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Taxation-Jurisdiction to Tax-Business Situs-Taxatino of State Bank Shares

RECENT CASE NOTES

JURISDICTION TO TAX—BUSINESS SITUS—TAXATION OF STATE BANK SHARES. The chief assets of the appellant, a Delaware corporation, were shares of stock in state banks, trust companies, and other financial institutions located and incorporated outside the state of Minnesota. Appellant kept the certificates at its offices in Minnesota, and from these offices transacted most of its business. HELD, the appellant's property has a business situs in Minnesota, and Minnesota may tax its property in shares of foreign state bank stocks. It is immaterial that the states of Montana and North Dakota have imposed a property tax on the shares of the banks organized and doing business in those states.[1]

Jurisdiction to tax property because of a business situs in the state occurs when intangible wealth of a non-resident becomes identified with the economic structure of the state in the sense that it is in the process of investment and

[1] First Bank Stock Corporation v. Minnesota (U. S. 1937), 57 S. Ct. 677, 81 L. Ed. 644.

reinvestment[2] within the state, producing new wealth in connection with and in competition with other wealth permanently situated there. Such wealth is usually in the form of commercial credits, but may be any intangible personalty. The court which originated the doctrine justified it on the grounds that the state in which a non-resident does business protects the wealth used in that business.[3] When the tendency of the law of taxation turned away from allowing jurisdiction to tax to a state solely because its laws protected the wealth,[4] this concept was supplemented by another to the effect that since the foreign wealth which had a permanent productive situs in the state was in competition with the wealth of residents, it should fairly be subject to the same burden of taxation.[5]

For a business situs of wealth to exist, that wealth must have lost its transitory character and have become a force in local economic activities. The fact that the place of management of a far flung business is in the state is insufficient to give all its intangible assets, such as accounts receivable, a situs in the state.[6] A single credit transaction will not create a business situs,[7] nor will investment in the stock of a domestic corporation.[8] However, that the paper is kept in the state is immaterial,[9] and neither is it necessary that the debtor be a resident of the state.[10]

States have been readily taxing credits at their business situs since the earliest direct decision on the subject by the Supreme Court in 1899[11]—in fact, the tax was not uncommon long before explicit approval was given.[12] Subsequent decisions established and clarified the doctrine until the year 1930. In rapid succession that year there were handed down three memorable decisions which definitely announced the court's solution to the condition of multiple taxa-

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2 "Investment and reinvestment" is the stock phrase by which the courts describe the character of the use of the wealth. Harding, Double Taxation, Sec. 15.

3 Colton v. Hill (1849), 21 Vt. 152, 161: "If persons residing abroad bring their property and invest it in this state, for the purpose of deriving profit from its use and employment here, and avail themselves of the advantages of our laws for the protection of their property, their property should yield its due proportion towards the support of the government which protects it." Redmond v. Rutherford (1882), 87 N. C. 122.

4 The Supreme Court was little influenced by Mr. Justice Holmes's dissents when he contended that the domicile of the debtor should tax credits since the laws of that state protect the debt. Farmers Loan & Trust Company v. Minnesota (1930), 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371; Baldwin v. Missouri (1930), 281 U. S. 586, 50 S. Ct. 436, 74 L. Ed. 1056.

5 2 Cooley, Taxation, 465; cases collected 76 A. L. R. 806.

6 American Barge Line Company v. Jefferson Co. (1932), 246 Ky. 573, 55 S. W. (2d) 416.

7 2 Cooley, Taxation, 466.

8 State v. National Cash Credit Assn. (1932), 22 Ala. 629; 141 S. 541.

9 Bristol v. Washing Co. (1900), 177 U. S. 133, 20 S. Ct. 585, 44 L. Ed. 761; Liverpool P. & G. Co. v. Board (1911), 221 U. S. 346; 31 S. Ct. 550, 55 L Ed. 762.

10 Marshall-Wells Hardware Company v. Multnomah Co. (1911), 58 Ore. 496, 115 P. 150.

11 New Orleans v. Stemple (1899), 175 U. S. 309, 20 S. Ct. 110, 44 L. Ed. 174.

12 Catlin v. Hull, supra, note 3. Walker v. Jack (C. C. A. 6th Circuit, 1898), 88 F. 576. But see 96 F. 578 (C. C. S. D. Ohio 1899), appeal in some case where it was held that the Ohio statute did not subject credits to taxation unless sole control of them was surrendered to the local agent.

tion of intangibles.[13] By use of the maxim *mobilia sequuntur personam* the general rule was establishd that property should be taxed, but taxed only once by the states; and the place of taxation should be the domicile of the creditor or owner of the intangible wealth. Legal scholars became doubtful as to whether the business situs doctrine would survive as an exception to the rule giving the domicile jurisdiction. When during the next few years the court dodged the issue of business situs in several cases,[14] many predicted the abandonment of the doctrine.[15] However, last year the Supreme Court so emphatically approved the business situs doctrine, that its adherence thereto in the principle case likely surprised few.[16]

Whether adherence to the business situs doctrine precludes taxation of property so taxable from being assessed also at the domicile of the owner is not yet clear. The tenor of the decisions aimed at multiple taxation seems to indicate that when property is found to be taxable at one situs, it is immune from taxation at the domicile.[17] It is submitted that the law of situs of tangible personalty is applicable to intangibles. If tangible property has a permanent situs in a jurisdiction, it is taxable there and there alone.[18] If it has no situs elsewhere, it is taxable at the domicile.[19] Realistically, it is absurd to speak of ordinary intangibles as having a physical situs; the location of certificates or evidences of debts is neither legally nor metaphysically the location of the intangible wealth. However, there are two kinds of intangibles which have a use or a value related to a geographical locus: one is good will,[20] and the other is where a business situs exists. In these cases we can say that the wealth is localized and should be taxed at the situs rather than at the domicile; in all other cases the domicile should prevail, as there can be no other situs.

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[13] Farmers Loan & Trust Company v. Minnesota (1930), 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371; Baldwin v. Missouri (1930), 281 U. S. 586, 50 S. Ct. 436, 74 L. Ed. 1056; Safe Deposit and Trust Company v. Virginia (1930), 281 U. S. 97, 50 S. Ct. 59, 74 L. Ed. 180.

[14] Beidler v. South Carolina Tax Comm. (1930), 282 U. S. 1, 51 S. Ct. 54, 75 L. Ed. 131; First National Bank of Boston v. Maine (1932), 284 U. S. 312, 52 S. Ct. 174, 76 L. Ed. 313, 77 A. L. R. 1401: "We do not overlook the possibility that shares of stock as well as other intangibles, may be so used in a state other than that of the owner's domicile as to give them a situs analogous to the actual situs of tangible personal property. . . . That question heretofore has been reserved, and it is still reserved to be disposed of when, if ever it properly shall be presented for our consideration." See Brown, Multiple Taxation by the States (1935), 48 Harvard L. R. 407, 427ff.

[15] Brown, Multiple Taxation by the States loc. sit., supra note 14.

[16] Wheeling Steel Corporation v. Fox (1936), 298 U. S. 193, 56 S. Ct. 733, 80 L. Ed. 1143.

[17] Ibid. p. 209 (298 U. S.): "And having thus determined that in general intangibles may be properly taxed at the domicile of their owner, we have found no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to intangibles."

[18] Union Ref. Transit Co. v. Ky. (1905), 199 U. S. 194, 26 S. Ct. 36, 50 L. Ed. 150; Frick v. Pennsylvania (1925), 268 U. S. 473, 45 S. Ct. 603, 69 L. Ed. 1058.

[19] Tacoma Oriental S. S. Co. v. Tallant (D. C. W. D. Wash, 1931), 51 F. (2d) 359.

[20] Adams Express Co. v. Ohio (1915), 165 U. S. 194, 17 S. Ct. 305, 41 L. Ed. 683.

The appellant contended that the states of Montana and North Dakota lawfully taxed the shares of the banks organized and doing business in those states, and that this precluded a further tax on these shares by Minnesota. The Supreme Court properly held that the legality of the taxes by the state of organization was not an issue before it. The acts of other states cannot deprive Minnesota of its jurisdiction to tax.[21] However, an interesting question is raised in regard to the power of a state to tax stock in the hands of non-residents of both state and national banks located there, and how it might tax them alike. The ability to tax national banks is dependent upon the ability to tax state banks similarly situated, for Congress has decreed that stock of the former shall be taxable only if it is not assessed "at a greater rate than . . . other moneyed capital . . . coming into competition with the business of national banks."[22]

Whether state bank stock held by a non-resident is taxable by the state of organization depends upon whether First National Bank of Boston v. Maine[23] will apply to states that provide in their incorporation laws for the submission of shareholders in domestic corporations to state property taxes. The older cases hold that consent is conditioned upon the privilege to buy stock,[24] but these decisions belong to the vast group of doubtful cases decided before 1930.

If multiple taxation of state bank shares is permitted, it is still doubtful whether national bank stock may be so taxed. Congress has given its consent to the tax, but we do not know whether abolition of an immunity given by the doctrine of the dual form of government will waive a right under the fourteenth amendment in due process as a matter of jurisdiction.[25]

It is hoped that the Supreme Court will in the near future furnish us with the answers to these interesting speculations.

H. A. F.

CONTEMPT—UNAUTHORIZED PRACTICE OF LAW.—The State on the relation of the Indianapolis Bar Association in an original action charged the Fletcher Trust Company with constructive criminal contempt of the Supreme Court. The contempt alleged was the unauthorized practice of law. Relator's theory was that since the Supreme Court had the right to say who shall be admitted to the bar, it had also the right to prevent the unauthorized practice of law by corporations. The trust company filed a verified response which denied that

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21 Kidd v. Alabama (1903), 188 U. S. 730, 25 S. Ct. 401, 47 L. Ed. 669; In re Dorrance's Estate (1934), 115 N. J. Eq. 268, 170 A. 601.

22 R. S. § 5219, 12 U. S. C. A. § 548.

23 (1932), 284 U. S. 312, 52 S. Ct. 174, 76 L. Ed. 313, 77 A. L. R. 1401. Held, that the state of incorporation may not impose an inheritance tax on the transfer of shares from a non-resident decedent. The case did not involve bank stock since the bank was the executor of the estate.

24 Corry v. Baltimore (1905), 196 U. S. 466, 25 S. Ct. 297, 49 L. Ed. 556; Tappan v. Merchants' National Bank (1873), 19 Wall. 490, 22 L. Ed. 189.

25 Tappan v. Merchants' National Bank, supra note 24; Whitman v. Oxford National Bank (1900), 176 U. S. 559, 20 S. Ct. 477, 44 L. Ed. 587; Hancock National Bank v. Farnum (1900), 176 U. S. 640, 20 S. Ct. 506, 44 L. Ed. 619; First National Bank of Louisville v. Commonwealth of Kentucky (1869), 9 Wall. 353, 19 L. Ed. 701.