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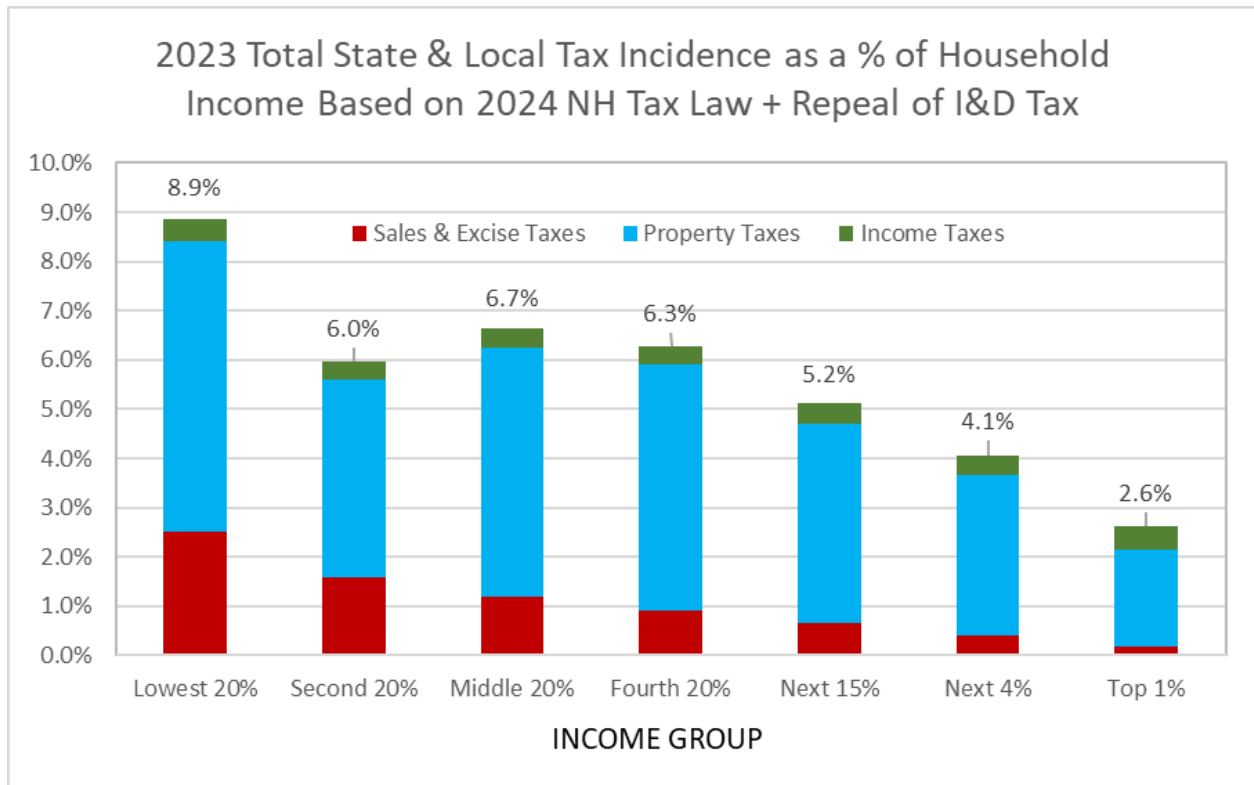
**April 15, 2026**

NH House Ways & Means Committee

RE: CACR 12

Dear Members of the NH House Ways & Means Committee,

I write to urge you to vote Inexpedient to Legislate (ITL) on CACR 12 that runs contrary to existing constitutional principles around taxation and would lock in a regressive tax system that primarily benefits those in the top 5% of household income. We all pay our state and local taxes from our income (unless we don't have enough income and then we have to tap into any life savings we might have), we just don't pay our current taxes in proportion to our income. We have a regressive tax system in which the top 1% enjoy a tax burden that is less than 1/3 of that of the bottom 20% and half that of the middle 60%. This is illustrated below, using data from the Institute on Taxation and Economic Policy's 2024 [Who Pays Analysis for NH](#).



Note that the top 20% enjoy more than half of all income, more than the household income of the bottom 80% all together. The top 5% have more total income than the bottom 60% but enjoy a much lower tax burden than the bottom 80%.

Income Group:	Lowest 20%	Second 20%	Middle 20%	Fourth 20%	Next 15%	Next 4%	Top 1%
2024 Income Range:	Below \$ 35,000	\$ 35,000 \$ 62,300	\$ 62,300 \$ 104,100	\$ 104,100 \$ 153,900	\$ 153,900 \$ 329,300	\$ 329,300 \$ 721,000	\$ 721,000 And Above
Average Income in Group =	\$ 19,300	\$ 46,700	\$ 81,700	\$ 129,300	\$ 217,600	\$ 463,900	\$ 2,125,000
% of 2023 Household AGI =	3%	7%	13%	20%	26%	15%	17%
	Bottom 60% = 23%					TOP 5% = 31%	
					TOP 20% = 57%		

## CACR 12 IS CONTRARY TO NH'S CONSTITUTIONAL FRAMEWORK FOR TAXATION

### Consider, for example, the tax law that was in effect when our state constitution was adopted:

The last major tax law adopted in New Hampshire prior to the adoption of our current state constitution in 1784 stated as follows: "Whereas it is necessary there should be an Equitable Rule Established by Law for making Rates and Taxes, so that **every person may be Compelled to pay in proportion to his Income**, ... that "henceforward all publick Rates and Taxes shall be made and assessed in proportion to the Amount of Each person's polls, Rateable Estate and Faculty, which shall be Estimated as followeth, ..." and then the law set forth base rates for each adult with a premium for "faculty" or income producing ability, plus rates for large agricultural animals based on their income producing ability, agricultural (or "improved") land based on what it produced, by busheld of grain, tons of hay, barrells of cider, or pasturage, and "all Mills, Wharffs and ferry's ... Houses, warehouses and other Buildings .. [at] One Twelfth part of their neat [net] yearly Income." Homes and land that did not produce an income were not subject to tax. (*New Hampshire Province Laws*, pp. 585-6, law adopted 1773).

### Constitutional provisions governing taxation:

Central to our NH Constitution has been the recognition that each citizen has an obligation to contribute their just share of the common expense and a right to pay no more than their due proportion of such common responsibilities as universal basic public education that produces common benefits for all, including the preservation of a free government and economic prosperity. This central principle, that "the law cannot discriminate in favor of one citizen to the detriment of another" to the end of securing "to all as perfect equality of privilege and of burden as human wisdom permits, was the chief end sought by the framers of the instrument" and requires that "all taxation must be equal."<sup>1</sup>

Part 1, Bill of Rights, Art. 3, [Society, its Organization and Purposes.]

*When men enter into a state of society, they surrender up some of their natural rights to that society, in order to ensure the protection of others; and, without such an equivalent, the surrender is void.*

Art. 12 [Protection and Taxation Reciprocal.]

*Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary. But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.*

Part 2, [Form of Government.] Art. 5 [Art.] 5. [Power to Make Laws, ... Impose Fines and Assess Taxes; ...]

*[F]ull power and authority are hereby given and granted to the said general court, from time to time, to ... impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, ....*

What is each citizen's just and proportionate share of the cost of state and local government? In 1951 the Supreme Court was asked their opinion about a series of narrow based taxes. The Court warned that narrowly based taxes may "fail to promote [an] 'equal or honest division of [the] common burden.'" They concluded that "What tax or combination of taxes will rest upon the broadest base with greatest practical equality is one which the Legislature must decide. ... [but t]he danger of discrimination which may result from a selection of numbers of small classes ... cannot be disregarded."

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<sup>1</sup> State v. Pennoyer, 65 NH 113 (1889).

In a 1972 Opinion of the Justices, 112 NH 32, on a proposed school property tax that would not apply to primary residences, the NH Supreme Court advised, among other things that:

1. Exemption from a proposed school property tax of residential real estate occupied by its owner as his principal place of abode would not violate the constitution since alleviation of a disproportionate burden of taxation would be a just reason for such exemption.

2. Taxes upon property or estates must be laid at a common rate within the taxing district, but a general exemption there from would be constitutional if just reasons exist for the classification of certain property as taxable and certain other property as nontaxable.

The Court has used similar reasoning to opine that a uniform homestead exemption for a basic unit of housing generally applicable, could be used with a uniform rate on value in excess of a homestead exemption. They have also opined that uniform exemptions of an amount of income necessary to meet basic needs could also be considered constitutional as part of reasonable and proportional taxation.

**CACR 12 would lock NH into a regressive tax system that favors the top 5% over the bottom 80%.**

In December of 1997, when the Claremont II was decided, I was in my 3<sup>rd</sup> term in the NH House, elected as a Democrat. I decided to join forces with Republican Representative Liz Hager to propose a personal income tax with substantial personal exemptions combined with a low rate state-wide property tax with a homestead exemption to replace the local property tax as the primary means of funding an adequate public education. It was considered by many to be a fool's errand. In 1998, I ran for the State Senate, with my support for the Hager-Below Plan at the forefront of my campaign. Mark Fernald did the same. We both flipped Republican seats against anti-income tax pledge takers, that had never before elected candidates of the Democratic Party, as far back as records reached into the 1800s.

In 1999 we introduced HB 109, the Hager-Below-Fernald Plan for funding public education. The distributional impact of how it would have changed the tax burden in NH is shown in the attached. As you can see the tax burden on the bottom 80% as quintile groups would have gone down while the top 20% as a whole would have paid more. NH's tax system would have moved from regressive to more nearly proportional. Those who benefit the most from a good public education system and the rule of law, both individually and generally by having a productive economy, educated citizenry and functioning democracy, would have been paying much more nearly in proportion to that benefit, that is an ability to earn and enjoy a good income.

After much deliberation and debate on how best to fund public education and much to everyone's surprise HB 109 passed the House on a bipartisan 194 to 190 vote, with 51 Republicans voting in favor of OTP. In October the Senate then passed an amended version of HB 109 on a 15-9 vote with 4 Republicans voting in favor. The bill would not have passed either chamber without significant bipartisan support. Gov. Shaheen, threatening a veto if the House concurred, flipped enough votes to ensure non-concurrence with the Senate amendment.

The 3-3 tax cut plan is an updated version of that concept, with basics shown on the next page. Following the HB 109 graphic is information about the distributional impact of that plan. More information can be found at <https://nhtaxsavingscalculator.com/>. Passage of CACR 12 by the House and the voters would effectively preclude consideration of any such plan and lock future generations into a regressive tax system, dependent on high property taxes, that allows the most wealthy to evade paying a share of the common expense in proportion to that borne by low-income through upper middle-income households. CACR 12 would serve to preclude substantive debates on how best to ensure that everyone pays their fair share of the common expense, and no more.

Following that is a compilation of relevant NH Supreme Court cases that laid the foundation for the Claremont II decision. Thank you for your service in the legislature.

Yours truly,

*Clifton Below*



# Cut Our Property Taxes!

Support the

## **3-3 TAX SAVINGS PLAN.**

- **3 percent NH Education Income Tax**
  - \$35,000 deduction for each taxpayer
  - \$15,000 deduction for each dependent
  - \$15,000 deduction for single/head of household
  - Raises \$1 billion to cut local property taxes
- **\$3 true statewide property tax**
  - \$250,000 homestead exemption
  - \$750 credit for each rental unit
  - Raises \$1 billion to cut local property taxes
- **100,000 outbound commuters receive credit for income taxes paid to other states**
- **65,000 in-bound commuters pay 3 percent NH Education Income Tax**

Learn more at:  
[NHTaxCalculator.com](https://www.nhtaxcalculator.com)

Technical advice provided by the Institute for Tax and Economic Policy (ITEP), 1301 Connecticut Avenue, NW, Suite 220, Washington, DC 20036

March 3, 2026—andruvolinsky@gmail.com

HB 109: Property Tax Reform & Education Funding Plan (the Hager/ Below/Fernald plan).  
 Graphs prepared by Sen. Clifton Below, 1/30/99.

## Who Pays NH Taxes Now:

NH has one of the most regressive tax systems in the nation. The poorest 20% pay at 3 times the effective rate of the most well off (the top 1%).

## A Fairer Way:

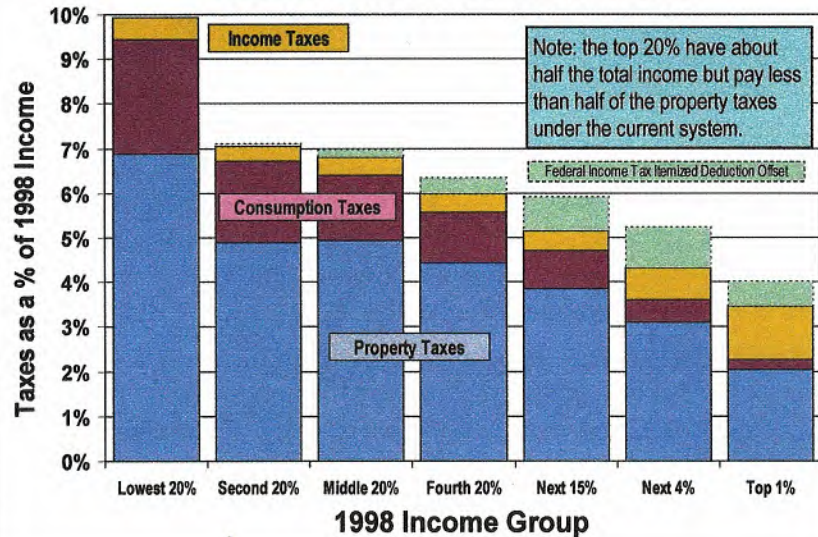
With HB 109, NH's overall tax burden would approach true proportionality across income levels (before federal offsets, which lessen the relative burden on the rich by allowing them to offset up to 40% of their NH income tax with reduced federal taxes).

## Who will pay more or less:

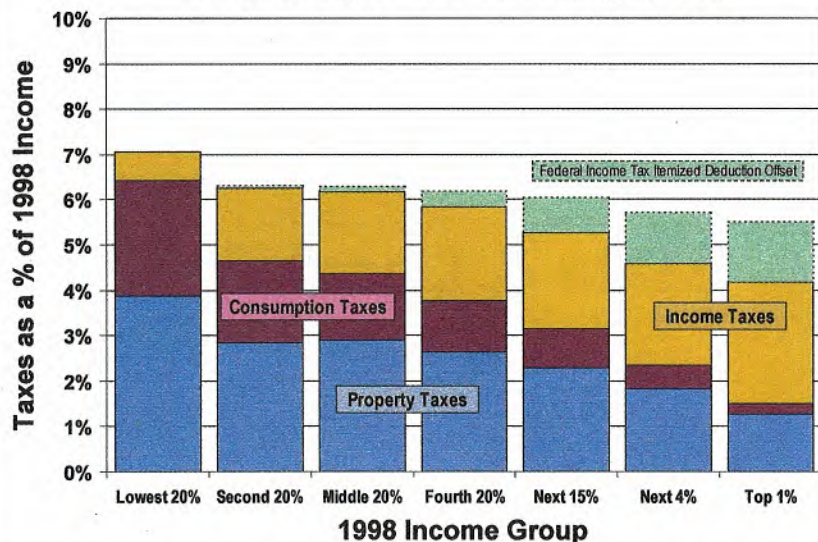
Source: Institute on Taxation and Economic Policy, January, 1999, [www.ctj.org/itep/](http://www.ctj.org/itep/)

In the bottom chart the incidence of tax change includes the effects of the federal income tax itemized deduction offset.

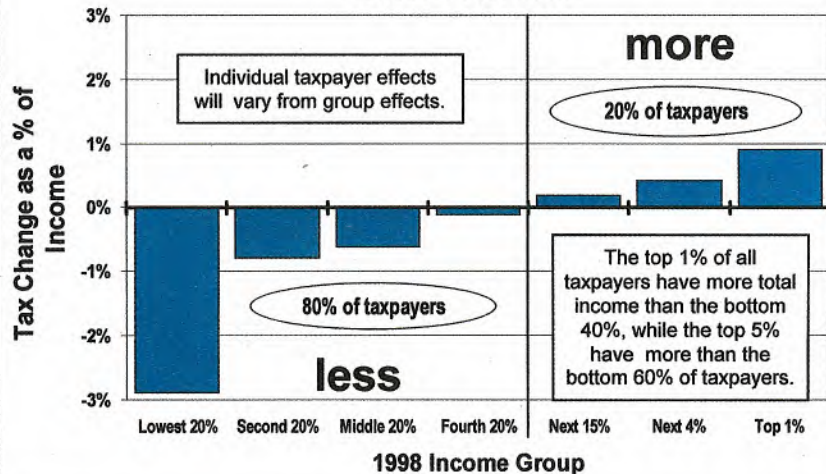
All New Hampshire Taxes (State & Local) in 1998 as Shares of Family Income



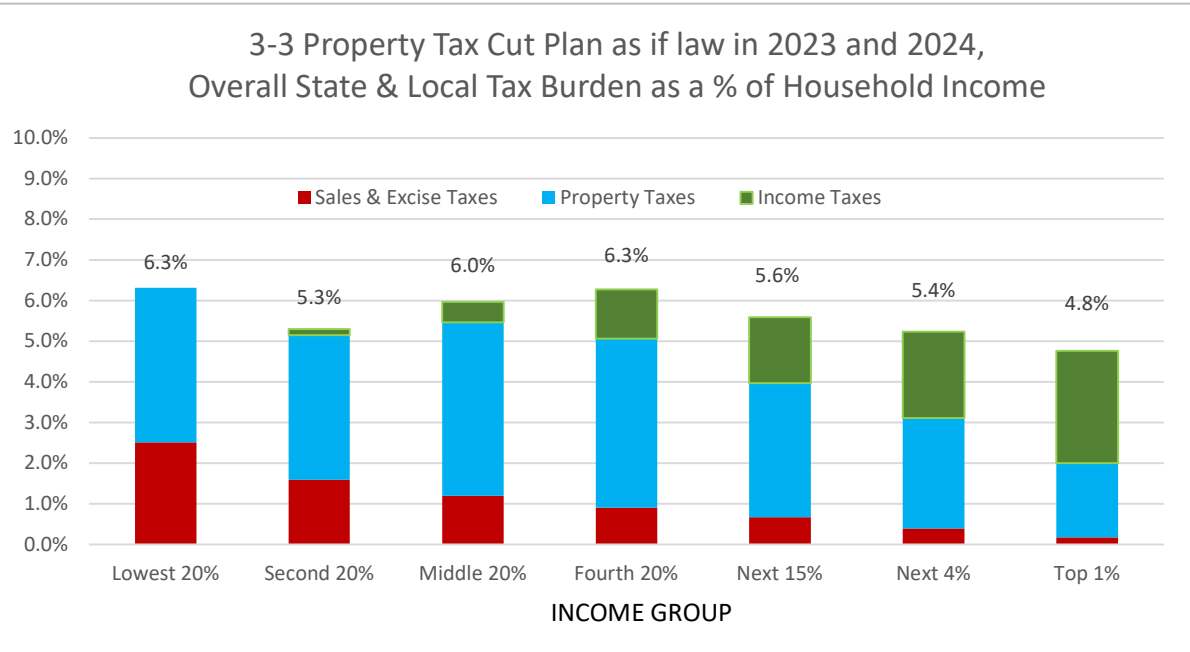
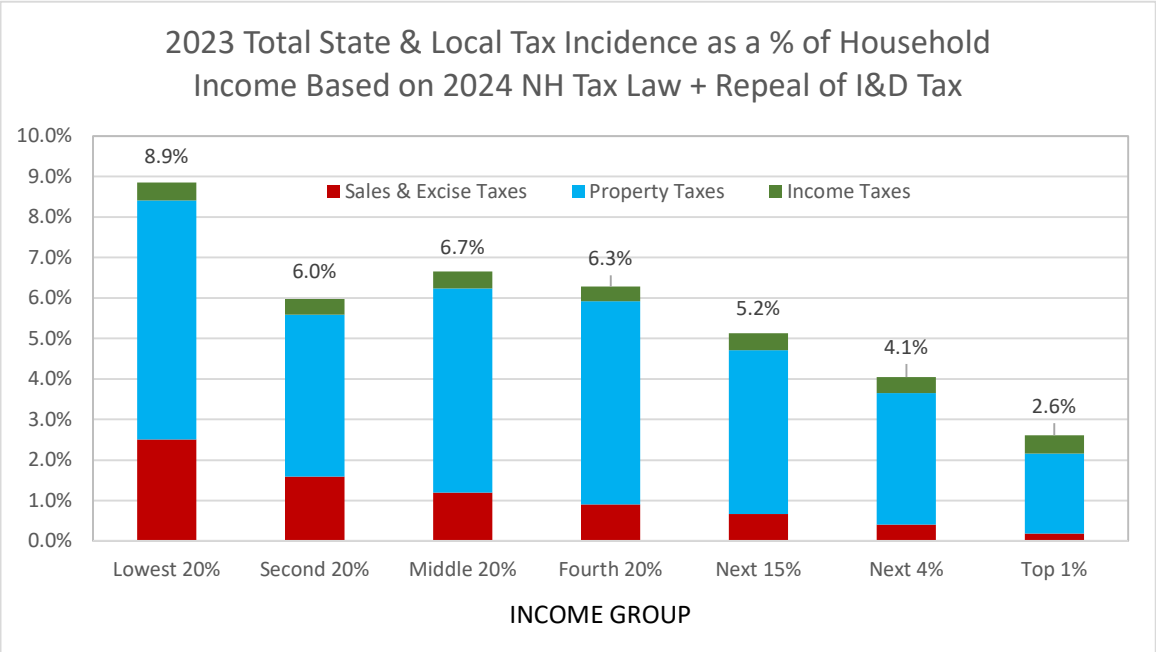
Distributive effect of HB 109 on Total NH Taxes as a % of 1998 NH Family Income



HB 109: Tax Change from Current Law as a Share of Income

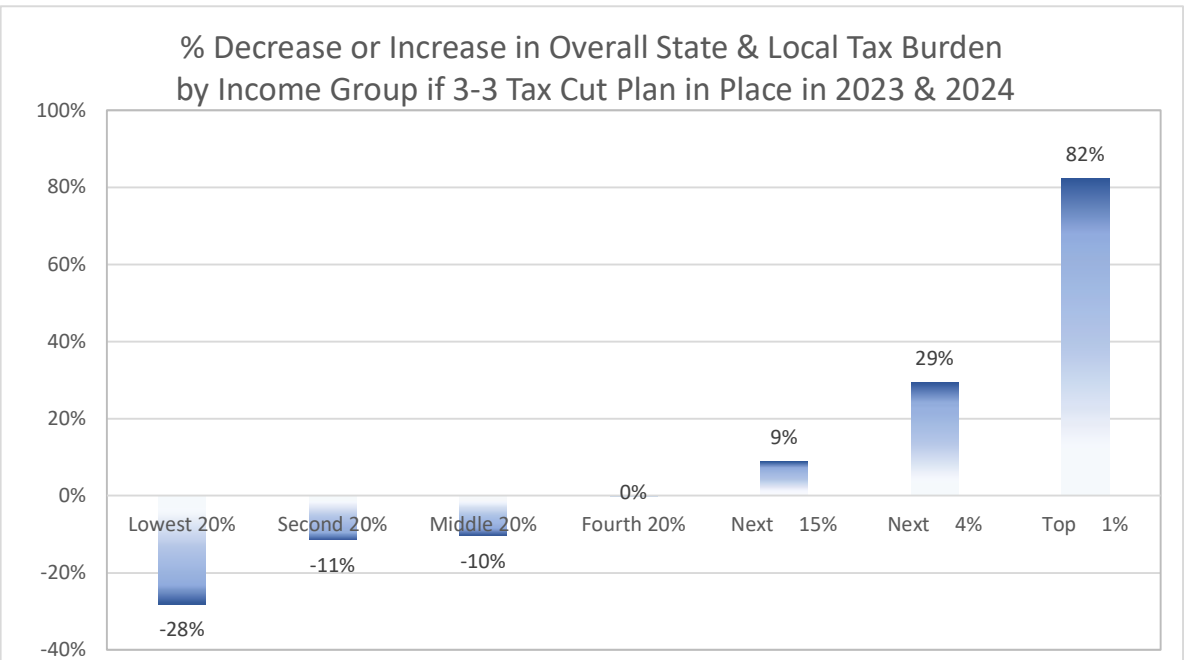


# Distributional Impact of the 3-3 Tax Cut Plan



Income Group:	Lowest 20%	Second 20%	Middle 20%	Fourth 20%	Next 15%	Next 4%	Top 1%
2024 Income Range:	Below \$ 35,000	\$ 35,000 - \$ 62,300	\$ 62,300 - \$ 104,100	\$ 104,100 - \$ 153,900	\$ 153,900 - \$ 329,300	\$ 329,300 - \$ 721,000	\$ 721,000 And Above
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% of 2023 Household AGI =	3%	7%	13%	20%	26%	15%	17%
	Bottom 60% = 23%				TOP 5% = 31%		
					TOP 20% = 57%		

NOTES: Modeling of Income Tax, Homestead and Renter's Credits, and distributional impact of 3-3 Property Tax Cut Plan is by the Institute for Taxation and Economic Policy (ITEP). The Base Case shown above was modeled by ITEP as part of the 7th Edition of its "Who Pays" analysis of each state's tax system for local and state government and includes 99.9% of state and local tax revenue collected in NH at 2024 levels and shows tax incidence as state and local tax shares of family household income. Senior taxpayers are excluded for reasons detailed in their methodology. Repeal of the Interest & Dividends tax is assumed in the Base case shown above. The remaining incidence of income tax at about 0.4% of income is the portion of Business Profits tax that is born by each income group. See <https://nhtaxsavingscalculator.com/> for more information on the 3-3 Tax Savings Plan. For more information on ITEP: <https://itep.org/whopays/new-hampshire-who-pays-7th-edition/>



# SOME INTERESTING HISTORICAL POINTS CONCERNING PUBLIC EDUCATION AND TAXATION IN NEW HAMPSHIRE

Prepared by Clifton C. Below, originally when a State Representative in 7/98 and revised 4/07.  
[Emphasis added. All cases headlined are by the NH Supreme Court.]

## THE TAX LAW IN EFFECT WHEN OUR STATE CONSTITUTION WAS ADOPTED:

The last major tax law adopted in New Hampshire prior to the adoption of our current state constitution in 1784 stated as follows: "Whereas it is necessary there should be an Equitable Rule Established by Law for making Rates and Taxes, so that **every person may be Compelled to pay in proportion to his Income**, and also for Ascertaining who are legal Voters in Town and Parish meetings; Be it Enacted by the Governor Council and Assembly, that henceforward all publick Rates and Taxes shall be made and assessed in proportion to the Amount of Each person's polls, Rateable Estate and Faculty, which shall be Estimated as followeth, ..." and then the law set forth base rates for each adult with a premium for "faculty" or income producing ability, plus rates for large agricultural animals based on their income producing ability, agricultural (or "improved") land based on what it produced, by busheld of grain, tons of hay, barrells of cider, or pasturage, and "all Mills, Wharffs and ferry's ... Houses, warehouses and other Buildings .. [at] One Twelfth part of their neat [net] yearly Income." Homes and land that did not produce an income were not subject to tax. "All Stock, whether money in hand, or at Interest, more than the person Gives Interest for, and all money Improved in Trade shall be Estimated at the half of One per Cent" (*New Hampshire Province Laws*, pp. 585-6, law adopted 1773).

## CLAREMONT SCHOOL DISTRICT v. GOVERNOR, 138 N.H. 183 (1993)

In Claremont I (12/30/93) the NH Supreme Court explained that Part II, Article 83 (the "encouragement of literature clause") imposes "a duty on the State to provide universal education" and "to support the public schools and ensure an educated citizenry." The Court drew upon many sources to support their unanimous decision including the statements of political leaders who were contemporaries of those who wrote and adopted our constitution in 1784. The court observed that in 1795 Governor Gilman addressed the Senate and House stating: "**The encouragement of Literature being considered by the Constitution as one of the important Duties of Legislators and Magistrates, and as essential to the preservation of a free Government, will always require the care and attention of the Legislature.**" The House and Senate replied: "*The encouragement of Literature is a sacred and incumbent Duty upon the Legislature.* Possessing a Constitution of Government which is founded upon the broad basis of the natural rights of mankind, *we feel on our part, the strongest obligation* to revere, to cherish, and *to support it*. Without a competent share of information diffused generally through the community, the natural as well as the acquired rights, and the duties to which the social compact necessarily subjects us, must be imperfectly understood, and consequently will be liable to be perverted and neglected. We shall therefore most cordially embrace all proper measures to diffuse Knowledge and Information, to promote Literature and to cherish seminaries of Learning as the most direct and certain means to perpetuate to posterity that Constitution, which form our Glory, our Safety, and our Happiness."

The Court went on to note that "For over two hundred years New Hampshire has recognized its duty to provide for the proper education of the children in this State. Since 1647, education has been compulsory in New Hampshire, and our constitution expressly recognizes education as a cornerstone of our democratic system. ... We are confident that the legislature and the Governor will fulfill their responsibility with respect to defining the specifics of, and the appropriate means to provide through public education, the knowledge and learning essential to the preservation of a free government."

## OPINION OF THE JUSTICES (School Financing), 142 N.H. 892 (1998):

"Part II, Article 5 of the State Constitution provides that the legislature may "impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, the said state." In Claremont II, the court concluded that taxes levied to fund education "are in fact State taxes that have been authorized by the legislature to fulfill the requirements of the New Hampshire Constitution," and are not, in fact, local taxes. Claremont II, 142 N.H. at \_\_\_, 703 A.2d at 1356. Accordingly, the court held that "the varying property tax rates across the State violate part II, article 5 of the State Constitution in that such taxes, which support the public purpose of education, are unreasonable and disproportionate." Id. at \_\_\_, 703 A.2d at 1357. The court offered further that "[t]o the extent that the property tax is used in the future to fund the provision of an adequate education, the tax must be administered in a manner that is equal in valuation and uniform in rate throughout the State." Id. ...

"**Because the diffusion of knowledge and learning is regarded by the State Constitution as 'essential to**

**the preservation of a free government,' N.H. CONST. pt. II, art. 83, it is only just that those who enjoy such government should equally assist in contributing to its preservation. The residents of one municipality should not be compelled to bear greater burdens than are borne by others.'**

"Id. [See Claremont II, 142 N.H. at 470]; see also Claremont School Dist. v. Governor, 138 N.H. 183, 192, 635 A.2d 1375, 1381 (1993) (Claremont I) ("free government is dependent for its survival on citizens who are able to participate intelligently in the political, economic, and social functions of our system"). This obligation cannot be avoided or lessened by the mere circumstance of a town having few children or a town having a wealth of property value, including wealth generated by the presence of heavy industry. Cf. Barksdale v. Town of Epsom, 136 N.H. 511, 514, 618 A.2d 814, 816 (1992) ("[a] citizen cannot claim tax aggrievement merely because he or she does not personally add to the public education expense"); Union Transit Co. v. Kentucky, 199 U.S. 194, 203 (1905) (taxpayers cannot refuse to pay simply because they do not receive equal share of benefits; childless citizens must pay share of school tax).

**"It should not be forgotten that New Hampshire is not a random collection of isolated cities and towns. Indeed, all of us live in a single State. The benefits of adequately educated children are shared statewide and are not limited to a particular town or district. We live in a highly mobile society such that a child may be educated in Pittsfield and, as an adult, reside in Moultonborough. That adult may serve or influence the town or State as an elected or appointed official, a business or civic leader, or in various other endeavors. The benefits of that citizen's public education and contributions to community may be felt far beyond the boundaries of the educating town or district. Therefore, it is basic to our collective well-being that all citizens of the State share in the common burden of educating our children. ..."**

"In interpreting the constitution as we do today, we are mindful that those who crafted the words of Part II, Article 5 had lived under the taxation policies of the British Crown. **The framers were thus cognizant of schemes of taxation which were oppressive, unpredictable, and grossly unfair. It undoubtedly was the specter of unfair taxation that prompted the requirement that taxes be both proportional and reasonable.** Our interpretation of this language has been consistent and to advise otherwise now would be the first step down a dangerous path leading to frustration of the document upon which our government rests. **The language of our constitution commands that taxes be no less than fair, proportional, and reasonable.**"

### **OPINION OF THE JUSTICES, 4 N.H. 565 (1829)**

"... The constitutional right of the legislature, to impose taxes, cannot, then, by any sound rule of construction, be held to extend farther than to impose proportional and reasonable taxes.

"What then are to be considered as proportional and reasonable taxes?"

"... *in the twelfth article of the bill of rights, it is declared that "Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection." It is very manifest, that "his share," here means, his proportional part of the expense,* according to the amount of his taxable estate.

"To establish the rules by which each individual's just and equal proportion of a tax shall be determined, is a task of much difficulty, and a very considerable latitude of discretion must be left to the legislature on the subject. The force of this remark may be seen by a moment's consideration of the nature of a tax upon polls [individuals]. A tax of a particular sum, upon every poll in the state, might be easily laid, and would be, in one sense of the term, a proportional tax. But no person would suppose, that such a tax would be just and reasonable. No one would think, that the polls of children, in their earliest infancy, or of idiots and distracted persons, were proper subjects of taxation. It must rest, then, in the sound discretion the legislature, to determine what polls may, and what may not be, justly and reasonably taxed. And this discretion has of always been exercised by the legislature.

"Within the limits of this discretion, as to the selection of proper subjects of taxation, and the proportion of the tax that shall be laid on each subject, the authority of the legislature is, without question, supreme. But it is supposed, that if the legislature should attempt to impose a tax upon a single individual, or upon a single town, or county, for any purpose whatever, such attempt could not be considered as a due exercise of any discretion which the constitution has left to the legislature on the subject, and that such a tax could not be viewed as a proportional and reasonable tax, within the meaning of the constitution.

"... the taxes, laid upon inhabitants, and residents, and upon estates are not only to be proportional, but **'reasonable.'** The word 'reasonable,' in this clause of the constitution, seems to be used as having the same meaning with the word **just**, and the sense of the clause to be, that *taxes shall be laid, not merely proportionally, but in due proportion, so that each individual's just share, and no more, shall fall upon him.* ... No tax is ever

imposed upon a single county by the General Court ... No tax is ever imposed upon a single town by the legislature. ... The taxes imposed by the legislature for the support of schools do not form an exception. For these are, in their nature, state taxes, and fall in due proportion upon every town in the state.”

**BREWSTER v. HOUGH, 10 N.H. 138 (1839)**

*“The constitution commends the interests of education to the fostering care of the legislature.”*

**FARNUM’S PETITION, 51 N.H. 376 (1871)**

On the role of the Supreme Court: “We are not, however, to inquire into the motives of the legislature, or to judge of the wisdom of their acts. Our plain and simple duty is, to declare and apply the law, remembering that the constitution is the paramount law, and that any statute which is clearly repugnant to the provisions of that instrument is not law, by reason of the superior and controlling authority of the mandate which it contravenes.”

**“The clause in the constitutions of 1783 and 1792, in regard to the encouragement of literature, in connection with the early legislation on the subject (see acts of June 18, 1789, December 13, 1804, December 25, 1805), show conclusively, if any such evidence were needed, that the framers of the constitution, as well as their contemporaries in the legislature, regarded the subject of education as one of public concern, {379} to be cherished, regulated, and controlled by the State; and the great multitude and variety of acts passed since show that no different view has ever been entertained.**

**“First, the constitution enjoins the duty, in very general and comprehensive terms, on magistrates and legislators as one of paramount public importance.** Then the legislature, in the early acts referred to, enjoin it upon towns, parishes, &c., such corporations being the only organized public bodies then in existence **upon which their mandate could be laid,** and which could be entrusted with the performance of the duty. Shortly after, towns were authorized to divide into school districts, and the inhabitants of such districts were invested with certain powers and duties, which made them **quasi** corporations like towns. ...

**“An examination of our statutes on this subject, from the time school districts are first spoken of down to the present time, shows that they are and always have been public corporate bodies, created by the legislature as a means and instrument in carrying out the public duty in reference to public instruction laid upon the legislature by the constitution.”**

**MORRISON v. MANCHESTER 58 N.H. 538 (1879)**

“The supreme legislative power, vested in the senate and house of representatives by the second article of the constitution, includes **the power of taxation, which is the power of causing a constitutional division to be made, among the members of the community, of the public expense, of which each one is,** by the twelfth article of the bill of rights, **bound to contribute his share. Each one is bound to contribute his share of the expense incurred by all in protecting the life, liberty, and property of each, and promoting the common welfare.** What each is bound to contribute being a debt of constitutional origin and obligation, no part of the share of one can be constitutionally exacted of another. And as **any one's payment of less than his share leaves more than their shares to be paid by his neighbors, his non-payment of his full share is a violation of their constitutional right.”**

**“Such non-payment is, in effect, a compulsory payment of money, by those who bear their shares of the common burden, to the privileged person who does not bear his share. It is, in law and in fact, as much a subsidy, paid by the former to the latter, as if it were a subsidy in form and in name. ... This cannot be done by New Hampshire taxation, which is an equal sharing of the public expense, and not a donation of subsidies to a part of a class of property owners out of the property of others.”**

**GOULD v. RAYMOND 59 N.H. 260 (1879)**

“We had no inviolable rights, no rights constitutional in the American sense, before the second day of June, 1784. The constitution that went into operation on that day terminated the era of unlimited power, and introduced an era of liberty and equality secured by a supreme written law, and an organic division of government into three branches, each invested with limited authority. ... The non-constitutional system was intentionally abolished, and the system of reserved rights and limited government was intentionally adopted.

**“The reservations could not be more clearly expressed. If the right of equality is not secured by them, it can never be secured by any written instrument. And equality that can be legally violated is not constitutionally protected.** The legal value of the reservations is in their ability, not to suggest or advocate a theory of human rights,

but to carry a theory into practical effect, and insure the enjoyment of the rights reserved. The want of a bill of rights was one of the defects complained of by some who protested against the organization of the government of 1776. 8 N.H. State Papers 425. In their address to the people, recommending the adoption of the constitution of 1784, the convention say,--"The bill of rights contains the essential principles of the constitution. It is the foundation on which the whole political fabric is reared, and is consequently a most important part thereof." 9 N.H. State Papers 881. And **there is no more legal reason for holding its prohibition of unequal taxation, in the twelfth article, to be ineffective, than for nullifying all its articles, and the whole constitution.** This prohibition is not less operative than it would have been, if, like several amendments in the nature of a bill of rights added to the federal constitution, it had been inserted, after the adoption of the original, in fulfilment of assurances without which the original might have been rejected. Story Const., ss. 301-305. 1858-1953; 2 Curtis Hist. Const. 508-597.

The constitutional obligation of sharing public expense equally would not be satisfied by a declaration of a proportional but unenforceable duty, or by an imposition of a nominal fine for the non-performance of a duty that is not nominal, or by taxation practically and substantially unequal. **The right of the tax-payers of a town to contribute no more than their share of the public expense would not be a constitutional right, if the obligation of other towns to contribute their shares could be evaded by verbal ingenuity.** Constitutional equality would have no meaning, if [a] burden ... could be put upon some towns, and not upon all. ... the principle of local self-government ... does not authorize an unequal division, among New Hampshire tax-payers, of a non-local expense ... [To put upon] some towns ... a burden not put upon others [is] an act of unequal taxation."

**"The power of requiring the tax-payers of every town to pay their share of [a] tax, ... does not include a power of requiring one town to pay their share, and not requiring others to pay theirs .... *The difference between a law that requires them all to perform a common and justly apportioned duty, and a law that submits to each the question whether they will perform their part or not, is the difference between equality and inequality.*** The principle of local self-government allows, between towns, much inequality of taxation for local purposes, but not for purposes not local. ... The obligation of every member of the community to contribute his share of the public expense, is a part of the foundation [of our Constitution] which neither branch of the government is authorized to remove."

### **RAILROAD v. THE STATE, 60 N.H. 87 (1880)**

"The unconstitutionality of unequal taxation is too plainly declared by our constitution, and too well settled by repeated decisions made during the last fifty-three years, to be debatable. A disproportional, unequal assessment, so far as it is disproportional and unequal, is an act, not of taxation, but of confiscation destitute of that element of equal rights which, under our constitution, is an essential part of the definition of law. ***"Equality is the corner-stone of every just and wholesome system of taxation. Every departure from this principle, no matter what the pretext may be, shifts upon one class a share of the burden of taxation that belongs to another."*** Rep. Tax Com'r's (1878), p. 10. ... Mathematical equality of taxation being unattainable, an approximation, reasonably exact, as nearly proportional as possible in consideration of the difficulties of the subject, and sufficient for the practical purposes of substantial justice, is all that is required. ..."

**"Taxation requires a uniform valuation and a uniform rate.** The expenditures of some towns and counties being greater than those of others, taxes must be higher in some than in others. But the rule of uniformity is coextensive with the territory to which a tax applies, and prevents unjust discriminations. **A state tax must be uniform throughout the state,** a county tax throughout the county, a town tax throughout the town."

### **STATE v. EXPRESS CO., 60 N.H. 219 (1880)**

"... the true constitutional idea and basis of all taxation is equality and justice; and that each person and his estate shall bear his proportional and reasonable share of the public burdens. ...."

**"The idea of proportional and reasonable or just and equal taxation is founded on the declaration in the bill of rights, that every member of the community is bound to contribute his share in the expense necessary to the protection of his property.** ... The unconstitutionality of an unequal division of public expense among New Hampshire tax-payers has been settled too long, and by too many decisions, to be a subject of debate or doubt." ,,,

"The bill of rights is a bill of their equal, private rights, reserved by the grantors of public power. The reservation precedes the grant. Before they create the power of proportional taxation in the fifth article, and the supreme legislative power in the second article, and before they form themselves into a state in the first article, they lay the foundation, and therein reserve those personal liberties, which, upon the evidence of history and their own

experience, they think cannot safely be surrendered to government. The definition of taxation, given in the foundation, is taken from books with which the leading statesmen of the Revolution were familiar. "The public revenues," says Montesquieu, "are a portion that each subject gives of his property, in order to secure or enjoy the remainder." Spirit of Laws, b. 13, c. 1. Government is formed by men for the common good, for the preservation of their lives, liberties, and estates, and the enjoyment of them in peace and safety; and "it is fit every one who enjoys his share of the protection should pay out of his estate his proportion for the maintenance of it." Locke on Government, b. 2. c. 9, ss. 123, 124, 131; c. 11, ss. 134, 140. Government, says the bill of rights, is "instituted {Page 251} for the general good," "for the common benefit, protection, and security of the whole community." Arts. 1, 10. "Every member of the community has a right to be protected by it in the enjoyment of his life, liberty, and property. He is therefore bound to contribute his share in the expense of such protection." Art. 12. Upon every member of the community is laid a constitutional obligation to contribute his share of public expense. "He is \* \* bound to contribute his share." The reason is given. He is entitled to the common benefit, protection, and security for which government is instituted; he has a right to be protected in the enjoyment of life, liberty, and property: "he is therefore bound to contribute his share" of the expense. **The right of benefit and protection, and the duty of contribution, are reciprocal.** The former is the consideration for the latter. The latter is the price of the former."

... **Equality, being practically the source and sum of all rights, and the substance of the constitution, is not abolished by the impossibility of maintaining and enjoying it with precision.** Many requirements of the common law, the statutes, and the constitution, are answered by approximations, reasonably free from error, and sufficient for the practical purposes of substantial justice. **The difficulty of dividing public expense into the shares which the members of the community are bound to contribute, does not insert in their contract a power of imposing the share of one man, family, or class of men upon another man, family, or class.**

#### **SOCIETY v. MANCHESTER, 60 N.H. 342 (1880)**

"The right of the legislature to make a partial exemption rests "upon the same basis as its right to make a total exemption. Every exemption is an indirect tax upon other property, and can only be justified where a direct tax upon other property in its behalf would be within the power of the legislature."

"The supreme power [of taxation, lodged in the representative body of the people is] limited only to equality and proportion in assessment. ... No exclusion of any individuals, classes, or property of any kind was made; but it was explicitly set forth, that "every member of the community" "is bound to contribute his share," and that the legislature had "full power and authority" to impose the "proportional and reasonable assessments" upon "all the inhabitants and residents" and "all the estates" within the state."

#### **WOOSTER v. PLYMOUTH, 62 N.H. 193 (1882)**

"... In this state, this limitation of legislative control is imposed by the reservation of private rights requiring equal taxation, and correlation of taxation and protection. Bill of Rights, arts. 1-3, 10, 12; ..."

#### **STATE v. PENNOYER, 65 N.H. 113 (1889)**

"**The law cannot discriminate in favor of one citizen to the detriment of another. The principle of equality pervades the entire constitution.** . The bill of rights declares expressly that all government is "instituted for the general good, for the common benefit, protection, and security of the whole community, and not for the private interests or emolument of any one man, family, or class of men;" that "every member of the community has a right to be protected by it in the enjoyment of his life, liberty, and property . . . is therefore bound to contribute his share in the expense of such protection," and is "entitled to a certain remedy by having recourse to the laws for all injuries he may receive in his person, property, or character." Bill of Rights, arts. 1, 10, 12, 14. All the declarations of right are imbued with the same spirit. With them the body of the constitution is in full conformity. **To secure to all as perfect equality of privilege and of burden as human wisdom permits, was the chief end sought by the framers of the instrument. To this all other purposes were incidental and subordinate.** "The bill of rights is a bill of their equal private rights, reserved by the grantors of public power." State v. Express Co., 60 N.H. 250. "The reservations could not be more clearly expressed. If the right of equality is not secured by them, it can never be secured by any written instrument. . . . The legal value of the reservations is in their ability not to suggest or advocate a theory of human rights, but to carry a theory into practical effect, and insure the enjoyment of the rights reserved." Gould v. Raymond, 59 N.H. 275.

"**All taxation must be equal.** Opinion of the Justices, 4 N.H. 565; Smith v. Burley, 9 N.H. 423, 437; Morrison v. Manchester, 58 N.H. 538, 548, 550; Edes v. Boardman, 58 N.H. 580; Carpenter v. Dalton, 58 N.H. 615; First

National Bank v. Concord, 59 N.H. 75, 77, 78; Berry v. Windham, 59 N.H. 288; Robinson v. Dover, 59 N.H. 521; Railroad v. State, 60 N.H. 87, 94; Mills Co. v. Location, 60 N.H. 156; State v. Express Co., 60 N.H. 219; Society v. Manchester, 60 N.H. 342, 347; Curry v. Spencer, 61 N.H. 624; Telephone Co. v. State, 63 N.H. 167, 169; Railroad v. State, 63 N.H. 571, 573; Boody v. Watson, 64 N.H. 162; Holt v. Antrim, 64 N.H. 284. This is merely an example of the universal equality of right which the constitution secures to all. **No one citizen or class of citizens can by law be charged with the performance of duties or subjected to burdens not by law made incumbent upon all other citizens in the same circumstances. . . .**

“The fourteenth amendment of the constitution of the United States, providing that “no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the laws,” adds nothing to the rights and liberties of the citizens of this state. It merely confirms to them by federal sanction the rights secured by the action of their ancestors a century ago. It has wrought no change in the law of the state. An enactment obnoxious to this provision of the national constitution is in New Hampshire no more ineffective than it would be in its absence.

““Equality of protection,” says Field, J., “implies . . . equal exemption with others in like condition from charges and liabilities of every kind.””

### **STATE v. GRIFFIN, 86 N.H. 609 (1894)**

“In this state legal effect has been given to the general declarations of the bill of rights in which uniformity and equality are laid down as a rule of government . . . Under our institutions all men are viewed as equal, entitled to enjoy equal privileges, and to be governed by equal laws. . . . This is the very genius and spirit of our institutions. . . . Without uniformity there is no equality. Without equality there is no law in the constitutional sense in which the word ‘law’ is used in this state. This sense has been so often declared here and so long and so vigorously maintained, that it cannot be considered an open question, except in a constitutional convention where a proposed revolution in the fundamentals of government can be properly discussed. **A state law selecting a . . . municipal collection of persons for favors and privileges withheld from others is at war with a principle which this court is not authorized to surrender.** . . . There is no limit to the injustice and tyranny that can be practiced if uniformity and equality are not essential parts of law.”

### **STATE v. JACKSON, 71 N.H. 552 (1902)**

“**That education of the citizen is essential to the stability of the state, is a proposition too plain for discussion. As a mere generalization of our own it would command immediate and universal assent.** But it rests upon a firmer foundation. The constitution declares that ‘knowledge and learning, generally diffused through a community,’ are essential to the preservation of a free government. Const., art. 82. Nor does it stop with this abstract statement. It provides that ‘it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools.’ Const., art. 82.”

“Showing that something more than a sentimental interest was intended by the injunction ‘to cherish the interest of literature,’ etc., this court has said: [quotation from Farnum’s Petition, 1871, like that on p. 2 above].”

### **OPINION OF THE JUSTICES, 97 N.H. 546 (1951)**

In considering the constitutionality of a House bill that proposed certain narrowly based sales taxes the Court began by asking the question, **do the proposed taxes “produce a division of tax burden effecting practical equality, so that each citizen would bear his just and proportionate share, and no more?”** as that, in effect, is the essence of the test of whether taxes are constitutional in New Hampshire.

The Court did not come to a definitive opinion on the proposed bill but did warn that narrowly based taxes may “fail to promote ‘equal or honest division of [the] common burden.’ Robinson v. Dover, 59 N.H. 521, 528. The danger of creating, by narrow classification, a tax upon occupations or privileges is apparent. Cf. State v. Express Company, 60 N.H. 219; Opinions of the Justices, 82 N.H. 561, 563, 564; 95 N.H. 555. “Under our constitution, the power to tax is a power not to destroy the right of property by a discriminating process of classification or selection, but to equitably defray the expense of protecting the right of property and other rights.’ State v. Company, 60 N.H. 219, 253.” Williams v. State, 81 N.H. 341, 349.

**“What tax or combination of taxes will rest upon the broadest base with greatest practical equality is one which the Legislature must decide** upon the basis of information not available to us. The danger of discrimination which may result from a selection of numbers of small classes which is plainly apparent in House Bill No. 429 cannot be disregarded.”