Michigan Law Review

Volume 38 | Issue 3

1940

TAXATION - CONSTITUTIONAL OBJECTIONS TO RELEASE OF DELINQUENT TAXES AND ACCRUED PENALTIES THEREON

Michigan Law Review

TAXATION — CONSTITUTIONAL OBJECTIONS TO RELEASE OF DELINQUENT TAXES AND ACCRUED PENALTIES THEREON — In 1933, the Ohio legislature passed an act exempting from taxation certain property of interurban railway companies for a period of three years from January 1, 1932, and a subsequent act in 1935 extended the exemption for two more years.[1] Relator, a taxpayer, sought by mandamus to compel the state tax commission to collect the taxes for all the years in question. *Held*, the act was unconstitutional as applied to the 1932 taxes already assessed because it violated a provision of the state constitution forbidding retroactive laws.[2] *State ex rel. Struble v. Davis*, 132 Ohio St. 555, 9 N. E. (2d) 684 (1937), 135 Ohio St. 393, 22 N. E. (2d) 81 (1939).

The great increase of tax delinquency during the depression has led to numerous legislative attempts to speed tax collection by discharging the burden of accrued penalties, interest and costs on delinquent taxes and, in some cases, by releasing the delinquent taxes themselves.[3] Several constitutional objections to such legislation have been raised. Constitutional provisions forbidding retroactive laws do not bar the discharge of accrued penalties.[4] Where this type of

[1] 115 Ohio Laws 546 (1933); 116 Ohio Laws 26 (1935).

[2] Ohio Const. (1851), art. 2, § 28. Similar provisions are in the constitutions of Colorado, Georgia, Missouri, New Hampshire, Tennessee and Texas.

[3] On the problem in general, see Simpson, "Tax Delinquency: Economic Aspects," and Baker, "Tax Delinquency: Legal Aspects," 28 ILL. L. REV. 147, 159 (1933); Symposium on collection of real property taxes, 3 LAW & CONTEM. PROB. 335-461 (1936); FORD, REALTY TAX DELINQUENCY IN MICHIGAN (1937) (Univ. Mich. Bureau of Govt. Bul. No. 8, N. S.). For a collection of typical legislation, see Smith, "Recent Legislative Indulgences to Delinquent Taxpayers," 3 LAW & CONTEM. PROB. 371 (1936).

[4] In State ex rel. Outcault v. Guckenberger, 134 Ohio St. 457, 17 N. E. (2d) 743 (1938), the court allowed a discharge of accrued penalties and distinguished a prior decision, State ex rel. Crotty v. Zangerle, 133 Ohio St. 532, 14 N. E. (2d) 932

provision alone is involved, it is difficult to see why delinquent taxes also cannot be released.[5] Constitutional provisions forbidding laws which release obligations due the state or its subdivisions [6] have been held to invalidate laws releasing delinquent taxes,[7] but courts hold that penalties are not "obligations" within the meaning of these provisions.[8] Constitutional prohibitions against refund of penalties and fines by local and special laws do not prevent their discharge by general laws.[9] Even where a constitution expressly forbids release or commutation of taxes, accrued penalties may be discharged.[10] Arguments based on impairment of contract or of vested rights have little force as objections to either discharge of penalties or release of delinquent taxes.[11] Constitutional requirements of equal protection of law and of uniformity in valuation for taxation do not prevent the discharge of accrued penalties.[12] However, these provisions are

(1938), which held unconstitutional a law refunding penalties already paid on the ground that it was retroactive. The distinction does not seem clear, since the laws involved were parts of the same general plan. See dissenting opinion of Gorman, J., in the Zangerle case and comment in 4 OHIO ST. L. J. 191 (1938).

[5] In Demoville v. Davidson County, 87 Tenn. 214, 10 S. W. 353 (1889), and Bank of Commerce & Trust Co. v. McLemore, 162 Tenn. 137, 35 S. W. (2d) 31 (1931), the court held that a similar provision, Tenn. Const. (1870), art. 1, § 20, did not prevent the state from releasing taxes by retroactive laws. Retroactive conferring of benefits may be distinguished from retroactive imposition of burdens. See Smith, "Retroactive Laws and Vested Rights," 5 TEX. L. REV. 231 (1927).

[6] Such provisions are found in constitutions of Colorado, Illinois, Kentucky, Louisiana, Missouri, Montana, Nebraska, New Mexico, Texas and Wyoming.

[7] Louisville v. Louisville Ry., 111 Ky. 1, 63 S. W. 14 (1901) (attempt by city to compromise a tax claim); Graham Paper Co. v. Gehner, 332 Mo. 155, 59 S. W. (2d) 49 (1933) (income tax not yet due is an obligation within this provision). The court in Asplund v. Alarid, 29 N. M. 129, 219 P. 786 (1923), held a subsequent amendment giving the legislature power to make certain tax exemptions constituted an exception to the existing constitutional prohibition on releasing obligations due the state.

[8] State ex rel. Crutcher v. Koeln, 332 Mo. 1229, 61 S. W. (2d) 750 (1933); Jones v. Williams, 121 Tex. 94, 45 S. W. (2d) 130 (1931) (penalties not prosecuted to judgment may be discharged); State ex rel. Sparling v. Hitsman, 99 Mont. 521, 44 P. (2d) 747 (1935) (two prior cases overruled and excellent consideration of authorities presented).

[9] See cases in note 8, supra. In People ex rel. Clarke v. Jarecki, 363 Ill. 180, 1 N. E. (2d) 855 (1936), a law discharging penalties in Cook County alone was held invalid on this ground.

[10] Steinacher v. Swanson, 131 Neb. 439, 268 N. W. 317 (1936); Neb. Const. (1875), art. 8, § 4.

[11] In State ex rel. McKittrick v. Bair, 333 Mo. 1, 63 S. W. (2d) 64 (1933), the court held that a county tax collector and his attorneys had no vested contract right to compensation from penalties for collection of delinquent taxes. Henry v. McKay, 164 Wash. 526, 3 P. (2d) 145 (1931), held that the state could release any vested rights it had in existing penalty rates.

[12] Penalties are held not part of the tax burden, hence not subject to the uniformity rule. State ex rel. Pierce v. Coos County, 115 Ore. 300, 237 P. 678 (1925); State ex rel. Outcault v. Guckenberger, 134 Ohio St. 457, 17 N. E. (2d) 743 (1938). The Illinois court in People ex rel. Clarke v. Jarecki, 363 Ill. 180, 1 N. E. (2d) 855

usually a serious obstacle to laws releasing or compromising delinquent taxes.[13] The general distinctions between releasing delinquent taxes and discharging accrued penalties seem valid.[14] The result in the principal case is in line with general authority, but the decision could have rested on stronger constitutional limitations than the prohibition against retroactive laws.

(1936), held that the release of accrued interest violated the constitutional provision for uniform taxation on valuation, as the interest varied with the valuation.

[13] Classification on the basis of speed of payment alone has been held arbitrary and a denial of the equal protection of law to persons paying their taxes on time. State ex rel. Matteson v. Luecke, 194 Minn. 246, 260 N. W. 206 (1935); Ranger Realty Co. v. Miller, 102 Fla. 378, 136 So. 546 (1931); Ritchie v. Wells, 123 Fla. 284, 166 So. 817 (1936). Both courts stated that classification on the basis of ability of the property owner to pay and the proportional value that the property bore to the delinquent taxes would be constitutional. It is submitted that, while this reasoning is a departure from the general theory of the property tax, it may be justified on grounds of social and economic necessity.

[14] Penalties are designed to enforce and encourage prompt payment of taxes, not to be steady sources of revenue. The legislature should be able to change the inducements to payment when it finds that existing systems do not produce results.