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CARRIERS - STATE TAXATION OF INTERSTATE MOTOR CARRIERS

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CARRIERS — STATE TAXATION OF INTERSTATE MOTOR CARRIERS — Appellant, an Ohio corporation, was engaged exclusively in interstate commerce as a common carrier of property for hire by motor vehicle. In 1937 the Georgia legislature passed a Maintenance Tax Act [1] which provided, inter alia, for a tax, graduated according to manufacturer's rated capacity, on each motor common carrier for hire, and a tax, substantially smaller in the respective rated capacities, on each motor vehicle not used as a common carrier for hire. Appellant contested the validity of the tax on the grounds that it was repugnant to the commerce clause of the Constitution and that it violated the equal protection clause of the Fourteenth Amendment. *Held*, the tax was reasonable compensation for the privilege of operating over the state's highways; and the classification complained of was not unreasonable or arbitrary. *Dixie Ohio Express Co. v. State Revenue Commission of Georgia*, (U. S. 1939) 59 S. Ct. 435.

It is well established that common or contract carriers engaged in interstate commerce and operating over the highways of a particular state may be taxed by that state as a means whereby the state recovers reasonable compensation for the privilege of using its roads.[2] If the state tax on interstate carriers is not grounded on this purpose, the Court is not slow to invalidate it as being a burden upon interstate commerce.[3] When deciding whether or not a given

[1] Ga. Laws (1937), p. 155, Act No. 376. The relevant portions are as follows: "The maintenance tax herein provided for shall be in addition to any and all other taxes, license, or registration fees now required under existing laws." Ibid., p. 156, § 1. "For each non-passenger carrying motor vehicle or truck not used as a common or contract carrier for hire . . . of more than one and one-half and not exceeding two tons manufacturer's rated capacity . . . the sum of $30." Ibid., p. 158, § 3 (B) (4). "For each non-passenger carrying motor vehicle or truck used either as a common or contract carrier for hire . . . of more than one and one-half and not exceeding two tons manufacturer's rated capacity . . . the sum of $75." Ibid., p. 160, § 3 (C) (4).

[2] In Hendrick v. Maryland, 235 U. S. 610, 35 S. Ct. 140 (1914), and Kane v. New Jersey, 242 U. S. 160, 37 S. Ct. 30 (1916), a tax on non-resident motorists passing through a state in private cars was held valid, the proceeds thereof being devoted to highway purposes. In Clark v. Poor, 274 U. S. 554, 47 S. Ct. 702 (1927); Interstate Buses Corp. v. Blodgett, 276 U. S. 245, 48 S. Ct. 230 (1928); Continental Baking Co. v. Woodring, (D. C. Kan. 1931) 55 F. (2d) 347; Hicklin v. Coney, 290 U. S. 169, 54 S. Ct. 142 (1933), special taxes on interstate carriers were upheld on the ground that they were levies to compensate the states for use of their highways.

[3] See, Sprout v. South Bend, 277 U. S. 163, 48 S. Ct. 502, 62 A. L. R. 45 at 52 (1928); Interstate Transit, Inc. v. Linsey, 283 U. S. 183, 51 S. Ct. 380 (1931); Gwin, White & Prince, Inc. v. Henneford, (U. S. 1939) 59 S. Ct. 325.

tax is valid, the Court indulges in a series of rebuttable presumptions.[4] A tax on interstate motor carriers is presumed to be invalid unless it is affirmatively demonstrated by the state that it is enacted to compensate the state for providing highways to the public. A state need only show that the proceeds of the tax are allocated to highway purposes, and it thereby successfully rebuts the presumption of invalidity. The burden then falls on counsel for the carriers to rebut the presumption of validity. Two approaches are available for this purpose: first, that the tax is discriminatory; secondly, that the exaction is not reasonably related to the use of the state's highways.[5] Counsel for motor carriers may well draw a moral from the principal case: general and abstract allegations of discrimination, et cetera, will not rebut the presumption of validity.[6] Counsel in the principal case argued that the tax discriminated against carriers for hire in favor of carriers not for hire; but this vague allegation was answered by the Court when it pointed out that no facts had been presented to show the classification to be an unreasonable one. Discrimination of a character clearly unconstitutional occurs where a state taxes interstate, but not intrastate, carriers.[7] Such discrimination did not arise under the statute in question. But as possibly constituting discrimination, counsel might have argued that the tax fell disproportionately on interstate carriers in that such a carrier, operating in two or more states, was subject to several like taxes, while an intrastate carrier, operating over the same or greater mileage distance, was subject to but one tax.[8] The Court suggested that a comparison of the amount of taxes paid by the carrier with the carrier's total operating expenses and revenues should be presented, along with statistics showing how much the tax was per truck mile, or per ton hauled, or per ton mile.[9] Besides presenting these suggested statistics to prove the tax an interference with interstate commerce, counsel might also offer in evidence a report of the gross revenues from all special motor vehicle

[4] Set forth in Interstate Transit, Inc. v. Lindsey, 283 U. S. 183 at 185, 51 S. Ct. 380 (1931); and recently approved in Ingels v. Morf, 300 U. S. 290, 57 S. Ct. 439 (1936). See further discussion of this question by Kauper, "State Taxation of Interstate Motor Carriers," 32 MICH. L. REV. 1, 171 at 185 et seq. (1933), 351 (1934).

[5] A thorough analysis of the two methods whereby counsel for the carriers may attempt to rebut the presumed validity of a state tax is presented by Kauper, "State Taxation of Interstate Motor Carriers," 32 MICH. L. REV. 171 at 191 et seq. (1933).

[6] The Court pointed out twice in a relatively short opinion a lack of even alleged facts to support the carrier's contentions.

[7] As announced in Welton v. Missouri, 91 U. S. 275 (1875).

[8] "It is not probable that even those members of the Supreme Court who subscribe to the view . . . that the due process clause of the Constitution does not prohibit multiple taxation of testamentary transfer of intangibles, would permit multiple taxation of interstate carriers if it were demonstrated that interstate motor carriers were really placed at a disadvantage. Multiple taxation that results in substance in discrimination against interstate commerce presents a different question than multiple taxation where interstate commerce is not involved and where only the due process clause is involved." Kauper, "State Taxation of Interstate Motor Carriers," 32 MICH. L. REV. 171 at 203, note 226 (1933).

[9] Principal case, 59 S. Ct. 435 at 438.

taxes levied by the state.[10] If the revenues are unreasonably in excess of the annual highway costs, the Court might find the tax to be a burden on interstate commerce.[11] There is no doubt but that the task of compiling these various statistics is a laborious and difficult one. But it is submitted that only when counsel for the carriers adopt this approach will the Court give serious attention to the carrier's claim that a state tax is either discriminatory or a burden on interstate commerce.

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[10] See TAX SYSTEMS OF THE WORLD, 7th ed., 169, 192 (1938), for the several taxes on motor vehicles in the various states. Proceeds from registration taxes, motor fuel taxes, and taxes of the same nature as involved in the principal case, should properly be combined to weigh against the annual costs.

[11] Annual costs would include yearly administrative and maintenance expenses, yearly depreciation charges, and the annual interest charges on the debt incurred in originally building the highways.