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Constitutional Law - Tax on Interstate Commerce

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CASE NOTES

CONSTITUTIONAL LAW—TAX ON INTERSTATE COMMERCE

The petitioner, Norton Company, a Massachusetts corporation, manufactured abrasive machines and maintained general offices in Worcester, Massachusetts. The company operated a branch office and warehouse in Chicago which sold locally inventoried items directly to the purchaser. For items not in local stock, sales to purchasers with no established credit, and special order goods, the branch office forwarded the orders to Massachusetts. Illinois purchasers sometimes completely bypassed the local branch by ordering directly from the home office. Under the Illinois Retailers' Occupation Tax,[1] which specifically exempts business in interstate commerce, the Department of Revenue collected a tax on the gross income of the Norton Company's Illinois business which was upheld by the Illinois Supreme Court.[2] On appeal the United States Supreme Court in a five to four decision reversed and remanded, holding that a state tax on all sales involving the utilization of a branch office either in receiving orders or distributing goods was valid and not a burden on interstate commerce, but that a state could not validly tax proceeds from orders sent directly to the corporation's home office in a sister state and shipped from there to the customer. *Norton Company v. Department of Revenue of the State of Illinois*, 340 U.S. 534 (1951).

The taxing power is inherent in sovereign states; however, the states have apportioned their taxing power between the Federal Government and themselves. The states have delegated to the United States the exclusive power to tax the privilege of engaging in interstate commerce[3] and it is essential that no state be permitted to exercise this function.[4] Courts are called upon to reconcile competing constitutional demands that commerce between the states shall not be unduly impeded by state action and that the power to levy taxes for the support of state government shall not be unduly curtailed.[5] The Supreme Court has gone far in sustaining state

[1] Ill. Rev. Stat. (1949) c. 120, § 441.

[2] Norton Company v. Department of Revenue, 405 Ill. 314, 90 N.E. 2d 737 (1950).

[3] U.S. Const. Art. 1, § 8, cl. 3.

[4] Spector Motor Service, Inc. v. O'Connor, 340 U.S. 602 (1951), restored to docket for reargument, 340 U.S. 910 (1951).

[5] McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33 (1940); Ford Motor Co. v. Beauchamp, 308 U.S. 331 (1939); South Carolina Highway Department v. Barnwell Bros., 303 U.S. 177 (1938); Galveston, Harrisburg & San Antonio Ry. Co. v. Texas, 210 U.S. 217 (1908); Brown v. Houston, 114 U.S. 622 (1885); Woodruff v. Parham, 8 Wall. (U.S.) 123 (1868); cf. Board of County Comm'rs of Jackson Coun-

power to tax property and transactions,[6] and the restrictive effect of the commerce clause[7] does not forestall all state action affecting interstate commerce.[8]

Forms of state taxation the tendency of which is to prohibit interstate commerce, place it at a disadvantage with intrastate activity, or discriminate against it are examples of unconstitutional exercises of state taxing power.[9] Where, however, equality is the theme of the tax, there is no discrimination against commerce between the states.[10] States may levy a tax on a foreign corporation for the privilege of engaging in a local business,[11] on the use of property,[12] and on goods at the conclusion of their interstate journey where the goods have come to rest.[13] States may not impose a direct tax on interstate commerce or for the privilege of engaging in it.[14] License taxes levied on the capital stock of a corporation engaged in interstate commerce have been rejected[15] but have been sustained when fairly

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ty, Kansas v. United States, 308 U.S. 343 (1939); Metcalf and Eddy v. Mitchell, 269 U.S. 514 (1926).

[6] 13 Geo. Wash. L. Rev. 117–20 (1944), noting McLeod v. J. E. Dilworth Company, 322 U.S. 327 (1944).

[7] U.S. Const. Art. 1, § 8, cl. 3.

[8] McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33 (1940); South Carolina Highway Department v. Barnwell Bros., 303 U.S. 177 (1938).

[9] McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33 (1940).

[10] Nelson v. Sears, Roebuck & Co., 312 U.S. 359 (1941).

[11] Nelson v. Sears, Roebuck & Co., 312 U.S. 359 (1941); Ford Motor Co. v. Beauchamp, 308 U.S. 331 (1939); Atlantic Refining Co. v. Virginia, 302 U.S. 22 (1937); Henneford v. Silas Mason Co., 300 U.S. 577 (1937); Wiloil Corp. v. Pennsylvania, 294 U.S. 169 (1935); Federal Compress and Warehouse v. McLean, 291 U.S. 17 (1934); Bankers Brothers v. Pennsylvania, 222 U.S. 210 (1911); Telegraph Co. v. Texas, 105 U.S. 460 (1881).

[12] Felt & Tarrant Mfg. Co. v. Gallagher, 306 U.S. 62 (1939); Southern Pacific Co. v. Gallagher, 306 U.S. 167 (1939); Henneford v. Silas Mason Co., 300 U.S. 577 (1937); Monamotor Oil Co. v. Johnson, 292 U.S. 86 (1934).

[13] Minnesota v. Blasius, 290 U.S. 1 (1933); Bacon v. Illinois, 227 U.S. 504 (1913); General Oil Co. v. Crain, 209 U.S. 211 (1908); American Express Co. v. Iowa, 196 U.S. 133 (1905); American Steel & Wire Co. v. Speed, 192 U.S. 500 (1904); Emert v. Missouri, 156 U.S. 296 (1895); Pittsburgh & Southern Coal Co. v. Bates, 156 U.S. 577 (1895); Coe v. Errol, 116 U.S. 517 (1886); Brown v. Houston, 114 U.S. 622 (1885).

[14] U.S. Const. Art. 1, § 8, cl. 3; Spector Motor Service, Inc. v. O'Connor, 340 U.S. 602 (1951); Dixie Ohio Exp. Co. v. State Revenue Commission of Georgia, 306 U.S. 72 (1939); Southern Pacific Co. v. Gallagher, 306 U.S. 167 (1939); Pacific Telephone & Telegraph Co. v. Tax Commission of Washington, 297 U.S. 403 (1936); Baldwin v. Seelig, 294 U.S. 511 (1935); Interstate Transit, Inc. v. Lindsey, 283 U.S. 183 (1931); New Jersey Bell Telephone Co. v. State Board, 280 U.S. 338 (1930); Leloup v. Port of Mobile, 127 U.S. 640 (1888).

[15] International Paper Co. v. Massachusetts, 246 U.S. 135 (1918); Looney v. Crane, 245 U.S. 178 (1917); Atchison, Topeka & Santa Fe Ry. Co. v. O'Connor, 223 U.S. 280 (1912); Western Union Telegraph Co. v. Kansas, 216 U.S. 1 (1910).

apportioned to that part of the capital attributable to intrastate activity.[16] A privilege tax on the gross receipts from interstate commerce[17] and a tax on articles in the course of their interstate movement are both unconstitutional.[18] Even a state tax on the privilege of engaging in a local business is void if it imposes a direct burden on interstate commerce.[19] Although the state tax on the net income of an interstate corporation is not a burden on intercourse between the states,[20] a state tax on the gross receipts of an interstate corporation is void.[21] A state tax on gross income is valid, however, where the manufacturing is in fact intrastate.[22]

In the instant case, the Supreme Court was unanimous in holding that the state could validly tax the income from the local over-the-counter sales of the branch office. The majority opinion of the Court held that the orders forwarded to Massachusetts by the local office were not interstate commerce and, consequently, that the proceeds from such business activity could properly be the subject of the Illinois tax. In his dissent, Mr. Justice Reed, seeing no constitutional difference between salesmen in a branch office and salesmen on the road, felt that the rule of *McLeod v. J. E. Dilworth Company*[23] should be applied. In that case, a tax on the transactions of a corporation which were solicited by drummers in another state was held to be a burden on interstate commerce. The doctrine has been generally well established that a state statute or municipal ordinance requiring a license or imposing a tax for the solicitation of orders for goods located outside of the state constitutes an unlawful interference with interstate commerce.[24]

[16] Ford Motor Co. v. Beauchamp, 308 U.S. 331 (1939).

[17] Galveston, Harrisburg & San Antonio Ry. Co. v. Texas, 210 U.S. 217 (1908); Leloup v. Port of Mobile, 127 U.S. 640 (1888); Fargo v. Michigan, 121 U.S. 230 (1887); cf. Gwin, White & Prince v. Henneford, 305 U.S. 434 (1939).

[18] Carson Petroleum Co. v. Vial, 279 U.S. 95 (1929); Hughes Bros. v. Minnesota, 272 U.S. 469 (1926); Champlain Realty Co. v. Brattelboro, 260 U.S. 366 (1922); Case of the State Freight Tax, 15 Wall. (U.S.) 232 (1872).

[19] Fisher's Blend Station v. State Tax Commission, 297 U.S. 650 (1936); Alpha Portland Cement Co. v. Massachusetts, 268 U.S. 203 (1925); Leloup v. Port of Mobile, 127 U.S. 640 (1888).

[20] United States Glue Co. v. Town of Oak Creek, 247 U.S. 321 (1918).

[21] Gwin, White & Prince v. Henneford, 305 U.S. 434 (1939). See J. D. Adams Mfg. Co. v. Storen, 304 U.S. 307 (1938).

[22] Department of Treasury of Indiana v. Ingram-Richardson Mfg. Co., 313 U.S. 252 (1941); Fisher's Blend Station v. State Tax Commission, 297 U.S. 650 (1936). See J. D. Adams Mfg. Co. v. Storen, 304 U.S. 307 (1938); Philadelphia & Southern Steamship Co. v. Pennsylvania, 122 U.S. 326 (1887).

[23] 322 U.S. 327 (1944).

[24] Robbins v. Shelby County Taxing District, 120 U.S. 489 (1887); Nippert v. City of Richmond, 327 U.S. 416 (1946); McLeod v. J. E. Dilworth Co., 322 U.S. 327 (1944); Stewart v. Michigan, 232 U.S. 665 (1914); Rogers v. Arkansas, 227 U.S. 401 (1913); Crenshaw v. Arkansas, 227 U.S. 389 (1913); Caldwell v. North Carolina, 187 U.S. 622 (1903); Brennan v. Titusville, 153 U.S. 289 (1894); Stoutenburgh v. Hennick, 129 U.S.

In the case under discussion the Court distinguished for the first time between solicitation by drummers and solicitation by a branch office. The decision acknowledges the tax immunity where drummers are employed but points out that the advantages gained by employing a local branch office make transactions consummated by the use of such a branch office local in nature. The Supreme Court decision was based on logic and common sense for it cited no supporting cases. By maintaining a branch office, the Massachusetts corporation intended to keep close to the Illinois trade. The trade might think the seller too remote to transact business if solicitors were the sole means of contact between the vendor and the vendees. The local office also affords service to machines after they are in the consumers' hands and stands ready to offer engineering and technical advice. After the foreign corporation has gained the confidence of its customers through its local operations and has received the protection of the state, there is no reason why it should not bear the burden of a local business.

Norton Company v. Department of Revenue of the State of Illinois stands as a new development in the application of the *Dilworth* case inasmuch as it upholds a tax on solicitation through a branch office. The case also exemplifies three views as to what constitutes interstate commerce. The majority opinion holds the middle ground. The conservative view is expressed in Reed's dissent that only proceeds from direct sales should be taxed and the liberal view in Justice Clark's dissent which extended the reasoning of the majority of the Court to apply to all types of transactions carried on by the Norton Company. It would seem that despite mechanical or artificial distinctions sometimes made to arrive at decisions as to the validity or invalidity of particular taxes, the decisions are predicated on practical judgment as to the likelihood of the tax being used to place interstate commerce at a competitive disadvantage.

DOMESTIC RELATIONS–DENIAL OF EQUITABLE ENFORCEMENT OF FOREIGN ALIMONY DECREE

Plaintiff recovered a New York decree for divorce and alimony payable in installments, and sought to enforce it in Illinois. While the plaintiff was allowed to set up the past due installments as a foreign judgment and recover same as a debt, it was held that equitable relief, by way of civil contempt for failure to pay future alimony installments, was properly denied. *Tailby v. Tailby*, 342 Ill. App. 664, 97 N.E. 2d 611 (3d Dist., 1951)

The *Tailby* decision is the third case to be decided in Illinois as to whether equity will enforce a foreign alimony decree. The first was *Rule*

141 (1889); Asher v. Texas, 128 U.S. 129 (1888); Carson v. Maryland, 120 U.S. 502 (1887). Contra: Re Rudolph, 2 Fed. 65 (C.C. Nev., 1880); Dunston v. City of Norfolk, 177 Va. 689, 15 S.E. 2d 86 (1941); Collier v. Burgin, 130 N.C. 632, 41 S.E. 874 (1902).