Property Law Guidebook*, (Oxford University Press, 2011) 28.

³⁵ Comninel, above n 30, 17.

³⁶ Ibid 27.

³⁷ This was made clear in the opening episode of season 7 where he brutally killed two Alexandrians to prove the rest of the survivors and anything they have belongs to him.

³⁸ In Rebus, *Latin quotes, sayings and words of wisdom*
<http://www.inrebus.com/latinphrases_q.php>.

to cash. Jobs are being re-established, though mainly essential services initially. To ensure this rebuilding effort continues to operate effectively, the states and territories will need to consider the possibility of instituting death duties or a zombie consumption tax.

1 *Death taxes*

Chodorow believes that ‘the zombie apocalypse will create an urgent need for significant revenues to defend the living, while at the same time, rendering a large portion of the taxpaying public dead or undead’³⁹ and asks whether a death/estate tax is the answer? Estate taxes were one of colonial Australia’s first direct taxes, and were considered an easy form of taxing wealth as they ‘inflicted the least pain of all taxes’.⁴⁰ Death/estate taxes are not currently imposed in Australia,⁴¹ but were up until the late 1970s/early 1980s when both state and federal level duties were abolished.⁴²

The 2010 Henry review into our taxation system, suggested death taxes should be reconsidered saying ‘A bequest tax would be an economically efficient way of raising revenue and would allow reductions in other, less efficient taxes.’^{43 44} The Organisation for Economic Co-operation and Development (OECD) notes that there are some practical difficulties in imposing death taxes, including issues of double taxation, and requirements for specific rules on gifts.⁴⁵ The practical difficulties in a zombie apocalypse would centre around the questions of who is actually dead, are they only undead (and can they be cured?), and do they have any living relatives who may have claim on their estates? All questions which are outside the scope of this article.⁴⁶

2 *Consumption taxes*

Perhaps we could establish a zombie currency where you catch a zombie and trade it for goods, the zombies get locked up waiting for a cure, and you get to eat that night. If you have a family you’d like cured at some stage you can decide to lock them up, ala Hershel in season 2 of *The Walking Dead*. If things get desperate, you could trade your zombie family for food and other essentials. This would have the added bonus of having them kept somewhere safe so they don’t hurt others, and a fee could be imposed for

³⁹ Adam Chodorow, ‘Death and Taxes and Zombies’ (2013) 98 *Iowa Law Review* 1207, 1209.

⁴⁰ Smith, above n 5, 24.

⁴¹ Australian Taxation Office, *Deceased Estates* (18 August 2016) <<https://www.ato.gov.au/Individuals/Deceased-estates/>>.

⁴² Smith, above n 5, 87-88; OECD (2014), *OECD Economic Surveys: Australia 2014*, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/eco_surveys-aus-2014-en>.

⁴³ Australian Government, *Australia’s Future Tax System: Final Report Overview*, ‘*Personal Taxation*’, 4.4 <http://taxreview.treasury.gov.au/content/FinalReport.aspx?doc=html/publications/papers/Final_Report_Part_1/index>.

⁴⁴ Economist Thomas Piketty suggested Australia is an outlier. Emma Alberici, *Economist Thomas Piketty suggests Australia introduce inheritance tax to address wealth inequality* (25 October 2016) ABC Lateline <<http://www.abc.net.au/news/2016-10-24/celebrated-economist-suggests-inheritance-tax/7961270>>.

⁴⁵ Given in these circumstances, the original owner of the estate is either likely dead or undead, gift issues and double taxation would be relatively minor concerns, above n 42, 88.

⁴⁶ See Chodorow’s article for a good discussion of this, above n 39.

their upkeep. Penalties could be applied if they escape and consume other potential taxpayers.

In all seriousness, as trade expands, and money becomes a viable aspect of the economy, consumption taxes such as a goods and services tax (GST) or value added tax (VAT) are an efficient and sustainable option.⁴⁷ Australia introduced a consumption tax in the form of the *A New Tax System (Goods and Services Tax) Act 1999*. The GST is collected by the federal government and then redistributed back to the states and territories under the section 96 grants power in the Constitution.⁴⁸ A state/territory based GST would require some law changes to be effective, as currently the states/territories are prohibited from enacting their own consumption taxes.⁴⁹

A consumption tax during the zombie apocalypse wouldn't necessarily be a tax on regular goods and services, it would likely be linked to items that are necessary for survival like food, weapons or medication, and items considered to be a luxury could be the price paid. If there is a zombie cure or suppressant medication,⁵⁰ the government could set a price and charge a consumption tax to each person that takes it.

III BEYOND THE APOCALYPSE

*'The only thing that hurts more than paying an income tax is not having to pay an income tax.'*⁵¹

As society returns to normal, revenue will become even more important. In the continued absence of a federal government, can the states and territories legally impose income taxes to raise this revenue? To answer this question, it is important to firstly provide some historical context for income taxes in Australia, while also looking at the legal basis and powers for tax imposition.

⁴⁷ Australian Government, above n 43, *Chapter 7: Taxing consumption*.

⁴⁸ Along with the 1999 Intergovernmental Agreement on Reform of Commonwealth-State Financial Relations. Robert Carling, 'A State income tax for Australia', (2007) 22 *Australian Tax Forum* 161, 164.

⁴⁹ It can only be imposed under the Constitution, *ibid*.

⁵⁰ See Benjamin Duff, 'Protecting the infected. Government acquisition of patents during the zombie apocalypse' *Canberra Law Review* 14(1).

⁵¹ Thomas Dewar, BrainyQuote.com, Xplore Inc (2016) <<https://www.brainyquote.com/quotes/quotes/t/thomasdewa158142.html>>.

A Income Tax In Australia

1 Early colonial times

Prior to 1901 and the Federation of Australia, the States were separate colonies with individual economic objectives and taxing policies,⁵² which were based on what was easy and readily available, designed to progress the 'economic and social needs' of each colony.⁵³ In the earliest days of colonial Australia, laws were made at the whim of the Governor of the day.⁵⁴ Money, food and other goods were provided by the Monarchy.⁵⁵ Taxes were usually indirect excise and customs type duties.^{56 57} While some taxes were required to supplement the insufficient provisions from England,⁵⁸ they were not of great concern.⁵⁹

2 Representative government

This changed in 1818 with the legalisation of collection of duties in New South Wales (NSW), which authorised the NSW Governor to impose customs duties.⁶⁰ Next came laws in 1823 allowing representative government in NSW and Western Australia (WA),⁶¹ followed by the *Australian Colonies Government Act 1850 (Imp)*,⁶² and then self-government.⁶³ There was a 'high degree of economic and political tension and competition between the...colonies and their governments',⁶⁴ with each colony charging import taxes and taxes on goods traded between the colonies.⁶⁵

3 Income taxes – a latecomer to the tax party

Income tax was a late introduction in the colonies, with SA introducing it in 1884,⁶⁶ Tasmania in 1894,⁶⁷ and both NSW⁶⁸ and Victoria⁶⁹ in 1895. Both Queensland (Qld)

⁵² Caroline Dick, 'Taxation in Australia up until 1914: the warp and weft of protectionism' (2014) *eJournal of Tax Research*, 12(1) 104-129, 105.

⁵³ Ibid, 112.

⁵⁴ Peter A Harris, 'Metamorphosis of the Australasian Income Tax: 1866 to 1922' (Australian Tax Research Foundation, Research Study No. 37, 2002) 13.

⁵⁵ Dick, above n 52, 108.

⁵⁶ Which is due to the lack of organised administrative infrastructure, *ibid*, 106.

⁵⁷ Also often due to the lack of a taxable capacity (i.e. no land ownership, no wealth and imports were appropriated on arrival for distribution). Smith, above n 5, 9.

⁵⁸ Dick, above n 52, 107.

⁵⁹ When there were so many other things that were taking up the time and attention of the colonies, such as 'an uncertain economy, a disinterested British government, unrest and dissatisfaction of prisoners and settlers, the irregularity of shipments, and the lack of local industries and business', *ibid*, 109.

⁶⁰ By an Act of the British Parliament *59 Geo. III., c.114*, *ibid*.

⁶¹ *4 Geo. IV., c.96*, *ibid*.

⁶² After which government was formed in NSW, Tasmania (then Van Diemen's Land), South Australia (SA) and Victoria, *ibid*.

⁶³ During the period 1855-1859. *Act 59 Geo. III., c.114*, *ibid* 109.

⁶⁴ Citing C D Allin, *A History of the Tariff Relations of the Australian Colonies (Bulletin of the University of Minnesota, 1918)*, 1, *ibid* 110.

⁶⁵ Which were removed during the Federation processes, *ibid*.

⁶⁶ Stephen Mills, *Taxation in Australia* (MacMillan and Co Limited, 1925), 142.

⁶⁷ *Ibid* 191.

⁶⁸ *Ibid* 66.

⁶⁹ *Ibid* 89.

in 1902,⁷⁰ and WA in 1907,⁷¹ introduced income tax after federation. Their methods of collection were limited to flat rates of income tax,⁷² only collectable on income derived from that state.⁷³ With federation came the centralisation of customs and excise duties⁷⁴ that the colonies previously had control over, a concern as these were seen as their ‘major tax base’.⁷⁵ Vitally, they were allowed to hold on to their income taxing powers,⁷⁶ in an effort to keep as much fiscal independence as possible.⁷⁷

4 *Federation and taxing powers in the Constitution*

With federation in 1901, came Australia’s Constitution. There are a number of sections within the Constitution that provide the taxing powers for the Commonwealth. Section 51(ii) provides power for taxation, but qualifies that it cannot be used to discriminate between the States or parts of States,⁷⁸ which is supported by the section 99 prohibition on preference being given to any state over another.⁷⁹ Section 96 provides the grants power that allows the federal government to allocate financial assistance to the states.⁸⁰

5 *Post-federation*

Federal income tax was introduced in 1915, at the same time Australia was involved in World War I.⁸¹ It was a progressive tax from the start,⁸² allowing deductions for taxes already paid to the states,⁸³ however attempts made to introduce uniformity at this stage failed.⁸⁴ A Royal Commission in the early 1920s attempted harmonisation of income taxes⁸⁵ but faced difficulties⁸⁶ with their recommendation that the Commonwealth hold sole power to impose income taxes resulting in only bringing the various laws closer in

⁷⁰ Though Queensland had earlier introduced a Dividends Tax in 1890 imposing a 5% duty on Company dividend payments, *ibid* 116-117.

⁷¹ *Ibid* 165.

⁷² Australian Treasury, ‘A short history of personal income tax since 1915’ (Treasury Tax Paper No B(1)5 Australian Treasury, 1979) 4.

⁷³ *Ibid* 5.

⁷⁴ Through section 86 of the Constitution of Australia. This also brought the first effective grant to the States through the Braddon clause, which mandated certain percentages of the excise and customs duty to be returned to the States for a period of ten years post Federation. Dick, above n 52, 116.

⁷⁵ *Ibid* 115.

⁷⁶ Quoting Julie P Smith, *ibid*.

⁷⁷ George Williams, ‘Bryan Pape and His Legacy to the Law’ (2015) *University of Queensland Law Journal* 29-46, 32.

⁷⁸ *Australian Constitution* s 51(ii).

⁷⁹ *Ibid*, s 99.

⁸⁰ *Ibid* s 96. Interestingly this is set as a period of 10 years after federation, or until Parliament provides otherwise. There is much that has been written about the increasing power of the Commonwealth in relation to the States and the grants power is one way of continuing that. Ss 81 and 83 also relate to revenue but are not as important to this discussion. S 55 limits the subject matter of a law dealing with taxation to taxation.

⁸¹ Australian Treasury, above n 72.

⁸² To protect low income earners from paying more than was necessary, *ibid* 4.

⁸³ *Ibid* 15-16.

⁸⁴ As the laws of each State were too different, *ibid* 6.

⁸⁵ *Ibid* 30.

⁸⁶ Those difficulties being the powers of direct taxation were held by the Commonwealth and the States, the significant revenue requirements of each, and the differences in the taxation Acts themselves, *ibid* 43.

line.⁸⁷ Another Royal Commission held in 1932-1934⁸⁸ made a number of recommendations⁸⁹ however also failed to get to the desired level of uniformity.⁹⁰ What was agreed was that any government wishing to alter its income tax laws must consult with the other governments first.⁹¹

6 *The sole domain of the Commonwealth?*

Australia's involvement in World War II brought about the changes in states being able to impose income tax. With the extra revenue required to fund Australia's war effort,⁹² income taxes became the easy target by which to raise funds,⁹³ with an immediate 15% rate increase.⁹⁴ Increases continued until it became impossible for federal and state taxes to continue side by side.⁹⁵ In 1942 a committee was established to consider uniform taxation, again with the Commonwealth as the 'sole taxing authority', with the committee suggesting this should be implemented, but only until after the war had been over for one year.⁹⁶

7 *The First Uniform Taxation Case*

The Commonwealth government then tried to introduce a package of four laws which, inter alia, included priority for the Commonwealth over state income taxes and made grants conditional on states not imposing income tax at all.⁹⁷ Despite state rejection, and the subsequent High Court challenge by SA, Victoria, Qld and WA,⁹⁸ the laws were enacted in June 1942.⁹⁹ The High Court upheld the legality of the Commonwealth imposing taxes and states abstaining from doing so, as well as the priority of income tax to the Commonwealth, through the use of the constitutional taxing and defence powers.¹⁰⁰ Despite the one-year condition, after the war ended the Commonwealth legislated again in 1946 to make the changes permanent.¹⁰¹

8 *The Second Uniform Taxation Case*

This case was heard in 1957, with Victoria and SA attacking the *State Grants (Tax Reimbursement) Act 1946-1948*¹⁰² for requiring grant funds to be spent for specific

⁸⁷ Ibid 44.

⁸⁸ The Royal Commission was charged with 'simplifying and standardising the Commonwealth and State taxation laws, where the taxes covered substantially the same subject matter,' ibid 64.

⁸⁹ Some of which were taken up and implemented with the *Income Tax Assessment Act 1936*, ibid 68.

⁹⁰ For the same reasons as the 1920s Commission, ibid 78.

⁹¹ Ibid 79.

⁹² Julie P Smith, 'Australian State income taxation – a historical perspective', (2015) 30 *Australian Tax Forum* 679-712, 698.

⁹³ Australian Treasury, above n 72, 81.

⁹⁴ Ibid 82.

⁹⁵ Which in some cases, the two taxes resulted in 90% of the income being taxed, though there were rebates where this was the case, ibid 89.

⁹⁶ Ibid 91.

⁹⁷ *South Australia v The Commonwealth (First Uniform Tax Case)* (1942) 65 CLR 373, 375-377.

⁹⁸ A challenge which failed, ibid 374.

⁹⁹ Australian Treasury, above n 72, 92.

¹⁰⁰ Ibid.

¹⁰¹ Again 'unanimously opposed by the States', ibid 117.

¹⁰² *States Grants (Tax Reimbursement) Act 1946-1948* s 5 and 11.

purposes, and the *Income Tax and Social Services Contribution Assessment Act 1936-1956*¹⁰³ for the requirement that federal taxes were given priority over state taxes. The High Court held that the *State Grants Act* was constitutional, saying that the Commonwealth could make grants with inducements for the states but they could not be coercive, with Dixon CJ stating ‘...there is nothing which would enable the making of a coercive law. By coercive law is meant one that demands obedience.’¹⁰⁴

It was a different story in regards to the social security laws however, with the relevant section being struck down by the court, effectively overturning the Commonwealth’s ability to enforce priority. This result allowed the states to continue to impose income tax should they choose to do so; however, they would likely lose any Commonwealth grants they may have otherwise received.¹⁰⁵

IV A STATE & TERRITORY INCOME TAX

HOW WOULD IT WORK?

*‘Why not just eliminate the federal income tax?’*¹⁰⁶

While the Commonwealth was allowed to keep their income tax control in 1942 and 1957, there is no constitutional barrier to prevent states/territories from imposing their own income tax again now.¹⁰⁷ Carling suggests the barrier is more of a practical one now, based on the growing dependency the states have on the federal government for funding.¹⁰⁸ Harris suggests it is also political in nature, with the Commonwealth government being able to encourage state compliance through the use of the section 96 grants power.¹⁰⁹ Post zombie apocalypse there should be few barriers left with no federal government to intervene, however the question remains, how would it work and what are the advantages and disadvantages?

A How Would It Work?

1 *What models are there?*

Despite being a ‘decentralised federation by Constitution’, centralisation within the taxation system, and other areas, has been increasing since federation as the powers of

¹⁰³ *Social Services Contribution Assessment Act 1936-1956* s 221(1)(a).

¹⁰⁴ *Victoria v Commonwealth (Second Uniform Tax Case)* (1957) 99 CLR 575, 28 (610).

¹⁰⁵ Bede Harris, *Constitutional Law Guidebook* (Oxford University Press, 2009) 207.

¹⁰⁶ Gore Vidal, writing for *The Nation*, < <https://www.thenation.com/authors/gore-vidal/>> (1995).

¹⁰⁷ Carling, above n 48, 167.

¹⁰⁸ *Ibid.*

¹⁰⁹ Harris, above n 105, 207.

the federal government have expanded.¹¹⁰ While the states, and now territories, have their own taxing powers (land taxes, stamp duties, payroll taxes etc. which only bring in around half of what is needed),¹¹¹ the federal government has had its purview significantly increased with the help of the High Court and decisions such as those in the Uniform Taxation cases.¹¹² A shared income tax approach has been raised on a number of occasions, as a ‘robust and reliable source of revenue’.¹¹³ Carling refers to the following four models that have been successful in other jurisdictions:¹¹⁴

(a) Fully decentralised

The United States (US) and Switzerland are examples of fully decentralised models, with the US States that do have ‘income taxes, operating separate systems from the federal income tax’.¹¹⁵ In Switzerland, the federal government has the indirect taxing powers, but has left the direct taxing powers with the cantons, and is considered the most decentralised of the OECD countries.¹¹⁶

(b) Partially decentralised

Canada is a good example of a working partially decentralised model where states piggy back their income tax on the federal income tax, which is collected at the federal level then redistributed.¹¹⁷ This has also been referred to as a coordinated base sharing model,¹¹⁸ and does have some drawbacks, such as the population size of each state differing and requiring some states to impose higher percentages of income tax than others.¹¹⁹ Note that this option would not work if there is no federal government.

(c) Income tax revenue sharing with local collections

Germany and Austria are provided as examples of sharing arrangements with local collections, however Carling sees this as a weak form of decentralisation as it lacks autonomy for the sub-central governments.¹²⁰

¹¹⁰ Koutsogeorgopoulou, V & A Tuske (2015), ‘Federal-State Relations in Australia’, OECD Economics Department Working Papers, No 1198, OECD Publishing, Paris.
<http://dx.doi.org/10.1787/5js4h5mx7bg0-en>, 6.

¹¹¹ Commonwealth Grants Commission, *What is fiscal equalisation: Australia States and Territories* Australian Government
<https://www.cgc.gov.au/index.php?option=com_content&view=article&id=35&Itemid=314>.

¹¹² Koutsogeorgopoulou, above n 110, 7.

¹¹³ For example, the Taxation Discussion Paper and National Commission of Audit 2014 Report referred to by Richard Eccelston and Helen Smith, ‘Fixing funding in the Australian Federation: Issues and options for State tax reform’ (2015) 74(4) *Australian Journal of Public Administration* 435-447, 442.

¹¹⁴ Carling, above n 48, 168.

¹¹⁵ Ibid.

¹¹⁶ David Carey, Kathryn Gordon and Philippe Thalmann (1999), ‘Tax Reform in Switzerland’, OECD Economics Department Working Papers NO. 222, OECD Publishing, Paris.
ECO/WKP(99)14, 5-6.

¹¹⁷ Carling, above n 48, 169.

¹¹⁸ Eccelston, above n113, 442.

¹¹⁹ Western Australia has been used as an example here, with a ‘levy of 4.2% being required to recoup its per capita share of... aggregate income tax’. The authors suggest that the wealthier States would benefit the most from this arrangement. Ibid 443.

¹²⁰ Carling, above n 48, 169.

(d) Income tax revenue sharing with national collections

The current set up in Australia is an example of revenue sharing with national collections, based on our grants system and the distribution of GST income.¹²¹

2 Which model could work?

While Carling settles on a partially decentralised model,¹²² in a post-apocalyptic society, with a greatly diminished population and no federal government, the better option would be a fully decentralised model. This would allow existing and any new states¹²³ to have ‘the freedom to set [their] own rates and bases with [their] own administration’.¹²⁴ Assuming a lack of significant transport infrastructure limiting the ability to move around the country, and taxes would be collected and spent locally on rebuilding any damage that has been done.

In the current zombie free world, there are a number of advantages and disadvantages that a decentralised model would bring. Of course in a post-apocalyptic society some of these issues would be remedied simply due to the lack of federal government.

3 Advantages

(a) Decreased dependency

The level of dependency the states currently have on federal government funding is significant,¹²⁵ with around half of their revenue coming from grants, including tied grants, and a significant proportion of that funded by GST revenue.¹²⁶ The GST was supposed to solve or at least improve the fiscal imbalance between the states and federal government, but Carling argues that it has made things worse, as the Intergovernmental Agreement that provides the GST revenue to the states does not allow the states any real authority over the rates or base of the GST.¹²⁷

(b) Reduced fiscal imbalance

Seen as a source of inefficiency if it is too high, Eccelston and Smith consider that some fiscal imbalance is inevitable and in fact necessary.¹²⁸ Vertical fiscal imbalance is ‘the extent to which the states depend upon transfers from the central government to finance their own expenditure responsibilities’ and Carling suggests that Australia’s level of vertical fiscal imbalance is ‘extreme among the world’s federations’.¹²⁹ This is

¹²¹ Ibid.

¹²² Ibid, 170.

¹²³ See Bede Harris, ‘Constitutional Implications Of A Zombie Outbreak’ (2016) 14(1) *Canberra Law Review*.

¹²⁴ Carling, above n 48, 168.

¹²⁵ Ibid, 167.

¹²⁶ Ibid, 164.

¹²⁷ Ibid.

¹²⁸ Eccelston, above n113, 438.

¹²⁹ Carling, above n 48, 162.

evidenced by the percentage of grant money that is provided to the states to close the fiscal gap, making up around half of the revenue they need to provide services.¹³⁰

(c) Increased competition

With a reduced population and no national emergency funds, handouts¹³¹ or grant money on the horizon due to the lack of a federal government, states and territories would need to set competitive rates of income tax in the longer term, to keep and attract the citizens that have survived. Interestingly, Pape was a firm supporter of competition between the states as the means of best serving Australia's federalism,¹³² and the Constitution was drafted in such a way as to leave 'a greater body of power' with the states to support independent operation.¹³³

4 Disadvantages

(a) Increased competition

Increased competition can also have its downsides, and there are arguments that the competition between states actually allows for tax avoidance opportunities and lowers the yield of State tax.¹³⁴

(b) A lack of horizontal fiscal equality

Currently Australia operates on a model that aims to provide each state/territory with enough funding to ensure their capacity to provide the appropriate services and infrastructure is at the same standard.¹³⁵ The size of the population will affect the capacity of each state/territory in the amount of revenue it can raise from income tax, as obviously the more people of working age you have, the larger the tax base you can draw from.

(c) Double taxation issues

While this would ordinarily be a concern, without a federal government to impose tax, this would not be an issue. It may arise if and when the federal government gets itself back on track, however could still be addressed by a reduction in federal income tax by the amount of the state/territory income tax.¹³⁶

¹³⁰ Commonwealth Grants Commission, above n 111.

¹³¹ For example, the tax bonus payments which were paid to all income earners by the Rudd Government during the global financial crisis. These payments were challenged by Bryan Pape as he believed them to be ultra vires the constitution. The High Court ruled that it was within the scope of the taxing powers for the government to make the payments. *Pape v Commissioner of Taxation* (2009) 238 CLR 1.

¹³² Williams, above n 77, 32.

¹³³ Ibid.

¹³⁴ Citing RC Mills, Smith, above n 92, 686.

¹³⁵ Quoting from the Commonwealth Grants Commission (2013), Koutsogeorgopoulou, above n 110, 14.

¹³⁶ Carling, above n 48, 170.

V CONCLUSION

In the author's opinion, while not 100% guaranteed, it seems unlikely that the federal government will be wiped out by an impending threat of a zombie apocalypse, though if it does, will tax survive like the proverbial cockroach in a nuclear war? However, should the zombie apocalypse occur, regardless of what form or forms of government survive or re-emerge afterwards, tax will remain one of the most important aspects of a functioning society and there are a range of different options governments could employ that will assist society in becoming civilised once more.

Apocalypse or no apocalypse, the idea of the states and territories being able to impose their own income tax does have its merits when taking into account the arguments of increasing independence, and addressing the vertical fiscal imbalance to at least some degree. The original intention of the constitutional drafters in keeping competition between the states would be served by shifting income tax back to the states and territories. It would also allow states and territories to properly provide health, education and other essential services. While the fully decentralised model discussed as the preference in a zombie apocalypse would not be required with a federal government in place, we could look to Canada and the partially decentralised model they have implemented for further guidance.

