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Constitutional Law-Chain Store License Tax As Applicable To Gasoline Filling Stations

Constitutional Law—Chain Store License Tax As Applicable To Gasoline Filling Stations. The legislature of West Virginia passed a law whereby all persons and corporations operating or maintaining a store as therein defined were required to obtain an annual license from the state tax commissioner. The license fee was graduated according to the number of stores. The result was to cast upon the complainant and competing chains in the same business a much heavier burden than that borne by others in the same business. The complainant took the position that the taxes were illegal, first, because the gasoline stations were not stores within the meaning of the statute, and, second, because even though they were, the imposition of such a tax was a denial to the complainant of the immunities secured by the equal protection clause of the United States and State Constitutions. The district court decided that the tax constituted a denial to the complainant of the equal protection of the laws and also that gasoline stations were not stores within the meaning of the statute. The decree enjoined the payment of the contested fees into the treasury and ordered restitution. The case was appealed to the Supreme Court of the United States. Held, that gasoline filling stations are stores or mercantile establishments within the meaning of the statute and that statute does not deny to the complainant the equal protection of the laws.[1]

The court decides that a gasoline filling station falls within the genus, "store", or within the summum genus, "mercantile establishment", apparently on the ground that gasoline, automobile accessories and other petroleum

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[9] Embirocos v. Anglo-Austrian Bank (1905), 1 K. B. Div. 677; Weissman v. Banque de Bruxelles (1930), 254 N. Y. 488, 173 N. E. 885.

[10] Lees v. Harding, Whitman & Co. (1905), 68 N. J. Eq. 622, 60 Atl. 352; Sargent v. Usher (1875), 55 N. H. 287. It is to be noted, however, that the American Law Institute Restatement of Conflicts makes no such distinction.

[1] Fox v. Standard Oil Co. of New Jersey (1935), 55 Sup. Ct. 333.

products are goods, wares or merchandise. By a statute of West Virginia,[2] "store shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained and/or controlled by the same person, firm, corporation, copartnership, or association, either domestic or foreign, in which goods, wares or merchandise of any kind, are sold, either at retail or wholesale." The identical definition exists in the Indiana statute[3] and also in the Florida statute,[4] except for one difference in the latter. The Florida statute has an added provision which states, "the term 'store' shall not include filling stations engaged exclusively in the sale of gasoline or other petroleum products". The case of Gunther v. Atlantic Refining Co.[5] holds that a gasoline station is a store (in the absence of a statute). It will be noted that the Florida statute expressly excludes gasoline stations from the operation of the statute. This does not necessarily show that the term store would not ordinarily include gasoline stations, but rather allows an inference to be drawn to the effect that without the express exclusion, gasoline stations would be included in the definition as given. The inference would certainly follow that a gasoline station was a mercantile establishment. In either the legal or the popular meaning of words, it would be a splitting of hairs to omit the designation, filling station, from the conception, mercantile establishment.[6]

We have now to consider the propriety of a classification distinguishing chain stores and individual stores for the purpose of taxation.[7] The court in the present case apparently assumed that such a tax was proper. In a similar case appealed from Indiana,[8] the same court in upholding a similar statute taxing chain grocery stores stated, "The restriction of the equal protection of the laws does not compel an iron clad rule of equal taxation nor prevent variety or differences in the classification of properties, businesses, trades, callings or occupations".

The equality clause of the United States Constitution, as contained in the 14th amendment thereto, has been construed to grant to all persons equality before the law in the sense that any state statute which makes an unreasonable or arbitrary discrimination between different persons, or classes of persons, may be held to be unconstitutional.[9] It is usually stated that such classification must not be capricious or arbitrary but must rest upon some reasonable difference or distinction.[10] This distinction must be substantial and rational,

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2 Acts of West Virginia (1933), C. 36, Sec. 8.

3 Indiana Acts (1929), c. 207, Sec. 8.

4 Laws of Florida (1931 Ex. Sess.), C. 15624, Sec. 8; General Acts of Alabama (1931), Act 369, Sec. 8.

5 Gunther v. Atlantic Refining Co. (1923), 277 Pa. 289, 121 Atl. 53; People ex rel Hodkinson Corp. v. Cantor (1922), 196 N. Y. S. 855, 119 Misc. Rep. 664.

6 Hugh E. Willis, Chain Store Taxation (1931), 7 Ind. L. J. 179.

7 State Bd. of Tax Commissioners v. Jackson (1931), 283 U. S. 527, 51 Sup. Ct. 540; Liggett Co. v. Lee (1933), 288 U. S. 517, 53 Sup. Ct. 481; Liggett Co. v. Baldridge (1928), 278 U. S. 105, 49 Sup. Ct. 57; Great A. and P. Tea Co. v. Maxwell (1930), 199 N. C. 433, 154 S. E. 838; Great A. and P. Tea Co. v. Doughton (1928), 196 N. C. 145, 144 S. E. 701; Great A. & P. Tea Co. v. Morrisett (1931), 284 U. S. 584, 52 Sup. Ct. 39.

8 State Bd. of Tax. Commissioners v. Jackson (1931), 283 U. S. 527, 51 Sup. Ct. 540; See also Louisville Gas and Electric Co. v. Coleman (1927), 275 U. S. 87, 96; Citizens Telephone Co. v. Fuller (1913), 229 U. S. 322.

9 Cincinnati Ry. Co. v. McCullom (1915), 183 Ind. 556, 109 N. E. 206; Kelso v. Cook (1916), 184 Ind. 173, 110 N. E. 980; Union Sewer-Pipe Co. v. Connelly (1902), 184 U. S. 540.

10 Concordia Fire Insurance Co. v. People of Ill. (1934), 292 U. S. 535, 54 Sup. Ct. 830; Borden's Farm Products v. Baldwin (1934), 55 Sup. Ct. 187; State v. Standard Oil Co. (1908), 218 Mo. 1, 116 S. W. 902; State Bd. of Tax Commissioners v. Jackson (1931), 283 U. S. 527, 51 Sup. Ct. 540; Great A. and P. Tea Co. v. Doughton (1928), 196 N. C. 145, 144 S. E. 701; Quaker City Cab. Co. v. Pennsylvania (1928),

not illusory and should have at least some relation to the purpose of the statute. The principle of equal protection of the laws does not mean that equal taxation is required but means that unequal taxation must be in accordance with a proper classification. The court relies in the instant case upon two similar recent cases in deciding as to the propriety of the classification.[11] In the Indiana case are enumerated the chief benefits of the chain store system, as follows: 1. Quality and quantity buying. 2. Cash buying. 3. Avoidance of oversupply. 4. Cheaper and better advertising. 5. Superior management and method. It is difficult to see how any or all of these benefits form any realistic distinction between chain and independent stores, especially in view of the recent policy of independent merchants to form associations by which they are able to secure every one of these supposed points of difference. The conclusion must be reached that these points do not constitute substantial differences.[12] A rule that allows states to make any classifications they choose, however slight, and still comply with the requirement of equal protection of the laws is not satisfactory when it allows a distinction to be drawn between persons in identical occupations.

It is also to be noted that where the chain store question has not been involved, that similar classifications have not been upheld.[14] These recent decisions favoring chain store taxation have led and will undoubtedly lead to an increase in such statutes,[15] thereby greatly increasing the burden on such stores. Such statutes indicate a plain intention on the part of legislatures to discriminate against owners of more than one store. Whether or not such discrimination is for a worthy purpose seems to be immaterial,[16] as the court here states, "We deal with power only". However, we must deal with the fact that the usual standards of classification have been broken down and that apparently any difference is sufficient to comply with the requirement calling for the equal protection of the laws. It is a quite evident fact that such a tax will allow oppression, foster discrimination in protection of a questionable social interest in the abolition of chain stores, and permit confiscation to the point of destruction. These statutes base their fees solely on the number of units and have no regard for the amount of income, amount invested, character of business, size of units, kind of units, value of units, or the social interest in better values, lower prices, and more efficient service. If the chains are oppressive or are monopolistic, the proper procedure for checking them is not in the guise of a license tax but by the Clayton or Sherman acts.

As to the tax in this case being due process of law, the court upheld it saying, "What has been said in respect of the contention that the tax has the effect of an arbitrary discrimination is a sufficient answer to the contention that property has been taken without due process of law". Without going

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277 U. S. 389, 48 Sup. Ct. 553; Royster Guano Co. v. Virginia (1920), 253 U. S. 412, 40 Sup. Ct. 560; Tanner v. Little (1916), 240 U. S. 369, 36 Sup. Ct. 379.

[11] State Bd. of Tax Commissioners v. Jackson (1931), 283 U. S. 527, 51 Sup. Ct. 540.

[12] Hughes, The taxation of Chain Stores (1932), 10 Chicago-Kent Rev. 107.

[13] Becker and Hess, The Chain Store License Tax and the 14th amendment (1929), 7 N. C. L. Rev. 115; State Bd. of Tax Commissioners v. Jackson (1931), 283 U. S. 527, 51 Sup. Ct. 540; Quong Wing v. Kirkendall (1912), 223 U. S. 59, 32 Sup. Ct. 192; Cargill Co. v. Minnesota ex rel Ry. and Warehouse Commission (1901), 180 U. S. 452, 21 Sup. Ct. 423.

[14] Quaker City Cab. Co. v. Pennsylvania (1928), 277 U. S. 389, 48 Sup. Ct. 553.

[15] Keystone Grocery and Tea Co. v. Huster (1927), Md. Alleghany County Circuit Ct. Equity Case No. 10922 (unreported), Acts of West Virginia (1933), C. 36; Indiana Acts (1929), C. 207; Laws of Florida (1931 Ex. Sess.), c. 15624; Laws of Md. (1927), C. 554; 17 Va. L. R. 113; 19 Va. L. Rev. 722.

[16] Alaska Fish Co. v. Smith (1921), 255 U. S. 44, 41 Sup. Ct. 219; Magnano Co. v. Hamilton (1934), 292 U. S. 40, 54 Sup. Ct. 599.

deeply into this point it is appropriate to note that if this is an exercise of the taxing power it must be for a public purpose, and if it is an exercise of the police power, it must be in support of a sufficient social interest. It is not expressly stated to be for a public purpose and as has already been stated, it does not appear that the people have any greater social interest in the preservation of the independent merchant than they have in the preservation of chain stores which are of undisputable aid to those in the proletariat class and also to any of those who trade with them.

J. O. M.