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TAXATION-INCOME TAX -JURISDICTION -TRUSTS - STATE TAX ON RESIDENT BENEFICIARY'S NET INCOME FROM TRUST ESTABLISHED AND ADMINISTERED BY NON-RESIDENT TRUSTEE

Allan A. Rubin
University of Michigan Law School

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TAXATION — INCOME TAX — JURISDICTION — TRUSTS — STATE TAX ON RESIDENT BENEFICIARY'S NET INCOME FROM TRUST ESTABLISHED AND ADMINISTERED BY NON-RESIDENT TRUSTEE — The state of Virginia imposed an income tax upon the income received by a resident of Virginia as beneficiary of a discretionary trust established and administered in New York by a resident of New York, which state had levied and collected an income tax on the entire income of the trust fund. Petitioner protested the payment of the Virginia tax, alleging the taking of property without due process of law and the denial of equal privileges in contravention of the Fourteenth Amendment of the Federal Constitution. *Held*, that the tax was valid, since it was ascertained by the beneficiary's equitable interest, which had its situs in the taxing state. *Guaranty Trust Co. of New York v. Virginia*, 305 U. S. 19, 59 S. Ct. 1 (1938).

The principal case indicates that, despite the vigorous use made of the due process clause of the Fourteenth Amendment in defining jurisdictional limits as a means of eliminating double taxation,[1] the power of the states to levy income

[1] Johnson Oil Refining Co. v. Oklahoma ex rel. Mitchell, 290 U. S. 158, 54 S. Ct. 152 (1933); Farmers' Loan & Trust Co. v. Minnesota, 280 U. S. 204, 50 S. Ct. 98 (1929); Safe Deposit & Trust Co. of Baltimore v. Virginia, 280 U. S. 83, 50 S. Ct. 59 (1929); Frick v. Pennsylvania, 268 U. S. 473, 45 S. Ct. 603 (1925). See dissent of Justice Stone in Senior v. Braden, 295 U. S. 422 at 434, 55 S. Ct. 800 (1935). See also Harper, "Jurisdiction of the States to Tax—Recent Developments," 5 IND. L. J. 507 at 509 (1930); Brown, "Multiple Taxation by the States—What is Left of it?" 48 HARV. L. REV. 407 (1935); Merril, "Jurisdiction to Tax—Another Word," 44 YALE L. J. 582 (1935); Nossaman, "The Fourteenth Amendment in its Relation to State Taxation of Intangibles," 18 CAL. L. REV. 345 (1930); Rottschaefer, "State Jurisdiction to Impose Taxes," 42 YALE L. J. 305 (1933); 32 COL. L. REV. 542 (1932).

In each case, the taxation subject to this objection was that which entailed taxing the same legal interest twice (see cases cited above). Taxation of separate legal interests, though the same economic property bore the burden, was permissible. Blodgett v. Silberman, 277 U. S. 1, 48 S. Ct. 410 (1928); Cream of Wheat v. County of Grand

taxes seems to be immune to the double taxation objection. Although prior federal decisions permitted taxation of income both at the source thereof [2] and by the state of domicile,[3] yet in each instance only one state was attempting to tax the income. In *Maguire v. Trefry*,[4] the United States Supreme Court upheld a state tax on income derived by a resident beneficiary from a corpus held by a non-resident trustee. The instant case would seem a mere reaffirmation of that position, were it not for the fact that in the earlier decision no attempt was made to tax income also taxed to the trustee.[5] But despite the employment of the due process clause to curtail multi-state taxation of intangible personal property, the continued validity of the *Maguire* decision has been recognized.[6] Unfortunately, however, the decision in *Senior v. Braden* [7] has introduced a certain amount of confusion in this field of tax law. In denying the constitutionality of a property tax on the cestui's equitable interest in an extraterritorial trust, the value being determined by the income yield to the cestui, the Court distinguished the *Maguire* case on what would seem to be specious grounds. Since the sole difference between a tax on income from the cestui's interest and a tax on the cestui's interest as measured by his income therefrom is merely one of technical form, the same essential issue was presented to the Court for determination in each case.[8] Thus, as a tax on income, the income yield and

Fork, 253 U. S. 325, 40 S. Ct. 558 (1920). See concurring opinion of Justice Stone in Farmers' Loan & Trust Co. v. Minnesota, 280 U. S. 204, 50 S. Ct. 98 (1929); Fidelity & Columbia Trust Co. v. Louisville, 245 U. S. 54, 38 S. Ct. 40 (1917); Bristol v. Washington Co., 177 U. S. 133, 20 S. Ct. 585 (1900); Hunt v. Perry, 165 Mass. 287, 43 N. E. 103 (1896); Harvard Trust Co. v. Commissioner of Corp. & Taxation, 284 Mass. 225, 187 N. E. 596 (1933). In the instant case distinct legal interests were taxed.

[2] Shaffer v. Carter, 252 U. S. 37, 40 S. Ct. 221 (1920). Also see Travis v. Yale & Towne Mfg. Co., 252 U. S. 60, 40 S. Ct. 228 (1920).

[3] Lawrence v. State Tax Comm. of Mississippi, 286 U. S. 276, 52 S. Ct. 556 (1932); New York ex rel. Cohn v. Graves, 300 U. S. 308, 57 S. Ct. 466 (1937). And see Maguire v. Trefry, 253 U. S. 12, 40 S. Ct. 417 (1920).

[4] 253 U. S. 12, 40 S. Ct. 417 (1920).

[5] Ibid., 253 U. S. at 13, 14.

[6] But see decision note on principal case, 52 HARV. L. REV. 326 (1938). Mayor & City Council of Baltimore v. Gibbs, 166 Md. 364, 171 A. 37 (1934), commented upon in 47 HARV. L. REV. 1224 (1934); Senior v. Braden, 295 U. S. 422 at 431, 55 S. Ct. 800 (1935), commented upon in 35 COL. L. REV. 1151 (1935), 49 HARV. L. REV. 159 (1935); 21 IOWA L. REV. 147 (1935); 7 ROCKY MT. L. REV. 287 (1935), and 4 FORDHAM L. REV. 526 (1935). It should be noted that had both states taxed, two distinct *separate legal interests* would have been taxed in the Maguire decision, though the same economic property would have had to bear the burden of both taxes.

[7] 295 U. S. 422, 55 S. Ct. 800 (1925). It is doubtful whether the tax in the Maguire case was treated as one on the person, measured by income from sources outside the state, or as an income from property, the cestui's equitable interest, having its situs in the taxing state. The principal case chose the latter theory.

[8] See 49 HARV. L. REV. 159 (1935); 35 COL. L. REV. 1151 (1935). The Senior decision has been much criticized by commentators (supra, note 6). See also the dissent of Justice Stone, 295 U. S. 422 at 433.

not the value of the investment being the basis of the tax, the objection of double taxation should have been held inapplicable. In the interests of consistency, it is to be hoped that the instant case will be used in the future as a means of overruling the doctrine of the *Senior* decision.

Allan A. Rubin