THE POWERS OF A COURT OF EQUITY IN STATE TAX LITIGATION

Maurice S. Culp

Lamar School of Law, Emory University

Follow this and additional works at: https://repository.law.umich.edu/mlr

Part of the Common Law Commons, Jurisdiction Commons, Litigation Commons, and the Taxation-State and Local Commons

Recommended Citation
Available at: https://repository.law.umich.edu/mlr/vol38/iss5/3

This Article is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.
THE POWERS OF A COURT OF EQUITY IN STATE TAX LITIGATION*

Maurice S. Culp †

A recent act of Congress, in amending the judicial code, radically altered the jurisdiction of the federal district courts, as follows: ¹

"no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State."¹

Hitherto a state taxpayer, otherwise meeting the jurisdictional requirements of a federal district court, could secure an injunction from such a court upon a showing that there was no adequate remedy at law in the federal district court, and this regardless of the legal or equitable remedies afforded by the state courts.²

In view of this recent legislation, it becomes important to ascertain the new limitation upon the equity powers of the federal district courts in state tax litigation. Likewise, because of these new rigid limitations

---

2 1 Stat. L. 82 (1789), 28 U. S. C. (1934), § 384, reads as follows: "Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate and complete remedy may be had at law." In the case of Di Giovanni v. Camden Fire Ins. Assn., 296 U. S. 64 at 69, 56 S. Ct. 1 (1935), the Court said that "the inadequacy prerequisite to relief in a federal court of equity is measured by the character of remedy afforded in the federal rather than in state courts of law." Also in City Bank Farmers' Trust Co. v. Schnader, 291 U. S. 24, 54 S. Ct. 259 (1934), the Supreme Court held that the taxpayer could resort to a court of equity where the statutory remedy afforded in Pennsylvania was not cognizable in the federal district court.

The circuit court of appeals in Skagit County v. Northern Pacific Ry., (C. C. A. 9th, 1932) 61 F. (2d) 638, stated the rule that the federal equity power is not affected by state statutes regulating state equity practice. In this case the Washington state statute restricted the use of the injunction in state courts to the situation where the law was void or property was exempt.

Also see, on federal equity power to enjoin enforcement of state taxes, notes in 33 Mich. L. Rev. 118 (1934); 24 Va. L. Rev. 176 (1937).
upon the jurisdiction of the federal courts, the attitude of the state courts of equity toward intervention in tax litigation becomes more important than ever. Both these matters will be dealt with in this article.

**Federal Equity Powers**

At the outset it is important to point out that the establishment of the illegality or unconstitutionality of a state tax does not in itself assure the litigant of a remedy in a federal court. Under the practice which existed before the amendment quoted above, a taxpayer could confidently expect some relief from a federal district court upon a showing that a tax was unconstitutional and that the remedies authorized under the state law did not suffice to furnish an adequate remedy at law in that court. Thus if the taxpayer charged that the state tax was in violation of the Federal Constitution or statutes, he was able to proceed in district court upon a showing of a substantial federal question and a jurisdictional amount in excess of $3,000. Or, if the objection was based solely on state law, such as an exemption provision of the state constitution or a rule based upon stare decisis, it was necessary for the taxpayer to establish diversity of citizenship and the jurisdictional amount in excess of $3,000 in order to invoke the aid of a federal district court of equity. The recent amendment to the judicial code adds a further condition which must be observed in either situation.

If the courts of the state wherein the assessment or tax is under scrutiny are able to afford a *plain, speedy and efficient* remedy in either law or equity, the taxpayer cannot in the light of the literal wording of the amendment expect the intervention of a federal district court, armed with equity powers. In every case now, it would seem, the taxpayer must show that there is no adequate remedy at law or in equity in the state courts. A majority of the lower federal courts have applied the statute literally.

---


At the present time, therefore, any discussion of the use of federal equity powers in state tax litigation must proceed upon the assumption that there is no adequate remedy, either legal or equitable, in the state courts.

Under this assumption, some consideration of the federal precedents relative to equitable intervention is valuable as a basis for prediction. Indeed, in one decision since the amendment a district court appears to have denied a motion to dismiss a petition for an injunction because it seemed impossible to predict the decision of the state courts. The chief justification for intervention has been the absence of any construction of the state statutes in local courts. Such a position, however, does not seem sound wherever the statutory phraseology is plain and unambiguous. The decision of the Circuit Court of Appeals for the Eighth Circuit in Atchison, T. & S. F. Ry. v. Sullivan also seems of doubtful validity. In that case the court authorized an injunction against an assessment because the state legal remedy was not as complete or as certain as the federal court could afford.

Since the new amendment attempts no definition of an adequate
remedy at law, the old tests will naturally be applied in determining whether "a plain, speedy and efficient remedy" exists in the state law courts. Federal courts have in the past held that specific uncertainties about the legal remedy were cause for equitable intervention. A brief enumeration of examples will illustrate this trend. Such causes include insolvency of taxing officials, uncertainty regarding the appropriate forum under the state law, uncertainty whether a suit might be maintained against the governmental officer or unit to which the tax was paid, severe limitations upon the legal remedy amounting to its impairment, and inadequacy or uncertainty of the administrative remedy where this was the recognized remedy under the state law.

Under the former practice there was an adequate remedy at law if a common-law or statutory right of action to recover taxes illegally collected existed. The adequacy of the remedy was not affected by a condition that the payment must have been made under protest. Nor did it matter that the only legal remedy open to the taxpayer was the opportunity to offer a defense to an action brought by the state in

---

18 See Interstate Natural Gas Co., Inc. v. Gully, (D. C. Miss. 1934) 8 F. Supp. 174. The allegations of the bill charged the collector with insolvency. They also stated that even if the taxpayer paid the tax and sued to recover, it was very uncertain under the laws of Mississippi whether there was any proper forum in which the action could be maintained.


16 West India Oil Co. v. Gallardo, (C. C. A. 1st, 1925) 6 F. (2d) 523. The taxpayer had to attach to his complaint, as a prerequisite to the filing of a suit to recover taxes, a certificate setting forth the fact that he had paid all his taxes of whatever nature, valid or invalid, prior to the time of suit. See Porto Rico Mercantile Co. v. Gallardo, (C. C. A. 1st, 1925) 6 F. (2d) 526.

15 Munn v. Des Moines Nat. Bank, (C. C. A. 8th, 1927) 18 F. (2d) 269. It should be noted that the requirement that the taxpayer exhaust state administrative remedies as a condition precedent to federal equity relief is not in harmony with the general proposition that the adequacy of the law remedy in the federal court is the only bar to equitable relief in the federal court.

17 Singer Sewing Machine Co. v. Benedict, 229 U. S. 481, 33 S. Ct. 942 (1913); Indiana Mfg. Co. v. Koehne, 188 U. S. 681, 23 S. Ct. 452 (1903). In the last case the Indiana procedure was complicated. First, the taxpayer had to review his assessment through an administrative hierarchy. Then if he was not satisfied with the administrative decision, he had the option of paying the tax and filing a petition for its repayment. See Security Title Ins. & Guarantee Co. v. Hopkins, (C. C. A. 9th 1937) 88 F. (2d) 303; Pacific Express Co. v. Seibert, (C. C. Mo. 1890) 44 F. 310; Baldwin Tool Works v. Blue, (D. C. W. Va. 1916) 240 F. 202.

assumpsit, debt or otherwise for the recovery of delinquent taxes.\(^\text{19}\)
In such cases the sale of the property for taxes was the primary source of collection, and frequently the time for offering the defense occurred when the state asked for authority to sell the property.\(^\text{20}\) Summing up the situation, if the taxpayer could in any manner offer a full defense,\(^\text{21}\) he had an adequate remedy at law and could not secure the aid of a federal equity court.

As heretofore mentioned, under the former practice "the inadequacy prerequisite to relief in a federal court of equity is measured by the character of remedy afforded in the federal rather than in state courts of law."\(^\text{22}\) Whether a remedy existed in a state court of equity was immaterial. Under the literal wording of the recent amendment the situation is changed. Whereas the words "at law" in the original statute\(^\text{23}\) were interpreted to apply to a common-law court as distinguished from a court of equity, the amendment expressly declares that a "plain, speedy and efficient remedy at law or in equity" in the state court shall be a bar to federal equity jurisdiction. Although a good many states expressly limit or deny equitable powers to their courts in tax litigation,\(^\text{24}\) the taxpayer must now be able to show, as a condition to invoking the jurisdiction of the federal equity court, that he cannot have either legal or equitable relief in the courts of his state.

\(^{19}\) Scottish Union & National Ins. Co. v. Bowland, 196 U. S. 611 at 633, 25 S. Ct. 345 (1905): "It will be presumed, if the claim of the company is right, no personal judgment will be rendered against it, and if its theory of the controversy is correct no such judgment can be lawfully rendered. In such case the authorities are uniform that equity will not interfere by injunction, but leave the party to his defense at law." See Texas Co. v. Grosjean, (D. C. La. 1936) 16 F. Supp. 264.


\(^{21}\) See Ill. Ann. Stat. (State Bar ed., 1935), c. 120, §§ 200-210, [Smith-Hurd, 1935), c. 120, §§ 170-180] wherein provision is made for the taxpayer to present any defense to the county court at the time the tax collector petitions that court for judgment and sale of the delinquent property.


\(^{23}\) 1 Stat. L. 82 (1789), 28 U. S. C. (1934); § 384, quoted in note 2, supra.

\(^{24}\) See statutes cited in notes 40-44 inc., 47, 48, 76, 77, 80, 83, 84, 85 infra.
Many situations will develop in which state courts cannot give an adequate remedy in either law or equity. It is therefore desirable to consider briefly the circumstances in which district courts have intervened. Federal equity courts have considered many assessment cases. A successful attack upon an assessment must be based upon serious charges. Successful bills have usually charged that the assessing authorities have systematically and intentionally discriminated against the taxpayer or that the assessment was fraudulent or that there was gross error which under the circumstances amounted to fraud. A second group of cases in which the federal equity courts, under the original statute, found no adequate remedy at law comprises bills which charged facts bringing the cases under some well-recognized ground of equity jurisdiction. The cases within this group fall into three well-defined classes: (1) equity's jurisdiction to avoid a multiplicity of suits at law; (2) jurisdiction to remove clouds on title of real property; and (3) jurisdiction to prevent irreparable injury to a tax-


While it is not within the direct scope of this article, the problem of the relief which the equity court will give in these assessment cases is very interesting. The following materials present an adequate discussion. Sioux City Bridge Co. v. Dakota County, 260 U. S. 441, 43 S. Ct. 190 (1923); Chicago, R. I. & P. Ry. v. Young, 60 S. D. 291, 244 N. W. 370 (1932); Cooley, Taxation, 4th ed., § 1659, p. 3358 (1924); 46 Harv. L. Rev. 1000 (1933); 23 Va. L. Rev. 613 (1937).


The general test for determining jurisdiction in these situations is set forth in Matthews v. Rodgers, 284 U. S. 521 at 529-530, 52 S. Ct. 217 (1932): "In general, the jurisdiction of equity to avoid multiplicity of suits at law is restricted to cases where there would otherwise be some necessity for the maintenance of numerous suits between the same parties, involving the same issues of law or fact. It does not extend to cases where there are numerous parties plaintiff or defendant, and the issues between them and the adverse party are not necessarily identical." See the annotation on multiplicity of suits as ground for injunction against alleged unconstitutional taxes, 76 L. Ed. 455 (1932).

28 Shaffer v. Carter, 252 U. S. 37, 40 S. Ct. 221 (1920), cloud on title to real property; Wallace v. Hines, 253 U. S. 66, 40 S. Ct. 435 (1920), cloud on title to
payer’s business or property. Obviously a court of law could not give an acceptable substitute for an equity decree in such cases. However, under the recent amendment a taxpayer must now show that he cannot have equitable relief of a similar nature in his own state courts.

Neither the original statute nor the amendment refers to state administrative procedure in any manner. Many states, particularly in assessment controversies, provide an administrative review as the taxpayer’s principal remedy. A great majority of these states have created some statutory judicial review of this administrative action. In these jurisdictions it would seem that the administrative remedy, coupled with its judicial review, affords a legal remedy in the state courts which would ordinarily prevent the federal district court’s exercise of jurisdiction. However, about five states have held that the administrative process is conclusive and exclusive, and that a taxpayer cannot have judicial review in any form of such administrative action. In those states a taxpayer has no remedy at all in the state courts. A federal district court would have jurisdiction to give both legal and equitable relief there.

Likewise, the nature of judicial review of administrative action may be so restricted in scope that it is doubtful whether such review gives a plain, speedy and efficient remedy in the courts of law. Frequently judicial review is limited to questions of law. If the taxpayer alleges fraud or discrimination against an assessment, an adequate review of administrative action would seem to necessitate a full hear-


30 This amendment was introduced in the Senate by Senator Bone, 81 Cong. Rec. 1415 (1937), as Senate Bill 1551, 75th Cong., 1st sess. In Senator Bone’s statements in support of the bill there appears no reference to its possible effect on administrative action. 81 Cong. Rec. 1416 (1937). Likewise the report of the committee, S. Rep. 1035, 75th Cong., 1st sess., recommending passage of the bill, fails to mention any contemplated effect on administrative tribunals. The essence of that report is that the bill is designed to withdraw equity jurisdiction wherever the state policy is against the use of the injunction and the state has provided some method for adjudicating the validity of the assessment or tax after the taxpayer has paid his tax. This also seems to have been the purpose of Senator Bone. See 81 Cong. Rec. 1416 (1937).


The amendment should not prevent federal jurisdiction in such cases.

Under existing equity practice, even assuming that there is an adequate basis for applying to the federal district court, there can be no exercise of jurisdiction until the taxpayer has exhausted his remedies under the state law. A taxpayer has to show that he has pursued the appropriate administrative procedure, that he has availed himself of all state procedure, whether judicial or administrative, if he is objecting to the correctness of an assessment. There seems to be no valid reason for changing this judicial attitude. Such a rule is consistent with the recent amendment because it was conceived to contract federal jurisdiction.

As mentioned above, the amended statute conditions jurisdiction in a federal equity court upon the absence of an adequate legal or equitable remedy in the state courts. Suppose there is no sufficient remedy in any of the state courts, but that a remedy does exist through the common-law jurisdiction of the district court. Does the federal court have jurisdiction to grant equitable relief? If only the amended statute is considered, the answer is that the federal equity power can be exercised. However, the federal courts follow the general doctrine that a court of equity will not interfere where there is an adequate remedy.


Pittsburgh, C. C. & St. L. Ry. v. Board of Public Works, 172 U. S. 32, 19 S. Ct. 90 (1898). The state statute provided for an appeal to the circuit court from the decision made by the board of public works.

Gorham Mfg. Co. v. State Tax Comm., 266 U. S. 265, 45 S. Ct. 80 (1924). Here the taxpayer could apply to the tax commission for a revision of the assessment at any time within one year thereafter. See Stason, "Judicial Review of Tax Errors—Effect of Failure to Resort to Administrative Remedies," 28 Mich. L. Rev. 637 at 652-654 (1930). The author presents a very convincing argument in favor of limiting the doctrine of administrative impregnability by estoppel to cases of fraudulent or intentional overvaluation and discrimination and then only if there has been adequate provision for notice of the assessments to the taxpayer.
at law. On the whole a federal equity court should not exercise juris-
diction unless the federal remedy at law proves inefficient because of
the existence of well-recognized grounds for the exercise of equity
jurisdiction.

STATE REMEDIES

A single article cannot hope to develop in detail the equity practice
of every state in the Union. The problems of each state are varied, and
in many cases the statutes of a state do not cover the entire tax field,
e.g., in any given state there may be statutes which limit or deny the
use of the injunction in litigation regarding some specific tax but do
not exist for the entire field. The method of approach in this article
is to make a comparative analysis of equitable remedies in the states.
This survey is divided into two parts: (1) a consideration of the statutes
dealing with the use of the injunction under the four generally preva­
lent types of tax: general property, income, estate or inheritance, and
sales; and (2) a discussion of the equity practice developed from the
precedents in those jurisdictions which have no direct statutory regula­
tion of the equitable remedy.

Statutory Practice

At least twenty states have express or implied statutory provisions
regarding equitable remedies which are applicable to at least one or
more of the several taxes enumerated. Such statutes fall into at least
three classes: (1) vesting general jurisdiction in the equity courts;
(2) prohibiting the use of the injunction to stay the assessment or col­
clection of any tax; and (3) limiting the use of equitable jurisdiction to
specific, special conditions. The first type of statute is extremely rare.
The Florida law follows:

87 Many Supreme Court decisions hold that the federal courts will not enjoin
the enforcement of tax legislation where there is an adequate remedy at law. Stratton
v. St. Louis S. W. Ry., 284 U. S. 530, 52 S. Ct. 222 (1932); Singer Sewing Machine
Co. v. Benedict, 229 U. S. 481, 33 S. Ct. 942 (1913); Arkansas Building & Loan

These cases were decided under the law as it existed prior to the recent amend­
ment. We should beware, therefore, of relying on such cases as Munn v. Des Moines
Nat. Bank, (C. C. A. 8th, 1927) 18 F. (2d) 269 at 272, which states that the legal
remedy must be available in the federal court. The recent amendment changes that rule.

88 There is a Connecticut statute which permits an action in equity where the
taxpayer claims that he is exempt from general property taxation. Conn. Gen. Stat.
Rev. (1930), § 1201. And a Rhode Island act permits the taxpayer to invoke the
assistance of an equity court if the tax on general property is illegal or void. R. I.

“The courts of chancery in this State shall have jurisdiction in all cases involving the legality of any tax, assessment or toll, and shall inquire into and determine the legality, equality and validity of the same under the Constitution and laws of the State of Florida, and shall render decrees, setting aside such tax, assessment or toll, or any part of the same, that shall appear to be contrary to law. . . .”

A very considerable majority of the statutes fall under the second classification above. Some statutes are very brief, such as the one from South Carolina: 40 “The collection of taxes shall not be stayed or prevented by any injunction writ or order issued by any court or judge thereon. . . .” Others are more detailed and inclusive, as typified by the Tennessee law: 41

“No writ for the prevention of the collection of any revenue claimed, or to hinder and delay the collection of the same, shall in any wise issue, either injunction, supersedeas, prohibition, or any other writ or process whatever; but in all cases in which, for any reason, any person shall claim that the tax so collected was wrongfully or illegally collected, the remedy for said party shall be as above provided, and in no other manner.”

Other statutes in this group include those of the states of Arizona, Georgia, Louisiana, Michigan and North Carolina. 42

The Nebraska statute is fairly representative of the third class: 43

“No injunction shall be granted by any court or judge in this state to restrain the collection of any tax, or any part thereof hereinafter levied, nor to restrain the sale of any property for the nonpayment of any such tax, except such tax or the part thereof enjoined be levied or assessed for any illegal or unauthorized purpose. . . .”

40 S. C. Code (1932), § 2845.
44 Other statutes within this group apply to illegal or unauthorized taxes or grant protection for property exempt from taxation. See Conn. Gen. Stat. Rev. (1930), § 1201, authorizing relief in equity if property is exempt or improperly assessed; Mont. Rev. Codes Ann. (1935), § 2268, injunction restricted to following situations: (1) where tax is illegal or unauthorized by law, and (2) where property is exempt. Ohio Gen. Code Ann. (Page, 1938), § 12075 [same section in Baldwin & Throckmorton
Montana, Ohio, Washington and Wyoming have similar statutes which exclude the use of the injunction unless the tax is illegal or unauthorized. In addition the Virginia statutes prohibit any suit to restrain the enforcement of a tax except where there is no adequate remedy at law.

Also article sixteen, section thirteen of the Arkansas Constitution provides that "Any citizen of any county, city or town may institute suit in behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever." The Arkansas courts have applied this section to tax litigation. They have held that a taxpayer has the right to contest the exaction of any illegal tax in a court of equity by virtue of this article.

While the Florida statute confers jurisdiction, it does not seem that it compels the exercise of jurisdiction in every case. In a recent Florida Supreme Court decision, the court declared that a court of equity will not take jurisdiction where the remedy at law is full, complete and adequate. This amounts to holding that the Florida equity courts will act only where the remedy at law is deemed inadequate.

The literal language of the statutes in the foregoing jurisdictions applies to all tax controversies. However, upon closer examination the Michigan statutes and some of the Nebraska sections are aimed at the use of the injunction against the general property tax. Oklahoma has an implied limitation upon the use of the injunction against the enforcement of any tax as a result of statutory interpretation. This law

---

45 See citations in note 44, supra.
46 The Montana and Washington statutes cited in the preceding note permit jurisdiction also where the property is exempt.
51 Statutes cited in notes 39-44 inc. and 47, supra.
52 Mich. Comp. Laws (1929), § 3507. The statutes in Connecticut and Rhode Island are also of a similarly limited scope. See citations in note 38, supra.
states \(^{54}\) that the action to recover taxes (which have been paid simul-
taneously with a declaration on the part of the taxpayer that he intends
to sue to recover them) shall be considered an adequate legal remedy
in both state and federal courts.

Although the statutes in Michigan, North Carolina, South Carolina
and Tennessee have generally withdrawn equity jurisdiction from tax
disputes, the courts in these states have not unanimously enforced
their literal application. The Michigan \(^{55}\) and North Carolina \(^{56}\) courts
have enforced their statutes with fidelity, but the South Carolina
Supreme Court \(^{57}\) has held that an injunction cannot be denied where
there is no legal remedy, and has stated that the statute is practically
a reenactment of the equity maxim that where there is a legal remedy
resort cannot be had to a court of equity. The Tennessee courts \(^{58}\) have
allowed the injunction in cases of void assessments and illegal taxes.
These decisions totally ignored the statute.

The courts in Montana, \(^{59}\) Nebraska \(^{60}\) and Virginia \(^{61}\) give literal effect
to their statutes, which restrict the injunction to cases in which assess-
ments or taxes are illegal or levied for an unauthorized purpose. The
Washington \(^{62}\) courts enforce a similar statute, limiting the injunction
to restrain the enforcement of taxes which are void or which are levied
upon exempt property. But it seems that the Washington courts apply
the statute only to the tax, and, if the equity bill relates to the levy or
a course of action leading to the imposition of the tax, the limitation


\(^{55}\) Lake Superior Ship Canal, Ry. & Iron Co. v. Auditor General, 79 Mich. 351,
44 N. W. 616 (1890); Eddy v. Township of Lee, 73 Mich. 123, 40 N. W. 792
(1888).

\(^{56}\) Bunn v. Maxwell, 199 N. C. 557, 155 S. E. 250 (1930). This decision was
rendered under a former statute which was less stringent in its prohibitions against the
use of the injunction than the present statute.

\(^{57}\) Western Union Tel. Co. v. Town of Winnboro, 71 S. C. 231, 50 S. E. 870
(1905); State ex rel. Nat. Bank v. Cromer, 35 S. C. 213, 14 S. E. 493 (1892); Ware

\(^{58}\) Tennessee Fertilizer Co. v. McFall, 128 Tenn. 645, 163 S. W. 806 (1912);
Smoky Mountain Land, Lumber & Improvement Co. v. Lattimore, 119 Tenn. 620,
105 S. W. 1028 (1907).

\(^{59}\) Northern Pac. Ry. v. Musselshell County, 54 Mont. 96, 169 P. 53 (1917);
Barnard Realty Co. v. City of Butte, 50 Mont. 159, 145 P. 946 (1915).

\(^{60}\) Fred M. Crane Co. v. Douglas County, 112 Neb. 365, 199 N. W. 791
(1924); State Bank of Omaha v. Endres, 109 Neb. 753, 192 N. W. 322 (1923);


apparently does not apply. Likewise, the courts in Ohio and Wyoming have departed from the literal wording of their statutes. If the controversy is relative to a matter of valuation, the Ohio courts hold that the exhaustion of administrative remedies is a condition precedent to the exercise of equity jurisdiction. But both Ohio and Wyoming courts hold that the injunction is a concurrent remedy when the issue is the jurisdiction to tax. While the Georgia courts usually follow the mandate of their statute, there are a number of exceptional cases, such as an unconstitutional statute or the inadequacy of the remedy at law, which will cause the courts to disregard the statute and give equitable relief.

These statutes deprive the taxpayer of a valuable procedural remedy. What have these jurisdictions provided as a substitute for equitable relief? Since the statute takes nothing away, Florida could not be expected to provide other remedies. But in the other states there is usually an attempt to compensate for the deprivation of equity jurisdiction in tax litigation by providing for some statutory legal remedy. Michigan, Montana, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Washington and Wyoming authorize a general statutory action to recover taxes illegally or erroneously collected. While several of these statutes require payment under protest, others allow the action on any ground, provided it is filed within a specified time limit.

The Nebraska statute distinguishes between different kinds of

---

64 Hammond v. Winder, 112 Ohio St. 158, 147 N. E. 94 (1925); Bashore v. Brown, 108 Ohio St. 18, 140 N. E. 489 (1923).
66 If the tax is levied under an unconstitutional statute, equity will enjoin its assessment and levy. Green v. Hutchinson, 128 Ga. 379, 57 S. E. 353 (1907); Woolworth Co. v. Harrison, 172 Ga. 179, 156 S. E. 904 (1931). Equity will also take jurisdiction where there is no adequate remedy at law. See Kennedy v. Howard, 183 Ga. 410, 188 S. E. 673 (1936); Pullman Co. v. Suttles, 187 Ga. 217, 199 S. E. 821 (1938); Ga. Code Ann. (1933), § 37-301. Other exceptions have been where the law does not impose the tax or authorize the execution, Hewin v. Atlanta, 121 Ga. 723, 49 S. E. 765 (1905); where a tax execution is void because of excessiveness, Vincent v. Poole, 181 Ga. 718, 184 S. E. 269 (1936). There are also many other situations. See infra, notes 87, 97, 102.
67 See citations in note 103, infra.
68 See note 103, infra.
69 Ohio, Oklahoma, Washington, Wyoming, citations in note 103, infra.
claims for recovery. Different remedies exist. If the taxpayer claims that the property is non-taxable or twice assessed, he follows an administrative remedy by application to the county board. \(^{70}\) If the tax is illegal or unauthorized, the taxpayer will pay the tax and claim its return, which, if not complied with, gives rise to a legal cause of action against the governmental division collecting the tax. \(^{71}\) The Louisiana and Virginia statutes infer a general action at law in the courts. \(^{72}\) The Arizona statute \(^{73}\) attempts to limit the statutory action to the recovery of illegal taxes. Georgia seems to be the only state having a general restriction against the use of equity jurisdiction which does not provide some form of legal action for the recovery of taxes. \(^{74}\)

While a considerable majority of the state statutes impose a restriction upon equity jurisdiction in all state tax litigation, several state acts impose restrictions upon the use of the injunction against specific taxes. Five statutes specifically apply the restriction to the income tax. Arkansas, \(^{75}\) Georgia, Indiana and South Carolina have a blanket statutory prohibition against the use of the injunction. \(^{76}\) The former Washington statute limited the use of the injunction to cases involving a violation of the Constitution of the United States or of the state. \(^{77}\) Four of these states substitute the remedy of an action at law to recover taxes, paid either with or without protest. \(^{78}\) In Washington the taxpayer was given a statutory refund proceeding. \(^{79}\) The states of Arizona, Michigan, North Carolina and Utah impose blanket restrictions against the use

\(^{71}\) Neb. Comp. Stat. (1929), § 77-1923 (2).
\(^{74}\) The Georgia statute strictly limits the action. See Ga. Code Ann. (1933), § 20-1007. If there is to be any recovery at all, the payment must have been involuntary and the tax must have been illegal. See the discussion of this local remedy by Culp, "Taxpayers' Remedies in Georgia," 1 Ga. B. J. 19 at 34-35 (1939).
\(^{75}\) In McCarroll v. Gregory-Robinson-Speas, Inc., (Ark. 1939) 129 S. W. (2d) 254, the Arkansas court held that a taxpayer could contest an illegal income tax exaction regardless of statute.
\(^{76}\) Ark. Dig. Stat. (Pope 1937), § 14055; Ga. Code Ann. (1933), § 92-3307 (also a general restriction, see note 42, supra); Ind. Laws (1937), c. 117, § 14(b), p. 633; S. C. Code (1932), § 2468 (also a general restriction, see note 40, supra).
\(^{79}\) Wash. Laws (1935), c. 178, § 58. See supra, note 77.
of the injunction with respect to sales tax enforcement.\textsuperscript{80} Of these, all,\textsuperscript{81} except the North Carolina statute expressly create an action to recover such taxes which have been paid. Some states require that they must have been paid under protest; others require the taxpayer to apply for a refund as a condition precedent to filing suit. The North Carolina general statutory action to recover taxes applies expressly to the income tax.\textsuperscript{82} Apparently only the state of Kentucky specifically denies equitable restraint against the enforcement of the estate or inheritance tax.\textsuperscript{83} This restriction, too, is accompanied by a statutory action to recover after payment. Finally, one should remember that any of the thirteen blanket statutes discussed above would ordinarily apply to every kind of tax, including the general property, income, estate or inheritance and sales taxes.

In a few instances unnecessary duplication of statutory restrictions occur. For example, a state may have a general statute and one or more special statutes relating to particular taxes. Also, in some instances, a state has a deficiency of provisions. Thus a single state may have no general statute but does have a prohibition against the injunction in income or sales tax disputes. Ordinarily there seems to be no very valid reason for such overlapping or irregularity of restrictions. Since nearly all of the states which do restrict equity jurisdiction in tax matters also authorize some form of action to recover taxes which have been paid, it seems preferable in the interest of simplicity and certainty to have one blanket restriction upon equity jurisdiction as to all taxes accompanied by a general action to recover any tax which had been unlawfully or unjustly collected. This statutory action would prevent any charge that the restrictive statute denies the taxpayer an adequate remedy at law.

\textit{Non-Statutory Practice}

A majority of our states have no statutory policy relative to the exercise of equity jurisdiction in tax litigation, but many state courts


The West Virginia retail store license tax act has a similar provision. See W. Va. Code (1937), § 975 (16).

\textsuperscript{81} See the statutes of Arizona, Michigan, North Carolina, and Utah, cited in note \textsuperscript{80}, supra.

\textsuperscript{82} N. C. Code Ann. (Michie, 1939), § 7880 (194).

have adopted a general policy against the use of the injunction. A good many courts will deny equitable relief where the taxpayer merely alleges some irregularity, hardship or illegality of the assessment or tax. But at the same time these courts do not recognize an actual impairment of equity jurisdiction in tax matters. They may grant an injunction if a taxpayer accompanies his charge of illegality with an allegation that the case contains elements which will fall under some recognized head of equity jurisdiction. Equity courts have given relief where the taxpayer charges that there is no adequate remedy at law. If the taxpayer is also able to show that he will be involved in a multiplicity of actual legal suits under the available remedies, a very respectable group of courts will give equitable relief. One of the most effective allegations which a taxpayer can make is that an illegal tax


85 Alabama Gold Life Ins. Co. v. Lott, 54 Ala. 499 (1875); County of Cochise v. Copper Queen Consolidated Mining Co., 8 Ariz. 221, 71 P. 946 (1903) (prior to Arizona statute, enacted in 1913, cited note 42, supra); DeWitt v. Hays, 2 Cal. 463 (1852); Robinson v. Garr, 6 Cal. 273 (1856); Hallett v. Board of Comrs. of Arapoe County, 40 Colo. 308, 90 P. 678 (1907); Neal Institute Co. v. Stuckart, 281 Ill. 526, 117 N. E. 1012 (1917); Oates v. Atchison, 2 Kan. 454 (1864); Conley v. Chedic, 6 Nev. 222 (1870); Lough v. New Mexico Bureau of Revenue Comm., 42 N. M. 115, 76 P. (2d) 6 (1938); Delaware & Hudson Canal Co. v. Atkins, 121 N. Y. 246, 24 N. E. 319 (1890); Merchants’ State Bank of Velva v. McHenry County, 31 N. D. 108, 153 N. W. 386 (1915); Hughes Electric Co. v. Helstrom, 50 N. D. 522, 197 N. W. 133 (1924); Dant & Russell Inc. v. Pierce, 122 Ore. 337, 255 P. 603 (1927); Chicago & N. W. Ry. v. Fort Howard, 21 Wis. 45 (1866); Hixon v. Oneida County, 82 Wis. 515, 52 N. W. 445 (1892).


87 Shanks v. Winkler, 210 Ala. 101, 97 So. 142 (1923); Vanover v. Davis, 27 Ga. 354 (1859) (county tax not within statutory prohibition of “judicial interference”); McIntyre v. Harrison, 172 Ga. 65 at 73, 157 S. E. 499 (1931) (no mention
will create a lien on real property or a cloud on title to realty. Many injunctions have been granted in such cases. The highest courts in Missouri, North Dakota and West Virginia have indicated that they will provide equitable relief if the continued enforcement of a tax law will cause irreparable injury or mischief. The Pennsylvania courts have a very definite dislike for the injunction in tax matters. They have held that they will not interfere with the collection of taxes unless there is the clearest showing of a want of jurisdiction in the assessing or collecting officers.

Sometimes a tax levy is based upon a void statute. Several courts have held that this is not the proper occasion for an injunction. Equity will not ordinarily enjoin a trespass. One court held that an action of trespass against a solvent officer afforded an adequate legal remedy. However, it would seem that an allegation charging that the collecting officer is insolvent would negative any presumption that the legal

of statutory prohibition); Hershbach v. Kaskaskia Island Sanitary & Levee District, 265 Ill. 388, 106 N. E. 942 (1914); McTwiggan v. Hunter, 18 R. I. 776, 30 A. 962 (1895), assuming jurisdiction to settle common rights.

See Equitable Guarantee Trust Co. v. Donahoe, 8 Del. Ch. 422, 45 A. 583 (1900), where the court said that the vexatiousness of a multiplicity of suits must be real and not merely imaginary, and pointed out that it cannot be presumed that the state as a party plaintiff will resort to a multiplicity of suits.

In Merchants’ State Bank of Velva v. McHenry County, 31 N. D. 108, 153 N. W. 386 (1915), the North Dakota court stated that there is no ground for equitable interference where there is an adequate remedy at law by suit to recover the tax and thereby avoid the alleged multiplicity of suits. See Goolsby v. Board of Drainage Comrs., 156 Ga. 213, 119 S. E. 644 (1923) (no mention of Georgia statute cited in note 42, supra).


90 First Nat. Bank of Hannibal v. Meredith, 44 Mo. 500 (1869); Shaffner v. Young, 10 N. D. 256, 86 N. W. 733 (1901); White Sulphur Springs Co. v. Holly, 4 W. Va. 597 (1871); White v. Stender, 25 W. Va. 615 (1884). All of these courts recognized the basis of jurisdiction, but denied relief under the equities of these cases.

91 Baldwin v. Kine, 30 Pa. St. 227 (1858); Black v. Boyd, 155 Pa. 163, 26 A. 5 (1893). In both cases an injunction was denied on the ground that equity will not interfere with the collection of taxes unless in the clearest of cases of want of jurisdiction in the assessing or collecting officers.

92 McPike v. Pew, 48 Mo. 525 (1871).
remedy by action of trespass is adequate. But one of the above mentioned courts held that it would enjoin seizure under a void statute if it could prevent irreparable injury to a going business or to commerce.

Several jurisdictions will enjoin the collection of illegal or void taxes. The view of these courts was well expressed by the Supreme Court of Indiana when it said:

"equity will come to the rescue of one under duress because of a void act. A party is not required to follow the legal route prescribed in law to overcome an order that is void. Where he desires to free himself of a void administrative order which, if executed, would deprive him of his property, he may resort to equity for instant relief."

Frequently a taxpayer objects to the payment of a tax because he believes that the assessment is illegal. Several state courts enjoin collection of the tax wherever the assessment is for any reason void. Such a condition exists wherever there is a charge that there has been deliberate overvaluation of property or a fraudulent assessment which

93 See Richardson v. Scott, 47 Miss. 236 (1872).
94 Johnson v. Debary-Baya Merchants' Line, 37 Fla. 499, 19 So. 640 (1896). This was a bill to enjoin seizure of a steamboat, and it seemed that the court placed equitable jurisdiction on the ground that seizure would cause irreparable injury to a going business and to commerce. For the Florida statutory rule, see Fla. Comp. Gen. Laws Ann. (1927), §1038, quoted at note 39, supra.
95 McDaniel v. Texarkana Cooperage & Mfg. Co., 94 Ark. 235, 129 S. W. 727 (1910); State Board of Tax Comrs. v. McDaniel, 199 Ind. 708, 160 N. E. 347 (1928); Department of Treasury v. Rigdely, 211 Ind. 9, 4 N. E. (2d) 557 (1936); Smith v. Peterson, 123 Iowa 672, 99 N. W. 552 (1904).
96 State Board of Tax Comrs. v. McDaniel, 199 Ind. 708 at 717-718, 160 N. E. 347 (1928). But see State Board of Tax Comrs. v. Belt R. R. & Stock Yards Co., 191 Ind. 282, 130 N. E. 641 (1921), where the decision may have been partly determined by the fact that there was no clearly adequate remedy at law.
97 Vincent v. Poole, 181 Ga. 718, 184 S. E. 269 (1936) (holding Georgia statute, cited note 42, supra, does not apply to void taxes); State Board of Tax Comrs. v. McDaniel, 199 Ind. 708, 160 N. E. 347 (1928); Cleveland, C. C. & St. L. Ry. v. Enley, 44 Ind. App. 538, 89 N. E. 607 (1909); County Commissioners of Alleghany County v Union Mining Co., 61 Md. 545 (1884); Price Shoe & Clothing Co. v. McBride, 20 N. M. 409, 149 P. 362 (1915), if the legal remedy is found inadequate; Alexander v. Henderson, 105 Tenn. 431, 58 S. W. 648 (1900), with no reference to the statute existing in that state.
98 Courts which would otherwise deny equity jurisdiction will act where the taxing officers have no jurisdiction in making an assessment. Dun & Bradstreet, Inc. v. City of New York, 276 N. Y. 198, 11 N. E. (2d) 728 (1937). The court of appeals said that an injunction would issue if the officers act without jurisdiction, but if they have jurisdiction the taxpayer must proceed in the manner prescribed by statute. See Smith v. Peterson, 123 Iowa 672, 99 N. W. 552 (1904).
amounts in effect to a levy without legal authority. The courts in Maryland, Montana and New York distinguish between a void and an irregular assessment. They will not enjoin a tax based upon an irregular assessment.

The foregoing discussion presumes the absence of any statutory material which affords the taxpayer a plain and adequate legal remedy. Frequently the state statutes create a general action to recover taxes. Then courts of equity will not interfere because of the adequacy of the legal remedy.


101 County Comrs. of Allegany County v. Union Mining Co., 61 Md. 545 at 548 (1883); Cobban v. Meagher, 42 Mont. 399, 113 P. 290 (1911), partially controlled by Montana statute; Mercantile Nat. Bank of New York v. City of New York, 172 N. Y. 35, 64 N. E. 756 (1902). In O'Neal v. Virginia & Maryland Bridge Co., 18 Md. 1 (1861), the court stated that a court of equity has no jurisdiction to correct the assessment if there is a remedy through an administrative appeal.

102 A rather obvious circumstance under which it seems proper to relax the restraint upon equitable jurisdiction is where a taxpayer claims that he has already paid the tax in question. Some courts have granted injunctions under these conditions. See Nalley v. McManus, 135 Ga. 713, 70 S. E. 255 (1911).


Besides these general statutory actions, various states have created special statutory actions to recover overpayments of income taxes, estate taxes and sales taxes.

104 Fairlamb v. Bowle, 101 Colo. 135, 71 P. (2d) 417 (1937); Loud v. City
Likewise, if any common-law action which affords a similar remedy exists, the holding should be the same; there would then be no ground for equity jurisdiction.\(^{105}\)

In several states the only method of tax collection is an action brought by the state which seeks primarily to collect the tax from proceeds of the sale of the property. Courts in these states have held that the opportunity afforded by statute to present a full defense to any action which the state may bring for delinquent taxes is an adequate remedy at law which defeats equity jurisdiction.\(^{106}\) For example, in Georgia the present method of general property tax enforcement is limited to execution against the property. To a limited extent a taxpayer may have the opportunity to file a statutory affidavit of illegality to the execution. This amounts to the tender of a general defense, and the Georgia courts hold that such a remedy precludes a resort to an equity court.\(^{107}\) Other states have set up a special statutory procedure of Charlestown, 99 Mass. 208 (1868); Proprietors of the Cemetery of Mt. Auburn v. Massachusetts Unemployment Compensation Comm., (Mass. 1938) 16 N. E. (2d) 666; Rockingham Ten Cent Savings Bank v. Portsmouth, 52 N. H. 17 (1872); Raleigh & G. R. R. v. Lewis, 99 N. C. 62, 5 S. E. 82 (1888); Wallace v. Gassaway, 148 Okla. 265, 298 P. 867 (1931); National Loan & Exchange Bank of Greenwood v. Jones, 103 S. C. 80, 87 S. E. 482 (1915) (statute quoted supra, note 40, not mentioned); Chesterfield County v. State Highway Dept., 191 S. C. 19, 3 S. E. (2d) 686 (1939) (citing statute); Chicago & N. W. Ry. v. Rolfson, 23 S. D. 405, 122 N. W. 343 (1909); Duluth Log Co. v. Town of Hawthorne, 139 Wis. 170, 120 N. W. 864 (1909).

\(^{105}\) In order to satisfy the requirement of an adequate remedy at law, this common-law action should permit a very broad recovery, without restriction as to the reasons for asking repayment. For example, it does not seem that a common-law action limited to cases where the tax is illegal would provide an adequate remedy at law. See Idaho Irrigation Co. v. Lincoln County, 28 Idaho 98, 152 P. 1058 (1915); Kimball v. Merchants' Savings Loan & Trust Co., 89 Ill. 611 (1878), for restricted remedies. For a discussion of the Illinois action to recover taxes, see Carey and Schuyler, "The Illinois Taxpayer's 'Day in Court,'" 31 Ill. L. Rev. 993 (1937).


The necessity for an unrestricted defense should be emphasized. It seems doubtful whether a statute such as that in Texas which restricts the scope of the defense really affords an adequate remedy at law. See Tex. Civ. Stat. Ann. (Vernon, 1939), art. 7329, and note 19, infra.


In Georgia there is no general state statute authorizing the filing of an affidavit of illegality against a tax execution. In Goolsby v. Board of Drainage Comrs., 156 Ga. 213, 119 S. E. 644 (1923), the court, by a full bench, held that an affidavit of illegal-
for the recovery of taxes which is predicated upon a prior payment of the tax in dispute. The taxpayer has to apply for a "refund" of the overpayment in some states; in others he files a petition in a law court or administrative tribunal for an abatement of the tax. The courts have held that the taxpayer must pursue the appointed procedure which affords an adequate remedy; an equity court will not interfere with the orderly statutory procedure. 108

Most general or special taxing statutes provide some method of administrative review of assessments. 109 Some also set up an administrative device for the return of taxes unlawfully collected. Like the federal courts which have adopted a rule of self-limitation in such cases, some state courts have held that a taxpayer must resort to whatever administrative remedies the statutes of his state provide before he has any standing in a court of equity. 110 Some state courts 111 have gone further in that there will be no exercise of equity jurisdiction unless the taxpayer invokes all administrative remedies and all judicial review of such administrative action afforded by the statutes in his state, 112 but these decisions have usually arisen in assessment cases where

ity is not a proper remedy to contest the illegality of a tax execution. This remedy cannot be used unless authorized specially, as by Ga. Code Ann. (1933), § 92-7301, or unless contained in a city charter. In Georgia each city charter is in effect a special act of the legislature, and it is impossible to generalize on the existence of this remedy. The existence of such a charter section explains the case of City of Nashville v. Lanier Motor Co., cited above. In Carreker v. Green and Milam, also cited above, the court held that § 92-7301 of the code authorized the use of the affidavit of illegality. Therefore equity jurisdiction was denied, but the court recognized that an injunction will usually issue because the affidavit cannot ordinarily be used.

The Georgia income tax statute makes the tax a personal debt from the taxpayer recoverable by suit at law or in equity. Ga. Code Ann. (1933), § 92-3311. If the state should elect to sue to recover the tax, the defendant would be able to offer any defense he might have to the action.


112 If the statute gives a satisfactory method of attacking an assessment, the expiration of the statute of limitations is not a sufficient excuse for failing to use the statutory method. Equity should not take jurisdiction on that ground alone. Roe v. Jersey City, 79 N. J. Eq. 645; 82 A. 873 (1912).

However, the remedy which the statute provides, particularly if it is an adminis-
the statute has made some provision for an administrative review of assessments.

It is arguable that a distinction should be made between a void and an avoidable assessment. If the assessment is void, it could be argued that there should be no necessity for a resort to statutory remedies before applying to an equity court. But such an argument implies that the administrative body could be relied upon to correct a voidable assessment but not one which is void. On the contrary, there is a strong presumption that the administrative body will correct the error regardless of its quality. Upon this basis the distinction should be discouraged.

The rule requiring the taxpayer to exhaust his administrative remedies before coming into a court of equity should be applied generally. If a state provides administrative remedies for the return of taxes unlawfully paid in addition to machinery for the correction of assessments, a court of equity should insist that the taxpayer follow the statutory procedures first. The obvious argument in support of such a proposition is that the legislatures have provided for a system of administrative review which will presumably afford the taxpayer all the relief to which he is entitled.

Since the federal equity jurisdiction cannot be as effective as formerly, state equitable remedies are now especially significant. This study reveals a general statutory and judicial policy against easy interference with collection of the revenue. While equitable interference with tax collections is undesirable from the public standpoint, the taxpayer has a vital interest which cannot be ignored. If the legislatures or courts propose to take away equity jurisdiction, justice to the taxpayers demands that an equally effective, if not as speedy, remedy be available. Statutory or common-law actions should be permitted the taxpayer for the recovery of taxes which fairly and equitably he should not have paid. At the same time there can be no objection to conditioning such a legal remedy upon prior exhaustion of the administrative remedies provided by statute.


\footnote{Tumulty v. District of Columbia, (App. D. C. 1939) 102 F. (2d) 254. While this is the decision of a District of Columbia court, it is a sound authority for the point decided. This court was acting in a capacity analogous to that of any state court deciding a question of state law.}